



The National Council of Veteran Associations in Canada

PROPOSED LEGISLATIVE PROGRAM

For Adoption at 2016 NCVA Meeting

NOVEMBER 2016

Prepared by Brian N. Forbes, B.Comm., LL.B., Chairman
National Council of Veteran Associations in Canada



The National Council of Veteran Associations in Canada

- 1st Canadian Parachute Battalion Association
- 14th Canadian Field Regiment Association
- 435-436 & Burma Squadrons Association
- Airborne Regiment Association of Canada
- Air Force Association of Canada
- Aircrew Association
- The Algonquin Regiment Veterans' Association
- Armed Forces Pensioners'/Annuitants' Association of Canada
- The Black Watch (Royal Highland Regiment) of Canada Association
- Bomber Command Association Canada
- Burma Star Association
- Canadian Airborne Forces Association
- Canadian Association of World War II Veterans from the Soviet Union
- Canadian Corps Association
- Canadian Fighter Pilots Association
- Canadian Forces Communications and Electronics Association
- Canadian Infantry Association
- Canadian Merchant Navy Veterans Association Inc.
- Canadian Naval Air Group
- Canadian Naval Divers Association
- Canadian Paraplegic Association
- The Canadian Scottish Regimental Association
- Canadian Tribal Destroyer Association
- The Chief and Petty Officers' Association
- Dieppe Veterans and Prisoners of War Association
- The Dodo Bird Club of Ex-RCAF Flight Sergeants
- Ferry Command Association
- First Special Service Force Association
- Hong Kong Veterans Association of Canada
- Jewish War Veterans of Canada
- KLB (Konzentrationslager Buchenwald) Club
- Korea Veterans Association of Canada
- The Limber Gunners
- Maritime Air Veterans Association
- Métis Nation of Ontario Veterans Council
- The Military Vehicle Hobbyists Association
- National Prisoners of War Association of Canada
- Naval Association of Canada, Montreal Branch
- Naval Club of Toronto
- Nova Scotia Naval Officers Association
- Nursing Sisters' Association of Canada
- Operation Legacy
- The Overseas Club - Canadian Red Cross Corps (Overseas Detachment)
- The Polish Combatants' Association in Canada
- The Queen's Own Rifles of Canada Association
- RCAF Prisoner of War Association
- Regimental Association for the Toronto Scottish Regiment (Queen Elizabeth the Queen Mother's Own)
- Royal Air Forces Escaping Society
- Royal Canadian Air Force Pre-War Club of Canada
- The Royal Canadian Army Service Corps Association
- Royal Canadian Naval Association
- The Royal Canadian Regiment Association
- Royal Naval Association - Southern Ontario Branch
- Royal Winnipeg Rifles Association
- The Sir Arthur Pearson Association of War Blinded
- The South Alberta Light Horse Regimental Association
- Submariners Association of Canada (Central Branch)
- Toronto Police Military Veterans Association
- The War Amputations of Canada
- War Pensioners of Canada
- War Veterans & Friends Club
- The Warriors' Day Parade Council
- White Ensign Club Montreal
- Wren Association of Toronto

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*Brian Forbes, Chairman
National Council of Veteran
Associations in Canada*

2016 PROPOSED LEGISLATIVE PROGRAM

INTRODUCTION

This last year has proven to be an exceptionally busy period for the advancement of veterans' issues and I believe it is fair to say that NCVA continues to play a leading role in this ongoing reform and improvement of veterans' legislation.

With the bringing down of the Federal Budget on March 22, 2016 and the introduction of Division 2 Part 4 of Bill C-15, the Federal Government clarified, to some extent, its preliminary intentions with respect to partially implementing the Mandate Letter that has been received by the Minister of Veterans Affairs, Kent Hehr, from the Prime Minister as a consequence of the Liberal government's election campaign commitments. In my judgement, with certain significant caveats, this set of measures delineated in the Budget represented a good first step in reforming veterans' legislation but there is clearly much more to be done to fulfill the priorities in the Mandate Letter.

It should be clearly noted that the greater majority of the Federal announcements introduced in these legislative amendments reflect significant long-standing proposals sourced in the NCVA Legislative Program which we have pursued for a number of years in this context.

These statutory changes begin the process of addressing the gaps, weaknesses and inequities which have been readily apparent in the New Veterans Charter for some time and which have been recognized by multiple advisory groups and stakeholder organizations including the New Veterans Charter Advisory Group of 2009, the Veterans Ombudsman, the Royal Canadian Legion Veterans Consultation Assembly and the Standing Committees of Parliament which have studied and reviewed this legislation for almost a decade.

As part and parcel of his obligation to fulfill the specific commitments outlined in the Mandate Letter, Minister Hehr has engaged the veterans' community so as to better understand the position of veteran stakeholders in this regard.

In conjunction with improving the consultation levels with the veterans' community the new Minister has appointed six advisory groups and two sub-advisory groups as follows:



Prime Minister Justin Trudeau.

Photo credit: Liberal Party of Canada.

Advisory Groups:

Policy Advisory Group
Service Excellence Advisory Group
Mental Health Advisory Group
Families Advisory Group
Care and Support Advisory Group
Commemoration Advisory Group

Sub-Advisory Groups:

Marijuana for Medical Use Expert Panel
Homelessness Working Group.

As you will know I have been appointed Co-chair of the Policy Advisory Group (PAG) and this particular committee has met on a number of occasions in 2016 with the Minister, the Parliamentary Secretary to Veterans Affairs Karen McCrimmon, ministerial officials and senior members of the VAC hierarchy. It is to be further noted that NCVA has representation on four of the six advisory groups including the Commemoration Advisory Group, the Service Excellence Advisory Group and the Care and Support Advisory Group.

Three Veterans Summits have been held in the last year, one in December of 2015, one in May and one in October of this year which have been attended by the greater majority of major stakeholder organizations together with the Advisory Groups that have been created by the new Minister. Although somewhat unwieldy due to their size, these Summits have provided a meaningful opportunity for us to advance our Legislative Agenda and to underline the needs of the seriously disabled veteran and the overall veterans' community.



*Minister of Veterans Affairs
Kent Hehr.*

Photo credit: Office of Kent Hehr.



*VAC Deputy Minister
Walt Natynczyk.*

With reference to the ongoing topic of the transition process for disabled veterans from the Department of National Defence to Veterans Affairs Canada, it remains readily apparent that dramatic procedural changes are required to ease this transition. Although Deputy Minister Natynczyk has initiated significant policy revisions to provide for an early intervention well in advance of the ultimate medical release of the disabled veteran, there remains much more work to be done to ensure that this transitional process is improved.

Without breaching confidentiality, quite clearly one of the most significant priorities currently being addressed by the various Advisory Councils to the Minister with reference to this transitional phase is to ensure that disabled veterans are fully apprised of benefits

and entitlements, rehabilitation options and job alternatives well before their medical discharge from the Canadian Armed Forces.

In this regard, it is my strong opinion that VAC should be able to identify those benefits a veteran is entitled to and implement these benefits on the veteran's behalf. In general terms, the utilization of a knowledgeable case manager together with administrative aides at an early point in the transitional process should expedite this procedure, as opposed to the current protocol where a veteran is often asked to describe his or her needs and the precise benefits that the veteran is seeking. It has been our recommendation that the case manager must be in a position in nearly all cases to identify these benefits and entitlements to the individual veteran under the various VAC programs, and that this should occur in collaborative partnership with the Department of National Defence prior to the discharge of the disabled veteran in question. With particular reference to seriously disabled veterans, the onus should be removed from the veteran and the VAC administrative function should be fine-tuned and more proactive in establishing entitlements for such veterans.

FEDERAL BUDGET 2016/ POLICY ADVISORY GROUP RECOMMENDATIONS

I would now like to turn to the specific implications of Federal Budget 2016 and the impact that these proposals will have on veterans' legislation.

Earnings Loss Benefit/SISIP/ Rehabilitation and Income Support

- The new legislative provisions emanating from the Federal Budget of March 2016 were intended to increase the Earnings Loss Benefit, effective October 1, 2016, to provide 90% of gross pre-release military salary for injured veterans participating in VAC's rehabilitation program or on an extended basis for those injuries preventing the veteran from suitable and gainful employment. The indexation of this benefit would also no longer be capped at 2% and would be allowed to keep pace with inflation.



It was the expectation of veteran stakeholders that such an increase to the Earnings Loss Benefit would apply equally, and without exception, to all SISIP LTD benefits received by veterans whether covered by the *Pension Act* or the New Veterans Charter and whether service related or non-service related.

As a matter of background, the greater majority of all veteran stakeholders have consistently recommended a 90% to 100% income replacement with regard to both ELB and SISIP

LTD particularly in circumstances where the disabled veteran is permanently incapacitated or, under the new parlance of the Bill, has suffered a “diminishment of earnings capacity” as a consequence of his/her disability.

The former reduction of 25% in income founded on the SISIP LTD model has clearly been unacceptable, particularly given that this loss of essential revenue is imposed when veterans and their families face a period of rehabilitation as they attempt to re-establish themselves in Canadian civilian society.

The insurance industry has long taken the position that this type of income diminishment is necessary in relation to disability income replacement so as to ensure that the insured is fully committed to the rehabilitation program. This form of so called “disincentive” allegedly prevents the insured from merely accepting his or her former wage and not pursuing rehabilitation with appropriate effort.

This by-product of the insurance culture has no place in veterans’ legislation particularly when applied to permanently incapacitated veterans or those veterans suffering a substantial diminishment of earnings capacity. Any sense of “disincentive” is largely inappropriate in such circumstances, given the veteran’s inability, by definition, to return to the employment workplace.

In the immediate context, based on the briefing received from VAC officials at the Policy Advisory Group meeting on June 28, it is to be noted that, with regard to the amending legislation to be made effective October 1, 2016, our Advisory Group has serious concerns as to the impact of this increase in relation to the new Earnings Loss Benefit on SISIP LTD payments. It is essential to note in this regard that the greater majority of medically released CAF members access the SISIP LTD Income Replacement Program as a “first responder.”

It is our understanding, based on the information received from VAC that under the New Veterans Charter it would appear to be the intention of the Department to “top-up” the SISIP LTD payments through the ELB program provided the disability of the veteran in question is service-related.

On the other hand, should the veteran be in receipt of a SISIP LTD benefit and the disability be non-service related there would be no top-up contemplated. This distinction is clearly not justifiable and had been drawn to the attention of the Minister immediately as being totally unacceptable to the veterans’ community and particularly our Policy Advisory Group. Whether one wishes to adopt the principle of “one veteran – one standard” or simply recognizes the flagrant inequity in this legislative result, it is self-evident that this revelation of discriminatory treatment will produce a public relations disaster for the Minister and the



CANADA

CONSOLIDATION

Pension Act

R.S.C., 1985, c. P-6

Government which was, after all, elected on the philosophy of providing care, support and respect for all veterans without distinction.

This entire discussion triggers a much more fundamental concern as to whether SISIP LTD for service-related disabilities should be continued at all or whether it should be eliminated due to the multiple standards which exist not only with the SISIP LTD program but also the SISIP VOC-REHAB program.

One of the priority recommendations of NCVA, the New Veterans Charter Advisory Group, numerous veteran consultation groups, the Standing Committee on Veterans Affairs and the Veterans Ombudsman's office for many years has been to suggest that the insurance culture needs to be removed from the compensation made available to veterans and their families. The compensation of veterans and their dependants should not be a function of the insurance industry whose mandate, in many situations, is to minimize exposure of the insurer's policy when applied to injured or disabled individuals.

As a matter of background a fundamental commitment made by the Government at the time of the enactment of the New Veterans Charter was the recognition that the SISIP LTD program should be eliminated and fully replaced by a liberalized Earnings Loss Benefit. The constraints placed on the New Veterans Charter by the restrictive provisions of the SISIP LTD program and the SISIP VOC-REHAB program are felt in the present context and should be removed as soon as possible. This Government commitment made by the Minister and Deputy Minister of the day was part and parcel of the understanding between the veteran stakeholder community and VAC in consideration of the immediate passage of the Charter by Parliament in 2006.

- The “wellness program” strongly advocated by VAC and more particularly the Deputy Minister Walt Natynczyk, is clearly impacted by the fact that the greater majority of medically released CAF members fall under the administration of the SISIP VOC-REHAB program. In effect, Veterans Affairs does not have the capacity to control and operate this portion of the VOC-REHAB program and is left with little accountability as to the impact that the SISIP program will have on veterans in regard to this essential element of the New Veterans Charter.
- As part of our Policy Advisory Group report to the Minister we also concluded in this context that, with reference to the Earnings Loss Benefit, there should be no set off in relation to this program with regard to the first \$10,000 (or higher amount to be



determined) earned by a veteran in returning to the workplace. Through this mechanism, the question of disincentive is addressed with the resultant impact that the veteran sees a distinct advantage in attempting to earn employment income without worrying about a set off applying to these funds. It is interesting to note that the former Minister Erin O’Toole, as part and parcel of the Conservative Government’s election platform in the fall of 2015, proposed that the first \$10,000 of employment income should not be set off against the Earnings Loss Benefit in furtherance of this objective.

- With reference to the question of service and non-service related disabilities, it has been the experience of the veterans’ community that this entire question of whether a member of the Canadian Armed Forces is to be considered “on duty” for the purposes of pensionability either under the *Pension Act* or the New Veterans Charter has been a longstanding grievance. The regulations in this area would be far clearer and more equitable if the Government/Department agreed to adopt the “insurance principle” in this context so that all members of the military would be considered “on duty” at all times



and thus eligible for various financial benefits such as the Disability Award and Income Replacement programs once they put on a uniform. This would clear up the potential interpretive issues which are raised in the regulations to the New Veterans Charter and would address the confusion and ambiguity which often results, when individual hypothetical cases reflect “gray areas” or areas of dispute. The resultant effect of this recognition would also further the objective of eliminating the SISIP LTD program even for non-service related disabilities which, of course, was its original and exclusive mandate in the 1970’s when it was first created.

In this context, the following represents the recommendations of the Policy Advisory Group to the Minister:

- (i) Eliminate SISIP LTD/VOC-REHAB and place all SISIP LTD and VOC-REHAB under VAC for all service attributable and non-service attributable medical releases with no premiums – ONE PROGRAM/ ONE SERVICE DELIVERY MODEL.
- (ii) In relation to the Earnings Loss Benefit, we are proposing that VAC permit a minimum threshold of earned income to encourage work and remove this disincentive.
- (iii) With regard to the immediate short term concern as to the impact of the increase of ELB to 90% on SISIP LTD recipients we are recommending in order to address the inequity and blatant discrimination contained in the Department’s proposed policy

that VAC harmonize the SISIP LTD and ELB to 90% for all recipients immediately in accordance with the “one veteran – one standard” principle.

Permanent Impairment Allowance/Career Impact Allowance

- It is implicit in Bill C-15 and the amending legislation that the government ostensibly intends to expand access to higher grades of the Permanent Impairment Allowance to better support veterans who have had their career options limited by a service related illness or injury. The potential impact of permanent and severe impairments on a veteran’s career advancement opportunities will apparently be considered in determining the appropriate level of financial support. The benefit will also be renamed “Career Impact Allowance” to better reflect the intent of the program.

It has been readily apparent that access to Permanent Impairment Allowance has been extremely limited under the administration of the New Veterans Charter. The Veterans Ombudsman’s office has determined that only 50% of seriously disabled veterans qualify for PIA, and of those that do qualify, over 90% obtain only the lowest grade or Grade 3. Improving the width and scope of the PIA/CIA will potentially contribute to “closing the seam” between *Pension Act* benefits and New Veterans Charter benefits. By addressing the loss of probable future income for an injured veteran in a meaningful manner, the new CIA will give VAC the opportunity to clearly identify the impact that a permanent and severe impairment can have on a veteran’s career.

Unfortunately, it is self-evident that the newly conceived CIA under the amended legislation is ill-defined, both as to eligibility and grade level criteria. Moreover, the schedules to the Bill clearly suggest that the arbitrary grade level amounts which existed under the Permanent Impairment Allowance will continue with reference to the new CIA. It is important to understand that the original grade level amounts struck in the initial New Veterans Charter were established as a substitute for the net monetary allowances found under the Exceptional Incapacity Allowance of the *Pension Act*. In effect, the PIA was arbitrarily structured so as to provide similar amounts to seriously disabled veterans under the Charter – indeed, these monetary figures have no real bearing as to any projected loss of career earnings suffered by an injured CAF member with reference to his/her military career.

In my judgement, the PIA provisions reflect a “blunt instrument” as opposed to a “precise tool” in evaluating the financial impact that an injury may have on an injured veteran when related to his/her projected military career.

Although it is recognized that the Department is endeavouring to improve the access to higher grades in its current deliberations, Bill C-15 simply does not provide any further guidance as to the approach or strategy that the Department intends to adopt in order to achieve the objective of improving access to higher grades for the new CIA.

It is our fundamental position as an Advisory Group that it is essential that VAC “think outside the box” in this regard, so that the concept of CIA contemplates future loss of income for a disabled veteran on the basis of the following fundamental question – “what would the disabled veteran have earned in his/her projected military career if the veteran had not been injured?”

Once this benchmark is established, a form of CIA can be developed as to the probable earnings loss of the disabled veteran over his/her career as delineated in various reports emanating from the Veterans Ombudsman’s Office over recent years and as proposed by the New Veterans Charter Advisory Group in 2009. The evaluation of the Veterans Ombudsman demonstrates the relative predictability of the elevation of a CAF member through his/her military career in recognizing the specific ranks the member would have achieved had the member not been injured.

Upon this determination being made, a “career probable earnings” approach should be implemented, to ensure that the true impact of the projected career income loss is recognized.

It is also of considerable import that the Canadian Civil Courts over the last number of decades have evaluated the plight of severely injured plaintiffs by consistently applying the concept of future loss of income in assessing monetary damages. In a similar fashion to the proposals emanating from our Policy Advisory Group on Career Impact Allowance the courts consider the probable career earnings of an injured plaintiff from the perspective of future loss of income or, alternatively, future loss



of earnings capacity as part and parcel of the damage award granted to plaintiffs in the Canadian judicial system. It is of interest that, in the context of Veterans Affairs Canada, the department has a distinct advantage over the courts, as the judicial system only has “one bite at the apple” at the time of the court hearing or settlement. VAC on the other hand is able to monitor the income position of a disabled veteran throughout his/her life to determine the differential between the benchmark established by the CIA concept and the actual income received by the veteran. Query: why should an injured Canadian veteran receive less than an injured plaintiff with reference to “future loss of income.” We have, in effect, paralleled the Disability Award under the New Veterans Charter with general damage awards in the Canadian courts – why not replicate the philosophy of the future loss of income concept as well?

- A further question remains as to the eligibility of this newly branded allowance i.e., what triggers the CIA? Currently arbitrary categories of disability are found in the VAC Regulations/Policy Guidelines for PIA. It is interesting that VAC has indicated that they intend, as one option, to do a “functional capacity assessment” at the point of determining whether a veteran is eligible for CIA – what does this truly mean? Given the clear intent of the Department to further develop the CIA concept and to consider its application to the lifetime pension commitment under the Mandate Letter, surely this type of assessment should only be transitional and should be as simple as possible given all of the circumstances.

It can be argued that the veteran’s disability award initially granted should be a major determinant (but not the only criteria) in evaluating CIA qualification. The “functional capacity” assessment contemplated by VAC is merely an unnecessary extension or alternatively a duplication of this type of Disability Award assessment.

The PAG report recommendations with reference to the new CIA were as follows:

- With reference to the short term, in order to reflect the Budget 2016 proposed changes, we are asking VAC to establish a simple methodology to determine the eligibility for “loss of career progression” and to liberalize the access to CIA.
- In regard to the long term for Budget 2017 we are proposing VAC consolidate ELB and CIA (previously PIA and PIAS) to provide a single stream of income, including a “projected career earnings” approach and make the CIA portion non-taxable (to parallel the *Pension Act* benefits).
- It is our further proposal that the CIA concept should reflect – “what would the veteran have earned in his or her military career as a veteran if the veteran had not been injured?”
- We are also recommending that access to the new CIA benefit should be available throughout the lifetime of the veteran providing a financial safety net that includes application to both pre and post release income scenarios.
- Our newly proposed CIA would continue for life and eliminate the need for the RISB which is clearly inadequate.

All of these recommendations in my judgement are key PAG proposals as it is self-evident that widening the scope of the CIA will expedite the closing of the seam between the New Veterans Charter and the *Pension Act* [and potentially apply to all disabled veterans].

Disability Award/Exceptional Incapacity Allowance/ Critical Injury Benefit

- The provisions of Bill C-15 augment the Disability Award by increasing the maximum to \$360,000 in 2017 for injuries or illnesses caused or worsened by military service and aligning with other New Veterans Charter benefits by indexing the Disability Award to inflation.

Higher awards will be paid retroactively to all veterans who have received an award since the introduction of the New Veterans Charter in 2006.

This increase, which the veterans' community has advocated for many years, allows the Disability Award to parallel the maximum that the Canadian Courts award for non-economic damages (pain and suffering, loss of enjoyment of life, et al) suffered by an injured plaintiff.

It is also noteworthy that this new maximum cap of \$360,000 has been supported by the Veterans Ombudsman's Office and the *EQUITAS* lawsuit. It is of particular interest that the recently released OVO report comprehensively compares the Disability Award to national and international standards and Workers Compensation Board standards in Canada and finds the maximum amount of DA to be fair and equitable.

It is not without significance in this regard that, one of NCVAs major recommendations to the Standing Committee on Veterans Affairs over recent years with regard to non-economic awards, was to propose that VAC adopt the Exceptional Incapacity Allowance concept founded under the *Pension Act* to distinctively recognize the extraordinary financial needs of certain seriously impaired high end veteran pensioners. This allowance has traditionally addressed the impact of a disability suffered by 100% veteran pensioners with reference to their difficulty to cope with their overall incapacity. The introduction of EIA to the Charter would augment the Disability Award particularly in circumstances where a seriously disabled veteran confronts the ravages of age.

It is interesting to note that the above-mentioned Veterans Ombudsman's report issued in August of this year proposes a similar continuation of the EIA with the caveat that the eligibility percentage be adjusted so that those seriously disabled veterans under 100% should also be considered for this newly established award under the Charter.

Note the recommendations of the Policy Advisory Group in this context:

- (i) Extend EIA to NVC recipients to recognize veterans who suffer an exceptional incapacity
- (ii) Lower the eligibility criteria for EIA to cover those veterans under 98% disabled and who are confronting extraordinary incapacities as a result of their service-related disabilities



Chairman Brian Forbes and the Veterans Ombudsman, Guy Parent.

- (iii) Improve the eligibility criteria for the Critical Injury Benefit to include mental health injuries and evolving injuries
- (iv) Extend eligibility of the Death Benefit to the families of all deceased veterans.

Benefits to Support Families

- It is noteworthy that under Budget 2016 the Government has not addressed the plight of families particularly in circumstances where a member of a family, often a spouse, is required to act in the role of a caregiver to a disabled veteran.

The Family Caregiver Relief Benefit (FCRB) introduced in 2015 certainly requires further re-evaluation, as it fails to comprehensively provide adequate financial support for the families of seriously disabled veterans where significant needs of attendance must be provided by a caregiver who often has to leave his or her employment to do so.

Unfortunately, the VAC FCRB program reflects a half measure at best, and fails to comprehensively provide adequate financial recognition of the cost to a family where significant levels of attendance must be provided by a caregiver, spouse, or another family member.

This FCRB, in its targeted support in relation to providing caregivers with appropriate respite or relief, represents only one element of the overall concerns confronting the caregivers of seriously disabled veterans in need of attendance. Such families are also facing, in many cases, a significant diminishment in income due to the fact that the caregiver spouse has been forced to give up his or her employment, and when coupled with the veteran's 10% – 25% loss of income under the SISIP LTD/ELB program, often results in a financial crisis in the overall family budget.

It is readily apparent that VAC need not “reinvent the wheel” with regard to such caregiver allowances as:

- (i) DND through its “Attendant Care Benefit” program has provided reimbursement to seriously disabled Afghan veterans for payments made to an attendant to look after the Canadian Armed Forces member on a full-time basis. This benefit is paid to the CAF member at a daily rate of \$100 (\$3,000 a month – \$36,000 a year). This benefit also implicitly represents



a recognition that the financial costs of attendants far exceed the need to address respite. More importantly, a serious question remains in the context of the veteran's transition from DND to VAC as to whether the financial assistance to such families will dramatically drop from the DND program to the VAC FCRB.

- (ii) Alternatively, the Attendance Allowance, founded under the *Pension Act*, which has been in place for many decades and is a far more generous provision when compared to the FCRB produces \$15,000 – \$20,000 a year of non-taxable benefits to those veterans in significant need of attendance.

It is noteworthy that the Liberal Government election platform position and Mandate Letter indicates an intention to invest \$100 million per year to expand support for the families of veterans to include education, counselling and training for families who are providing care and support for veterans living with physical or mental health issues as a result of their service. The re-introduction to the New Veterans Charter of the above-mentioned Attendant Care Benefit or alternatively the Attendance Allowance provision of the *Pension Act* would go a long way to alleviating financial concerns of families in this context.



Prime Minister Justin Trudeau.
Photo credit: Liberal Party of Canada.

In addition, we are proposing a new Family Benefit for all veterans in receipt of a Disability Award based on the level of disability assessment, which would provide further support to families and address, to a certain extent, the cost of the veteran's disability to his spouse and/or dependant children. The amount of this benefit would parallel the payments which have been made under the *Pension Act* for many years as part of the pension received by a disabled veteran who has a spouse and/or dependant children. Once again, the resultant impact of balancing benefits in this manner under both statutory regimes would be particularly responsive to the current shortcoming in the New Veterans Charter insofar as financial assistance to families of disabled veterans is concerned.

Note PAG report recommendations in relation to the support to families:

- (i) Introduce a modernized Attendance Allowance payable to informal caregivers to recognize and compensate for the significant effort and economic loss to support injured veterans and ensure access reflects consideration for effects of mental health injuries.

- (ii) Introduce a new Family Benefit for all veterans in receipt of a disability award that would compensate for the size of the families similar to the benefit provided in the *Pension Act* disability pension.

Retirement Income Security Benefit (RISB)

- It is also to be noted that the new legislative amendments emanating from Budget 2016 do not address the inadequacies of the Retirement Income Security Benefit (RISB) which was enacted last year by the former Conservative Government in its attempt to address the post-65 financial security for seriously disabled veterans and their families.

The RISB created last year provides specific veterans with a post-65 benefit consisting of 70% of the Earnings Loss Benefit (or SISIP LTD payment) together with 70% of the Permanent Impairment Allowance that the veteran has been receiving from Veterans Affairs less certain deductions prescribed by regulation.

What became abundantly crystal clear upon the adoption of the RISB last year was that the effectiveness of the RISB was contingent upon appropriate enhancements to the PIA/PIAS (CIA) and ELB (SISIP LTD) provisions of the Act. Without such complementary amendments to provide, for example, improved access to PIA (CIA) and higher grade levels for the allowance, it was clear that a number of moderately or severely disabled veterans at age 65 would be

essentially receiving 70% of the Earnings Loss Benefit which was originally awarded at 75% – 90% of previous military service income indexed with a cap of 2% per annum. The impact on surviving spouses is even more adverse and detrimentally affects the financial security of the surviving spouses by only providing a 50% entitlement in relation to the above-mentioned formula. In the minds of most of the veterans' community this would result in less than a satisfactory form of financial security in the traditional retirement years for such disabled veterans and for their surviving spouses.

To apply a 70% formula to the post-65 period for a permanently incapacitated veteran based on a public/private sector pension model is not appropriate when it is recognized that the plight of such a seriously disabled veteran post-65 remains unchanged and his or her financial costs of living continue to be essentially the same.

During the course of discussions surrounding the enactment of the RISB provisions last year, strong arguments were made by various veteran stakeholders that the Earnings Loss



Benefit should be continued for life and that the Earnings Loss Benefit be established at 90% – 100% of previous military service income, particularly given the fact that the principal recipients of this post-65 “pension” will be totally incapacitated veterans.

It is interesting to note that our Policy Advisory Group recommendations address this significant issue by establishing that a single stream of ELB/CIA payments should be continued for life as is the case for similar *Pension Act* benefits and that the RISB be eliminated – as it is self-evident the RISB is far too complex and impacts negatively on many seriously disabled veterans and particularly surviving spouses.

In addition, our financial compensation model provides that, in the event ELB/CIA is indeed continued for life, surviving spouses should be entitled to 70% of this amount which would equate to the proposed levels of the new *Canadian Forces Superannuation Act* survivor benefit committed to under the Minister’s Mandate Letter.

Policy Advisory Group Conclusions

With reference to the Policy Advisory Group Report to the Minister and the Veterans Summit on October 5, 2016, our work under Chapter One of our Submission can be summarized as follows:

Firstly: “The enhancement of ELB/CIA as a single stream of income for life, the addition of EIA, Attendance Allowance, and a new monthly family benefit for life will ensure all veterans receive the care and support they deserve, when they need it and through their lifetime.”

Secondly: “The elimination of the SISIP LTD and VOC-REHAB program will ensure all veterans have streamlined and simple access to VOC REHABILITATION and income support when they need to focus on wellness and re-establishing self-fulfillment.”

So what is the impact of these recommendations:

- By bridging the best parts of the *Pension Act* and the NVC and enhancing or adding new benefits our Chapter One:
 - ◆ represents a good first step to addressing the disparity between the New Veterans Charter and the *Pension Act*;
 - ◆ provides a form of “life-long pension” for those veterans who qualify for the benefits proposed in our model.

As clearly outlined to the Veterans Summit our assignment as an Advisory Group is a work in progress and there is clearly more work required to address the proverbial “elephant in the room” i.e., the disparity between the *Pension Act* and the New Veterans Charter in regard to all disabled veterans.

In relation to our ongoing work in Chapter Two in order to achieve the “one veteran – one standard” principle, it will be our task to ensure that no veteran under the NVC shall receive less compensation than a veteran under the PA with the same level of disability or incapacity.

It is our preliminary conclusion with reference to those disabled veterans not fully covered by our Chapter One recommendations that there are better options than simply returning to the disability pension under the *Pension Act* and we are currently evaluating alternative solutions to eliminate the disparity and achieve the “one veteran – one standard” principle.

With reference to adopting the position of utilizing the disability pension under the *Pension Act* as a possible response to the Mandate Letter, the Policy Advisory Group has studied the challenges and implications of this option. These considerations include the following:

- It must be recognized that the disability pension under the PA is a blended payment of both economic loss (income replacement) and non-economic loss (pain and suffering) – (as confirmed by the recent OVO and The Woods Committee Report of 1968). We cannot equate the disability award on an “apples to apples” basis with the disability pension – the disability award is purely non-economic in nature.

In reviewing this overall question as to the applicability of the disability pension under the *Pension Act*, it is important to analyze the origins of the disability pension under the *Pension Act* – suffice to say that the *Pension Act* disability pension over time has measured a number of elements:

- (i) The debt and gratitude of the Canadian people for the veteran’s service;
- (ii) The recognition of sacrifice of veterans and their families;
- (iii) The assessment of the quality of life;
- (iv) The loss of earnings capacity suffered by the veteran as a consequence of his or her injury or disability.

It is noteworthy that, whatever definition of the PA disability pension you wish to employ, compensation for a disability pension has always been measured by a comparison to the wages paid in the unskilled labour market or the lower ranks of the public service.

In my many years of dealing with the *Pension Act* there has been a consistent criticism from the Traditional veterans’ community that the disability pension is not only insufficient but that the unskilled labour market wage is too low a standard. It is important to recognize that Traditional veterans have felt, over the last few decades, that they had been falling further and further behind income actually paid to members of the military. It is the position of the Policy Advisory Group that we should not perpetuate this weakness in the *Pension Act*. We have concluded in this context that we can do better than returning to the *Pension Act* disability pension option in addressing the “one veteran – one standard” principle.

What does the work of the PAG to date reflect?

- (i) Chapter One of our report not only provides the first step to addressing the disparity between the PA and the NVC, it also proposes a form of life-long pension for those veterans who require financial care and support.
- (ii) Chapter Two will complete the analysis to ensure that no veteran under the New Veterans Charter will receive less compensation than a veteran under the *Pension Act* with the same disability or incapacity.
- (iii) In effect, the ultimate financial model should not only close the seam between the PA and the NVC for all disabled veterans but also recognize the projected loss of career earnings that the disabled veteran has suffered as a consequence of a veteran's injury – and not just the wages paid in the unskilled labour market or wages paid to the lower echelons of the Public Service as reflected in the *Pension Act* model.

I would advise that the PAG has obtained preliminary actuarial studies to confirm that our financial model satisfactorily addresses the disparity in compensation between the *Pension Act* and the NVC for those veterans who require financial care and support through their life.

It was my personal feeling that the presentation of the Policy Advisory Group Report Chapter One to the recent Veterans Summit meeting on October 5 in Ottawa was well received and that the course of action adopted by the PAG will produce effective recommendations to the Minister and VAC so as to further the overall objective of improving veterans' legislation.

Clearly it is time, in my judgement, that the government implement solutions and for the Advisory Group to continue to provide recommendations to assist the Minister in fulfilling the commitments and priorities that he will have to address in satisfying the Mandate Letter.

There is little question that the current environment surrounding this collaborative effort has dramatically improved and this may indeed be the best opportunity that the veterans' community has had to rectify the self-evident problems contained in the Charter and related legislation.

For the purposes of our NCVA legislative platform the following recommendations are proposed:

RECOMMENDATION

NCVA adopts the position that much more is required to improve the New Veterans Charter and that the Government needs to fully implement the Ministerial Policy Advisory Group recommendations presented to the Minister of Veterans Affairs and the Veterans Summit in October 2016 with particular emphasis on

- (i) resolving the significant disparity between the financial compensation available under the *Pension Act* and the New Veterans Charter
- (ii) ensuring that no veteran under the New Veterans Charter would receive less compensation than a veteran under the *Pension Act* with the same disability or incapacity in accordance with the “one veteran – one standard” principle.

RECOMMENDATION

NCVA continues to support the contention that the seriously disabled veteran should be given the highest priority in the implementation of the new Government’s plan of action for legislative reform in regard to the New Veterans Charter and other related legislative provisions.

RECOMMENDATION

NCVA endorses the position that the former Government’s failure to fully implement a plan of action on reforming the New Veterans Charter violated the social covenant owed to Canadian veterans and their families.

RECOMMENDATION

That NCVA require that DND and VAC employ all necessary financial, professional and personnel resources to identify, care and compensate veterans’ suffering from post-traumatic stress disorder and that it is recognized that this insidious disability must be continually monitored to ensure the well being of such veterans.

RECOMMENDATION

NCVA takes the position that, as part and parcel of the DND and VAC “early intervention” protocols, no disabled CAF member should be medically released until proper rehabilitation, re-establishment and financial benefit programs are implemented and completed to ensure such disabled veteran is capable of satisfactorily returning to civilian life.

RECOMMENDATION

That NCVA continue to support the ongoing work of The War Amps Task Force to improve VAC administration efficiency for the purposes of optimizing the delivery of VAC programs and benefits.

RECOMMENDATION

That NCVA member organizations contribute proposals based on their own members’ experiences to be included in the effective work of The War Amps Task Force for the purposes of a further submission to Veterans Affairs Canada in addressing bureaucratic obstacles and eliminating red tape.

RECOMMENDATION

That NCVA continue to apply “relentless scrutiny” to departmental service delivery so that we are able to draw our own conclusions as to the impact of the budgetary staffing enhancements currently being implemented by VAC and promised in the future by the new Liberal government in order to make our own judgement as to the question of whether VAC has become more administratively efficient through the “red tape cutting” initiative.

RECOMMENDATION

That NCVA continue to promote the utilization of presumptions in the VAC adjudicative system as outlined in NCVA 2014 Legislative Agenda so as to create administrative efficiencies and provide financial savings to the department in this period of budgetary analysis.

LONG-TERM CARE/INTERMEDIARY CARE

With reference to NCVAs long-standing concerns in this area I can advise that the Ministerial Advisory Group on Care and Support is currently evaluating the shortcomings of the VAC Health Care and Long-Term Care programs. In specific terms, it is my understanding that the Advisory Group will be studying the myriad of regulations and policies which apply to VAC Health Care and Long-Term Care classifications and which remain of serious concern insofar as the voluminous number of eligibility criteria that exists in this area of VAC administration.



As discussed over the course of the last number of NCVA meetings, it is self-evident that VAC, through VIP, has the authority to cover specific costs and expenditures while a qualified veteran resides in his home. In addition, once such a veteran pensioner has reached the stage where a long-term care facility is required, the veterans' Health Care Regulations establish financial support at this time in the health care process.

As we have consistently argued with departmental officials for many years, what has been missing has been the financial assistance for the middle ground or intermediary level of institutionalization where many of our members currently find themselves, i.e. seniors' residences and assisted living facilities.

We have had a number of intensive meetings with departmental officials over the last year in an attempt to close this gap, and I remain encouraged, through the recent discussions we have just completed with senior members of the VAC team, that attempts are continuing to be made to address this long-standing concern.

Last year, I also advised this meeting that I continue to work closely with the Veterans Ombudsman's Office in this context. It is of significant interest that Guy Parent's office has adopted our position and has issued a report with regard to Long-Term Care/Intermediary Care which fully recognizes the shortcomings that currently exist in the VAC Health Care Regulations concerning this particular gap in financial coverage. This will add further ammunition and support to our ongoing initiative to ensure that these inequities are eliminated.

As mentioned previously, it was of relevance that the NDP in their election campaign platform indicated that one of the substantial priorities for their party was to enhance the eligibility rules for not only Traditional veterans, but also Modern-day veterans vis-à-vis long term care qualification. It was indeed unfortunate that Peter Stoffer of the NDP was defeated in the October 19 election

as Peter had been a long-standing supporter and advocate for veterans' causes and he will be sorely missed in the House of Commons and in the Standing Committees where he was such a significant player.

As many of you will be aware, there have been a number of high profile cases this year which have been described in national media articles with reference to specific veterans attempting to gain admission to long term care facilities in various provinces across the country. It is of interest that VAC has ostensibly developed a flexible position in this context, so as to provide access to Traditional veterans' facilities on the basis of designating certain priority access beds as community beds for the purposes of VAC Policy Guidelines. This development of a form of freedom of choice for veterans attempting to gain admission to long-term care facilities should be encouraged on an ongoing basis.

RECOMMENDATION

That NCVA continue to collaborate with VAC to ensure that the adult residential care needs of the veteran are addressed through the expansion of the current VIP Program and long-term care policy of the department so as to provide financial assistance in this area of institutionalized care.

RECOMMENDATION

That NCVA continue to work with the Veterans Ombudsman's Office in drawing to the attention of the new Liberal government the inequity that has resulted in the gap that currently exists in the VAC Health Care Regulations concerning financial coverage for adult residential care.

RECOMMENDATION

That NCVA ensure that VAC continues to develop flexible policy to provide veterans with a freedom of choice between a community bed and a priority access bed for purposes of admission to long-term care facilities.

STE. ANNE'S HOSPITAL

I would reaffirm that I continue to consult with Deputy Minister Walt Natynczyk to obtain regular briefings to ensure that VAC is fulfilling its responsibility in accordance with the Transfer Agreement governing the administration of Ste. Anne's Hospital by the Province of Quebec.

It has been my objective to obtain appropriate assurances from the Deputy that the standard of care at Ste. Anne's will not diminish under Quebec administration, that priority access beds to veterans will be maintained as entrenched in the Transfer Agreement, and that the institution will remain bilingual. In my most recent conversation with the Deputy I strongly encouraged him to enhance the level of communication between the VAC hierarchy and Ste. Anne's residents to quell the ostensible concerns that they clearly are confronting in relation to this transfer.

We certainly are cognizant of the concerns expressed by staff and patients at Ste. Anne's over the last number of months with reference to matters which have been raised in media coverage and in relation to Union protestations as to staffing issues.

As mentioned last year, I am particularly sensitive, as I am sure you all are, to the feelings of the residents of Ste. Anne's, particularly as to the standard of care with reference to staffing and food which has found its way into recent letters to the editor from individual residents who are seriously concerned as to these ongoing issues.



Ste. Anne's Hospital. Photo credit: Architecture49.

It is of fundamental importance that NCVA member organizations in west Quebec continue to monitor the Transfer Agreement and ensure that the commitments made by the Federal Government are met with regard to the governance of Ste. Anne's by the Province of Quebec.

RECOMMENDATION

That NCVA will continue to express the significant concerns of our member organizations to the Minister and the Deputy Minister with reference to the administration of Ste. Anne's Hospital. NCVA intends to hold ongoing discussions with the new minister's office to protect the interests of veterans affected by this transfer and ensure that the provisions found in the transfer agreement established to support the commitments made in relation to priority beds for veterans, language rights, and the standard of care be strictly enforced and funded by the Federal Government as promised.

LAST POST FUND/VETERANS BURIAL REGULATIONS

Budget 2016 provided an expansion of the eligibility for The Last Post Fund Program so that more families of low income veterans will receive financial assistance under this program. The Budget proposed to increase the estate exemption for The Last Post Fund from roughly \$12,000.00 to

roughly \$35,000.00 and apply an annual cost of living adjustment to this estate exemption going forward.

Although these improvements made over the last two Federal Budgets are indeed helpful, it remains our position that a Seriously Disabled Veteran should be entitled as a Matter of Right, to receive funeral and burial benefits pursuant to the Veterans Burial Regulations.

As we have often stated, it is puzzling indeed that, during the lives of veterans, the Department has recognized the cumulative and synergistic impact of both their pension and non-pension conditions, approving many health care and treatment benefits on their behalf but, in death, ignores the relationship between these conditions.

In this context, it is inconceivable in our submission that the impact of the veteran's pension and non-pension disabilities did not play a part in his/her ultimate demise. In this overall analysis the principle of presumption should be fully applicable to this area of VAC adjudication

I would advise however, that recent developments in this area insofar as the treatment of Seriously Disabled Veterans continue to be extremely encouraging. Adjudication over the last number of months with reference to our Last Post Fund applications on behalf of veterans such as war amputees and Hong Kong veterans, has demonstrated a far more liberal interpretation by the Department of these policies such that nearly all of our applications on behalf of surviving families have been granted. We are presently pursuing the question of retroactivity in relation to this entire area of Last Post Fund applications given this dramatic change in adjudication policy from the Last Post Fund regime.



LAST POST FUND FONDS DU SOUVENIR

RECOMMENDATION

That NCVA continue to pressure the Minister of Veterans Affairs to ensure that, at a very minimum, Seriously Disabled Veterans entitled to a disability pension at 78% or more [SDVs] qualify, as a matter of right, under the Veterans Burial Regulations/Last Post Fund.

RECOMMENDATION

That Veterans Affairs Canada address the inequities that still exist in the Last Post Fund in relation to widening the standard for income/asset exemptions under the regulations and expanding the eligibility criteria to include a higher number of deserving Traditional Veterans and Modern-day Veterans.

PUBLIC SERVICE PENSIONS AND HEALTH CARE PROGRAMS/MARRIAGE AFTER SIXTY

Last year we discussed at considerable length that the former Federal Government had proposed or implemented major changes to Public Service benefits and pensions including:

1. An implemented increase in the contribution level of public servants and retirees to the Federal Public Service Health Care Plan (PSHCP) from 25% to 50% such premium increases to be phased in over four years and culminating in 2018.
2. A proposed amendment to the defined benefit pension plan currently enjoyed by Federal public servants through the introduction of a “target pension” concept which reflects a hybrid of the defined contribution model and the defined benefit pension plan.



Once again, I have requested Chuck McCabe of the Armed Forces Pensioners’/Annuitants’ Association of Canada to brief this year’s NCVA Annual Meeting on these contentious issues with reference to impact on the veterans’ community.

Given the “ostensible change” that the new Prime Minister Mr. Trudeau has invoked with reference to the improvement of the relationship between the Federal Government and the Public Service, it will be interesting to see whether this alteration in attitude will impact upon these particular government programs and proposals – again a true litmus test as to the validity and reality of these political commitments made during an election campaign.

With respect to our ongoing initiative vis-à-vis CAF retirees and “marriage after sixty:”

- This continues to be a very important issue within the NCVA Legislative Program in view of the fact that more and more Canadian Armed Forces (CAF) retirees are living longer and many are marrying for the second time.
- As it stands, the CAF retirees contribute to the Canadian Forces Superannuation account throughout their entire career and one of the important benefits is a 50 per cent Survivor’s Benefit except in those cases where the CAF retiree marries after age 60.
- We are continuing to work in close consultation with Chuck McCabe of the Armed Forces Pensioner’/Annuitants’ Association of Canada in attempting to pressure the appropriate Ministers of the Crown to address this longstanding inequity and injustice.

It is again noteworthy that the Liberal election platform specifically indicated that it was the intention to “...eliminate the marriage after sixty claw back clause so that surviving spouses of

veterans receive appropriate pension and health benefits.” As I indicated last year if our dear friend Helen Rapp was still with us, she would be extremely pleased to see this dramatic change in political attitude emanating from the new Liberal government. Hopefully this policy will become a reality after so many years of tortuous advocacy to obtain this legislative amendment.

RECOMMENDATION

That NCVA monitor developments with reference to the Federal Government’s position on Public Service pensions (“target pensions”) and health care programs and engage the Government as required to protect the interests of veterans and their dependants.

RECOMMENDATION

NCVA adopts the position that the Public Service Health Care Plan be amended so that seriously disabled veterans and their families be exempted from paying premiums for such coverage or, alternatively, that VAC should cover these contributions so as to alleviate this financial burden on seriously disabled veterans and their dependants.

RECOMMENDATION

That NCVA continue to pressure the new Minister of Veterans Affairs and the new Minister of National Defence on behalf of the aforementioned class of widows so as to allow the spouse of a Canadian Armed Forces retiree marrying after 60 to be eligible for survivor’s benefits without reducing the amount of superannuation in payment to the retiree in accordance with the Liberal Party’s election platform of 2015.

ABORIGINAL VETERANS

With reference to the longstanding grievance of the Aboriginal veterans in relation to their claim for compensation for post-World War II/Korea benefits, it is potentially of significant import that the Liberal Party’s election platform has suggested that the new government wishes to bolster financial assistance to the Aboriginal community. In my view, this may be an opportunity to reinvigorate our support for the Aboriginal veterans in their claim against the Canadian Government which is based on evidence that the Aboriginal veterans were denied full access to benefits under the initial Veterans Charter of 1945.

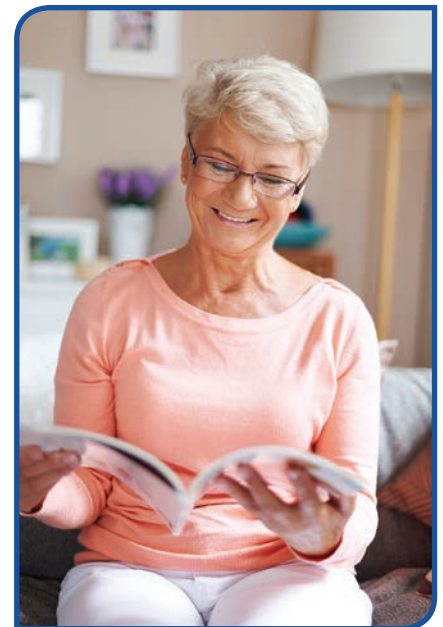
It will be remembered that, some years ago The War Amputations of Canada initiated a legal action in the United Nations Human Rights Committee in an attempt to pressure the Canadian Government on the substance of the claim. This claim, although gaining appropriate exposure to this particular grievance, was not fully successful in the United Nations Human Rights Tribunal due to the ostensible limitation periods that exist in that particular jurisdiction.

RECOMMENDATION

That NCVA continue to reinstate its support to the Aboriginal veterans in their claim against the Canadian Government to provide an ex-gratia payment as compensation for benefits denied to them following their service in WWII or Korea.

VIP FOR LIFE FOR WIDOWS

It remains a priority issue of NCVA to underline the need to expand the eligibility of VIP to include, at a minimum, those widows of seriously disabled veterans whose spouses did not apply for VIP prior to their death. Our position continues to be that in many cases the veteran was unable or reluctant to apply for VIP in the years prior to his passing. It is our strong argument that a presumption could be established that, in the event the Seriously Disabled Veteran had applied or was able to apply for VIP, he would have received the benefit given his significant incapacity. It is submitted that the Department would have great difficulty in refuting the logic of our argument and we remain hopeful that this particular presumption will be of great value to our widows in achieving VIP benefits.



As a matter of historic development, you will recall that the Federal Budget of 2008 partially expanded the current regulations for the continuation of VIP for life for widows provided the widow is either in receipt of the Guaranteed Income Supplement or has entitlement to the Disability Tax Credit under the *Income Tax Act*. It remains our position that this partial expansion is far too restrictive and that the required criteria should be removed with respect to widows of Seriously Disabled Veterans.

RECOMMENDATION

That NCVA continue to pressure the Minister and departmental officials to review the present policy on the continuation of VIP for Life for Widows with a view to providing, at a minimum, this benefit to all widows of Seriously Disabled Veterans who are not eligible because the veteran never applied for the benefits.

RECOMMENDATION

That the Minister of Veterans Affairs alters the government's current position so that:

- 1. The needs of the widow should determine the benefit required (housekeeping or grounds keeping) instead of the present practice of basing the decisions on the specific VIP benefit the veteran was receiving prior to his death.**
- 2. Section 16 and section 16.1 of regulations be amended so as to eliminate the absurd anomaly whereby a widow who fails to qualify for VIP based on her husband's VIP status cannot utilize her GIS or DTC eligibility for the purposes of her own VIP entitlement.**



The National Council of Veteran Associations in Canada