NCVA Legislative Program 2023-24

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National Council of Veteran
Associations in Canada

NCVA

The National Council of Veteran Associations in Canada

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- 400 Squadron Historical Society (Toronto)
- Airborne Regiment 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
- Canadian Airborne Forces Association
- Canadian Association of World War II Veterans from the Soviet Union
- Canadian Corps Association
- Canadian Forces Communications and Electronics Association
- Canadian Infantry Association
- Canadian Merchant Navy Veterans Association Inc.
- Canadian Military Intelligence Association
- 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
- First Special Service Force Association
- Halton Naval Veterans Association
- Hong Kong Veterans Commemorative Association
- Jewish War Veterans of Canada
- Korea Veterans Association of Canada
- The Limber Gunners
- Maritime Air Veterans Association
- Métis Nation of Ontario Veterans' Council
- The Military Vehicle Hobbyists Association
- Naval Association of Canada, Montreal Branch
- Naval Club of Toronto
- Nova Scotia – Naval Association of Canada
- Nursing Sisters' Association of Canada
- Operation Legacy
- The Polish Combatants' Association in Canada
- PPCLI Association
- The Queen's Own Rifles of Canada Association
- Royal Canadian Air Force Association
- 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 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
- Toronto Scottish Regimental Association
- The War Amputations of Canada
- The Warriors' Day Parade Council
- War Veterans & Friends Club
- Wren Association of Toronto

Legacy Associations:

- 1st Canadian Parachute Battalion Association
- 14th Canadian Field Regiment Association
- 435-436 Burma Squadrons Association
- Bomber Command Association Canada
- Burma Star Association
- Canadian Fighter Pilots Association
- Dieppe Veterans and Prisoners of War Association
- The Dodo Bird Club of Ex-RCAF Flight Sergeants
- Ferry Command Association
- KLB (Koncentration Lager Buchenwald) Club
- National Prisoners of War Association of Canada
- The Overseas Club – Canadian Red Cross Corps (Overseas Detachment)
- RCAF Prisoner of War Association
- Royal Air Forces Escaping Society
- Royal Naval Association – Southern Ontario Branch
- War Pensioners of Canada
- White Ensign Club Montreal

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Introduction

Upon an evaluation of the past year, the National Council of Veteran Associations in Canada (NCVA) and our 68 member-associations continue to have significant concerns with respect to veterans legislation, regulation and policy, which will necessitate further action by the Government and Veterans Affairs Canada (VAC) to rectify the ongoing inequity and injustice impacting disabled veterans and their families.

With the appointment of the Honourable Ginette Petitpas Taylor as the new Minister of Veterans Affairs/Associate Minister of National Defence, we are hopeful that she will provide a "breath of fresh air" and invigorated momentum for the required legislative reform.

Certainly, it must be stated, based on our formal exchanges over the last year with the former minister, Lawrence MacAulay, and senior officials of the department, that VAC unfortunately has tended to default to a defensive position of upholding the status quo as to the state of veterans legislation.

Although it is recognized that the former minister and the department have been inclined to deliver statements of good intention, it is readily apparent that the machinery of government under his watch moved at a snail's pace in actually implementing needed overall legislative change.

In a further development this year, it is noteworthy in this context of VAC expenditures that the federal budget of 2023 contained an ominous message that

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

all government departments must reduce financial spending by three per cent over the next five years.

In addition, Minister Anita Anand, in her new role as head of the Treasury Board, accelerated this objective by announcing in August of this year that all departments must provide firm undertakings by October 2, 2023, as to the financial steps to be implemented to create a total of a $15-billion reduction in overall government spending!

The government, as per usual, has stated that no benefits, programs or staff cuts will ensue. In our judgment, this pronouncement should not give the veterans' community any amount of real comfort.

Indeed, this form of fiscal management has been seen before in the Canadian political world, as a review of deficit-focused initiatives followed by previous governments confirms the following:

- In the 1990s, the Liberal government under Prime Minister Jean Chrétien, in concert with Finance Minister Paul Martin, invoked this form of debt diminishment strategy and delivered a parallel commitment, and yet veterans' programs were eliminated at that time to generate budgetary savings – for example, intermediate institutional care funding was completely removed from veterans legislation.
- During the Conservative government of Prime Minister Stephen Harper, veterans will well remember the substantial cuts that were made for the purposes of decreasing the federal deficit by closing departmental district offices and dramatically cutting VAC staff, to the detriment of veterans and their families.

The current policy directive, in our judgment, actually results in a contradictory message, as the same 2023 federal budget provided further funding to increase VAC staffing to ostensibly address the long-standing backlog/wait-time crisis – and yet, at the same time, the department is being required to reduce its overall spending by three per cent over the next five years.

NCVA will remain vigilant and apply "relentless scrutiny" to budgetary developments in the near future so as to ensure that no steps are enacted, directly or indirectly, to diminish veterans' benefits, programs or services by means of this cost-cutting political measure.

Notwithstanding these unsettling budgetary developments, we intend to work closely with the new minister and underline that, in actuality, much more is required from VAC to fully respond to our ongoing legislative agenda for the betterment of veterans and their families. This plan of action will include the following fundamental NCVA recommendations with respect to major topics of concern:

1. Our essential proposition that veterans legislation should equate to a "one veteran – one standard" approach. We have strongly recommended that the best parts of the Pension Act and the New Veterans Charter should be utilized to produce a comprehensive compensation/pension and wellness model for all disabled veterans, regardless of where or when they were injured.

NCVA takes the position that VAC, working together with relevant ministerial advisory groups and other veteran stakeholders, should think "outside the box" by jointly striving as an ultimate objective to create an overall program model that would essentially treat all veterans with parallel disabilities in the same manner as to the application of benefits and wellness policies – thereby resulting in the elimination of artificial cut-off dates that arbitrarily distinguish veterans based on whether they were injured before or after 2006.

2. The establishment of a new Career Impact Allowance (CIA) for life based on the future loss of income strategy employed for many years by the Canadian courts in lieu of the current VAC Income Replacement Benefit or the Canadian Armed Forces (CAF) SISIP income policy. The fundamental principle that should be followed by the department lies in the monetary evaluation as to what the disabled veteran would have earned in their military career if they had not been injured.

   In conjunction with the implementation of a future loss of income philosophy, VAC should fully revamp the Diminished Earnings Capacity post-65 policy so as to establish a formula that does not reduce the amount of the income replacement from 90 per cent to 70 per cent (of 90 per cent) at age 65, with accompanying setoffs. It is quite clear that the financial requirements of a seriously disabled veteran in receipt of Diminished Earnings Capacity do not decrease at the age of 65 and the parallel to private pension plans, as often posited by VAC, is not an acceptable justification for this reduction.

3. a) The adoption of the Ombud's recommendation as endorsed by the Standing Committee on Veterans Affairs (ACVA) that family members and caregivers should have an independent right to benefits and well-being provisions rather than the restricted derivative rights that have existed in veterans legislation for many years.

   b) The replacement of the present Caregiver Recognition Benefit by revitalizing the traditional concept of Attendance Allowance as to eligibility criteria from the Pension Act, together with the Department of National Defense (DND) Attendant Care Benefit as to the amount payable to informal caregivers to better recognize and more generously compensate them for their significant effort and economic loss in supporting injured veterans.

   c) The creation of a new family benefit for all veterans in receipt of Pain and Suffering compensation to parallel the Pension Act provisions in relation to spousal and child allowances, so as to

recognize the impact of the veteran's disability on their family.

4. A recognition that systemic change is essential to tackle the backlog/wait-time crisis, including the adoption of fast-tracking protocols and a form of automatic entitlement for common disabilities. Notwithstanding slight improvements over recent months, the latest Auditor General's report and the Parliamentary Budget Officer's report of 2020 make clear that increased temporary staffing and augmented digitization alone are not sufficient to resolve this ongoing problem. It is to be noted that our 2023-24 Legislative Program, in addressing the totally unacceptable backlog and wait times for veterans' disability claims, contains the essential elements of our proposals to alleviate this intolerable situation sooner rather than later.

5. We have been encouraged by the enactment in April 2022 of an immediate treatment benefit policy for veterans suffering mental health challenges, which has been a major breakthrough in accord with the long-standing position of NCVA in this context. We will continue to pursue an extension of this treatment benefit policy so as to ensure that it applies to all disabled veterans in urgent need of treatment or health care.

6. In response to NCVA's concerns, there has been significant progress over the last year by the DND/CAF to achieve enduring cultural change and to prevent and eradicate harassment and sexual misconduct in the CAF. We will continue to press the government to fully implement, without further delay, all of the salient recommendations contained in the report of Madame Justice Arbour (IECR).

   We are encouraged that the essential proposal concerning the appointment of an independent external auditor was implemented for the purpose of overseeing the progress required in regard to this ongoing crisis.

   We are further recommending that the Minister of National Defence: 1) extend the appointment of the external monitor for at least three years; 2) take the necessary action to launch immediately the external review of the two military colleges; 3) for the purpose of more meaningful oversight, establish a fully independent Office of the Inspector General of the DND and the CAF reporting to Parliament; and 4) ensure remedial steps are taken to address any challenges being encountered by individual claimants

in the transition of their cases to the civilian/criminal courts.

7. The marriage after 60 dispute and our demand that the so-called "gold digger's clause" be eliminated from the Canadian Forces Superannuation Act (CFSA) after many years of advocacy. It is noteworthy that the Standing Committee on Veterans Affairs (ACVA) recently carried out an extensive study of this long-standing grievance. On balance, the report contains a strong set of recommendations, particularly Recommendation 9, which calls for the Government of Canada to repeal the marriage after 60 clause in the CFSA and the RCMP Superannuation Act.

   With respect to the authority and jurisdiction of VAC, we would propose that the Veterans Survivors Fund, initially announced in the 2019 budget in the amount of $150 million, should be established to address the inequities and injustices created by the current CFSA legislation. The principles to be applied are detailed in this chapter of our NCVA Legislative Program.

8. In relation to long-term care, VAC must 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 a continuum of care and financial assistance in this area of intermediary institutionalized care.

   In addition, a flexible policy should be implemented immediately to provide veterans with the freedom of choice between a community bed and a priority access bed for purposes of admission to long-term care facilities without distinction between traditional and modern-day veterans.

9. A reform of the Last Post Fund legislation necessitating a recognition of the fact that families of seriously disabled veterans should receive this funeral and burial grant as a matter of right.

We will continue to work with the recently restructured hierarchy of VAC on behalf of Canadian veterans and their families. It is hoped that, with the appointment of the new minister, Ginette Petitpas Taylor, she will provide a significant impetus to the enactment of meaningful legislative change in the coming year.

In our considered opinion, the new minister and VAC must recognize that time is of the essence for Canadian veterans and their families who continue to wait for this fundamental legislative and policy reform so as to allow them to better cope with their service-related disabilities and injuries.

Our NCVA Legislative Program 2023-24 sets out the essential components of our agenda as we address Parliament, Veterans Affairs Canada and the Department of National Defence.

"One Veteran – One Standard"

Recommendation

NCVA takes the position that VAC, working together with relevant ministerial advisory groups and other veteran stakeholders, should think "outside the box" by jointly striving over time to create a comprehensive program model that would essentially treat all veterans with parallel disabilities in the same manner as to the application of benefits and wellness policies – thereby resulting in the elimination of artificial cut-off dates that arbitrarily distinguish veterans based on whether they were injured before or after 2006.

Recommendation

NCVA adopts the position that much more is required to improve the New Veterans Charter/Veterans Well-being Act and that the Government needs to fully implement the Ministerial Policy Advisory Group recommendations initially presented to the Minister of Veterans Affairs and the Veterans Summit in October 2016 (and enhanced in subsequent annual reports to various ministers) with particular emphasis on:

(i) Resolving the significant disparity between the financial compensation available under the Pension Act and the New Veterans Charter/Veterans Well-being Act;

(ii) Ensuring that no veteran under the New Veterans Charter/Veterans Well-being Act 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;

(iii) Utilizing a combination of the best provisions from the Pension Act and the best provisions from the New Veterans Charter/Veterans Well-being Act, producing a form of lifetime pension in a much more realistic manner in order to secure the financial security for those veterans who need this form of monetary support through their lifetime; and

(iv) Addressing the ongoing layering of legislation and incremental changes over the years, ostensibly without consistent objectives and clearly defined outcomes, which has created a complex grid of eligibility criteria, differences in eligibility for benefits depending on when and where served, and inconsistency between policy intent and outcomes and expectations.

Recommendation

In addition to the aforementioned fundamental proposals as to the overriding guiding principles for legislative reform, the following recommendations represent specific statutory and policy amendments in furtherance of this objective:

(i) Liberalize the eligibility criteria in the legislation and regulatory amendments for the new Additional Pain and Suffering Compensation (APSC) benefit so that more disabled veterans actually qualify for this benefit. Currently, only veterans suffering from a severe and permanent impairment will be eligible. It bears repeating that the greater majority of disabled veterans simply will not qualify for this new component of the proposed lifelong pension.

(ii) The Veterans Disability Award (PSC) initially granted to the veteran should be a major determinant in evaluating APSC qualifications. In effect, it is the position of NCVA that this employment of the Disability Award (PSC) percentage to individual APSC grade levels would produce a more straightforward and easier-understood solution to this ongoing issue of APSC eligibility.

(iii) Create a new family benefit for all veterans in receipt of PSC to parallel the Pension Act provisions in relation to spousal and child allowances to recognize the impact of the veteran's disability on their family.

(iv) Incorporate the special allowances under the Pension Act, i.e., Exceptional Incapacity Allowance and Attendance Allowance, into the New Veterans Charter/Veterans Well-being Act to help address the financial disparity between the two statutory regimes.

(v) Fine-tune the concept of Attendance Allowance, payable to informal caregivers, by adopting the amount paid under the Attendant Care benefit employed by DND so as to better recognize and compensate the significant effort and economic loss to support injured veterans. Moreover, VAC must ensure access reflects consideration for the effects of mental health injuries.

(vi) Improve the eligibility criteria for the Critical Injury benefit to include mental health injuries and evolving injuries.

(vii) Extend eligibility of the death benefit to the families of all deceased veterans.

Recommendation

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

Recommendation

NCVA endorses the position that the federal government's failure to fully implement a plan of action on reforming the New Veterans Charter so as to rectify the unacceptable financial disparity between the Pension Act and the NVC/VWA violates the social covenant owed to Canadian veterans and their families.

NCVA continues to take the position that there is much to do in improving veterans legislation so as to address the financial and wellness requirements of Canada's veterans' community. This is particularly so with respect to the Pension for Life (PFL) provisions originally announced in December 2017 and formally implemented on April 1, 2019.

It is self-evident that the greater majority of disabled veterans are not materially impacted by the PFL legislation in that the new benefits under these legislative and regulatory amendments have limited applicability – indeed, some seriously disabled veterans are actually worse off.

In our considered opinion, this PFL policy fails to satisfy the Prime Minister's initial commitment in 2015, in response to the Equitas lawsuit, to address the inadequacies and deficiencies in the New Veterans Charter/ Veterans Well-being Act (NVC/VWA) and continues to ignore the "elephant in the room" that has overshadowed this entire discussion.

As stated in our many submissions to VAC and Parliament, the Government has not met veterans' expectations with regard to the fundamental mandated commitment to "re-establish lifelong pensions" under the Charter so as to ensure that a comparable level of financial security is provided to all disabled veterans and their families over their life course, regardless of where or when they were injured. This financial disparity between the Pension Act and NVC/VWA compensation was fully validated by the Parliamentary Budget Office's report issued on February 21, 2019, which clearly underlined this long-standing discrimination.

In this regard, it is essential to recognize that VAC has been substantially impacted by government budgetary constraints in implementing the PFL and related benefits, producing half-measures and inadequate benefit components to overall veterans legislation.

Notwithstanding the Prime Minister's protestations as to the ability of his government to finance appropriate veterans' benefits and programs, one has to ask the fundamental question: What has happened to the millions of dollars saved by VAC with the passing of tens of thousands of traditional veterans and early peacekeepers over recent years?

In this context, in relation to the basic issue as to the "affordability" of veterans' programs, the government has failed to acknowledge the impact on the overall VAC budget of the fact that the greater majority of traditional disabled veterans have passed on over the past several years, resulting in significant savings in VAC's budgetary funding requirements. With the continuing loss of this significant cohort of the veteran population, VAC is no longer required to pay pensions, allowances, health-care benefits, treatment benefits, long-term care benefits, VIP et al for all of these disabled veterans.

NCVA and veterans at large will be closely monitoring all federal leaders to determine which party is prepared to make a substantial commitment to addressing the shortfalls and inequities that continue to exist in veterans legislation. In this regard, it must be remembered that there are over 600,000 veterans in Canada today and, when family, friends and supporters are considered, this number of potential voters is not without significance – particularly following the 2021 election that resulted in a minority government where, historically, a new election will in all probability ensue within the next 12 to 24 months.

If the "one veteran – one standard" philosophy advocated by VAC has any meaning, this glaring disparity between the Pension Act and the New Veterans Charter/Veterans Well-being Act benefits for disabled veterans requires that the Liberal government and the Opposition parties seize the moment and satisfy the financial needs of Canadian veterans and their dependants. In so doing, Parliament would finally be recognizing that the long-standing social covenant between the Canadian people and the veterans' community demands nothing less.

A. Pension for Life

With specific reference to the provisions of the legislation that became effective April 1, 2019, the statutory and regulatory amendments reflect the Government's inadequate attempt to create a form of "pension for life" (PFL) which includes the following three elements:

1. A disabled veteran has the option to receive the original lump sum disability award in the form of a Pain and Suffering Compensation (PSC) benefit representing a payment in the maximum amount of $1,297 (as of

January 1, 2023) for life. For those veterans in receipt of PSC, retroactive assessment would potentially apply to produce a reduced monthly payment for life for such veterans. In effect, VAC has simply converted the amount of the lump sum disability award into a form of a lifetime annuity as an option for those disabled veterans who are eligible.

2. An Additional Pain and Suffering (APSC) benefit has essentially replaced the Career Impact Allowance (Permanent Impairment Allowance) under the NVC/VWA, with similar grade levels and monthly payments that reflect a non-taxable non-economic benefit but is substantially limited in its application to those veterans suffering a "permanent and severe impairment which is creating a barrier to re-establishment in life after service."

3. A consolidated Income Replacement Benefit (IRB), which is taxable, combined four pre-existing benefits with a proviso that the IRB will be increased by one per cent every year until the veteran reaches what would have been 20 years of service or age 60. It is not without financial significance that the former Career Impact Allowance and Career Impact Allowance Supplement (CIA(S)) have been eliminated from the IRB package to the detriment of certain veterans as identified by the aforementioned Parliamentary Budget Office report in February 2019.

It is readily apparent that significant amendments to the NVC/VWA are required so as to address the proverbial "elephant in the room" in that the PFL legislation fails to satisfy the priority concerns of the veterans' community in relation to:

(i) Resolving the significant disparity between the financial compensation paid to disabled veterans under the Pension Act and the NVC/VWA; and

(ii) Ensuring that no veteran under the NVC/VWA receives less compensation than the veteran under the Pension Act with the same disability or incapacity in accordance with the "one veteran – one standard" principle.

It is totally unacceptable that we continue to have veterans legislation in Canada that provides a significantly higher level of compensation to a veteran who is injured prior to 2006 (date of enactment of the New Veterans Charter) when compared to a veteran who is injured post-2006. If applied to the Afghanistan conflict, this discrimination

results in veterans of the same war having totally different pension benefits.

During the course of discussions following Budget 2017 leading up to the minister's announcement, there was considerable concern in the veterans' community, which proved to be well founded, that the Government would simply establish an option wherein the lump sum payment (PSC) would be apportioned or reworked over the life of the veteran for the purposes of creating a lifelong pension. NCVA and other veteran stakeholders, together with the Ministerial Policy Advisory Group (MPAG), strongly criticized this proposition as being totally inadequate and not providing the lifetime financial security that was envisaged by the veterans' community and promised by the Prime Minister in his 2015 election campaign.

It is fair to say that the reasonable expectation of veteran stakeholders was that some form of substantive benefit stream needed to be established that would address the financial disparity between the benefits received under the Pension Act and the NVC/VWA for all disabled veterans.

It has been NCVA's consistent recommendation to the minister and to the department that VAC should adopt the major conclusions of the MPAG Report formally presented to the Veterans Summit in Ottawa in October 2016 (and subsequently to various ministers over the years since) together with the recommendations contained in the NCVA Legislative Programs.

Both of these reports proposed the combining of the best provisions of the Pension Act and the best provisions of the NVC/VWA, resulting in a comprehensive pension compensation and wellness model that would:

a) treat all veterans with parallel disabilities in the same manner; and

b) eliminate the artificial cut-off dates that arbitrarily distinguish veterans based on whether they were injured before or after 2006.

We would reiterate that this analysis is not a question of choosing between wellness and financial compensation, but rather a blending of the overall veterans legislative schemes to harmonize the impact of the re-establishment programs for medically released veterans and their families.

NCVA takes the position that financial security remains a fundamental necessity to successfully adopting any wellness or rehabilitation strategy.

In furtherance of this ultimate goal, we have continually encouraged VAC to prioritize the following long-standing major recommendations of the MPAG as fundamental building blocks in establishing the initial components of our proposed comprehensive pension/compensation/wellness model:

- The enhancement of the Income Replacement Benefit (IRB) as a single stream of income for life based on a progressive future loss of income concept in accord with what the disabled veteran would have earned in their military career if the veteran had not been injured.

- The addition of Exceptional Incapacity Allowance (EIA), Attendance Allowance (AA) and a new monthly family benefit for life in accordance with the Pension Act, which will ensure all veterans and their families receive the care and support they deserve when they need it and through their lifetime.

In this context, NCVA strongly feels that the current challenge facing the CAF insofar as retention and recruitment of members has been impacted by the current state of legislation for veterans and their families. A number of NCVA members indicated that the adverse reaction to the level of financial support and compensation available to disabled veterans has clearly influenced the willingness of individuals to serve in the CAF.

In specific terms, we would also suggest that the following steps would dramatically enhance the legislative provisions relevant to the present PFL concept and go a long way to satisfying the "one veteran – one standard" approach advocated by NCVA on behalf of the veterans' community and ostensibly followed by VAC as a basic principle of administration:

1. Liberalize the eligibility criteria in the legislation and regulatory amendments for the new APSC benefit so that more disabled veterans actually qualify for this benefit – currently, only veterans suffering from "a severe and permanent impairment creating a barrier to re-establishment in life after service" will be eligible. It bears repeating that the greater majority of disabled veterans simply will not qualify for this new component of the proposed lifelong pension.

   A more generous and readily understood approach is required in the amended regulations for the APSC benefit so as to generate a more inclusive class of disabled veterans.

   In NCVA's Legislative Programs, both before and after the enactment of the PFL, we argued that the veteran's disability award (PSC) initially granted should be a major determinant in evaluating APSC qualifications. The ostensible new criteria employed by VAC as set out in the regulatory amendments for APSC qualification represent, in our judgment, a far more restrictive approach when compared to the PSC evaluation.

   In effect, it is the position of NCVA that this employment of the Disability Award (PSC) percentage would produce a more straightforward and easier-understood solution to this ongoing issue of APSC eligibility. The following would reflect this form of evaluation criteria for APSC:

Veteran Disability Award (PSC)	APSC Grade
78 per cent or over	1
48-78 per cent	2
20-48 per cent	3

   It is somewhat revealing in this regard that it is apparently the VAC position that the APSC should be equated to a

form of Exceptional Incapacity Allowance as found under the Pension Act.

However, the Pension Act provisions for Exceptional Incapacity Allowance are only triggered following the full application of a much more generous 100 per cent disability pension, potentially supplemented by appropriate spousal and dependent children allowances.

Therefore, the use of a form of EIA through the employment of the current APSC under the NVC/VWA is premature and fails to provide sufficient Pension for Life to the disabled veteran in the post-2006 period.

The adoption of our approach to the APSC would have the added advantage of augmenting the PFL so as to incorporate more disabled veterans and address the fundamental parity question in relation to Pension Act benefits.

2. Create a new family benefit to parallel the Pension Act provision in relation to spousal and child allowances to recognize the impact of the veteran's disability on their family.

3. Incorporate the special allowances under the Pension Act, i.e., Exceptional Incapacity Allowance and Attendance Allowance, into the NVC/VWA to help address the financial disparity between the two statutory regimes.

In over 40 years of working with The War Amps of Canada, we have literally handled hundreds of special allowance claims and were specifically involved in the formulation of the Exceptional Incapacity Allowance and Attendance Allowance guidelines and grade profiles from the outset. We would indicate that these two special allowances, EIA and AA, represent an integral portion of the compensation available to war amputees and other seriously disabled veterans governed by the Pension Act.

It is of further interest in our judgment that the grade levels for these allowances tend to increase over the life of the veterans as the "ravages of age" are confronted – indeed, non-pensioned conditions such as the onset of a heart, cancer or diabetic condition, for example, are part and parcel of the EIA/AA adjudication uniquely carried out under the Pension Act policies in this context.

We would strongly suggest that VAC pursue the incorporation of the EIA/AA special allowances into the NVC/VWA with appropriate legislative/regulatory amendments so as to address these deficiencies in the PFL.

4. Establish a newly-structured Career Impact Allowance that would reflect the following standard of compensation: "What would the veteran have earned in their military career had the veteran not been injured?" This form of progressive income model, consistently used by the Canadian courts in addressing "future loss of income" for injured plaintiffs, has been recommended by the MPAG and the Veterans Ombudsman's Office. This concept would be unique to the NVC/VWA and would bolster the potential lifetime compensation of a disabled veteran as to their projected lost career earnings as opposed to the nominal one per cent increase provided in the proposed legislation.

As a general observation in relation to the new legislation and the regulatory amendments with regard to the evaluation of the calculation surrounding the new Income Replacement Benefit, we would suggest the following concerns are material:

- With reference to the one per cent per year increase in the IRB, it is to be noted that this percentile augmentation ostensibly decreases in financial impact with the higher number of years of military service experienced by the disabled veteran and disappears completely for those veterans who have served for over 20 years prior to suffering their injury or disability.

  As underlined by the PBO's report, it is also significant that, with the elimination of the Career Impact Allowance Supplement ($12,000 per year allowance), new veteran applicants post-April 1, 2019, will potentially be at a disadvantage due to the impact of this mathematical calculation, as for many veterans the one per cent increase in the IRB will not make up for the loss of the CIA(S).

- The post-65 benefits of the IRB (the former Retirement Income Security Benefit) are substantially impacted by a multitude of financial offsets that reduce the net amount of this benefit to the disabled veteran. Such financial offsets encompass any other income received by the veteran including CPP, OAS, Canadian Forces Superannuation Act (CFSA) benefits et al. In reviewing the VAC pension model used in the public statements emanating from the department and the examples employed in numerous budget papers, it would appear that VAC has not factored in these offset elements in the overall analysis.

In summary, it is fundamental to understand that it was truly the expectation of the disabled veteran community that the "re-establishment" of a PFL option would not just attempt to address the concerns of the small minority of disabled veterans but would

include a recognition of all disabled veterans who require financial security in coping with their levels of incapacity.

As a final observation, VAC consistently talks of the significance that the Government attaches to the wellness, rehabilitation and education programs under the NVC/VWA. As we have stated on a number of occasions, we commend VAC for its efforts to improve these important policies. NCVA recognizes the value and importance of wellness and rehabilitation programs; however, we take the position that financial security remains a fundamental necessity to the successful implementation of any wellness or rehabilitation strategy. It is readily apparent that this is not a choice between wellness and financial compensation as advanced by the minister and the Prime Minister, but a combined requirement to any optimal re-establishment strategy for medically released veterans.

Ideally, we would reiterate that the new minister, Ginette Petitpas Taylor, and the department should pursue the major goal of a "one veteran – one standard" philosophy and create a comprehensive program model that would essentially treat all veterans with parallel disabilities in the same manner as to the application of benefits and wellness policies.

In our judgment, the adoption of this innovative policy objective would have the added advantage of signaling to the veterans' community that VAC is prepared to take progressive steps to tackle legislative reform beyond the current PFL provision so as to address this fundamental core issue of concern to Canada's veterans and their families.

B. Financial Comparison: Pension Act/New Veterans Charter/Veterans Well-being Act

As a fundamental tenet of our current Legislative Program, NCVA will continue to pursue the substantive recommendations delineated in this report with the new minister, Ginette Petitpas Taylor, and senior VAC officials to address the discrimination and inequity (the "elephant in the room") that exists with respect to the financial compensation available to disabled veterans and their families under the traditional Pension Act and the New Veterans Charter/ Veterans Well-being Act.

Let us now actually compare the present pension benefit regimes and then take a look at what VAC legislation would provide to veterans and their families if the aforementioned NCVA proposals were adopted by the Government.

For 100 per cent pensioners (at maximum rate of compensation):

PENSION ACT (2023)

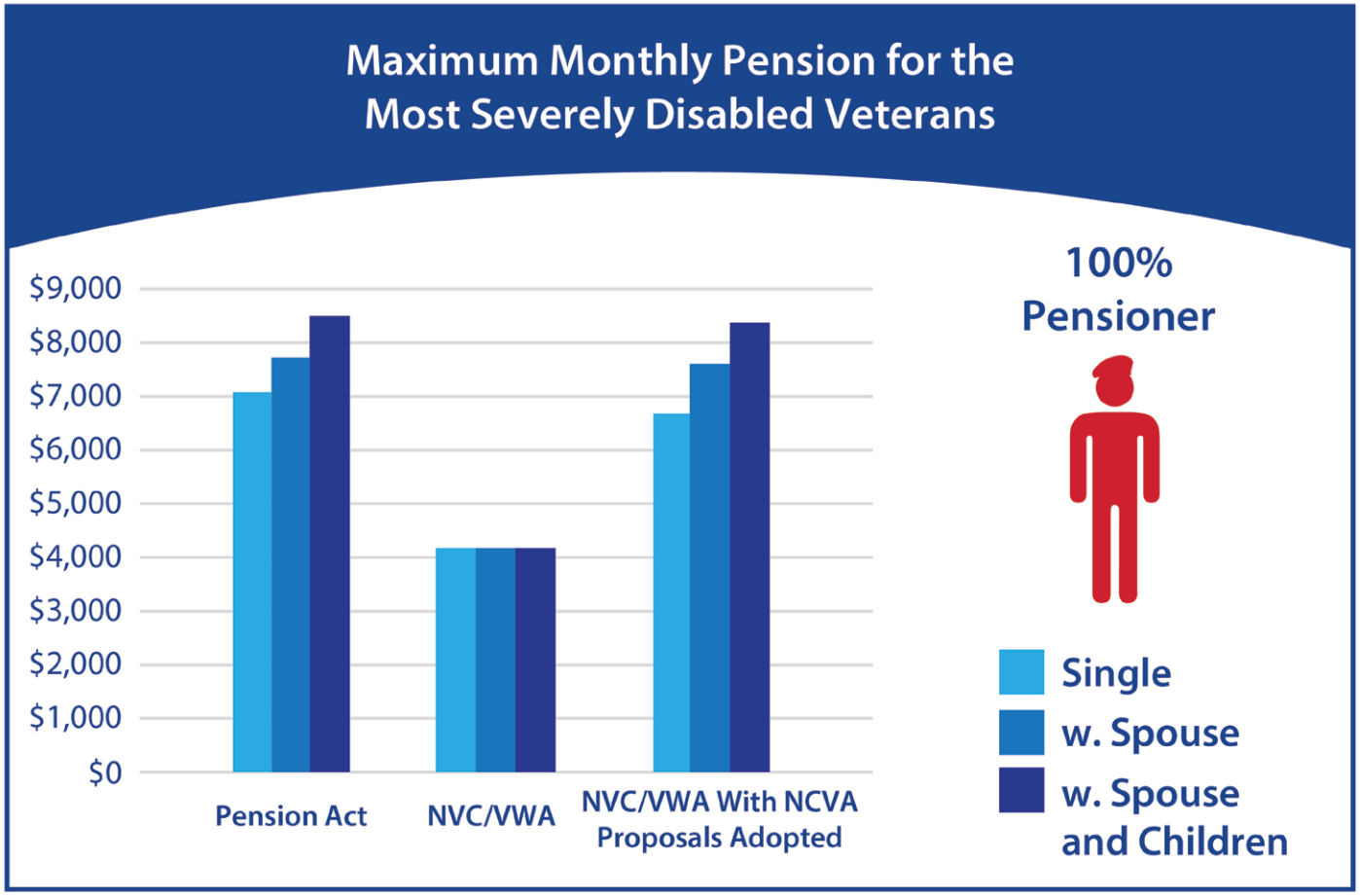
Benefit (maximum per month)	Veteran plus spouse and two children	Veteran plus spouse	Single veteran
Disability Pension	$4,743	$4,019	$3,215
Exceptional Incapacity Allowance	$1,702	$1,702	$1,702
Attendance Allowance	$2,127	$2,127	$2,127
TOTAL	$8,572	$7,848	$7,044

NEW VETERANS CHARTER/VETERANS WELL-BEING ACT (2023)

Benefit (maximum per month)	Veteran plus spouse and two children	Veteran plus spouse	Single veteran
Pain and Suffering Compensation	$1,297	$1,297	$1,297
Additional Pain and Suffering Compensation	$1,691	$1,691	$1,691
Caregiver Recognition Benefit	$1,154	$1,154	$1,154
TOTAL	$4,142	$4,142	$4,142

NEW VETERANS CHARTER/VETERANS WELL-BEING ACT (2023) (in the event NCVA proposals are adopted)

Benefit (maximum per month)	Veteran plus spouse and two children	Veteran plus spouse	Single veteran
Pain and Suffering Compensation	$1,297	$1,297	$1,297
Additional Pain and Suffering Compensation	$1,691	$1,691	$1,691
Family benefit (PA)	$1,528	$804	$0
Exceptional Incapacity Allowance (PA)	$1,702	$1,702	$1,702
Attendance Allowance (PA)	$2,127	$2,127	$2,127
TOTAL	$8,345	$7,612	$6,817



It is of even greater significance to recognize the impact of the Pension for Life policy that became effective on April 1, 2019, on those disabled veterans who might be considered moderately disabled as the disparity in financial compensation between the statutory regimes is even more dramatic.

Let us take the illustration of a veteran with a 35 per cent disability assessment:

- Assume the veteran has a mental or physical injury which is deemed not to be a "severe and permanent impairment" – the expected eligibility reality for the greater majority of disabled veterans under the NVC/VWA.
- The veteran enters the income replacement/rehabilitation program with SISIP LTD as the first responder or the IRB/rehabilitation program with VAC.
- Ultimately, the veteran finds employment in the public or private sector attaining an income of at least 66.66 per cent of their former military wage.

It is important to be cognizant of the fact that, once such a veteran earns 66.66 per cent of their pre-release military income, the veteran is no longer eligible for the SISIP LTD or the VAC IRB and, due to the fact that the veteran's disability does not equate to a "severe and permanent impairment," the veteran does not qualify for the new Additional Pain and Suffering Compensation benefit.

Therefore, the comparability evaluation for 35 per cent pensioners would be as follows under the alternative pension schemes:

PENSION ACT (2023)

Benefit (35 per cent per month)	Veteran plus spouse and two children	Veteran plus spouse	Single veteran
Disability Pension	$1,660	$1,406	$1,125

NEW VETERANS CHARTER/VETERANS WELL-BEING ACT (2023)

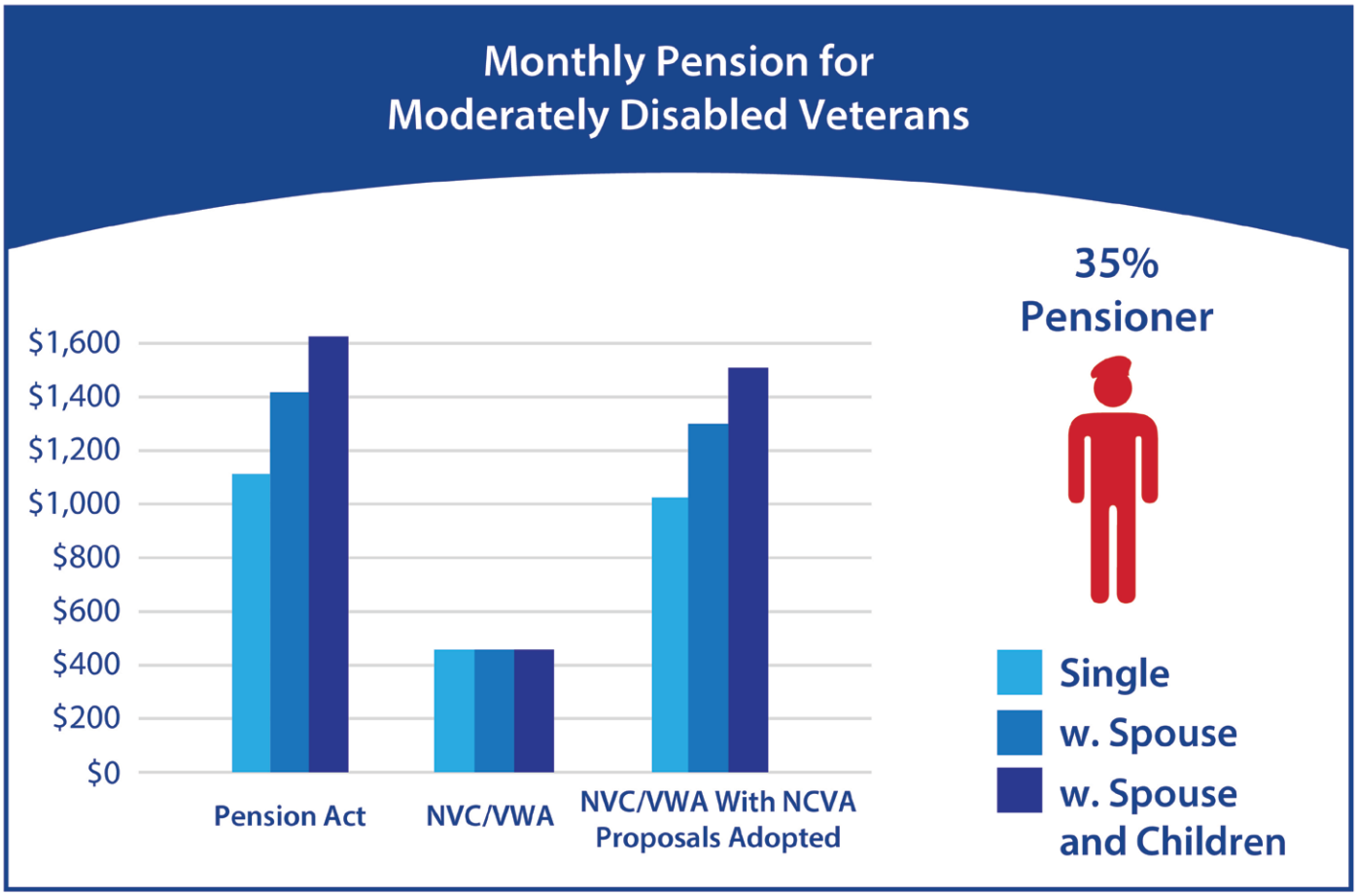
Benefit (35 per cent per month)	Veteran plus spouse and two children	Veteran plus spouse	Single veteran
Pain and Suffering Compensation	$453	$453	$453

We would underline that this analysis demonstrates the extremely significant financial disparity that results for this type of moderately disabled veteran. It is also essential to recognize that over 80 per cent of disabled veterans under the NVC/VWA will fall into this category of compensation. Unfortunately, the perpetuation of the inequitable treatment of these two distinct classes of veteran pensioner is self-evident and remains unacceptable to the overall veterans' community.

Finally, let us consider the impact on this analysis in the event the NCVA proposals were to be implemented as part and parcel of an improved NVC/VWA:

NEW VETERANS CHARTER/VETERANS WELL-BEING ACT (2023) (in the event NCVA proposals are adopted)

Benefit (35 per cent per month)	Veteran plus spouse and two children	Veteran plus spouse	Single veteran
Pain and Suffering Compensation	$453	$453	$453
Additional Pain and Suffering Compensation	$563	$563	$563
Family benefit (PA)	$535	$281	$0
TOTAL	$1,551	$1,297	$1,016



In summary, this combination of augmented benefits proposed by NCVA would go a long way to removing the discrimination that currently exists between the PA and the NVC/VWA and would represent a substantial advancement in the reform of veterans legislation, concluding in a "one veteran – one standard" approach for Canada's disabled veteran population.

In addition, should VAC implement NCVA's recommendations (as supported by the OVO and MPAG) with respect to a newly structured CIA, the IRB would be substantially enhanced by incorporating this progressive future loss of income standard as to *"What would the veteran have earned in their military career had the veteran not been injured?"*

It is noteworthy that the current IRB essentially provides 90 per cent of the former military wage of the veteran, together with a limited one per cent increment dependent on the veteran's years of service, resulting in an inadequate recognition of the real loss of income experienced by the disabled veteran as a consequence of their shortened military career. This is particularly so for young CAF members of lower rank who suffer a serious disability.

The new conceptual philosophy of this future loss of income approach parallels the long-standing jurisprudence found in the Canadian courts in this context and is far more reflective of the actual financial diminishment suffered by the disabled veteran (and their family). This would represent a major step forward for VAC in establishing a more equitable compensation/pension/wellness model.

As a final observation, it is noteworthy that the Prime Minister, various ministers of the department and senior governmental officials of VAC, in their public pronouncements from time to time, have emphasized that additional benefits and services are uniquely available under the NVC/VWA with respect to income replacement, rehabilitation and wellness programs.

NCVA fully recognizes the value and importance of these programs, and we commend VAC for its efforts to improve the department's wellness and educational policies. However, it should be noted that a number of programs dealing with essentially parallel income replacement and rehabilitation policies already exist under the PA regime by means of services and benefits administered by the Department of National Defence (DND) through their SISIP LTD insurance policy and Vocational Rehabilitation (VOC-REHAB) programs.

The one unique element of NVC/VWA with respect to income replacement that is comparably beneficial for a very small number of seriously disabled veterans is triggered where such a disabled veteran is designated as having qualified for "Diminished Earnings Capacity" status (which requires that a veteran is unemployable for life as a consequence of their pensioned disabilities).

In these circumstances, such a veteran will receive additional funds post-65 for life that are not available under the Pension Act/SISIP LTD program where such income replacement ends at age 65. This is most significant where the veteran has been medically released relatively early in their career.

It is noteworthy in this scenario that less than six per cent of all disabled veterans qualify for the Diminished Earnings Capacity. Thus, 94 per cent of veterans are not eligible for this post-65 benefit under the NVC/VWA.

It is not without significance in this evaluation that, at the time of the enactment of the New Veterans Charter in 2006, VAC committed to eliminating SISIP LTD and VOC-REHAB programs and creating a new universal gold standard in regard to income replacement and wellness policies that would be applicable to all disabled veterans in Canada. The reality is that the SISIP LTD and VOC-REHAB insurance policy has been and continues today to be "the first responder" for the greater majority of disabled veterans who have been medically released from the Canadian Armed Forces in relation to both the PA and the NVC/VWA.

As a fundamental conclusion to our position, we would like to think that the Government could be convinced that, rather than choosing one statutory regime over the other, a combination of the best parts of the PA and the best parts of the NVC/VWA would provide a better compensation/wellness model for all disabled veterans in Canada.

Benefits to Support Families/ Veteran Caregivers

Recommendation

VAC should:

a) Incorporate into the NVC/VWA the eligibility standards of the Attendance Allowance provisions under the Pension Act, together with the amount of allowance described in the Attendant Care Benefit (DND) for caregivers of disabled veterans, as supported by the Standing Committee on Veterans Affairs (ACVA) in its June 2021 report.

b) Establish distinctive grade levels for this newly created Attendance Allowance:
Grade 1 – $36,000
Grade 2 – $30,000
Grade 3 – $24,000
Grade 4 – $18,000

This will address the unique need for financial support of individual family caregivers of disabled veterans and, at the same time, help to rectify the financial disparity between the two statutory regimes.

c) Fine-tune the concept of Attendance Allowance payable to informal caregivers to recognize and compensate the significant effort and economic loss to support injured veterans and ensure access reflects consideration for the effects of mental health injuries.

d) Create a new family benefit for all veterans in receipt of Pain and Suffering Compensation to parallel the Pension Act provisions in relation to spousal and child allowances to recognize the impact of the veteran's disability on their family.

e) Adopt the Ombud's recommendation as endorsed by the Standing Committee (ACVA) that family members and caregivers should have an independent right to benefits and well-being provisions rather than the restricted derivative rights that have existed in veterans legislation for many years.

f) Automatically reimburse professional mental health expenses for the spouse and dependent children of veterans eligible for a rehabilitation plan for mental health concerns.

Since the enactment of the New Veterans Charter in 2006, the National Council of Veteran Associations (NCVA) has taken the strong position that the Government has not sufficiently addressed the plight of families of veterans, particularly in circumstances where a member of the family, often a spouse, is required to act in the role of caregiver to a disabled veteran.

As a matter of legislative background, the Family Caregiver Relief Benefit (FCRB) was introduced by the Government in 2015. This program proved to be clearly inadequate, as it failed to provide appropriate financial support for the families of seriously disabled veterans where significant needs of attendance must be provided by a caregiver who often has had to leave their employment to do so.

The current Caregiver Recognition Benefit replaced the Family Caregiver Relief Benefit as of April 1, 2019, and provides only a slightly more generous non-taxable $1,000 a month benefit ($1,300 as of 2023) payable directly to caregivers to ostensibly recognize and honour their vital role.

It is revealing that the former Minister of Veterans Affairs, Lawrence MacAulay, in a recent formal response to the NCVA Legislative Program 2022-23, referred to this Caregiver Recognition Benefit as an indication of the Government's attempt to address the needs of families of disabled veterans. What continues to mystify the veterans' community is why the Government has chosen to "reinvent the wheel" in this area when addressing this need for attendance/caregiving under the New Veterans Charter/Veterans Well-being Act. For many decades,

the Attendance Allowance under the Pension Act (with its five grade levels) has been an effective vehicle in this regard, providing a substantially higher level of compensation and more generous eligibility criteria to satisfy this requirement.

In this context, it must be underlined that the spouses or families of seriously disabled veterans often have to give up meaningful employment opportunities to fulfil the caregiving needs of the disabled veteran – $1,000 ($1,300 as of 2023) a month is simply not sufficient recognition of this income loss. Veterans Affairs Canada (VAC) should return to the Attendance Allowance provision, which potentially generates in excess of $25,000 per year of non-taxable benefits as of 2023 to those veterans in serious need of attendance, and pay such newly established benefit to the caregiver directly.

It is not without significance that the Department of National Defence (DND), through its "Attendant Care Benefit" program, has provided reimbursement to seriously disabled veterans of the Afghanistan conflict for payments made to an attendant to look after the Canadian Armed Forces (CAF)

member on a full-time basis. This benefit has been paid to the CAF member at a daily rate of $100 ($3,000 a month – $36,000 a year) for a maximum of 365 days. This policy also implicitly represents a recognition that the financial costs of attendants far exceed the need to address respite. A serious concern remains in the context of such a veteran's transition from DND to VAC as to the fact that the financial assistance to such families dramatically drops from the DND program to the current VAC Caregiver Recognition Benefit.

Attendance Allowance has historically and currently represented an integral portion of the compensation available to seriously disabled veterans governed by the Pension Act and more adequately supports family members and caregivers with respect to their role in maintaining family well-being.

It is of further interest, in our judgment, that the grade levels for these allowances tend to increase over the life of the veterans as the "ravages of age" are confronted – indeed, non-pensioned conditions such as the onset of a heart, cancer or diabetic condition, for example, are part and parcel of the AA adjudication uniquely carried out by VAC under the Pension Act policies in this context.

In addition, the MPAG has particularly emphasized with ministerial and departmental officials the above-cited concern that there should be more flexibility attached to the current Caregiver Recognition Benefit as, clearly, "one size does not fit all." It is extremely relevant in this area that the grading levels available under the AA provisions of the Pension Act give the department a certain degree of discretion and flexibility as to the attendance needs of individual veterans. In our experience, there are numerous examples where substantial distinctions exist as to the need for attendance encountered by seriously disabled veterans.

In over 40 years of working with The War Amps of Canada, we have literally handled thousands of special allowance claims and were specifically involved in the formulation of the Attendance Allowance guidelines and grade profiles from the outset. We would indicate that the Attendance Allowance represents an integral portion of the compensation available to war amputees and other seriously disabled veterans governed by the Pension Act.

It is also highly material that NCVA and the Ministerial Policy Advisory Group are proposing a new family benefit for all veterans in receipt of a Disability Award (Pain and Suffering Compensation). In accordance with the level of disability assessment, this recommendation would provide further support to families and address, to a certain extent, the cost of the veteran's disability to their spouse and/or dependent children. The amount of this benefit would parallel the payments that 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 dependent 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 NVC/VWA insofar as financial assistance to families of disabled veterans is concerned.

A. Report of the Standing Committee on Veterans Affairs (ACVA)

It is notable in this context that the Standing Committee on Veterans Affairs (ACVA) recently carried out a study in 2021 of federal supports and services to Canadian veterans, caregivers and families.

NCVA made a formal submission to the committee on March 26, 2021, as part and parcel of its deliberations, proposing the above-cited recommendations that need to be implemented by Veterans Affairs Canada to improve the financial supports to veteran caregivers so as to better meet their unique needs. The submission can be found at https://www.ncva-cnaac.ca/wp-content/uploads/2021/06/Submission-to-Standing-Committee-Feb2021-caregivers-EN.pdf.

The Standing Committee on Veterans Affairs released its report on veteran caregivers entitled "Caregivers: Taking Care of Those who Care for Veterans" on June 15, 2021, and forwarded the report to the House of Commons for Parliament's consideration.

It is noteworthy that the Standing Committee report provides a comprehensive review of all family and caregiver benefits presently found in Canadian veterans legislation and delineates at considerable length the serious deficiencies and shortcomings that currently exist in VAC programs and benefits in this context.

In NCVA's judgment, the committee recommendations represent a potential major step forward to remedying the insufficient and inequitable treatment of veteran caregivers by VAC since the passing of the New Veterans Charter.

We are also pleased to advise that our NCVA recommendations have been fully adopted by the committee in relation to replacing the highly inadequate Caregiver Recognition Benefit through the incorporation of the Attendance Allowance eligibility rules

(Pension Act) and the more generous DND Attendant Care Benefit financial provisions, together with the expansion of caregiver benefits to better recognize mental health concerns.

The following are the recommendations from the ACVA report:

Framework Recommendation

That the Government of Canada work to ensure that spouses and dependent children of veterans who would be eligible for VAC's rehabilitation program can access other VAC programs, including financial support and mental health services, in their own right, and with an individual client number.

Recommendation 1

That Veterans Affairs Canada publicly promote its Mental Health Assistance Service so that veterans, their family members and other caregivers have a better awareness and understanding of the services available.

Recommendation 2

That the Caregiver Recognition Benefit be changed as follows:

- That the maximum amount of the benefit be the same as the Department of National Defence's Attendant Care Benefit;
- That the eligibility criteria be the same as those for the Attendance Allowance under the Pension Act;
- That access be expanded to better reflect the specific challenges faced by family members and other caregivers of veterans who suffer from mental health conditions and brain injuries; and
- That eligibility be expanded to include caregivers under the age of 18.

Recommendation 3

That the services offered as part of the Veterans Independence Program be transferred to the veteran's spouse and maintained as a grandfathered right after the veteran's death.

Recommendation 4

That Veterans Affairs Canada automatically reimburse professional mental health expenses for the spouse and dependent children of veterans eligible for a rehabilitation plan for mental health concerns, up to $3,000 per person, and that the department's approval be required only when a claim is submitted that exceeds this amount.

Recommendation 5

That Veterans Affairs Canada ensure that every departmental client, whether or not they are case-managed, have a dedicated employee responsible for their file, be given direct access by phone or email to that employee, and that a group be given responsibility for answering questions from family members and other caregivers who would not be VAC clients.

Recommendation 6

> That the Veterans Well-being Act be amended to include an obligation to dependent children of living veterans, and that applications to programs created to that effect may be submitted by any parent of the child.

The full report can be found at https://www.ourcommons.ca/DocumentViewer/en/43-2/ACVA/report-7/.

Insofar as next steps, we will continue our crusade to ensure that VAC enacts the requisite statutory, regulatory and policy amendments to capture the essence of the Standing Committee recommendations.

In our considered opinion, these measures proposed by the Standing Committee, once implemented by the Government, will have a potentially significant impact on alleviating the "plight of veterans' caregivers/family members" that the department has failed to appropriately recognize since the enactment of the New Veterans Charter in 2006 and the subsequent extension to the Veterans Well-being Act.

B. Report of the Veterans Ombud (OVO)

It is to be noted in this context that the Office of the Veterans Ombud conducted a study on veteran caregivers entitled "Spouses

Supporting Transition" (dated September 21, 2020 – https://ombudsman-veterans.gc.ca/en/publications/systemic-reviews/spouses-supporting-transition-medically-released). This comprehensive OVO report examines a number of highly respected government and academic studies assessing the experiences of caregivers in relation to their support of their veteran spouses to transition from military to civilian life.

The peer review literature contained in the OVO evaluation makes a series of material findings with respect to this veteran caregiver role:

- Spouses of veterans inherit a significant amount of unpaid labour and suffer negative impacts to both physical and mental health immediately prior to, during and following the veteran's medical release.
- Several studies reported negative career impacts, social isolation and a sense of loss from the spouses' perspectives as a consequence of military-to-civilian transition.
- Another study referred to the spouse and family as the "strength behind the uniform" and stressed the importance of the support system for the veteran during and after service.

More recently, the Veterans Ombud, Nishika Jardine, made a further major recommendation that has been highlighted in the 2021 Standing Committee report vis-à-vis the important principle that family members/caregivers should have an independent right to benefits and well-being provisions rather than the limited derivative rights that have existed in veterans legislation for many years. This shortcoming in veterans legislation has prejudiced the rights of veterans' families/caregivers and is quite appropriately underlined by the Standing Committee as a high-priority recommendation. NCVA clearly stands behind the OVO proposal as part and parcel of our position on improving the overall access to VAC programs and benefits for Canadian family members/caregivers.

In conclusion, NCVA takes the position that the plight of veterans' families/caregivers in Canada requires immediate government attention. In our respectful submission, VAC should follow a "one veteran – one standard" approach by adopting a comprehensive program model for all family members/caregivers of veterans, thereby resulting in the elimination of artificial cut-off dates that arbitrarily distinguish veterans and their caregivers based on whether the veteran was injured before or after 2006.

It is time that VAC provides the necessary support to veterans' families/caregivers, who truly represent "the strength behind the uniform." They deserve nothing less!

VAC Backlog/Wait-Time Crisis

Recommendation

NCVA strongly recommends that VAC recognize that fundamental systemic change is required and that the department needs to accelerate the adoption of fast-tracking protocols/automatic entitlement for outstanding veterans' claims in order to alleviate the backlog and wait times that have only been compounded by the COVID-19 crisis.

Recommendation

NCVA proposes that VAC utilize presumptions in the departmental adjudicative system as outlined for many years in NCVA's Legislative Program. The adoption of evidentiary presumptions to deal with common disabilities and consequential claims will create administrative efficiencies and have a significant impact on turnaround times for veterans' claims currently in the backlog.

Recommendation

NCVA supports the adoption of the Standing Committee on Veterans Affairs' report dated December 11, 2020, titled "Clearing the Jam: Addressing the Backlog of Disability Benefit Claims at Veterans Affairs Canada," which accepted the majority of NCVA's recommendations in alleviating the backlog/wait-time crisis.

Recommendation

NCVA urges VAC to fully recognize the substantive findings and criticisms of the Auditor General's report of May 2022 and implement with the highest priority the statutory, regulatory and policy changes proposed in the report to realistically address the backlog/wait-time conundrum confronting Canada's disabled veterans.

Recommendation

NCVA strongly recommends that the Government expand the implementation of the proposals contained in Budget 2021, insofar as the immediate granting of treatment benefits prior to the formal adjudication of the veteran's disability claim so as to include all forms of disability suffered by the veterans of Canada.

Recommendation

NCVA recommends that VAC provide substantial financial funding to bolster the Veterans Emergency Fund to increase the maximum benefits per claim and to prioritize these applications during these challenging times. VAC should consider the utilization of the Veterans Emergency Fund as a stopgap measure for veterans awaiting disability pension claim decisions that have been inordinately held up by the current backlog conundrum.

Recommendation

NCVA proposes that VAC simplify veterans' legislation and regulations, including the Table of Disabilities, so as to provide a more "user-friendly" process and, in so doing, eliminate the complexities and legalistic provisions currently confronting veterans in making disability/health-care claims.

Recommendation

NCVA takes the position that, to ease the transition from DND to VAC, disabled veterans should be fully apprised of benefits and entitlements, rehabilitation options and job alternatives well before their medical discharge from the Canadian Armed Forces.

Notwithstanding slight improvements made by the department in recent months, the overriding concern in the veterans' community today still remains the ongoing crisis as to the intolerable backlog and wait times confronting veterans in making applications for disability pensions and health-care benefits. The National Council of Veteran Associations (NCVA) has consistently argued that systemic change is absolutely essential. It is self-evident that the departmental measures to increase staffing and digital resources will not be sufficient on their own to resolve this deplorable state of affairs as underlined by not only the Auditor General's report, but by the Parliamentary Budget Officer (PBO)'s report of September 2020.

From NCVA's perspective, it is incumbent upon the Liberal government, in concert with the official Opposition parties, to enunciate bold and creative measures to accelerate the establishment of fast-tracking protocols/automatic entitlement for outstanding veterans' claims in order to alleviate this backlog and wait-time dilemma, which has only been compounded by the COVID-19 crisis.

The following represents the crux of NCVA's position in relation to this ongoing administrative crisis:

- The department should adopt the position that veterans' claims be considered at face value and be based on the reasonable evidence provided by the veteran and their family, with the proviso that individual files could be monitored over time and "spot audits" carried out to address any potential abuses. The clear reality that medical reports usually required by VAC to support these applications continue to be extremely difficult to obtain at this time must be recognized in assessing this present dilemma.
- Even though medical offices and therapists' clinics have re-opened, these individual health professionals are simply overwhelmed with their own backlog and rescheduling delayed appointments. In our experience, the preparation of medical reports to support veterans' claims is still not a priority at this time for these beleaguered physicians and therapists.

- Unless creative steps are taken, the adjudicative delays and turnaround time dilemmas will not be relieved in the short term, given the reality of the significant challenge in obtaining these medical/therapist reports to substantiate individual veterans' applications.
- There is a general consensus among major veteran stakeholders that this administrative/adjudicative measure leading to a form of fast-tracking/ automatic entitlement deserves immediate attention.
- It has been the long-standing view of NCVA that this type of automatic entitlement approach should have been implemented by VAC years ago in regard to seriously disabled veterans. This desired policy change would achieve the objective of expediting these specific claims so as to circumvent governmental "red tape" and in recognition of the fact that nearly all of these cases are ultimately granted entitlement in the end, often following many months of adjudicative delay. It is our considered position that now is clearly the time to extend this thinking to all veterans' claims.
- It is noteworthy that a number of mandate letters received by the Minister of Veterans Affairs from the Prime Minister contained a specific direction that VAC should implement a form of automatic entitlement with respect to common disabilities suffered by Canadian veterans.

- It is also extremely significant that many financial assistance programs rolled out by federal/provincial governments to address the COVID-19 pandemic were premised on the philosophy of "pay now and verify later." In regard to a number of financial initiatives, the earlier need for medical reports to substantiate entitlement to these programs was waived by the Government, given the impracticality of accessing any input from the medical profession in Canada through these troubled times.
- It is to be noted that the initial reaction of the department to this proposed form of fast-tracking/automatic entitlement was that this approach could be implemented for benefits that are paid on a monthly basis; however, given the fact in relation to disability awards that the majority of veterans are still opting for lump sums, this would represent a concern for the department.
- In addressing this concern, it was our recommendation that, as an interim step in granting this form of automatic entitlement, the disability award could be paid as a monthly allowance with a preliminary assessment in the first instance. Ultimately, the department would have the ability to fully assess the extent of the veteran's disability in order to determine the veteran's final assessment, at which point the veteran could choose to convert their monthly allowance to a lump sum award with the appropriate financial adjustment to consider the monthly amounts already paid.
- The great advantage in this recommendation is that the veteran's entitlement would be established early on and the veteran's concerns surrounding financial security and access to health-care and treatment benefits would be addressed in this manner.
- The old adage that "desperate times call for bold and creative measures" is particularly apt in this situation.

A. Auditor General's Report

The Auditor General of Canada, Karen Hogan, tabled a report in Parliament on May 31, 2022, concluding that Canada's disabled veterans continue to face intolerably long wait times and an unacceptable backlog in earning entitlement for deserved financial assistance and benefits from Veterans Affairs Canada (VAC): https://www.oag-bvg.gc.ca/internet/English/parl_oag_202205_02_e_44034.html.

Hogan stated in her press conference in Ottawa that she was unimpressed with the efforts made by the department over the last number of years and called for the prioritization of a "realistic plan" to finally ensure that disabled veterans are not forced to wait months or even years for the financial support and compensation they require.

> "I am really left with the conclusion that the Government failed to meet a promise that it made to our veterans, that it would take care of them if they were injured in service. This has a real consequence on the well-being of our veterans and their families.
>
> "It is time to find a more sustainable solution that will see veterans receive their benefits in a timely way. After all,

it is our veterans who are here to take care of and protect our country and keep peace. The Government should do better by them."

The Auditor General's report made a number of significant findings in their evaluation of the VAC efforts to improve the processing time and backlog confronting the veteran community in Canada:

"2.9 Overall, we found that despite Veterans Affairs Canada's initiatives to speed up the processing of applications for disability benefits, veterans were still waiting a long time to receive compensation for injuries sustained in their service to Canada. Veterans applying for disability benefits for the first time waited a **median** of 39 weeks for a decision, which is a long way from the department's service standard of 16 weeks in 80 per cent of cases.

"2.10 The department's data on how it processes benefits applications – and the organization of this data – was poor. As a result, the department did not know if its initiatives sped up application processing or even if any of its initiatives slowed down processing. We also found that the department did not always calculate wait times consistently, which meant that veterans waited longer than the department reported publicly.

"2.11 The department lacked a long-term staffing plan to help address the long wait times. The department

hired term employees to help process the backlog of applications. However, some of them left the department before the end of their term to take jobs that offered more security. The department needs a stable workforce to process disability benefits. The department also needs an improved data management system to help ensure that veterans do not wait months or even years to receive benefits to support their physical and mental health.

"2.57 Veterans Affairs Canada should work with central government agencies to establish a sustainable long-term resourcing plan for processing disability benefit applications in a timely manner. This plan should consider the number of applications the department expects to receive and the efficiency it expects to gain from its process improvement initiatives.

"2.58 We concluded that although Veterans Affairs Canada implemented initiatives to improve the processing of disability benefit applications, its actions did not reduce overall wait times for eligible veterans. The department was still a long way from meeting its service standard. Implementation of initiatives was slow. Data to measure improvements was lacking. Both the funding and almost half of the employees on the team responsible for processing applications were temporary. As a result, veterans waited too long to receive benefits to support their physical and mental health and their families' overall well-being."

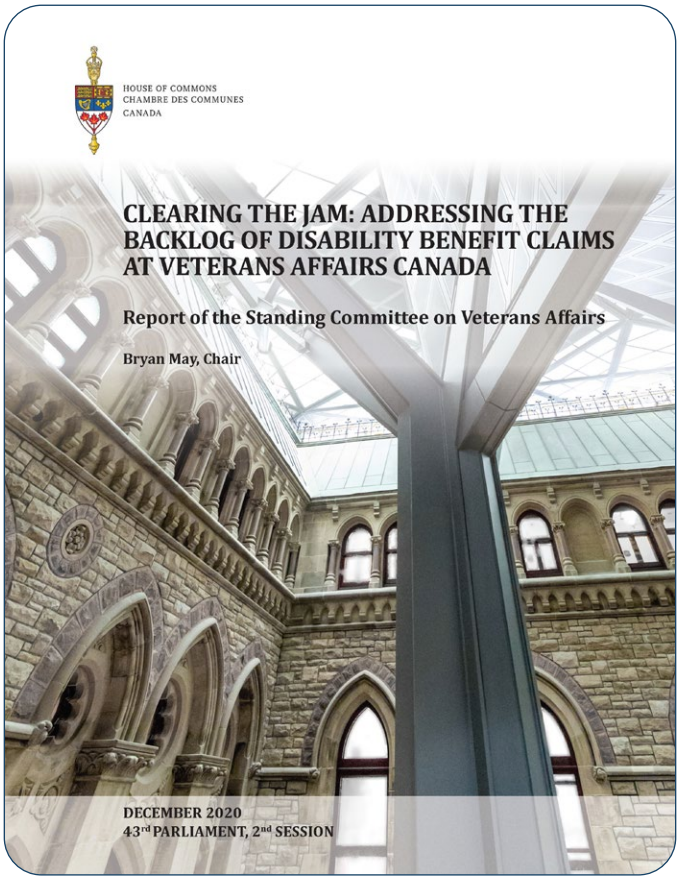
B. Report of the Standing Committee on Veterans Affairs – December 2020

The House of Commons Standing Committee on Veterans Affairs issued its highly material report "Clearing the Jam: Addressing the Backlog of Disability Benefit Claims at Veterans Affairs Canada" on Friday, December 11, 2020, following many months of study and stakeholder input: https://www.ourcommons.ca/Content/Committee/432/ACVA/Reports/RP11036287/acvarp04/acvarp04-e.pdf.

NCVA presented our submission to the committee in November 2020 as part and parcel of its deliberations: https://ncva-cnaac.ca/wp-content/uploads/2020/11/Submission-to-Standing-Committee-Nov2020.pdf.

The Standing Committee findings identify quite clearly the present crisis in VAC adjudication and call for urgent and dramatic change in departmental protocols. Most importantly, from our perspective, the report endorses our position that a form of automatic entitlement/pre-approval, together with fast-track protocols, needs to be adopted by the department to address the required systemic change.

We would suggest that the Standing Committee's report, which echoes the current Auditor General's Report 2022, reflects a comprehensive canvassing of a number of the salient issues surrounding the backlog/wait-time problem. With respect to the adjudicative initiatives we have focused on, the following represents the major



recommendations made by the Standing Committee in its report to Parliament:

- **Recommendation 13:** That Veterans Affairs Canada continue to automatically approve applications for medical conditions presumptively attributed to service in the Canadian Armed Forces or the Royal Canadian Mounted Police, table to the committee its list of such medical conditions and continue to expand it through research in Canada and in allied countries.
- **Recommendation 14:** That Veterans Affairs Canada conduct a study on women-specific medical conditions related to service in the Canadian Armed Forces and Royal Canadian Mounted Police, and, when applicable, add them to the list of medical conditions presumptively connected to military service.
- **Recommendation 15:** That the Minister of Veterans Affairs amend the Veterans Well-being Regulations to allow for the automatic pre-approval of disability benefit claims, and that Veterans Affairs Canada implement a pilot project to identify the risks and advantages of such automatic pre-approval of claims.
- **Recommendation 16:** That Veterans Affairs Canada conduct an in-depth review of the Veterans Emergency Fund in the context of its use to support veterans waiting in the backlog and report back to the committee with their findings.
- **Conclusion:** Adopting these measures would exhibit good faith in dealing with the existing backlog and uphold the fundamental principle that has guided all Canadian veterans' compensation programs since the First World War: the benefit of the doubt. Committee members want to reaffirm this principle and reassure veterans and their families that their well-being is the sole and unique purpose of Veterans Affairs Canada.

In response to these compelling recommendations, the former Minister of Veterans Affairs, Lawrence MacAulay, last year provided a formal reply to the committee setting out what constitutes, in our respectful judgment, a further statement of good intentions from the department's perspective in relation to increasing staffing, technological advances et al. We remain convinced, as set out in the Auditor General's Report 2022, that a more innovative approach is required to truly address this enduring backlog and wait-time crisis in VAC.

In this context, senior officials of the department have maintained for some time that they are ostensibly in the process of seeking legislative/regulatory authority to implement appropriate adjudicative changes required in accord with the Standing Committee conclusions and our long-standing proposals. Given the evaluation of the Auditor General's Report 2022, it is our hope that the department has recognized that there is sound rationale for incorporating the necessary adjudicative protocol amendments as the fundamental means of alleviating

this unacceptable backlog/turnaround time conundrum. NCVA will continue to press the department to expedite the implementation of the necessary changes outlined by the Standing Committee's report.

C. 2021 Federal Budget

NCVA has strongly recommended for many years that the immediate granting of treatment benefits for seriously disabled veterans prior to the completion of the individual VAC adjudication process is absolutely essential to meet the urgent needs of such veterans.

The amendments to the Veterans Health Care regulations implemented in April 2022 by the department will allow veterans who apply for disability benefits for mental health conditions to automatically qualify for treatment benefit/health-care coverage. As a matter of background, it is noteworthy that the 2021 federal budget, brought down by Finance Minister Chrystia Freeland, recognized that:

> "… [v]eterans are three to four times as likely to suffer from depressive or anxiety disorders, and over 15 times more likely to experience post-traumatic stress disorder (PTSD), than the general population. Veterans are entitled to financial support for mental health-care through the Treatment Benefit Program, but they can wait up to two years to receive mental health-care while waiting for their disability benefit application to be confirmed. …
>
> - "Budget 2021 proposes to provide $140 million over five years starting in 2021-22, and $6 million ongoing, to Veterans Affairs Canada for a program that would cover the mental health-care costs of veterans with PTSD, depressive, or anxiety disorders while their disability benefit application is being processed."

Although this budgetary proposal did not fully adopt our favoured concept of automatic entitlement/pre-approval for all physical and mental disabilities, it does provide a significant step forward in recognizing that treatment benefits should be granted immediately and not be dependent on the disability application process, which can indeed take up to two years. Thus, this provision is hopefully a springboard to expanding this principle so that veterans are not left in a precarious situation for many months or even years before health-care/treatment benefits are available to them. The Government, through the budget, has determined that mental health care (PTSD, depressive or anxiety disorders) should be given priority. It will be our continuing position that this approach should be applied to all physical disabilities so that veterans in serious need of health-care or treatment benefits are granted the same sense of priority.

Without doubt, this stopgap initiative has triggered much-needed treatment benefits for those veterans suffering urgent mental health issues. However, it still begs the larger question as to whether VAC is prepared in relation to the overall adjudication of disability benefits to fully operationalize the requisite systemic measures needed to ameliorate the pervasive administrative and bureaucratic delays currently confronting Canadian veterans and their families.

In this context, it is to be noted that over 95 per cent of PTSD claims are approved by the department. Therefore, automatic entitlement just makes good administrative sense and would accelerate the necessary disability and treatment benefits for the disabled veteran so as to obviate any further involvement of the bureaucracy of government.

As we have said all along with respect to the backlog/wait-time crisis, veterans deserve nothing less during these challenging times where financial and health concerns have been intensified by COVID-19!

D. Transitional Provisions/ Complexity of Legislation

It is not without significance that, due to the complexity and confusion surrounding a number of new benefits that have been promulgated over the last couple of years, the VAC adjudicative process has been further backlogged, resulting in many veterans being unable to access these new benefits and, as significantly, struggling to understand the criteria for application. In effect, the Government, in our judgment, has created a legislative "monster" insofar as the nature and scope of the VAC benefit grid that currently exists.

With the introduction of the new Pension for Life provision, statutory eligibility and policy guidelines have been dramatically complicated to the point where both the applicant veteran and the corresponding VAC adjudicator are confronted with many legalistic and interpretative obstacles with respect to achieving speedy decision-making and satisfactory entitlement results.

Although the department 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. It is extremely noteworthy that, in the past five years, both the Veterans Ombudsman and the Department of National Defence (DND) Ombudsman have made substantive proposals to the minister and

the Standing Committee on Veterans Affairs in relation to improving the transitional protocols in this context.

Quite clearly, one of the most significant priorities 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 remains the strong opinion of NCVA 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 aids such as an enhanced "My VAC" account 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 their 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 DND 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.

Sexual Misconduct in the Canadian Armed Forces (CAF)

The Honourable Louise Arbour's Report on Sexual Misconduct in the CAF

Recommendation

NCVA will continue to press the Government to fully implement without further delay all of the salient recommendations contained in the report of Madame Justice Arbour, the Independent External and Comprehensive Review (IECR).

Recommendation

That the Minister of National Defence extend the appointment of the external monitor to oversee the DND/CAF efforts to address sexual misconduct and harassment, and monitor the implementation of the IECR for at least three years.

Recommendation

That the Minister of National Defence take the necessary action to launch immediately the external review of the two military colleges.

Recommendation

That the Minister of National Defence ensure remedial steps are taken to address any challenges being encountered by individual claimants in the transition of their cases to the civilian/criminal courts.

The NCVA reports that, of our seven recommendations made to effect and ensure meaningful change, only one remains outstanding:

Recommendation

To effect and ensure meaningful change and oversight, the Government must establish a fully independent Office of the Inspector General of the DND and the CAF reporting to Parliament.

We would express our appreciation to Captain (RCN) (Ret'd) Andrea Siew, former president of the Canadian Military Intelligence Association (a member organization of NCVA), for her outstanding contribution to this critically important position paper, which represents a high-priority concern of NCVA's Legislative Program.

Background

In 2021, the NCVA provided a position paper and a high-level overview of the 30-year history of sexual misconduct in the CAF, including a summary of the findings of the previous investigations into the issue, the resulting recommendations and the recent response to address this unacceptable and abhorrent behaviour.

The 2021 evaluation concluded with five recommendations to effect immediate and enduring change:

- There must be immediate, meaningful and comprehensive cultural transformation in the Department of National Defence (DND) and CAF to restore the trust in the leadership. The men and women who serve our country deserve to work in an environment that is free from all forms of harmful behaviour.
- There is a requirement for an external and independent reporting and investigation system outside the chain of command. This system must offer a reporting mechanism for incidents of sexual misconduct without reprisal, fear or isolation.
- There must be accountability for the actions of those who engage in this abhorrent and unacceptable behaviour.
- There must be the resources and support for all victims of sexual assault including CAF members and veterans.
- Lastly, to effect and ensure meaningful change and oversight, the Government must establish a fully independent Office of the Inspector General of the DND and the CAF reporting to Parliament.

In April 2021, in response to allegations of significant sexual misconduct, the Government launched an Independent External and Comprehensive Review (IECR) of current policies, procedures, programs, practices and culture within the DND/CAF and engaged former Supreme Court Justice Louise Arbour to undertake this review.

The final report was released on May 30, 2022.[1] The comprehensive report detailed the causes of the continued presence of sexual harassment and misconduct in the CAF and provided 48 recommendations to prevent and/or eradicate sexual harassment and misconduct. Those areas range from the CAF's definitions of sexual misconduct and harassment to the Sexual Misconduct Response Centre (SMRC) mandate and activities – including its independence and reporting structure, to issues around recruitment, military training and colleges, and internal and external oversight mechanisms. The report's recommendations were thorough and if fully implemented would ensure enduring change to prevent and eradicate harassment and sexual misconduct.

The Minister of National Defence (MND) stated at the release of the report that the Government agreed with all of the recommendations in the report and that work would begin immediately to implement 17 of the report's 48 recommendations – either through new efforts or by strengthening existing programs. Our previous 2022 update provided a summary of these 17 recommendations,[2] and the Government committed to studying, analyzing and developing plans to respond to the remaining 31 recommendations.

In the 2022 NCVA Legislative Program, we reported that our five recommendations made in 2021 remained outstanding and made two additional recommendations:

- That the Minister of National Defence immediately appoint an independent external monitor, mandated to oversee the implementation of recommendations as required by Recommendation 48 in the Independent External Comprehensive Review.
- That the Minister of National Defence not only inform Parliament of any recommendations that the Government does not intend to implement by the end of 2022 (Recommendation 47), but also provide the status, progress and timeline towards implementation of all the recommendations made by Madame Justice Arbour in the Independent External Comprehensive Review.

2023 Update

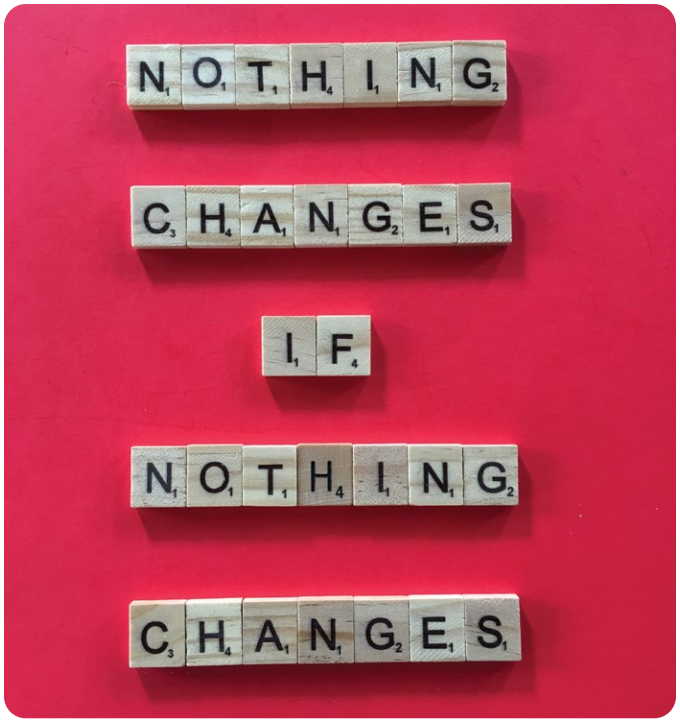
Over the last year, there has been significant progress that responds to our concerns by the DND/CAF to achieve enduring culture change and to prevent and eradicate harassment and sexual misconduct in the CAF. This report will provide an update on the progress being made to implement the recommendations of the Honourable Louise Arbour's Independent External Comprehensive Review (IECR) and will identify key recommendations yet to be implemented. We will conclude with an assessment of the NCVA recommendations for change.

1 https://www.canada.ca/en/department-national-defence/corporate/reports-publications/report-of-the-independent-external-comprehensive-review.html
2 https://www.ncva-cnaac.ca/en/legislative-program/#sexual-misconduct-in-the-canadian-armed-forces

The following provides an overview of key progress in the implementation of the IECR recommendations since last year's report.

On October 24, 2022, the Government announced the appointment of Madame Jocelyne Therrien as the external monitor to oversee the DND/CAF efforts to address sexual misconduct and harassment in the CAF and monitor the implementation of the 48 recommendations of the IECR. While the appointment is initially for one year, the NCVA is optimistic that the Government will do the right thing and extend the appointment until the IECR recommendations are fully implemented. This appointment responds to Recommendation 48 of the IECR.

On December 13, 2022, the Minister of National Defence tabled a report in Parliament outlining the path forward and providing direction to the DND/CAF to undertake on all 48 of the IECR recommendations. The report responds to **Recommendation 47** of the IECR. The report also outlines the work taken to implement the 17 recommendations that were immediately directed for implementation, the steps that will be undertaken to address the remaining 31 recommendations, as well as other ongoing and forthcoming DND/CAF initiatives that will further advance culture change within the institution.[3]



On May 2, 2023, Jocelyn Therrien, the external monitor of the DND/CAF response to the IECR, provided her first progress report.[4] While the report concluded that "a significant level of tangible activity" has been undertaken on the 48 recommendations, she raised concern that there is no overall strategic plan or framework that sets out how the organization, as a whole, will move from one phase to the next. While progress is being made, she states there needs to be an overall strategic plan that would serve to ensure that the resources are aligned to priorities.

The progress report also highlighted the changes being made with respect to Recommendation 5 of the IECR, which states that Criminal Code sexual offences should be removed from the jurisdiction of the CAF.

3 Details on the progress of specific recommendations are available here: https://www.canada.ca/en/department-national-defence/news/2022/12/update-on-madame-arbours-independent-external-comprehensive-review-final-report-and-culture-change-reforms-in-the-department-of-national-defence-an.html.

4 The May 2023 progress report is available here: https://www.canada.ca/en/department-national-defence/corporate/reports-publications/external-monitor-report-first-status-report-may2-2023.html#toc1.

Specifically, that they should be investigated and prosecuted exclusively in civilian criminal courts.

Last year, the NCVA reported that of the 62 cases that had been transferred to civilian authorities, at least half had been returned to the CAF.

In response to these challenges, the Minister of National Defence directed the DND/CAF to review how these jurisdictional changes can best be met, in consultation with federal, provincial and territorial (FPT) partners. The progress report highlighted that these discussions are achieving results. For example, the Office of the Provost Marshal and the Ontario Provincial Police have formalized the process for the referral of cases between the two organizations. To date, more than 90 files have been referred to and accepted by various jurisdictions. All cases are being investigated and prosecuted in civilian criminal courts.

The progress report also stated that an external review panel for the military colleges is expected to be in place by June 2023:

> "The IECR report (Recommendations 28 and 29) calls for an external review of the two military colleges and for the elimination of the cadet chain of responsibility. The process for finding qualified members for the review panel will be launched shortly via an executive search firm. The plan is to have the panel operational in June."

It is important to note that this external review has not yet been launched.

The next progress report will be October/ November 2023.

On August 15, 2023, the Minister of National Defence announced changes to the military grievance and harassment process, which implement Recommendations 7 and 9 of the IECR. The announcement stated that effective immediately, "any CAF members who have experienced sexual harassment, sexual misconduct or any other form of discrimination based on sex/gender while performing their duties have a new path to justice available to them. They can choose to bring their complaint directly to the Canadian Human Rights Commission (CHRC)." The CHRC operates independently from the Government of Canada.

With this change, a CAF member who intends to file a complaint of sexual harassment or discrimination on the basis of sex will have two options for lodging a complaint: (1) they can file a complaint through the existing CAF grievance and harassment processes, or (2) they can file directly with the CHRC. Members who choose to go directly to the CHRC will no longer be required to exhaust internal

grievance and harassment processes first. The implementation of these recommendations applies to both new and existing complaints.

On August 23, 2023, the Minister of National Defence announced that the DND/CAF are initiating a process to repeal the regulations on Duty to Report and will be strengthening and updating policies, orders and directives to ensure appropriate reporting. Repealing the Duty to Report regulations responds to Recommendation 11 of the IECR as well as recommendations received in other external reviews.

Repealing the Duty to Report is an important step in the process to restore relationships with members of the institution who have been harmed by sexual assault, sexual harassment or discrimination based on sex, gender, gender identity or sexual orientation. While the Duty to Report was designed to promote good order and discipline among CAF members by requiring them to report misconduct to the proper authorities, it has created unintended negative consequences for survivors by taking away their agency and control in the reporting process. As Madame Arbour stated in her report, "experience has shown that the duty to report has not achieved its intended purpose and, worse, has served only to terrorize and re-victimize those it was meant to protect."

Repealing the Duty to Report regulations will not limit a CAF member's ability to report their own experiences of misconduct, nor will it prevent appropriate reporting. This change simply removes the general legal obligation of CAF members to report misconduct, thereby providing space for a more survivor-centric, responsive, and evidence-informed approach. Removing the obligation to report will create a safe space for members to exercise discretion and choose the best path forward.

Summary

Significant progress has been made over the last year in the implementation of the IECR recommendations, which have also responded to the NCVA recommendations made in 2021 and 2022 to effect immediate and enduring change in the CAF. However, the NCVA is concerned that while the independent monitor reported "an external review panel for military colleges is expected to be in place by June" as required by IECR recommendations 28 and 29, this remains outstanding. This is a key recommendation.

The NCVA is also concerned that the Government has only committed to the establishment of the external monitor to oversee the implementation of the IECR for one year.

The NCVA looks forward to the next report of the external monitor, which is due before the end of 2023.

Marriage After Sixty

Recommendation

NCVA is recommending that the Minister of Veterans Affairs/Associate Minister of National Defence and/or the Minister of National Defence reconsider their position and adopt the proposals contained in the Standing Committee report of December 2022, titled "Survivor Retirement Pension Benefits (Marriage After 60)," and remove Section 31 of the Canadian Forces Superannuation Act. This will 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.

Recommendation

NCVA further recommends that, in addition to the elimination of the "gold digger's clause" in the CFSA, VAC should establish a realistic and effective Veterans Survivors Fund to address the inequities already created by the current legislation. The following principles should be applied:

1. In the event the veteran who has married after the age of 60 has exercised the option for a spousal benefit (OSB) under the CFSA, the amount of reduction in the veteran's current income in so doing should be reimbursed by VAC.
2. Should the veteran have not opted for the Survivor's Benefit, the amount of pension that the surviving spouse would have received if the "gold digger's clause" was removed should be paid to the surviving spouse by VAC under this new Veterans Survivors Fund.

The National Council of Veteran Associations in Canada (NCVA) and our 68 member-organizations have made submissions to the Government for over 25 years with respect to our concerns vis-à-vis Canadian Armed Forces (CAF) retirees and the infamous "marriage after 60" clawback provision. This continues to be a very important issue within the NCVA Legislative Program, in view of the fact that more and more CAF retirees (including many NCVA members) are living longer and marrying for a second time.

Representing a major development with respect to this crusade, the Standing Committee on Veterans Affairs (ACVA), after many months of study, released its final report in December 2022 on this contentious marriage after 60 provision of the Canadian

Forces Superannuation Act (the "gold digger's clause").

On balance, the report contains a strong set of recommendations, particularly Recommendation 9, which calls for the Government of Canada to repeal the marriage after 60 clause in the CFSA and the RCMP Superannuation Act. It goes on at some length to describe the nature of the calculation that should be applied to a newly amended form of pension legislation, effectively abolishing the marriage after 60 prohibition.

Unfortunately, the recent formal response from the Department of National Defence indicates that the Government is not prepared to eliminate the "gold digger's clause" from the CFSA, citing "cost containment" issues and the impact on other parallel pension plans.

This is totally unacceptable to the veterans' community, given the strong recommendations of ACVA and the long-standing commitments of various governments to remove this blatantly discriminatory provision.

As it currently stands, 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, save and except in those cases where the CAF retiree marries after age 60. In order to provide their new spouses any form of "Survivor Benefit," veterans over 60 must exercise the statutory option to reduce their own Canadian Forces Superannuation in a commensurate manner.

The resulting impact on the financial well-being of veterans over the age of 60 and their new spouses is often quite distressing, as the married couple in question is frequently faced with a difficult decision that in many cases can lead to economic hardship. Furthermore, should the veteran opt for providing a Survivor's Benefit for their new spouse, the immediate financial circumstances of the couple may be detrimentally affected as a consequence of the loss of current income. Moreover, utilizing this financial strategy in a situation where the new spouse predeceases the veteran, the funds contributed to the Survivor's Benefit are lost as they are not returned to the veteran but instead recouped by the Government.

Veterans and their new spouses should not be asked to confront this incredible conundrum. Without a crystal ball, the new couple has no way of knowing how their future lives will unfold and what the impact of their financial determination will be on each of them.

This archaic "gold digger's clause," in our respectful submission, should have no place in Canadian veterans legislation. It is of interest historically that, over 100 years ago when Canada's Militia Pension Act was passed in 1901, it contained a section now referred to as the "gold digger clause" that authorized the Government to exercise a discretion to deny benefits to widows deemed "unworthy." As a result, a widow of that period could not receive survivor benefits if she was more than 20 years younger than her husband or if he had married her after the age of 60. This antiquated legislation was apparently drafted this way to protect the Canadian Military from "death bed marriages," which were of

known concern in the United States in relation to younger women marrying veterans of the 1865 Civil War for their pensions!

As a matter of advocacy background, over the last two decades both Conservative and Liberal governments have made unfulfilled promises and commitments to NCVA and various veteran stakeholders to expunge this punitive measure from the CFSA. Ministers of National Defence and Veterans Affairs of various political stripes have declared their intent to amend the legislation only to be overruled by the financial hierarchy of government.

In addition, a number of Private Member's Bills/Petitions to Parliament have been initiated to rectify this unacceptable situation with no success, notwithstanding the grave discrimination that remains in the statute. In the current context, Rachel Blaney, the NDP Veterans Critic, has taken a leadership role through a Private Member's Bill she has presented to Parliament in recent months.

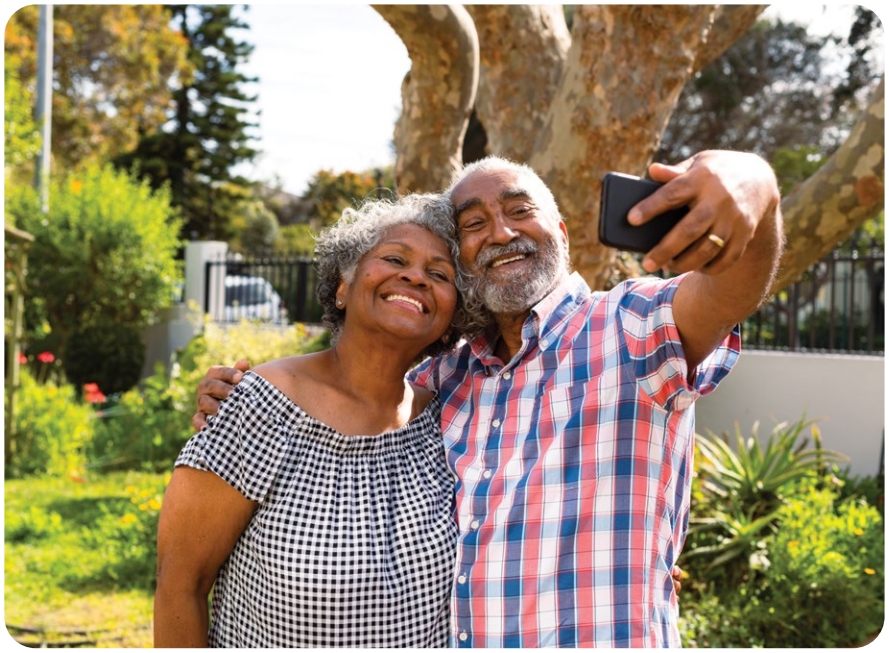
It is noteworthy that the Liberal 2015 election platform specifically indicated that it was the intention to "…eliminate the marriage after 60 clawback clause so that surviving spouses of veterans receive appropriate pension and health benefits." Indeed, several Mandate Letters directed by the current Prime Minister to various ministers of National Defence and ministers of Veterans Affairs/associate ministers of National Defence have been issued with no legislative action achieved in this context.

Furthermore, the 2019 federal budget contained a rather nebulous provision that was ostensibly proposed to address this long-standing concern.

The 2019 budget provided:

> "To better support veterans who married over the age of 60 and their spouses, Budget 2019 announces a new Veterans Survivors Fund committing $150 million over five years starting in 2019-20 to VAC. With these funds, the Government will work with the community to identify impacted survivors, process their claims, and ensure survivors have the financial support they need. The Government will announce additional details on this measure in the coming months."

Following this budget announcement, NCVA made continued enquiries with Veterans Affairs Canada, which resulted in the rather



shocking conclusion that no one in the department was aware of the substance of any legislative provision that actually would apply to this new policy. Our further communication recently with ministerial officials has been to little avail, save and except that we were advised that a new policy was under consideration and further research was being carried out. The mystery remains as to why the Government did not simply eliminate the marriage after 60 clawback disqualifying provision in the CFSA as opposed to proposing a brand-new policy with little or no substantive detail.

NCVA therefore recommends that, in addition to the elimination of the "gold digger's clause" (in the CFSA), VAC should establish a realistic and effective Veteran Survivors Fund to address the inequities already created by the current legislation.

In conclusion, NCVA submits that it is incumbent upon the government to reconsider its position and remove this discriminatory "gold digger's clause" from the CFSA so as to ensure that veterans over 60 who marry are able to enjoy their remaining years with appropriate financial security.

In our considered view, it is time for the government to get its act together, live up to its commitments, and take the necessary remedial steps to rectify this long-standing injustice. After many years of tortuous advocacy, veterans and their spouses deserve nothing less!

Veterans Legislation and Policies

A. Progressive Future Loss of Income (New Career Impact Allowance)

Recommendation

Establish a newly structured Career Impact Allowance that would reflect the following standard of compensation: "What would the veteran have earned in their military career had the veteran not been injured?" This form of progressive income model, which has been recommended by the MPAG and the OVO, would be unique to the New Veterans Charter/Veterans Well-being Act and would bolster the potential lifetime compensation of the disabled veteran as to their projected lost career earnings, as opposed to the nominal one per cent increase provided in the proposed legislation.

- NCVA encourages VAC to revisit the MPAG proposition of consolidating the Income Replacement Benefit and a newly structured CIA to provide a single stream of income for life that would include the "projected career earnings" approach.
- Access to the new structured CIA benefit should be available through the lifetime of the veteran, providing a financial safety net that includes application to pre- and post-release income scenarios.

As a matter of legislative history, it is to be noted that VAC converted the former Career Impact Allowance (CIA) and the Career Impact Allowance Supplement (CIA(S)) into the Additional Pain and Suffering Compensation benefit as part of the Pension for Life transition enactment. It remains the position of NCVA, in concert with the Policy Advisory Group, that the department should revisit this legislative model for career impact funding and address the future loss of income suffered by a disabled veteran on the basis of the following fundamental question – "What would the disabled veteran have earned in their projected military career if the veteran had not been injured?" – as opposed to the nominal one per cent increase in the Income Replacement Benefit provided in the current legislation.

A number of members of NCVA and the MPAG indicated a serious concern that the current income replacement program leaves lower-ranked CAF members at a minimal level of income replacement for life in circumstances where such a veteran qualifies for the VAC Diminished Earnings Capacity program or the SISIP long-term disability benefit.

It has been our position from the outset that the financial benchmarks for a progressive income model can be established in accord with the various reports emanating from the OVO over recent years and as proposed by the New Veterans Charter Advisory Group in 2009. These evaluations have demonstrated the relative predictability of the elevation of a CAF member through their military career in recognizing the specific ranks the member would have achieved had the member not been injured.

It is also of considerable import that the Canadian civil courts, over the last number of decades, have evaluated the cases 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 NCVA and the MPAG on the progressive income replacement model, 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 VAC, 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 their life to determine the differential between the benchmark established by this newly structured benefit for career impact funding 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 NVC/VWA with the general pain and suffering damage awards in the Canadian courts – why not replicate the philosophy of the future loss of income concept as well?

B. Veterans Education and Training Benefit

Recommendation

NCVA proposes that:

a) VAC eliminate the limitations as to the applicability of the new Veterans Education and Training Benefit so as to make this particular benefit available to all veterans and not just those who have served since April 1, 2006.

b) Family members (spouses and dependent children) should not only have an independent right to VAC VOC-REHAB and employment policies, but also to the Education and Training Benefit without the current restrictions that curtail their opportunity to access these programs.

We would concur with the considered opinion of former Deputy Minister Walt Natynczyk that this program represented a landmark proposal that substantially enhances the Education and Training Benefit for all eligible veterans. The deputy minister suggested at the time of the formal announcement that it was based on the United States G.I. Bill in relation to extending educational benefits beyond disabled veterans so as to include all released veterans who qualify under this new program.

The benefit is available for ten years going forward following the release of the veteran and is retroactive to April 1, 2006. Unfortunately, veterans released from the CAF prior to 2006 do not qualify for this benefit, which, in our judgment, reflects a rather arbitrary cut-off date and conceivably is a Government decision founded on actuarial objectives in the budgetary process.

This program was initiated on April 1, 2018, for all veterans honourably released on or after April 1, 2006 – veterans with six years of eligible service will be entitled to up to $40,000 of benefits, while veterans with twelve years of eligible service will be entitled to up to $80,000 of benefits. The minister/deputy minister of the day emphasized that the benefit would provide more money for veterans to go to college, university or technical school after they complete their service.

For those veterans who find education is not their solution, the department has indicated that there would be further monies available under this program for career development courses in the neighbourhood of $5,000 per veteran.

NCVA is of the opinion that the current eligibility date of 2006 should be changed to encompass a larger class of veterans prior to that date. The present policy actually splits the application of the ETB so that only veterans who served in Afghanistan after 2006 are eligible. In our view, there is no justification for this cut-off date.

In this context, the present ten-year rule for qualifications should also be eliminated so that the more inclusive veteran class would be eligible and not barred by this arbitrary ten-year limitation period.

We would also strongly recommend that family members (spouses and dependent children) should also have the independent right to access the Education and Training Benefit without the current restrictions that curtail their opportunity to utilize these programs.

C. Partial Disabilities

Recommendation

NCVA strongly recommends that VAC grant automatic entitlement to those veterans currently in receipt of consequential or partial entitlement rulings at one-fifth/two-fifths/three-fifths to a four-fifths level of assessment. In so doing, the department will address a significant amount of the backlog in relation to the numerous appeals that are currently in the department system re: fractional awards.

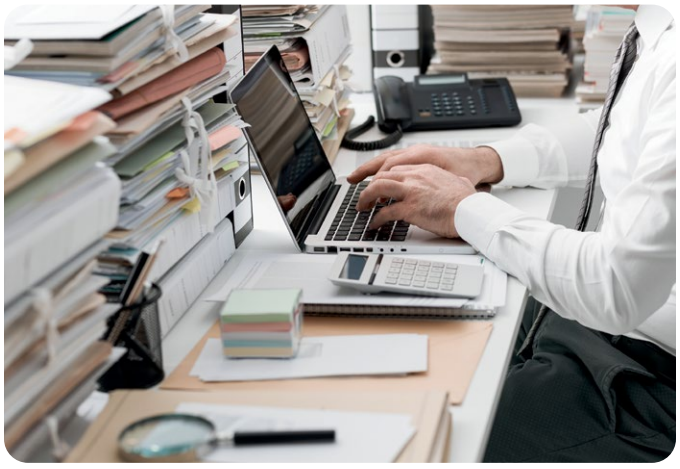
In early 2018, VAC created a new policy with reference to partial entitlement flowing from veterans legislation, i.e., disabilities arising in part out of military service or consequential disabilities arising in part from a primary disability.

The VAC policy amendment established a principle that any partial entitlement award would either be granted at four-fifths or five-fifths. In the past, fractional entitlements in this context were granted in fifths – one-fifth, two-fifths, three-fifths et al. The backgrounder information given to NCVA and the MPAG from VAC indicated that these fractional entitlements were often appealed one-fifth at a time, clogging up the entire VAC adjudicative system. It was felt that it would be prudent to simply eliminate the one-fifth, two-fifths and three-fifths entitlements and grant a four-fifths for any partial entitlement award.

This is clearly a beneficial policy insofar as a substantive increase in pension to be received by a veteran, but we felt it was important to raise a number of questions following the introduction of this amendment that still remain of concern as to the administration of this policy amendment:

1. Will these fractional entitlements be granted retroactively to all veterans who have received a one-fifth, two-fifths or three-fifths entitlement in the past?

   It has been established by VAC that this will not be done automatically but will only be triggered by individual veterans initiating a review of their files by the department in order to achieve a potential increase in their fractional entitlement. NCVA strongly recommends that VAC grant automatic entitlement to those veterans currently in receipt of consequential or partial entitlement rulings at one-fifth/two-fifths/three-fifths to a four-fifths level of assessment. This will also alleviate the significant backlog of



the numerous appeals with respect to fractional awards that are currently in the VAC adjudicative system.

2. Will there eventually be any limitation period as to how far back this form of increased fractional entitlement will be granted, given the magnitude of appeals that have been generated by this new policy?
3. Will the standard of assessment be more stringent when it is recognized that the partial entitlement award will be granted at a minimum of four-fifths? In the past, one-fifth awards were occasionally granted on the basis of giving the veteran applicant the benefit of the doubt – will this relative generosity be altered in the new policy guideline adjudication?

D. SISIP LTD/VOC-REHAB Programs

Recommendation

NCVA continues to take the long-held position that SISIP LTD/VOC-REHAB should be eliminated, placing 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.

NCVA continues to have a 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 that exist not only with the SISIP LTD program but also the SISIP VOC-REHAB program.

One of the priority recommendations of NCVA, the MPAG, the New Veterans Charter Advisory Group, numerous veteran consultation groups, the Standing Committee on Veterans Affairs and the OVO 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 income replacement loss benefit administered by VAC. The constraints placed on the NVC/VWA 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.

It is to be noted that the "wellness program" strongly advocated by VAC and, more particularly, by former 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, VAC 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 NVC/VWA.

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 Forces is to be considered "on duty" for the purposes of pensionability either under the Pension Act or the New Veterans Charter/Veterans Well-being Act has been a long-standing 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 PSC and Income Replacement programs once they put on a uniform. This would clear up the potential interpretive issues that are raised in the regulations to the NVC/VWA and would address the confusion and ambiguity that often results when individual hypothetical cases reflect "grey 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 1970s when it was first created.

E. Partners in Canadian Veterans Rehabilitation Services Program/Rehabilitation Services and Vocational Assistance Project (RSVP)

Recommendation

NCVA will continue to monitor the implementation of the new Partners in Canadian Veterans Rehabilitation Services Program/Rehabilitation Services and Vocational Assistance Project (RSVP) to ensure that the objective of VAC to provide improved medical, psycho-social and vocational rehabilitation services to our veterans and their families is achieved.

We would express our appreciation to Major (Ret'd) Bruce Henwood for his insights on this topic. He represents the NCVA as a member of the Minister of Veterans Affairs Canada Care and Support Advisory Group, and is also a Senior Consultant to The War Amputations of Canada (a member organization of the NCVA). Major Henwood is a seriously disabled veteran.

As reported in last year's NCVA Legislative Program, we remain of the view that the "devil will be in the details" on how this RSVP program is being implemented.

Beginning in November 2022, VAC merged two expiring national contracts delivering medical, psycho-social and vocational services to veterans and their families into one contract. It is a joint venture, provided by WCG International Consultants and Lifemark Health Group, called Partners in Canadian Veterans Rehabilitation Services (PCVRS). At times, RSVP and PCVRS acronyms are used interchangeably.

Both of the PCVRS organizations have a wealth of experience in the field and a national network of service providers.

As could be expected, there was some pushback and issues plaguing the rollout of this program. There unfortunately remains coordination issues between VAC and SISIP/Manulife on who does what to whom and when. The two do not work well together as there are different eligibility criteria and different suites of benefits. It appears the default setting is SISIP/Manulife first, then VAC. This is confusing to our veterans and their families.

Under the VAC program, as of September 2023, migration of all existing rehabilitation participants has been completed. There were some issues with regards to PCVRS Rehabilitation Services Specialists or RSS; as a result, more are being hired and are coming on board. Additionally, PCVRS has increased its clinics nationally from 600 to 795 with over 12,000 registered providers such as psychologists, physicians,

nurses, physiotherapists, massage therapists, chiropractors, social workers, clinical counsellors and vocational rehab specialists, just to name a few. Not all veterans have been assigned a rehab support specialist or have even been contacted, as many have active rehabilitation and/or treatment plans already in place and have been grandfathered. Others were actually not transitioned to the new program as they were scheduled to complete their rehab plan in the short term.

There was, as mentioned, pushback from within the department that essentially boiled down to the roles of the VAC case managers, veterans services agents and the PCVRS rehab service specialists. There was concern over job security and the quality of delivery of appropriate services to veterans and their families. There was also concern about funding issues and, as these are being discovered, fixes are being implemented. There was a lack of communication to the veteran community, but VAC is addressing this through a series of brochures, service bulletins and frequently asked questions handouts. The program is still evolving and the "devil will be in the details" remains to be seen!

One final note: there are still deficiencies with this program regarding the Canadian Armed Forces Reserve veterans.

VAC Health-Care and Treatment Benefit Policy Improvements

It goes without saying that there are many areas within VAC that can be improved to provide a better experience for the veteran and their family. The following can be summarized as *"Wouldn't it be nice if…"!*

- VAC were to assign a Veteran Service Agent (VSA) to all veterans, either upon request or at a high-level of disability, to support the veteran through their life journey. This is not the current practice; many seriously disabled veterans do not have VSA support.
- VAC were to implement a Health Spending Account (HSA) or similar benefit to cover small over-the-counter purchases. For example, a cane that costs approximately $40 requires a family physician prescription in order for VAC to cover the purchase. With an HSA, the veteran could simply purchase a cane or even shop for products on sale!
- VAC were to implement a veterans dental plan similar in nature to the existing Canadian Armed Forces Pensioners Dental Service Plan, with the ability for veterans upon retirement from the Canadian Armed Forces to opt into the plan, similar to how opting into the current Public Service Health Care Plan currently exists.
- The VAC benefit grid search engine were more user-friendly by expanding the language database to include common terminology that a veteran would use; for example, the search engine does not recognize "wheel chair" (it does, however, recognize "wheelchair"), or the search engine changes "ointments" to "appointments."
- The VAC benefit grid search engine would allow for the insertion of the Drug Identification Number (DIN) or Natural Product Number (NPN) to find a product.
- VAC and the VAC benefit grid recognized kinesiologists. Presently, rehabilitation services provided by kinesiologists are not recognized by VAC except in Ontario (so much for the "one veteran – one standard"!).
- VAC were to amend the benefit grid "prescriber required" criteria to include pharmacists, other health-care specialists, and home-care and medical supply vendors. It is presently too restrictive, recognizing only physicians, occupational therapists, physiotherapists or registered nurses.
- Yoga, especially for posture, became an approved treatment benefit covered by VAC.
- VAC, or indeed the Government of Canada, developed a disability identification card for travel abroad, similar to what many other countries already provide.

F. Post-65 Benefits

Recommendation

NCVA proposes that VAC should establish that the Income Replacement Benefit (former Earnings Loss Benefit) be continued for life without deduction, and that the post-65 diminishment be eliminated as the financial plight of the eligible seriously disabled veteran at age 65 remains essentially unchanged.

It is to be noted that the legislative amendments emanating from Budget 2018 (which consolidated a number of income replacement provisions into one benefit, the Income Replacement Benefit) unfortunately still retain the inadequacies of the Retirement Income Security Benefit, which was enacted earlier by the former Conservative government in its attempt to address the post-65 financial security for seriously disabled veterans and their families. As aforementioned, the post-65 benefit provides a limited number of disabled veterans (less than 6 per cent) with 70 per cent of 90 per cent of the IRB, should the veteran be deemed as suffering a "diminished earnings capacity" as defined under the regulatory provisions of the new act, less certain potentially significant deductions prescribed by these policy provisions.

In our view, to apply a 70 per cent 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 their financial costs continue to be essentially the same.

During the course of initial discussions surrounding the enactment of these post-65 provisions, strong arguments were made by NCVA and various veteran stakeholder groups that the full Earnings Loss Benefit/Income Replacement Benefit should be continued for life, particularly given the fact that the principal recipients of this post-65 "pension" will be totally incapacitated veterans.

We would underline that our proposal for a progressive future loss of income approach would address this inequity by providing a more realistic form of income replacement for seriously disabled veterans.

Long-Term Care/Intermediary Care

Recommendation

That NCVA ensure that VAC adopts a 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 without distinction between traditional and modern-day veterans.

Recommendation

That NCVA urge VAC to increase the number of Preferred Admission beds in order to address the demands of modern-day veterans and, in so doing, eliminate the current wait list for these beds across the country.

Recommendation

In conjunction with the settlement arrived at between the residents of Ste-Anne's Hospital, the federal government and the provincial government, NCVA calls on Veterans Affairs Canada, in accordance with the terms and provisions of the settlement documentation, to protect the interests of veterans affected by the transfer. The governments must also 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 are strictly enforced, and that enhanced funding is put in place by the federal government to satisfy this class-action settlement.

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 OVO in drawing to the attention of the 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.

A. Admission to Long-Term Care Facilities

One of the major recent developments with respect to long-term care has been the initiation of a policy by VAC to widen the scope of eligibility to so-called traditional veterans' beds in historical veterans' hospitals to modern-day veterans. With specific reference to individual hospitals such as Sunnybrook in Toronto, the department has taken steps to exercise this operational discretion where vacant beds have resulted from the passing of traditional veterans and the demand from the modern-day veteran community exists.

In addition, there have been a number of high-profile cases in the last number of years that 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 further priority access beds (preferred veterans' 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.

B. Intermediary Costs

As emphasized 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 their home. In addition, once such a veteran pensioner has reached the stage where a long-term care facility is required, the Veteran 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. As described earlier in our legislative report, this right of access to intermediate institutionalized level of health care was eliminated for veterans in the 1990s as part and parcel of the federal budgetary cost-cutting strategy in order to deal with the government debt reduction objective.

We have had a number of intensive meetings with departmental officials over the last five years in an attempt to close this gap, and we remain committed to compelling the Government to address this long-standing concern.

C. Veterans Ombudsman's Report

As previously advised, we continue to work closely with the OVO in this context. It is of significant interest that the Ombudsman's office has adopted our position and has issued a number of reports with regard to long-term care/intermediary care that fully recognize 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.

In this regard, it is noteworthy that the Veterans Ombudsman released an excellent report in 2018, entitled "Continuum of Care: A Journey from Home to Long Term Care," which contains a comprehensive analysis of the current VAC long-term care and health-care policies. The report further provides a series of recommendations which are consistent and in line with NCVA's long-standing position on this important subject. We will continue to coordinate our efforts with the OVO in pursing the implementation of these mutually desired recommendations.

In summary, the Veterans Ombudsman's proposals are as follows:

1. Followup contact with Veterans Independence Program recipients should be made on at least an annual basis and more frequently for those at higher risk (with in-home assessments when necessary) to ensure timely and accurate identification of changing needs as veterans age.
2. Eliminate the inconsistency in Veterans Independence Program eligibility for housekeeping and grounds maintenance for survivors and spouses

so that they may all have access to the services they need, regardless of what the veteran received or did not receive prior to their death or involuntary separation.

3. Adjust the eligibility criteria of the Caregiver Recognition Benefit to provide easier access to compensation for caregivers when service-related conditions inhibit a veteran's ability to perform instrumental activities of daily living and childcare.

4. Introduce additional financial support that can be used to subsidize assisted living options for veterans whose needs do not require long-term care, but who cannot stay in their own homes.

5. Merge the Veterans Independence Program and Long-Term Care Program into one "Continuum of Care" program such that access is determined once, and criteria are transparent, understandable and based on the physical and mental health needs of the veteran.

6. Reduce the complexity of 28 different eligibility groups, currently using service type, such that access to continuum of care support is based on the physical and mental health needs of veterans.

7. Develop and publicly communicate a strategy to ensure that the continuum of care needs of all veterans is being met within the current context of the Canadian health-care system.

VIP for Life for Surviving Spouses

Recommendation

That NCVA continue to pressure the minister and departmental officials to review the present policy on the continuation of VIP for Life for surviving spouses with a view to providing this benefit to, at a minimum, all surviving spouses of seriously disabled veterans who are not eligible because the veteran never applied for the benefits.

Recommendation

That the Minister of Veterans Affairs alter the Government's current position so that:

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

It remains a priority issue of NCVA to underline the need to expand the eligibility of VIP to include, at a minimum, those surviving spouses of seriously disabled veterans whose veteran 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 their 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, they would have received the benefit given their 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 surviving spouses in achieving VIP benefits.

As a matter of historic development, it will be recalled that the federal budget of 2008 partially expanded the current regulations for the continuation of VIP for Life for surviving spouses, provided the surviving spouse 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 replaced by a form of automatic entitlement with respect to surviving spouses of seriously disabled veterans.

Last Post Fund/Veterans Burial Regulations

Recommendation

NCVA proposes that a departmental policy change be implemented to recognize that seriously disabled veterans entitled to a disability pension at 78 per cent or more (SDVs) qualify, as a matter of right, under the Veterans Burial Regulations/Last Post Fund and should be granted automatic entitlement for funeral and burial grants. This would obviate the need to draft lengthy submissions that also place VAC adjudicators in the position of having to consider extremely complex and comprehensive evidence supporting our contention that the interrelationship of the pensioned and non-pensioned conditions of such veterans has contributed to their passing.

At the outset, we must state that a rather disturbing development has occurred with regard to the Last Post Fund administration of the Veterans Burial Regulations. It must be underlined that, over recent months, we have actually encountered a certain amount of procedural and substantive resistance from the Last Post Fund adjudicative team. Indeed, a number of our submissions on behalf of seriously disabled veterans such as war amputees and Hong Kong veterans have met with bureaucratic obstacles and a less positive result upon adjudication than previously experienced.

We must indicate that we were somewhat shocked that a supplementary submission has proven necessary in relation to an individual case of a Hong Kong veteran recently evaluated by the Last Post Fund section of VAC. Given the history of the Canadian Hong Kong veterans and the horrific experience they suffered as PoWs of the Japanese during the Second World War for some 44 months, this represents an intolerable state of affairs. As is well known, the devastating story of abuse, torture, starvation and gross violations of human rights has long led to the irrefutable conclusion that the family of a Hong Kong veteran should automatically receive Last Post funding as a matter of right.

We are currently pursuing a resolution to these difficulties with the deputy minister and the policy director of VAC, as this negative attitude within the Last Post Fund administration is unacceptable.

In general terms, it remains NCVA's position that it is necessary for VAC to recognize 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.

VAC regulations state that a veteran may be eligible to receive a Funeral and Burial Grant through Veterans Affairs Canada if it can be determined that their cause of death is related to one of their pensioned conditions or is a condition that has been aggravated by their pensioned conditions, leading to their demise.

It is noteworthy that many seriously disabled veterans are in receipt of disability pension from VAC at the rate of 100 per cent. In reality, there clearly is no necessity for the veteran to seek further entitlement given the maximization of their disability pension and the application of the VAC "SDV" policy, wherein 100 per cent pensioners are granted health-care/treatment benefits and long-term care for any and all of their pensioned disabilities and non-pensioned conditions.

We would point out that the department recognizes that as seriously disabled veterans age, their overall medical condition involves ailments from both pensioned and non-pensioned conditions. To eliminate the complication of distinguishing between these conditions, SDVs are provided with health-care and treatment benefits for both pensioned and non-pensioned conditions, in accordance with VAC health-care regulations.

In our judgement, the overall interrelationship between pensioned and non-pensioned conditions contributes to the SDV's death as direct application of the well-established principle recognized by VAC with reference to the seriously disabled veterans' policy. In this context, it is inconceivable that the impact of the pensioned and non-pensioned disabilities did not play a part in the veteran's ultimate demise.

It is also noteworthy that, when determining eligibility for Exceptional Incapacity under the Pension Act, the department takes into consideration the impact of both the pensioned and non-pensioned conditions.

As indicated in Chapter 7 of VAC's Table of Disabilities, section on Exceptional Incapacity Allowance:

> "7.04 … It is important to be cognizant of the fact that it **is difficult and frequently impossible to medically separate the impact of pensioned and non-pensioned conditions in a severely disabled person and in such cases, one can fairly assume such impact exists**. … Account should be taken of the **"synergism" principle, i.e., the total effect of the pensioned disabilities may be greater than the sum of the effects of the disabilities taken independently**. Mental and physical deterioration due to age is not excluded in the determination of exceptional incapacity…".

This synergistic relationship between pensioned and non-pensioned conditions is also acknowledged in the Attendance Allowance provisions of the Pension Act:

> "An Attendance Allowance may be awarded to a pensioner when all of the following circumstances are met:
>
> a. The pensioner is in receipt of at least a one per cent disability pension or prisoner of war compensation
>
> b. The pensioner is totally disabled, <u>whether by reason of military service or not</u>
>
> c. The pensioner is in need of attendance."

It is our basic position that an SDV profile as enacted in the VAC policy guidelines should also apply to the administration and interpretations of the Veterans Burial Regulations when determining matter of right on behalf of an SDV. It is puzzling indeed that, during their lifetimes, the department recognizes the cumulative and synergistic effect of both the veteran's pensioned and non-pensioned conditions by approving many health-care and treatment benefits on their behalf but, in death, ignores the relationship between these conditions.

In conjunction with this overall position, we would also ask that the department consider the Benefit of Doubt Section under the Pension Act as a relevant and fundamental principle of veterans legislation and, as such, request that the adjudicators note Section 5 in relation to these SDV claims:

> "(3) In making a decision under this Act, the Minister shall:
>
> (i) Draw from all the circumstances of the case and all the evidence presented to the Minister every reasonable inference in favour of the applicant or pensioner;
>
> (ii) Accept any uncontradicted evidence presented to the Minister by the applicant or pensioner that the Minister considers to be credible in the circumstances; and
>
> (iii) Resolve in favour of the applicant or pensioner any doubt, in the weighing of evidence, as to whether the applicant or pensioner has established a case."

In furtherance of these presumptive principles, we would submit in support of our recommendation that statements emanating from former Minister Lawrence MacAulay, former Deputy Minister Walt Natynczyk

and current Deputy Minister Paul Ledwell support the position that VAC adjudication should adopt a **compassionate and generous philosophy and ensure that a liberal interpretation is followed in relation to individual veteran applications**.

The "veteran-centric" approach adopted by the department has been similarly emphasized by the department in the context of "getting to yes faster" with respect to VAC adjudication.

As a personal note, it is extremely difficult to advise the surviving spouses/children of The War Amputations of Canada and the Hong Kong Veterans Association of Canada that not only has their claim for benefits under the Veterans Burial Regulations/Last Post Fund been turned down, but they will also not be receiving the Memorial Cross that is issued by the Government as a symbol of the personal loss and sacrifice that such surviving spouses/children are facing upon the death of their veteran spouse/parent.


NCVA
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