"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 (NVC/VWA) and that the Government needs to fully implement the Ministerial Policy Advisory Group recommendations initially presented to the minister of veterans affairs and the National Stakeholder 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 NVC/VWA;

(ii) Ensuring that no veteran under the NVC/VWA 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 NVC/VWA, 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 Pain and Suffering Compensation (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 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 Exceptional Incapacity Allowance under the Pension Act into the NVC/VWA to help address the financial disparity between the two statutory regimes.

(v) Establish a new caregiver allowance, payable to informal caregivers, based on the eligibility criteria under the Attendance Allowance of the Pension Act and the amount derived from the DND Attendant Care Benefit 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 NVC/VWA 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.

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) that 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 monthly amount of $1,355 (as of January 1, 2024) 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 Compensation (APSC) benefit has essentially replaced the Career Impact Allowance (Permanent Impairment Allowance) under the New Veterans Charter/Veterans Well-being Act (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 that 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 for many disabled veterans that the former Career

Impact Allowance and Career Impact Allowance Supplement have been eliminated from the IRB package.

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 annuitized or reworked over the life of the veteran for the purposes of creating an unacceptable form of 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 National Stakeholder 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:

(i) Treat all veterans with parallel disabilities in the same manner; and

(ii) 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:

(i) The enhancement of the 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.

(ii) The addition of Exceptional Incapacity Allowance (EIA), the establishment of a new caregivers allowance 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 Pain and Suffering Compensation (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 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% or over	1
48% - 78%	2
20% - 48%	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 EIA as found under the Pension Act.

However, the Pension Act provisions for EIA 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 EIA under the Pension Act, together with the establishment of a new caregiver 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 EIA and Attendance Allowance (AA) 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 EIA and a new caregiver allowance, based on the eligibility criteria of the AA together with the amount found under the DND Attendant Care Benefit, 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 Ombud'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 IRB, we would suggest the following concerns are material:

(i) 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.

(ii) 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 Canada Pension Plan (CPP), Old Age Security (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 and 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 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 (NVC/VWA).

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 (2024)

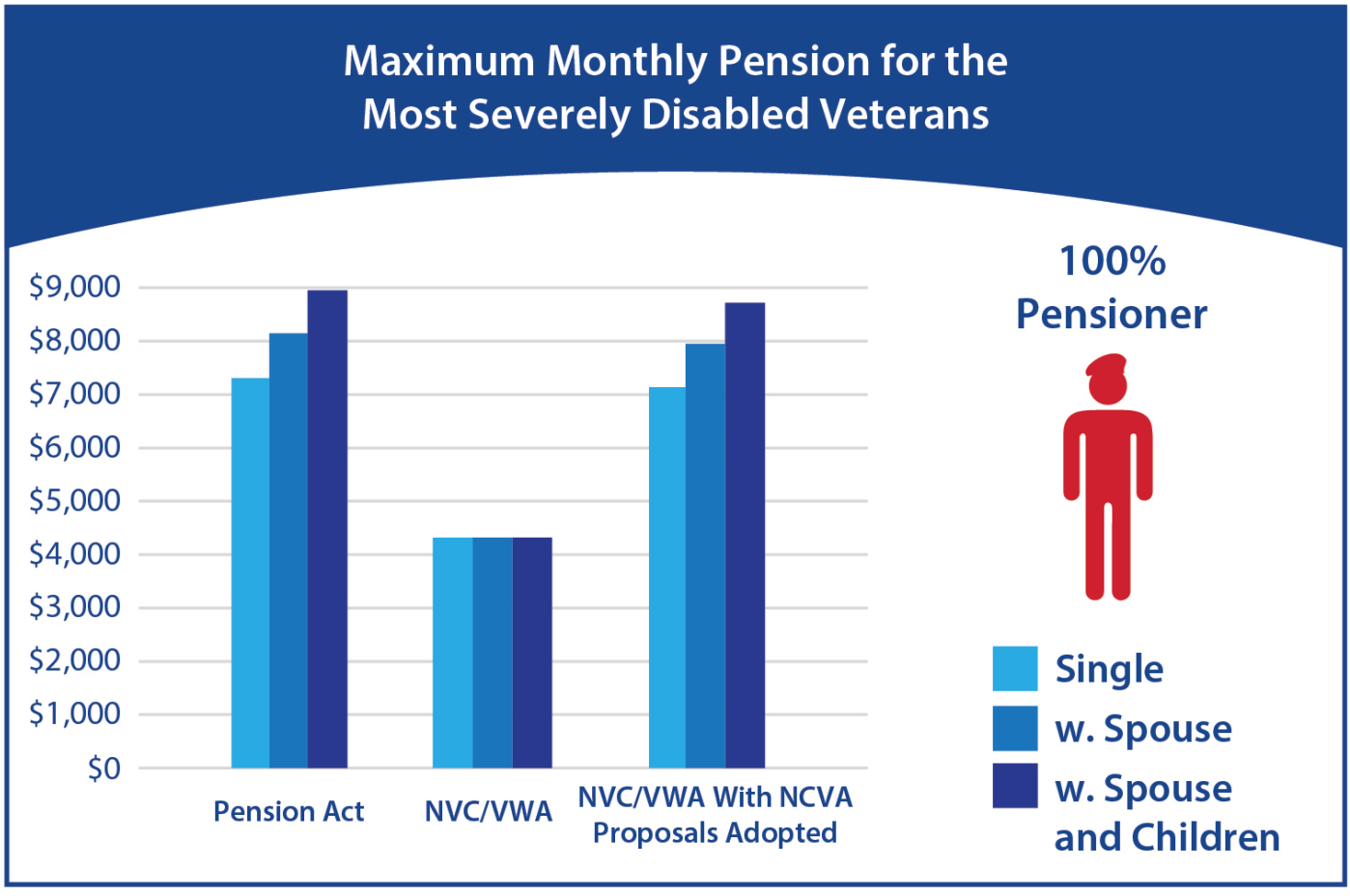
Benefit (maximum per month)	Veteran plus spouse and two children	Veteran plus spouse	Single veteran
Disability Pension	$4,950	$4,196	$3,357
Exceptional Incapacity Allowance	$1,777	$1,777	$1,777
Attendance Allowance	$2,221	$2,221	$2,221
TOTAL	$8,948	$8,194	$7,355

NEW VETERANS CHARTER/VETERANS WELL-BEING ACT (2024)

Benefit (maximum per month)	Veteran plus spouse and two children	Veteran plus spouse	Single veteran
Pain and Suffering Compensation	$1,355	$1,355	$1,355
Additional Pain and Suffering Compensation	$1,767	$1,767	$1,767
Caregiver Recognition Benefit	$1,206	$1,206	$1,206
TOTAL	$4,328	$4,328	$4,328

NEW VETERANS CHARTER/VETERANS WELL-BEING ACT (2024) (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	$1,355	$1,355	$1,355
Additional Pain and Suffering Compensation	$1,767	$1,767	$1,767
Family benefit (PA)	$1,593	$839	$0
Exceptional Incapacity Allowance (PA)	$1,777	$1,777	$1,777
Attendance Allowance (PA)	$2,221	$2,221	$2,221
TOTAL	$8,713	$7,959	$7,120



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:

(i) Assume the veteran has a mental or physical injury that 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.

(ii) The veteran enters the income replacement/rehabilitation program with SISIP LTD as the first responder or the IRB/rehabilitation program with VAC.

(iii) 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 (2024)

Benefit (35 per cent per month)	Veteran plus spouse and two children	Veteran plus spouse	Single veteran
Disability Pension	$1,733	$1,468	$1,175

NEW VETERANS CHARTER/VETERANS WELL-BEING ACT (2024)

Benefit (35 per cent per month)	Veteran plus spouse and two children	Veteran plus spouse	Single veteran
Pain and Suffering Compensation	$474	$474	$474

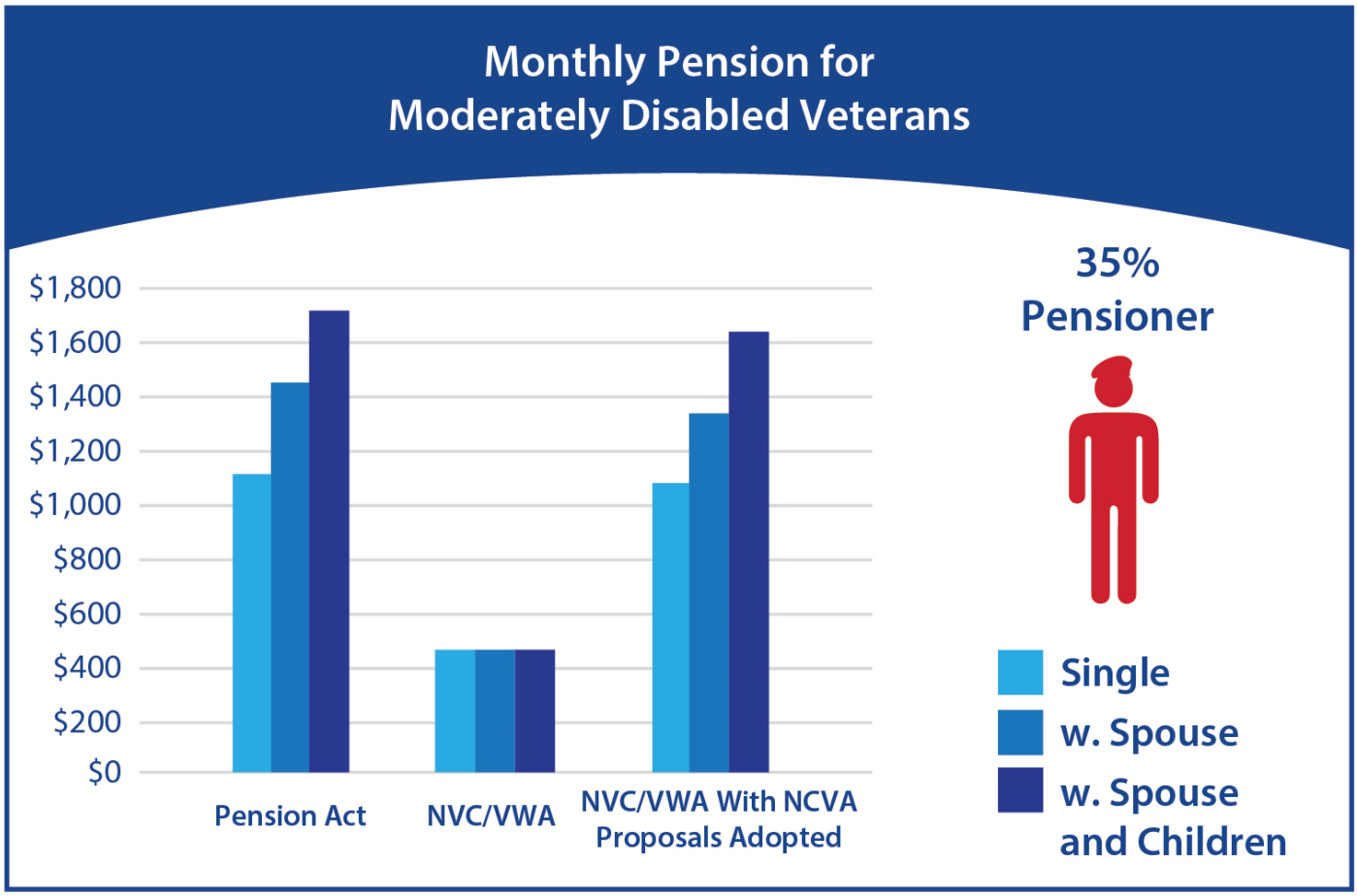
We would underline that this analysis demonstrates the extremely significant financial disparity that results for this type of moderately disabled veteran. It is also essential to recognize that over 80 per cent of disabled veterans under the NVC/VWA will fall into this category of

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 (2024) (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	$474	$474	$474
Additional Pain and Suffering Compensation	$589	$589	$589
Family benefit (PA)	$558	$293	$0
TOTAL	$1,621	$1,356	$1,063



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 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 Earning 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 Earning 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 CAF 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 Pension Act and the best parts of the NVC/VWA would provide a better compensation/wellness model for all disabled veterans in Canada.

It should be noted that NCVA emphasized this important topic in our submission to the Standing Committee on Veterans Affairs in March 2024, with regard to their study on veterans' transition to civilian life.