Marriage After 60

Recommendation

NCVA is recommending that the minister of veterans affairs/associate minister of national defence and/or 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 (CFSA). This will allow the spouse of a CAF 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:

(i) 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.

(ii) Should the veteran have not opted for the survivor's pension, 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 NCVA and our 68 member organizations have made submissions to the government for over 25 years with respect to our concerns vis-à-vis 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 (CFSA, 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 formal response from DND 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 pension, 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's pension, 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 pension 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 pension 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 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 a survivor's pension 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 bill/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 presented to Parliament.

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 VAC, 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 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 remarry 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!