

# **NATIONAL COUNCIL OF VETERAN ASSOCIATIONS IN CANADA**

*1<sup>st</sup> Canadian Parachute Battalion Association  
14<sup>th</sup> Canadian Field Regiment Association  
435-436 & Burma Squadrons Association  
Air Force Association of Canada  
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  
Bomber Command Association Canada  
Burma Star Association  
Canadian Airborne Forces Association  
Canadian Association of World War II Veterans from  
the Soviet Union  
Canadian Corps Association  
Canadian Fighter Pilots Association  
Canadian Forces Communications and Electronics  
Association  
Canadian Infantry Association  
Canadian Merchant Navy Veterans Association Inc.  
Canadian 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  
Dieppe Veterans and Prisoners of War Association  
The Dodo Bird Club of Ex-RCAF Flight Sergeants  
Ferry Command Association  
First Special Service Force Association  
Hong Kong Veterans Association of Canada  
Jewish War Veterans of Canada  
KLB (Konzentrations Lager Buchenwald) Club  
Korea Veterans Association of Canada  
The Limber Gunners  
Maritime Air Veterans Association  
Métis Nation of Ontario Veterans Council  
The Military Vehicle Hobbyists Association  
National Prisoners of War Association of Canada  
Naval Association of Canada, Montreal Branch  
Naval Club of Toronto  
Nova Scotia – Naval Association of Canada  
Nursing Sisters' Association of Canada  
Operation Legacy  
The Overseas Club - Canadian Red Cross Corps  
(Overseas Detachment)*

*The Polish Combatants' Association in Canada The  
Queen's Own Rifles of Canada Association  
RCAF Prisoner of War Association  
Regimental Association for the Toronto Scottish  
Regiment (Queen Elizabeth The Queen Mother's  
Own)  
Royal Air Forces Escaping Society  
Royal Canadian Air Force Pre-War Club of Canada  
The Royal Canadian Army Service Corps Association  
Royal Canadian Naval Association  
The Royal Canadian Regiment Association  
Royal Naval Association - Southern Ontario Branch  
Royal Winnipeg Rifles Association  
The Sir Arthur Pearson Association of War Blinded  
The South Alberta Light Horse Regimental  
Association  
Submariners Association of Canada (Central Branch)  
Toronto Police Military Veterans Association  
The War Amputations of Canada  
War Pensioners of Canada  
War Veterans & Friends Club  
The Warriors' Day Parade Council  
White Ensign Club Montreal  
Wren Association of Toronto*

## **SUBMISSION TO VETERANS AFFAIRS CANADA RE: NOTICE OF INTENT TO AMEND THE VETERANS WELL- BEING REGULATIONS (CANADA GAZETTE)**

## **RE: BILL C-74 PART 4 – AN ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE BUDGET TABLED IN PARLIAMENT ON FEBRUARY 27, 2018 AND OTHER MEASURES**

**JUNE 2018**

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

**Submission to Veterans Affairs Canada**  
**RE: Notice of Intent to Amend the Veterans Well-Being Regulations**

As a general overview, the National Council of Veteran Associations (NCVA) contends that Bill C-74 Part 4 (“An Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures”), which is essentially the legislative implementation of Minister Seamus O’Regan’s announcement of December 20, 2017 regarding the long awaited promise of a “lifelong pension” option, has failed to live up to the Liberal government’s 2015 election commitment to address the inequities in the New Veterans Charter and continues to ignore the “elephant in the room” which has overshadowed this entire discussion. The government has not satisfied veterans’ expectations with regard to this formal 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.

With specific reference to the provisions of Bill C-74 Part 4, the draft legislation and proposed regulatory amendments ostensibly reflect the government’s attempt to create a form of “pension for life” which includes the following three elements:

1. A disabled veteran will have the option to receive the present lump sum disability award in the form of a new Pain and Suffering Compensation benefit representing a monthly payment in the maximum amount of \$1,150 per month for life. For those veterans currently in receipt of a disability award, 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. A new Additional Pain and Suffering benefit would be created to essentially replace the Career Impact Allowance (Permanent Impairment Allowance) under the current Veterans Charter, with similar grade levels and monthly payments which would reflect a non-taxable non-economic benefit but would be 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 new, consolidated Income Replacement Benefit, which is taxable, would combine four pre-existing benefits (Earnings Loss Benefit, Extended Earnings Loss Benefit, Supplementary Retirement Benefit, and Retirement Income Security Benefit) with a proviso that the IRB would be increased by one per cent every year until the veteran reaches what would have been 20 years of service or age 60, and that any veteran who wishes to join the work force may also earn up to \$20,000 from employment before any reduction

will be made to their IRB payment. It is not without financial significance that the current Career Impact Allowance and Career Impact Allowance Supplement have been eliminated from the Income Replacement Benefit package.

Although, as per usual, “the devil remains in the details” as to the relevance of these new legislative provisions and proposed amended regulations to individual disabled veterans, it is readily apparent that only a circumscribed number of seriously disabled veterans and their survivors may benefit from the new legislation when compared to the level of entitlement available under the present New Veterans Charter. However, the greater majority of disabled veterans will not be materially impacted by the legislation in that the new benefits under the proposed legislative and regulatory amendments will have limited applicability. In addition, it is self-evident that the financial disparity between the *Pension Act* and the New Veterans Charter will be perpetuated for this significant cohort of disabled veterans in Canada.

In our submission it was fundamentally essential that the new Bill recognize that much more is required to improve the Charter so as to address the proverbial “elephant in the room” in that the 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 Charter; and
- (ii) Ensuring that no veteran under the New Veterans Charter 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 which 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.

It has been NCVA’s consistent recommendation to the Minister and to the Department that VAC should adopt the major conclusions of the Ministerial Advisory Group Report formally presented to the Veterans Summit in Ottawa in October 2016 together with the recommendations contained in the 2017 NCVA Legislative Program – both of these reports proposed that the combination of the best provisions of the *Pension Act* and the best provisions of the New Veterans Charter would produce 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.

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 benefits for the greater majority of disabled veterans requires that the government seize the moment and satisfy the financial needs of Canadian veterans and their dependants. The new legislation contained in Bill C-74 Part 4 has missed an opportunity to recognize that the longstanding social covenant between the Canadian people and the veterans’ community demands nothing less.

We are attaching to this submission recent NCVA op-ed position papers published in *The Hill Times* in response to the Minister’s announcement and subsequent public statements. This analysis addresses in considerable detail the fundamental deficiencies and flaws contained in the VAC position and outlines a series of proposals as to what can be done to improve the Pension for Life concept contained in Bill C-74 Part 4.

In this context, we strongly encourage the government to seriously consider the implementation of the following major recommendation of the Ministerial Policy Advisory Group as a first step to addressing this problem of the “elephant in the room”:

“[T]he enhancement of the Earnings Loss Benefit/Career Impact Allowance as a single stream of income for life, the addition of Exceptional Incapacity Allowance, Attendance Allowance and a new monthly family benefit for life in accordance with the *Pension Act* will ensure all veterans receive the care and support they deserve when they need it and through their lifetime.”

In specific terms we would also respectfully suggest to the Minister and the Department that the following steps would dramatically enhance draft legislative provisions and amended regulations relevant to the Pension for Life proposition found in Bill C-74 Part 4 and go a long way to satisfying the “one veteran – one standard” approach presently followed by VAC as a basic principle of administration:

1. Liberalize the eligibility criteria in the legislation and regulatory amendments for the new Additional Pain and Suffering Compensation 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.

N.B.

- It is noteworthy that the proposed regulations contained in the *Canada Gazette* notice with respect to the APSC benefit ostensibly replicate the eligibility prerequisites of the Permanent Impairment Allowance/Career

Impact Allowance. These PIA/CIA provisions have produced restrictive and arbitrary results over the years since their inception and were further complicated with the formula established by VAC in 2017 in relation to the interpretation of the CIA grades through the employment of the “Diminished Earnings Capacity” test.

In our submission, a more generous and readily understood approach is required in the proposed amended regulations for the APSC benefit so as to generate a more inclusive class of disabled veterans. It has been the longstanding position of NCVA that the traditional PIA/CIA regulations and policy guideline requirements reflected a “blunt instrument” as opposed to a “precise tool” in evaluating the overall impact that an injury may have on a disabled veteran.

In NCVA’s 2017 Legislative Program, we have argued that the veterans Disability Award (Pain and Suffering Compensation benefit) initially granted should be a major determinant in evaluating CIA (APSC) qualifications. The above-mentioned “Diminished Earnings Capacity” test employed by VAC and the apparent new criteria set out in the proposed regulatory amendments for APSC qualification are, in our judgment, merely an unnecessary extension or, alternatively, a duplication of this Disability Award 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 CIA (APSC) eligibility. The following would reflect this form of evaluation criteria for CIA (APSC):

<u>Veteran Disability Award (PSC)</u>	<u>CIA (APSC) Grade</u>
78% or over	1
48% - 78%	2

Alternatively, the DA (PSC) percentage could be applied in a more precise manner by using the percentile against the maximum CIA/APSC compensation available – for example, if a veteran is in receipt of a DA (PSC) of 65% the veteran would receive 65% of the maximum CIA (APSC) allowance. For the purposes of Grade 3 assessment, it is our recommendation that the DA (PSC) percentile could be similarly applied; i.e. if a veteran is in receipt of a DA (PSC) of 25%, the veteran would receive 25% of the maximum CIA (APSC) allowance. Note that this quantification of career impact has been utilized under the *Pension Act* for almost one hundred years in assessing the loss of earning capacity of a disabled veteran for lifetime pension purposes.

The adoption of this type of approach would have the added advantage of enhancing the Pension for Life so as to incorporate more disabled veterans and address the fundamental parity question in relation to *Pension Act* benefits.

- With reference to the current VAC proposals for regulatory amendments, we would also express concern that the regulatory prerequisite for the APSC benefit with regard to the disability of amputation remains arbitrarily defined, both as to eligibility and designated grade level.

It is to be noted that amputation at or above the knee or at or above the elbow is retained as a fundamental requirement for qualification in relation to a single-limb amputee – our years of experience with The War Amputations of Canada make clear that the loss of a limb at any level represents a “severe and permanent impairment” for the veteran amputee – the current arbitrary distinction is not justified and should be amended.

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 his or her family.
3. Incorporate the special allowances under the *Pension Act*, i.e. Exceptional Incapacity Allowance and Attendance Allowance, into the New Veterans Charter to help address the financial disparity between the two statutory regimes.

N.B.

- In my 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/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.

- As a sidebar, it is interesting that VAC refers to the new Caregiver Recognition Benefit of \$1,000.00 a month 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. For many decades, Attendance Allowance (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 is noteworthy that the spouses or families of seriously disabled veterans often have to give up significant employment opportunities to fulfill the caregiving needs of the disabled veteran – \$1,000.00 a month is simply not sufficient recognition of this income loss. VAC should return to the Attendance Allowance provision and pay such benefit to caregiver directly if so desired.
  - We would strongly suggest that VAC pursue the incorporation of the EIA/AA special allowances into the New Veterans Charter/Veterans Well-being Regulations prior to the formal implementation of these legislative/regulatory amendments on April 1, 2019 so as to address these deficiencies in the Pension for Life.
4. Establish a newly-structured Career Impact Allowance which would reflect the following standard of compensation: "What would the veteran have earned in his or her military career had the veteran not been injured?" This form of progressive income model, which has been recommended by the Ministerial Policy Advisory Group and the Veterans Ombudsman's Office, would be unique to the New Veterans Charter, and would bolster the potential lifetime compensation of a disabled veteran as to his or her projected lost career earnings as opposed to the nominal one per cent increase proposed by the minister.

N.B.

- As a general observation in relation to the legislation and the proposed 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 proposed one percent 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; and
- The post-65 benefits of the IRB (current RISB) are substantially impacted by a multitude of financial offsets which 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, CFSA benefits et al. In reviewing the VAC pension model used in the public statements emanating from the Department and the examples employed in the 2018 budget papers, it would appear that VAC has not factored in these offset elements in the overall analysis.

We would respectfully suggest that the Department consider the impact of these factors in finalizing the regulatory amendments relative to the new Income Replacement Benefit so as to ensure this one percent increase has substantive and meaningful impact for disabled veterans who require such income replacement for life. In addition, we would submit that VAC ultimately adopt the above-mentioned progressive income model for a newly structured form of CIA in accord with the approach utilized by the Canadian courts as to “future loss of income.”

In summary, it is fundamental to understand that it was truly the expectation of the disabled veteran community that the “re-establishment” of a Pension for Life 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, the Minister consistently talks of the significance that the government attaches to the wellness, rehabilitation and education programs under the New Veterans Charter. 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 approach to medically released veterans.

Ideally, we would like to believe that VAC, working together with relevant Ministerial Advisory Groups and other veteran stakeholders, could 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.

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 Bill C-74 Part 4 so as to address this fundamental core issue of concern to Canada's veterans.

All of which is respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. Forbes', written in a cursive style.

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