



The National Council of Veteran Associations in Canada

**SUBMISSION TO THE
STANDING COMMITTEE ON
VETERANS AFFAIRS
RE: REVIEW OF THE NEW
VETERANS CHARTER**

MARCH 2014

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



The National Council of Veteran Associations in Canada

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

NCVA SUBMISSION/STANDING COMMITTEE ON VETERANS AFFAIRS 2014/ NEW VETERANS CHARTER REVIEW

Upon the enactment of the New Veterans Charter in 2006, the Government declared that the legislation represented “a Living Charter” and made a formal commitment to the veterans’ community that, as gaps and inequities were identified, immediate remedial action would be taken to address these deficiencies.

Unfortunately, the Government has largely failed to fulfil this commitment with regard to a significant number of substantive issues impacting on the financial security and compensation benefits of disabled veterans, in violation of the social covenant that the Canadian people owe to our veterans and their families.

Through the consultation process which led up to the enactment of the Charter, it was recognized by all veteran stakeholders and by the Government itself that the New Veterans Charter was an imperfect document and I would underline that the Government commitment to address inequities was fundamental to the acceptance of the Charter by the veterans’ community.

Recent studies, including that of the New Veterans Charter Advisory Group (2009), the Standing Committee on Veterans Affairs in its report of 2010 “A Timely Tune-Up for the Living New Veterans Charter” and the recent Veterans Ombudsman’s Report of October 1, 2013, have clearly identified the self-evident inadequacies in the New Veterans Charter:

- The financial instability and decreased standard of living caused by reduced post-military release income and insufficient financial support after the age of 65 for totally and permanently incapacitated veterans.
- The unduly restrictive application of the Permanent Impairment Allowance provisions of the New Veterans Charter, which unreasonably constrains the number of disabled veterans who are able to qualify for appropriate levels of entitlement for this important allowance.
- The insufficiency of the Lump Sum Disability Award in its failure to parallel the non-economic awards granted as general damages by Canadian Courts.
- The limitations in vocational rehabilitation and educational funding, which impact on secondary career aspirations and employment options for veterans.

- The inadequate support to address difficult family environment scenarios as a consequence of military service.

NCVA has consistently demanded over the last number of years that Veterans Affairs Canada implement an overall plan of action to fulfil its commitment to not only reforming the New Veterans Charter, but also other outstanding issues impacting on seriously disabled veterans and health care.

In accordance with the fundamental conclusions of the aforementioned studies, it remains NCVA's position that, notwithstanding the ostensible economic constraints that have faced the country over the last few years, the seriously disabled veteran should be given immediate priority in the implementation of the first phase of a VAC plan of action for legislative reform. In our opinion, there is no higher obligation on Veterans Affairs Canada and the veterans' community than the responsibility to address the requirements of seriously disabled veterans and their families.

In this context, we take the position that budgetary restraints should never be a consideration in satisfying the needs of the seriously injured or permanently incapacitated veteran.

In NCVA's view, immediate implementation of a comprehensive course of action to legislative Charter reform pursuant to the recommendations of the various advisory groups, this Parliamentary Committee and the Veterans Ombudsman's office would represent an important step to meeting the controversy surrounding the much maligned Lump Sum Disability Award through these proposed enhancements of the complementary benefit and income support programs in the current legislation.

We have encouraged the new Minister Mr. Fantino, and his predecessors, to "get out in front" of the significant criticisms of the Charter with such a plan of action and to adopt a proactive approach vis-à-vis this Parliamentary Standing Committee Review which is presently taking place.

Given the significant and exhaustive studies already completed on Charter reform over the last five years, it was our expectation that the Minister would be in a position to present a substantive package of proposals to this Committee as part and parcel of this ongoing evaluation of the Charter.

Based on the consensus of the aforementioned advisory group proposals and the unanimous position of the 60 member organizations of NCVA, in our judgment, these further reforms to the New Veterans Charter should include the following:

- The Service Income Security Insurance Plan Long Term Disability (SISIP LTD) Program should be eliminated to eradicate the insurance culture constraints presently contained in the New Veterans Charter. It is to be noted that at the time of the enactment of the New Veterans Charter, VAC committed that, as a fundamental pre-condition to the passage of the legislation, the SISIP LTD Program would be eliminated as soon as possible so as to remove the restrictions that were inherent to the overall income replacement program.
- The Earnings Loss Benefit should be increased to 100% of pre-release income and, in relation to permanently incapacitated veterans, be paid for life (not terminated at 65, as is currently the case). In addition, the projected career earnings of a Canadian Armed Forces member should be employed as the standard for the payment of the Earnings Loss Benefit. In this context, VAC should adopt the approach utilized by the Canadian Courts in assessing the concept of “future loss of income,” which specifically addresses the projected lifetime earnings lost by a plaintiff in a personal injury claim.
- It should be further noted that in the event the SISIP LTD Program cannot be eliminated in the short term, we propose that VAC “top up” the SISIP LTD policy so as to produce the same net effect on the overall income program. It is recognized that attempts to remove the SISIP LTD policy have encountered administrative obstacles from certain central agencies of Government, and thus a strategy of “topping up” the SISIP LTD policy would appear to be an alternative implementation strategy to accomplish this overall objective.
- The restrictions and complexities of the Permanent Impairment Allowance (PIA) guideline should be addressed so as to allow greater numbers of disabled veterans to qualify for appropriate levels of entitlement for this important allowance.

(N.B.) The PIA was intended to be a fundamental component of the financial security and compensation package contained in the New Veterans Charter in relation to seriously disabled veterans. In effect, the objective of this allowance was to address the loss of career earnings suffered by a “totally and permanently incapacitated” veteran.

As evidenced by the findings of the recent Veterans Ombudsman’s Report, the restrictive application of the PIA by Veterans Affairs has led to the conclusion that this significant allowance has largely failed to fulfil its purpose.

Statistics developed in the Veterans Ombudsman’s Report of October 2013 demonstrate that over 50% of seriously disabled veterans have not qualified for PIA – and of those veterans who have been granted PIA, 90% have been awarded the lowest grade (or grade 3) of entitlement. It is also noteworthy in this context that, in order to qualify for the Enhanced Permanent Impairment Allowance, it is necessary for a veteran to have received eligibility for the basic PIA award.

In order to improve the access to the PIA, NCVA has been working closely, but unfortunately without success, with the senior hierarchy of the policy division of VAC to create a simplified PIA guideline which would allow a seriously disabled veteran with a 78% and above Disability Award to be granted entitlement at grade 1 PIA, and for those veterans with a Disability Award between 48% and 78% to be granted grade 2 entitlement. We would indicate that it is our understanding that the Ministry of Justice and the Treasury Board have blocked this highly worthwhile initiative to expedite the amendment of the PIA guideline criteria based on the veteran's Disability Award. There is simply no question that the current PIA guideline is far too complex and difficult to interpret and apply. Thus, we strongly recommend that our proposal be adopted and implemented, which would not only be administratively beneficial to both the veteran and the Department, but would allow PIA to satisfy its original objective as conceived under the Charter.

- The Lump Sum Disability Award should be increased commensurate with the general damages paid by the Canadian Courts. At this point in time the differential would be approximately \$50,000.00, and it remains our view that there is no justification for a lower amount being paid to a disabled veteran who is severely injured in the service of his country. In addition, a comparable evaluation should be carried out as to the parallel benefits paid by Allied countries, such as the United Kingdom and Australia.
- The Exceptional Incapacity Allowance concept founded under the Pension Act should be incorporated in the New Veterans Charter. This allowance has traditionally addressed the impact of the disabilities suffered by 100% veteran pensioners with reference to their difficulty to cope with their overall incapacity. The introduction of EIA to the New Veterans Charter would augment the limitations of the Permanent Impairment Allowance, particularly in the circumstance where a seriously disabled veteran confronts the ravages of age.
- Educational benefits should be expanded to bolster the rehabilitation provisions of the Charter so as to address the vocational and occupational constraints faced by many returning veterans with serious service-related disabilities.

(N.B.) It should be noted that, in response to this recommendation, the Minister of Veterans Affairs Mr. Fantino announced in October 2013 a major revision to the VAC regulations and policies on vocational rehabilitation, which, in effect, has removed the restrictive financial caps on the Department's VOC REHAB program, resulting in an improvement in the effectiveness and duration of these benefits. In this context, it must be recognized that, in order for these recent amendments to have a positive impact, the resistance within VAC to approving educational support must be overcome. Once again,

the Veterans Ombudsman's Report underlines the extremely low number of disabled veterans who are approved for educational assistance by the Department (and SISIP). In our experience, this educational form of rehabilitation is vital for seriously disabled and permanently incapacitated veterans who have suffered significant diminishment in their physical abilities.

- The discrimination that currently exists with reference to specific classes of Reservists, particularly those that are seriously disabled, should be eliminated in the New Veterans Charter and related insurance coverage, with particular regard to income replacement programs and relevant SISIP provisions.
- In order to recognize the caregiving requirements that many disabled veterans confront to cope with their incapacities, the Attendance Allowance provisions of the Pension Act should be added to the New Veterans Charter in recognition of the financial costs faced by many families in this context.
- The Charter should acknowledge that veterans with dependants should receive a higher level of compensation either through the augmentation of the Lump Sum Disability Award or an increase in Earnings Loss Benefit for such veterans and their families.

We would conclude by commending the Minister for his immediate commitment upon receipt of the Veterans Ombudsman's Report to the initiation of a review of the New Veterans Charter, with particular emphasis on "the most seriously injured, support for families and the delivery of programs by VAC."

However, in our judgment, the aforementioned proposed reforms have been sufficiently studied and analyzed over the last number of years, such that the gaps and voids have been readily identified by the New Veterans Charter Advisory Group, the Special Needs Advisory Group, this Standing Committee on Veterans Affairs and now the Veterans Ombudsman's office.

In our considered opinion, it is long overdue for VAC to become proactive and implement remedial legislation to address these well-established concerns and live up to its obligation under the social covenant to Canada's veterans and their dependants. For a Government that professes to support our military, the lack of substantive action to reform the New Veterans Charter is truly unacceptable and represents a betrayal of the Government's commitment to the veterans' community.

LETTER TO THE EDITOR

August 8, 2013

Letters Editor
The Ottawa Citizen
1101 Baxter Road
Ottawa, ON
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By email: letters@thecitizen.canwest.com

RE: Duty to Veterans

With reference to the *Ottawa Citizen* Editorial of July 31, 2013, there is indeed a social covenant between Canada and its veterans and their dependants, notwithstanding the highly inappropriate opinion expressed by Professor Robinson in his Opinion Piece of August 5, 2013.

As historic background, when Canadians prepared for the battle of Vimy Ridge in 1917, they were visited by the Prime Minister, Sir Robert Borden, who offered the following commitment:

“You can go into this action feeling assured of this, and as the head of the government I give you this assurance; that you need have no fear that the government and the country will fail to show just appreciation of your service to the country in what you are about to do and what you have already done. The government and the country will consider it their first duty to prove to the returned men its just and due appreciation of the inestimable value of the services rendered to the country and Empire; and that no man, whether he goes back or whether he remains in Flanders, will have just cause to reproach the government for having broken faith with the men who won and the men who died.”

This statement of principle has been seen by many in the veterans community as the genesis of Canada’s social covenant to veterans and their families; a form of implicit contract which has been at the foundation of veterans legislation from World War I to the present day.

Serving in the Canadian Forces is a demanding and inherently dangerous career choice. When Canadians put on a uniform for our country, they – and by extension their families – make an extraordinary personal and professional commitment and sacrifice. Veterans are different from the average citizen – because of their willingness to put their lives on the line to serve their country, and because of the potential long term impact of military service on their health. Since 1914 to the present day, members of the Canadian Forces have been injured or disabled in the line of duty. Many sustained injuries that affect their ability to do their jobs and limit their employment in the military.

As a fundamental tenet of Canada's social covenant to veterans, when these injuries occur, members of the Canadian Forces expect to be able to re-establish themselves in the civilian community and be gainfully employed. If their injury or medical condition leaves them unable to work, they expect that their standard of living will not be compromised because of their service to their country, and that they will still be able to provide for their families. If they are killed in action, they expect their families to be cared for and have the services they need. If they develop health problems later in life related to their military service, they expect to receive treatment, rehabilitation and support.

These are reasonable expectations for members of the Canadian Forces: the opportunity to work and – if they are not able to work – security for themselves and their families. We owe a unique debt of gratitude to members of the Canadian Forces who put themselves at risk on our behalf. We have a moral and legal obligation to provide services and supports that acknowledge their sacrifice and respect their dignity.

The Government of Canada should be ashamed to take a position in a Canadian court that fails to recognize the fundamental social covenant that exists between veterans, their dependants and the people of Canada.

Sincerely,



Brian N. Forbes, B.Comm., LL.B.
Chairman, National Council of Veteran Associations in Canada
Chairman, Executive Committee of The War Amps

BRIAN N. FORBES, B.COMM., LL.B.

Brian Forbes holds the position of Chairman of the National Council of Veteran Associations in Canada, an umbrella organization of some 60 distinct veterans associations. He has been the Association Solicitor for The War Amputations of Canada since 1975. In addition, he has also taken on the responsibilities of Chairman of the Executive Committee of The War Amps in relation to the governance and administration of the charitable programs of the Association.

He graduated from the University of Ottawa in 1971, Magna Cum Laude, a recipient of the Law School Gold Medal. He was a founding partner (1973) of the Ottawa law firm of

Forbes Singer Shouldice. Much of his law practice has been devoted to veterans matters and to representing disabled individuals, with particular emphasis on war amputees and civilian/child amputees.

Brian is a leading expert in veterans legislation and has extensive experience in making presentations to the various adjudicative tribunals and appellate bodies which govern the Pension Act, the New Veterans Charter and ancillary legislation dealing with veterans benefits and entitlements. He has made numerous submissions to Parliamentary Committees and has taken a number of successful appeals to the Federal Court of Appeal of Canada, which have had significant relevance to the interpretation of the Pension Act as affecting the pension entitlement of Seriously Disabled Veterans and a substantial expansion of the definition of “Exceptional Incapacity Allowance.”

In furtherance of his specialization with regard to international human rights law, he has made a number of appearances before the United Nations Commission on Human Rights in Geneva and has presented petitions to the United Nations Human Rights Committee on behalf of Canada’s Hong Kong Veterans, Canada’s Thalidomide children and Canada’s Aboriginal Veterans. In addition, he was instrumental in obtaining a Non-Governmental Organization status for The War Amputations of Canada in regard to the United Nations human rights system.

He was a long-standing member of the Board of Directors of the Perley Hospital and the Perley and Rideau Veterans’ Health Center. He was also a member of the Executive Committee of the Canadian War Museum. He continues to sit as a member of the Veterans Ombudsman Advisory Committee. In relation to the development of veterans health care reform and the New Veterans Charter, he has sat as a member of the Gerontological Advisory Council, the Canadian Forces Advisory Council, the New Veterans Charter Advisory Group and various veterans consultation groups established by Veterans Affairs Canada to advise the Department on the need for new legislation to address the concerns of Traditional and Modern-Day veterans and members of the Canadian Armed Forces and their families.

The National Council of Veteran Associations is an umbrella organization of some 60 distinct veterans associations formed to ensure an appropriate and independent voice on issues which are of significant interest to the veterans’ community at large. NCVA has a diverse membership consisting of a range of member organizations that reflect the width and breadth of the veteran constituency. In addition to NCVA’s ongoing and continuing efforts to ensure that the veterans’ community receives the most effective services and entitlements possible, in recent years, NCVA has been a leading voice and advocate in the cause of the Modern-Day veteran in furtherance of the enactment of an updated and reformed Veterans Charter.

