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CANADA

# **SURVIVOR RETIREMENT PENSION BENEFITS (MARRIAGE AFTER 60)**

**Report of the Standing Committee on Veterans Affairs**

**Emmanuel Dubourg, Chair**

**DECEMBER 2022  
44th PARLIAMENT, 1st SESSION**

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## **Report of the Standing Committee on Veterans Affairs**

**Emmanuel Dubourg  
Chair**

**DECEMBER 2022**

**44th PARLIAMENT, 1st SESSION**

## **NOTICE TO READER**

### **Reports from committees presented to the House of Commons**

Presenting a report to the House is the way a committee makes public its findings and recommendations on a particular topic. Substantive reports on a subject-matter study usually contain a synopsis of the testimony heard, the recommendations made by the committee, as well as the reasons for those recommendations.

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# **THE STANDING COMMITTEE ON VETERANS AFFAIRS**

has the honour to present its

## **NINTH REPORT**

Pursuant to its mandate under Standing Order 108(2), the committee has studied survivor pension benefits (marriage after 60) and has agreed to report the following:



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## LIST OF RECOMMENDATIONS

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*As a result of their deliberations committees may make recommendations which they include in their reports for the consideration of the House of Commons or the Government. Recommendations related to this study are listed below.*

### **Recommendation 1**

**That the Minister of Veterans Affairs and Associate Minister of National Defence work with the Minister of National Defence and the Minister of Public Safety to issue a declaration that gives a definitive answer to which department is responsible for survivor pension benefits of Veterans. .... 16**

### **Recommendation 2**

**That the Government of Canada immediately table a document explaining in detail the reasons for creating and maintaining clauses denying survivors' pensions when the relationship began after the pensioner reached age 60 (CFSAs and RCMPPSAs). .... 19**

### **Recommendation 3**

**That the Government of Canada immediately adopt regulations to make the Optional Survivor Benefit (OSB) available to both common-law spouses and legally married spouses. .... 19**

### **Recommendation 4**

**That the department responsible for pension benefits return to the Veteran any funds that were put aside through the Optional Survivor Benefit program, upon the death of the spouse of the Veteran, if the spouse passes away before the Veteran. .... 22**

### **Recommendation 5**

**That the Department of National Defence and the Department of Public Safety take vigorous action to ensure that members of the Canadian Armed Forces and of the Royal Canadian Mounted Police have all the necessary information about their pension plan, and have access to financial advice to make the most informed financial decisions before they retire. .... 22**

### **Recommendation 6**

**That Veterans Affairs Canada use the research and data provided by Statistics Canada and the Canadian Institute for Military and Veteran Health Research to identify survivors and immediately distribute the \$150 million Veterans Survivors Fund, focusing on those most in financial need, and publicly provide the formula and calculations for the funding allotment. .... 28**

### **Recommendation 7**

**That the Government of Canada recognize that pension benefits must be modernized to ensure that the survivors of CAF and RCMP Veterans, mostly senior women, are not pushed into a life of poverty because their partner died without being able to leave them survivor pension benefits. .... 28**

### **Recommendation 8**

**That the Minister of Veteran Affairs work with the RCMP and the RCMP Veterans Association to ensure survivors of RCMP Veterans will receive an equitable portion of the Veterans Survivors Fund. .... 28**

### **Recommendation 9**

**That the Government of Canada repeal the “marriage after 60” clause in both the Canadian Forces Superannuation Act and the Royal Canadian Mounted Police Superannuation Act, and make survivor benefits proportional to what the pensioner was receiving rather than the unreduced benefit that they would have received, and as needed, adjust the contribution rates and percentage applicable to the survivor benefit to adequately reflect the resulting reduction in financial liability. .... 32**



# SURVIVOR RETIREMENT PENSION BENEFITS (MARRIAGE AFTER 60)

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## INTRODUCTION

Most private or public pension plans contain clauses guaranteeing benefits to the surviving spouse or children in the event of the member's death. The details of these clauses vary widely, but in virtually all situations, they draw a clear distinction between whether the member was still a contributor to the plan or was a beneficiary.

If the member was still contributing or had not yet retired at the time of death, the criteria specific to each plan easily identify who is entitled to survivor benefits, primarily the spouse. In this case, the survivor benefit recipient is the spouse of the contributor at the time of the contributor's death. Distinctions may arise when a prior divorce agreement results in the amounts accumulated in the plan being divided among a number of spouses and children. However, these distinctions usually apply to the benefit amounts, not to the beneficiary designation as such, since the division of the accumulated credits takes place when the divorce judgment comes into effect. This division will reduce the value of the benefit upon the member's death, but will not affect the designation of the surviving spouse.

If the member was retired at the time of death and so was already receiving pension benefits, most plans provide that the spouse is entitled to survivor benefits if, and only if, the individual was the member's spouse before the member retired. In other words, if a member enters into a new relationship after beginning to draw pension benefits, the member's spouse will not be entitled to survivor benefits in the event of the retired member's death.<sup>1</sup>

These general principles are found in all legislation governing federal public service pension plans. Whether the plan in question is under the Public Service Superannuation Act (PSSA), the Canadian Forces Superannuation Act (CFS), the Royal Canadian Mounted Police Superannuation Act (RCMPSA) or the Judges Act, spouses are not

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<sup>1</sup> The exceptions to this general rule are the Quebec Government and Public Employees Retirement Plan (RREGOP) and the Ontario Municipal Employees' Retirement System (OMERS). The specifics of these two plans are discussed later in this report.



entitled to survivor benefits when the start of their relationship occurred after the plan participant began drawing pension benefits.<sup>2</sup>

These clauses are part of the total compensation package designed to attract the best possible candidates to federal positions. Introducing survivor benefits was seen as likely to provide greater financial security to families, thereby making the total compensation package more attractive. As a way to constrain the government's financial commitments and make them more predictable, they were limited to the conditions in place during the time the member actually performed their duties.<sup>3</sup>

In the case of Canadian Armed Forces retirees, spouses are also excluded from the survivor benefit if they began their relationship after the member began drawing pension benefits. However, in their case, as the legislation is worded, the exclusion clause does not apply when the member begins drawing benefits, but instead when they turn 60, which is the mandatory age of retirement in the CAF. In other words, if a military member begins receiving pension benefits at 55, the exclusion clause does not apply immediately. If the retiree enters into a relationship before reaching 60 years of age, the retiree's spouse would be eligible for survivor benefits.

Compared to what is in other statutes, this clause appears to be inflexible since it seems to introduce an arbitrary age after which veterans who begin a relationship are no longer able to provide their spouses with the same benefits had they married earlier. As well, given that roughly 85% of Canadian Armed Forces retirees are men, this raises suspicions that there are persistent sexist biases reminiscent of the debate over "deathbed marriages" in the U.S. after the civil war.

The so-called "marriage after 60" clause, named after the title of section 31(1) of the *Canadian Forces Superannuation Act*, has been frequently criticized in recent decades. In the 1990s, as we will see, the courts ruled that the clause was not discriminatory, or if it was, the resulting exclusion was based on reasonable grounds.

In the Minister of Veterans Affairs' and Associate Minister of National Defence's [2015 and 2017 mandate letters](#), the Government of Canada made eliminating the "marriage

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2 In the case of the *Members of Parliament Retiring Allowances Act* (MPRAA), the survivor benefit is limited to the individual who was the senator's or member's spouse during their term of office. If the parliamentarian had more than one spouse while in office, the survivor benefit amount will be divided among them in proportion to the number of years they were the senator's or member's spouse during that time.

3 *Sutherland v. Canada (1997)*, Summary of evidence submitted by Sharon Hamilton, note 23.

after 60” clawback clause an absolute priority “so that surviving spouses of veterans receive appropriate pension and health benefits.”

The government subsequently abandoned the legislative approach and did not eliminate the “clawback clause.” In [Budget 2019](#), it instead announced the creation of a Veterans Survivors Fund:

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 5 years starting in 2019–20 to Veterans Affairs Canada. 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.

Subsequently, there has been little information available about the nature of this fund or the investment over five years that this would entail until 2023–2024. The committee members wanted to learn more about the government’s rationale for not repealing the “marriage after 60” clause and to examine whether creating a veterans survivors fund would achieve the same result.

The committee devoted three meetings to this study during the First Session of the 44th Parliament. The committee heard from 19 witnesses, including one veteran from the Canadian Armed Forces (CAF), two veterans from the Royal Canadian Mounted Police, and four organizations or individuals submitted briefs. The committee members would like to sincerely thank them for their contribution to understanding this issue.

## HISTORICAL CONTEXT

The so-called “marriage after 60” clause is in section 31(1) of the [Canadian Forces Superannuation Act](#) (CFSA). Its origins can be traced back to section 18 of the 1901 [Militia Pension Act](#), enacted during the Boer War. It is unclear what the rationale was for including it in the Act. It was later interpreted as a way to prevent what was happening in the United States at the time, when many aging US civil war veterans married much younger women in what were called “deathbed marriages.” In the U.S., the policy resulted in prolonging the government’s financial liability for the children of these marriages until the early 21<sup>st</sup> century.<sup>4</sup>

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<sup>4</sup> The last known child of a US Civil War veteran to receive a pension, Irene Triplett, died on May 30, 2020, according the [Washington Post](#).



Originally, in Canada, only the widows and children of officers received a survivor's pension, but following the First World War, provisions were added for non-commissioned members. Under this clause, veterans' widows were not entitled to a survivor's pension (generally 50% of what the veteran would have received) if the marriage had taken place when the veteran was 60 or over. The children of these marriages were also not entitled to survivor benefits. This clause is quite similar to what is in the CFSA today, and it might have been less problematic had it not been for an accompanying clause limiting the age difference between the spouses. Not only were the spouses of pensioners excluded if they married after 60, but if there was more than a 25-year age difference between the veteran and their spouse (later lowered to 20), the benefit was reduced.

The initial goal of the policy, to prevent veterans' "deathbed marriages," was removed from disability pension programs when retirement pensions were extended to non-commissioned officers after the Second World War. However, the exclusions were maintained in pension plans, since actuarial projections were based on the assumption that spouses were entitled to benefits if they lived with the member while the member was contributing to the plan, the same way a spouse would be entitled to group insurance benefits as long as the member contributed to the plan.

According to [actuarial documents](#) prepared by the government to oversee the corresponding pension funds, the marriage after 60 and 20-plus year age difference clauses were kept in the 1950 [Defence Services Pension Act](#), which replaced the *Militia Pension Act*. The same clauses were kept in the [first version of the CFSA](#), which came into force on 1 March 1960. A provision was added to section 13(1) suspending its application if military retirees, once reaching the age of 60, returned to the Forces and resumed their pension plan contributions. In other words, on the day a military retiree resumed service after age 60, their spouse would once again be entitled to survivor benefits. The clause limiting the age difference to twenty years, often labelled the "gold-digger clause", was also found in the RCMPSA and in the PSSA. It was repealed in the three acts in 1989.<sup>5</sup>

## DESCRIPTION OF THE SURVIVOR BENEFIT

In 2020, according to [Statistics Canada](#), 39.7% of workers in Canada were covered by a registered pension plan to which employers and employees contributed. As well, 26.6% were covered by defined benefit plans, which provide guaranteed pension benefits,

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5 See [An Act to amend certain legislation respecting superannuation and other pensions](#), assented to on June 29, 1989.

regardless of market fluctuations. Federal pension plans are defined benefit plans. Additionally, 7.3% were covered by defined contribution plans, where benefit amounts depend on investment performance, and 5.7% were covered by hybrid and other types of plans. This means that 60% of the Canadian workforce must rely on their own retirement savings, as well as the Canada Pension Plan / Quebec Pension Plan and Old Age Security.

In 2021, according to the [Office of the Superintendent of Financial Institutions](#), for each \$100 contributed to the CAF pension plan, the Government of Canada paid about \$63.50 and CAF members paid \$36.50. As for the public service pension plan, a 2013 legislative amendment gradually shifted this ratio to \$50/\$50. For the [RCMP pension plan](#), the ratio is roughly \$55/\$45.

Generally, the maximum benefit payable under these plans can be up to 70% of pre-retirement income after 35 years of service. The survivor benefit is based on the calculated pension benefit to which the pensioner was entitled. The pension benefit will therefore be described first.

## Pension Benefit

Pension benefits under all federal plans are based on what is called the basic benefit. In the case of CAF and RCMP members and public service employees, the basic benefit is determined by first multiplying the number of years of service by 2%. For example, 30 years of service multiplied by 2% would be 60%. In the second step, this coefficient is multiplied by the average salary earned during the best five years. This means that an average salary of \$80,000 multiplied by 60% gives a lifetime pension benefit of \$48,000 per year. The general rule is that retirees are entitled to this pension without penalty if their age and years of service add up to at least 85. For example, a 55-year-old member will be entitled to an immediate unreduced pension if they have 30 years of service in the Regular Force. The rules are different for reservists.

If the age and number of years of service add up to less than 85 and the member is under 60, the benefit will either be “reduced” or “deferred.” If, for example, the member is 55 but has only 20 years of service, the benefit will be reduced if the member wants to receive it before reaching the mandatory retirement age of 60. Assuming the same average salary of \$80,000, the unreduced annual pension would have been \$32,000 (20 years of service X 2% X \$80,000). This pension will be reduced by 5% for each year between the member’s age and 60, in this case 5 years. If the member wishes to draw their pension immediately, at age 55, the annual amount will be reduced by 25%, or



\$24,000 per year for life. Members must be at least 50 to immediately draw a reduced Canadian Armed Forces pension.

A “deferred” pension is not reduced, but instead is not drawn until age 60. For instance, if the member described above opted to wait five years before receiving their pension, they would receive the full amount (\$32,000 instead of \$24,000).

For comparison, for public service employees, the age at which the pension is reduced is 65 instead of 60. In the case of a deferred pension, a pensioner cannot begin to draw it until age 65. These are only the most common situations. Other sometimes complex calculations can come into play to reduce or increase this basic benefit.

Other common changes to the basic benefit result from the division of pension credits ordered by a divorce judgment or a buyback of credits accrued in another registered pension plan. These two possibilities can result in quite a wide variety of situations, making it impossible to go into all the details. In the case of divorce, the general rule is that the credits accrued in a pension plan during a marriage are divided in two. An amount calculated accordingly is to be paid by one spouse into the other spouse’s registered pension plan or registered retirement savings plan. This will reduce the value of the benefit to be received by the pensioner on retirement. The calculations vary widely, but take the example of a military member with 30 years of service who divorces shortly before retirement after 10 years of marriage. The pension credits earned during the marriage will be divided in two, meaning that up to five years of service can be deducted from the basic benefit. Instead of receiving 60% of the average salary, the pensioner will receive only 50%.

Buying back pension credits in other plans has the opposite effect and can increase the value of the basic benefit. The cases are so variable and the complex calculations can affect the pension in so many different ways that it is not possible to provide a useful example here. All of these distinctions will become important when comparing the federal plan with the few plans that do not include an exclusion clause for survivor benefits.

## **Survivor Benefit**

Calculating the survivor benefit is much simpler than calculating the pension benefit. Instead of multiplying the number of years of service by 2%, it is multiplied by 1% and the result is then multiplied by the average salary calculated the same way as for the basic benefit. None of the other factors are taken into account, regardless of the age of

the member or retiree at the time of death, and regardless of any previous division of credits during a divorce.

This protects surviving spouses from a pension reduction that would have resulted from the division of pension credits following a divorce. As explained by the National Association of Federal Retirees in their brief,

[a]s divorce rates increased, pensions became legally recognized as family property or a joint asset, and survivor benefits were reframed to be solely for the spouse that supported the employee during their career, strengthening “marriage after 60/after retirement” clauses.<sup>6</sup>

Therefore, the survivor benefit is not half of what the pensioner was receiving, but instead is half of the unreduced benefit that the pensioner would have received on their 60th birthday. The amount is payable immediately on the member’s death, regardless of the survivor’s age.

Therefore, for a member earning \$80,000 who retired on their 50th birthday after 30 years of service, the reduced lifetime pension would be \$24,000. Had they died on the same day, their survivor, regardless of whether they were 18 or 98, would also have received an annual survivor benefit of \$24,000 since the calculation would not have taken into account the reduction stemming from the decision to retire at 50 instead of 60.

Lastly, as pointed out by the National Association of Federal Retirees in its brief, both pensioners and survivors continue to be covered by the Public Service Health Care Plan (PSHCP) and the Pensioners Dental Services Plan (PDSP).<sup>7</sup>

These principles apply to all federal pension plans. There used to be differences in the *Judges Act* for a division in divorce cases, but they were amended in 2006.

As will be examined later, pension plans that do not contain an exclusion clause, such as the RREGOP, generally base the survivor benefit on what the pensioner was actually receiving, not on the unreduced basic benefit that they would have received.

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<sup>6</sup> ACVA, Brief from the National Association of Federal Retirees, 29 April 2022, p. 7.

<sup>7</sup> ACVA, Brief from the National Association of Federal Retirees, 29 April 2022, p. 4.



## SIMILAR CLAUSES IN OTHER LEGISLATION

The same “marriage after 60” exclusion clause can be found in section 19 of the [Royal Canadian Mounted Police Superannuation Act](#) (RCMPSA). For all intents and purposes, the arguments supporting the repeal of this clause from the CFSAs apply to the RCMPSA.

There is a comparable clause in section 26(1) of the [Public Service Superannuation Act](#) (PSSA), although the age threshold depends on the age at which the pensioner retired. Under the PSSA, a surviving spouse or common-law partner would not be entitled to the survivor benefit if the marriage or common-law relationship began after the retiree became entitled to a pension. As for military and RCMP members, this restriction would be removed if the retiree, after the marriage or common-law relationship, resumed working in the federal public service and making pension contributions. The restriction also applies to surviving children.

A comparable clause is also found in section 44(4) of the [Judges Act](#). In this case, a surviving spouse or common-law partner would not be entitled to the retirement allowance if the marriage or common-law relationship began after the judge stepped down. This restriction also applies to surviving children. Therefore, for example, since the mandatory retirement age of Supreme Court justices is 75, the Act could have included a “marriage after 75” clause. Such a clause would have benefited judges who chose to retire earlier, just as the “marriage after 60” clause benefits CAF and RCMP veterans, compared to public service pensioners.

If the clause in the CFSAs were repealed, this would likely trigger calls for the repeal of similar clauses in the other statutes. The pension plans of the Canadian Armed Forces, RCMP, federal public service, judiciary and parliamentarians are all based on similar principles and are harmonized with the Canada Pension Plan. Bills introduced since the 1990s to repeal these clauses are not limited to just the Canadian Armed Forces pension plan. The proposed repeal would apply to all federal pension plans.

## COURT CHALLENGES

The CFSAs provisions were challenged in [Federal Court](#) in 1994. Justice McKeown ruled that there was no discrimination based on sex or age—the restrictions were based on the need to contain costs and to fix the plan’s liability as of a certain date—any distinction was not based on personal characteristics, but rather on employment status, which is not covered by section 15 of the Canadian Charter of Rights and Freedoms.

The court acknowledged the argument that the negative consequences of being excluded from the benefit almost entirely affect women, but added that this argument is insufficient to suggest any discrimination on the basis of sex, given that almost all recipients of these benefits are also women:

In determining adverse effect discrimination, it must first be determined whether the section creates an adverse effect upon women in comparison with men. ... Most spouses who marry pensioners who are older than 60, or who are younger than 60 but nonetheless retired, are women. Therefore, women would be most likely to benefit by the removal of the limitation on eligibility for spousal survival benefits, or, conversely would be most likely to suffer the burden imposed by the limitations. However, both those who do receive the benefit and those who do not are women. The comparative analysis could not be made because the groups to be compared consisted solely of women.<sup>8</sup>

The court accepted the government's argument presented by Sharon Hamilton:

[G]overnment pension plans are designed to ensure that plan benefits are reasonable in terms of their cost to employees and to the government as employer. Ms. Hamilton also explained that given the significant cost of survivor benefits, it has long been accepted that a plan's liability for these benefits should be limited to survivors existing at the time the employee's service ended. In the case of military personnel, this principle had been modified since they retire at comparatively young ages; by introducing the arbitrary age of sixty as an equivalent to retirement age, the Government was seeking to provide comparable survivor benefits to spouses of military personnel as are provided under other government pension plans. He concluded by accepting that age sixty, when used in the CFSA and the [*Defence Services Pension Continuation Act*], was simply a surrogate for the age of retirement.<sup>9</sup>

The court also stated that the CFSA was not intended to improve the economic status of senior women: "the CFSA [is] not part of the social welfare program of Canada. If there is a problem concerning the income levels of unattached elderly women it should be

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8 *Sutherland v. Canada*, 1994 CanLII 3497 (FC), [1994] 3 FC 662.

9 Cited in the appeal decision in *Sutherland v. Canada (1997)*, 123 F.T.R. 80 (note), 143 D.L.R. (4th) 226, 208 N.R. 1, 68 A.C.W.S. (3d) 265 (FCA).



addressed in the relevant legislation and not in pension plan legislation which is part of an employee's compensation."

The ruling was upheld on appeal in 1997. Desjardins J.A., on behalf of the three Court of Appeal judges, reiterated the opinion of the trial judge:

[The trial judge] dismissed the testimony of one of the appellants' witnesses, Dr. Margaret McCallum, who stated that the purpose of the legislation was to protect the military pension scheme from women prepared to marry elderly or retired soldiers in order to qualify for survivor benefits, women referred to pejoratively as "gold diggers" who seek out "death-bed marriages." The trial judge was similarly unimpressed with the evidence given by the appellants' expert on the current economic situation of women in Canada, Ms. Margaret Townson, who gave general evidence to the effect that elderly unattached women are likely to have incomes below the poverty level since many were full-time homemakers dependent on their husbands for financial support. The trial judge noted that Ms. Townson offered no evidence with respect to the economic situation of widows of military personnel or of widows who had married after their spouses' retirement.<sup>10</sup>

Desjardins J.A. then cited the government's expert, Ms. Hamilton:

Throughout the development of the survivor benefit package, it was recognized that there needed to be a limit placed on these costly benefits [emphasis in the ruling]. The primary principle adopted was that the plan's liability for survivor benefits would be limited to those survivors existing at the time the employee's service terminated. For this reason, benefits are not available to spouses or children where the marriage took place after the contributor ceased to contribute to the plan or if the child was conceived after contribution ceased.

... It is generally accepted that a pension plan's liability for survivor pensions should be known at the time when the employee's service

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10      *Sutherland v. Canada* (1997), 123 F.T.R. 80 (note), 143 D.L.R. (4th) 226, 208 N.R. 1, 68 A.C.W.S. (3d) 265 (FCA).

terminates for whatever reason and that any option to provide survivor benefits be exercised before the employee's own pension commences.<sup>11</sup>

According to the federal court and court of appeal decisions, the purpose of the marriage after 60 clause was essentially to contain pension plan costs. Given that a substantial percentage of military members retire before 60, this clause is advantageous to veterans when compared to similar clauses in other federal pension plan statutes.<sup>12</sup> If the CFSA clause were worded the same way as in other plans, the age at which the exclusion is triggered would be when the military member decides to retire. For instance, if a member retired at 55 and then married at 58, under the clauses of the federal public service pension plan, the spouse would not be entitled to the survivor benefit.

Furthermore, the marriage after age 60 exclusion is waived if, under an exception in the Orders, a member returns to service after reaching the mandatory retirement age, which, according to the ruling, "is another indication that liability under the plan is exclusively a money concern."<sup>13</sup>

The issue of discrimination was debated by the three judges forming the Court of Appeal. Desjardins J.A. wrote the decision and the reasons were concurred in by Hugessen J.A., rejecting the appellants' arguments on the issue of discrimination. However, the Chief Justice of the Court of Appeal, Isaac J.A., disagreed with part of the argument of the other two judges and held that there was discrimination, but that it was "reasonable" under the principles of section 1 of the Charter, given the need to limit the government's financial liability. The application for leave to appeal to the Supreme Court was dismissed in January 1999.

Despite these court rulings, several witnesses continue to condemn the exclusion clause as having sexist intent. This is likely to have been the case in the earlier versions of pension legislation. Until 1976, when amendments to the Public Service Superannuation Act came into force, only women were entitled to survivor benefits; male survivors were excluded. This restoration of equity acknowledged the growing role of women in the federal public service. Their participation has grown, and for over a decade now, women have made up over half of the federal public service and, more recently, this includes

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11      *Sutherland v. Canada (1997)*, 123 F.T.R. 80 (note), 143 D.L.R. (4th) 226, 208 N.R. 1, 68 A.C.W.S. (3d) 265 (FCA).

12      *Sutherland v. Canada (1997)*, 123 F.T.R. 80 (note), 143 D.L.R. (4th) 226, 208 N.R. 1, 68 A.C.W.S. (3d) 265 (FCA).

13      *Sutherland v. Canada (1997)*, 123 F.T.R. 80 (note), 143 D.L.R. (4th) 226, 208 N.R. 1, 68 A.C.W.S. (3d) 265 (FCA).



executive positions. Not counting same-sex spouses, men are now excluded from survivor benefits more often than women if their spouse had already retired when they began their relationship.

Given this demographic shift and the continuation of the exclusion clause in the public service pension plan, it is not possible to argue that the exclusion clause in the public service pension plan is sexist. If the exclusion clause in the Canadian Forces and RCMP pension plans were to be harmonized with the provisions of the public service pension plan, it would therefore be also impossible to argue that the same clause would be sexist for CAF and RCMP veterans' survivors, and not for the public service retirees' survivors. However, the fact that CAF and RCMP veterans are predominantly male, and that their female spouses tend to be younger than them, might give the impression that the clause exists to prevent benefits to female spouses who would be younger and receive these benefits for a longer period. In fact, given that CAF members and RCMP officers retire in average at a younger age than other public servants, the transposition of the PSSA clause to the CFSA and the RCMPSA would clearly be disadvantageous to CAF and RCMP veterans.

Conversely, if the exclusion clause was repealed in the CFSA and the RCMPSA, on the questionable grounds that it is discriminatory, it would become unfair to other public service retirees whose survivors would still be subject to their own exclusion clause. It should therefore be repealed in the PSSA too, which clearly shows that the main consequence of the simple repealing of the exclusion clause would be a direct increase in the overall financial value of the pension schemes. If one is to argue that survivor benefits are not generous enough and should be increased, that does not mean that they are currently discriminatory.

There were also good reasons to suspect sexist motives behind the clause reducing the amount of survivor benefits if the age difference between spouses was more than twenty years. This clause, often labelled the “gold-digger” clause, was found in the three main federal pension plans when they were harmonized with the Canada Pension Plan in the 1960s. The “gold-digger” clause was repealed in the three main federal pension plans in 1989, following an anticipated legal challenge under the *Charter*.

It is easy to see that eliminating survivor benefits would deprive spouses of supplemental income that is critical for some, especially when both partners did not earn an equivalent income to allow them to maintain their standard of living in the event of the other spouse's death. While the exclusion clause was originally intended to support the spouse who had been by the employee's side throughout their career, this

has been superseded by the legal recognition that pension rights are part of the family assets and must be divided equitably in the event of a relationship breakdown.

The exclusion clause appears to introduce an arbitrary aspect with the sole purpose of limiting the government's financial liability. Any other purposes that may have been served by the clause seem to have lost their relevance or to have been lost to history. In the case of the public service pension plan, this arbitrary nature is less evident, since the exclusion clause is not tied to a specific age, whereas it was set at 60 for the CAF and RCMP plans. It is worth noting that during this study, none of the witnesses representing a federal institution was able to explain the rationale of this exclusion clause.

Even looking back at the legal debate that took place when the clause was challenged, containing plan costs was the only reason given for maintaining it, although there is no argument justifying why this way of containing costs was chosen over another. In the 1997 Court of Appeal ruling, the government expert, Ms. Hamilton, was quoted when she was cross-examined as to why 60 was the age chosen as the threshold for the exclusion clause for CAF and RCMP retirees: "I am not in a position to know what in fact the thinking was. I don't believe there is any evidence as to exactly what factors went into the decisions that were arrived at."<sup>14</sup> The judge added: "She admitted that she did not find any documentation which contained a clear explanation of the purpose of the post-age sixty and post-retirement marriage exclusions for survivor benefits but that, essentially, the provisions were considered a protection against open-ended liability."<sup>15</sup>

This limit causes spouses to feel a sense of injustice when one of them is denied survivor benefits. There are many ways to contain pension plan costs, and going about it by opting to penalize relationships later in life today appears arbitrary or unfair.

That is why several witnesses recommend the outright repeal of section 31 from the CFSA, which creates this clause, something the Government Canada committed to do in the Minister of Veterans Affairs and Associate Minister of National Defence [2015 and 2017 mandate letters](#).<sup>16</sup> There was also some ambiguity on the respective responsibilities of the Minister of National Defence and the Minister of Veterans Affairs and Associate Minister of National Defence in this matter. The *Canadian Forces Superannuation Act* is under the authority of the Minister of National Defence, and the administration of pension benefits, including survivor benefits, is the responsibility of the Department of National Defence.

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14      [\*Sutherland v. Canada \(1997\)\*](#), 123 F.T.R. 80 (note), 143 D.L.R. (4th) 226, 208 N.R. 1, 68 A.C.W.S. (3d) 265 (FCA).

15      [\*Sutherland v. Canada \(1997\)\*](#), 123 F.T.R. 80 (note), 143 D.L.R. (4th) 226, 208 N.R. 1, 68 A.C.W.S. (3d) 265 (FCA).

16      See for example National Council of Veteran Associations in Canada, Brief submitted to ACVA, May 2022.



That does not prevent the Minister of National Defence from delegating some of these responsibilities to the Minister of Veterans Affairs and Associate Minister of National Defence. If this were the case, the administration of the benefits would remain under the responsibility of the Department of National Defence. The Minister of Veterans Affairs could also decide to launch a program, like the Veterans Survivor Fund, to help spouses of deceased veterans. Such a program would remain under the responsibility of the Minister and Department of Veterans Affairs and be independent from benefits provided under the *Canadian Forces Superannuation Act*. Given the complexity of these roles, the Committee recommends:

### **Recommendation 1**

**That the Minister of Veterans Affairs and Associate Minister of National Defence work with the Minister of National Defence and the Minister of Public Safety to issue a declaration that gives a definitive answer to which department is responsible for survivor pension benefits of Veterans.**

Since 1994 (the first year for which federal legislation is searchable online), nine private member's bills have been introduced to repeal section 31(1) of the CFSA: 38-1, [C-362](#), Werner Schmidt; 39-1, [C-202](#), Daryl Kramp (reintroduced during 39-2); 39-1, [C-238](#), Peter Stoffer (reintroduced during 39-2); 40-1, [C-210](#), Peter Stoffer (reintroduced during 40-2 and 40-3); 40-3, [C-524](#), Peter Stoffer; 41-1, [C-243](#), Peter Stoffer (reintroduced during 41-2); 42-1, [C-319](#), Irene Mathyssen; 42-1, [C-397](#), Irene Mathyssen (added amendments to statutes not included in C-319) and, most recently, 44-1, [C-221](#), Rachel Blaney. None of these bills made it to second reading, while debate for C-221 has not yet been scheduled.

On 2 November 2006, a [motion](#) moved by Peter Stoffer was agreed to by the House of Commons. One of its calls to action was that the government should immediately "amend Section 31 (1) of the *Canadian Forces Superannuation Act* so that second spouses of CF members and veterans have access to pension rights upon the death of the Canadian Forces member or veteran."

One of the difficulties in understanding this clause is the lack of a clear government statement of its purported objectives. During the court challenges of the 1990s, government officials explained that the clause was essentially meant to limit the government's long-term financial liability. No other official explanation from the government has been found. One can therefore accept that the rationale for keeping the clause is financial, but this does not explain why this is how costs are contained and not another way. There are many ways to limit a pension plan's financial liability. Why was

an exclusion clause for survivor benefits chosen and maintained for over a century, and why has there been no explanation?

This lack of information has done little to challenge the assumption that the continued existence of the clause is a careless anachronistic continuation of the prejudices associated with “deathbed marriages.” Such a perception is enhanced by the apparent lack of information provided to retiring veterans. When he realized how the exclusion clause would affect his wife, Veteran Kevin Sewell felt let down:

Under Veterans Affairs, she already was the beneficiary to all of what I could give her from Veterans Affairs, but the superannuation clause for the *Canadian Forces Superannuation Act* and this gold digger clause would restrict her dramatically and totally from receiving my pension if I passed away.

When I found this out, it was like a kick in the gut. It just totally deflated me. I wouldn't be able to give her what I had planned to give her, and I did not feel like a total human or a total man.<sup>17</sup>

Many witnesses, like Alexander Glenn and Kelly Vankoughnett, have echoed the same feelings:

I cannot imagine the mental stress, and Walt touched on this, that a pensioner who married over the age of 60 must be going through, worrying that his wife of many years is not going to be taken care of when he dies. The spouse doesn't deserve this, nor does the pensioner who gave most of his productive years to serving Canada.<sup>18</sup>

The only problem was the shortfall in my income and finding out that Pat would not have a survivor benefit for me, should I survive him. For me and Pat, it was illogical to think that after 37 and a half years of work, the woman that he loves, who has been working since she was 16 and who offered him a new shared home after he lost his through divorce, would be called a gold digger. It's ironic that my being the gold digger will leave Pat a mortgage-free home that he can afford to stay in, and an OMERS survivor pension that he won't even need to live a comfortable life.<sup>19</sup>

Simon Crabtree, Executive Director of Pensions and Benefits at Treasury Board, did attempt to correct this perception, but his explanation, based on his personal expertise and not the government’s position, would have merited further clarification:

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17 ACVA, *Evidence*, 13 May 2022, 1325, Mr. Kevin Sewell (As an individual).

18 ACVA, *Evidence*, 29 April 2022, 1330, Mr. Alexander Glenn (National President, Royal Canadian Mounted Police Veterans’ Association).

19 ACVA, *Evidence*, 13 May 2022, 1315, Mrs. Kelly Vankoughnett (As an Individual).



Speaking broadly here for a moment, I would first say that it's unfortunate that the gold digger connotation is associated with this provision, because it's really not what it's intended to do. I think the restrictions on marriage after retirement were about aligning with family law and direction as to who would have rights to pension assets; wherein, family law would guarantee the rights of spouses regarding assets acquired during a period of marriage or common-law union.<sup>20</sup>

This explanation appears to have made sense during the legal debates over the division of pension benefits on divorce, but these took place in the 1980s and 1990s and led to the passage of the *Pension Benefits Division Act*, which came into force in 1994. Although these reasons may explain the continued existence of the exclusion clauses, they do not explain why they were in place before then. Furthermore, they were not raised by government experts during the court challenges in the 1990s. Given that the federal pension plans are harmonized with the Canada Pension Plan and Quebec Pension Plan, how is it that these plans do not contain a similar clause? There may be valid explanations, but the evidence heard by the committee did not shed light on them. With regard to these exclusion clauses, Mr. Crabtree acknowledged that, “[a]s far as studies are concerned, we haven’t done much work in this respect. There has not been much direction. Obviously, the question comes up from time to time.”<sup>21</sup>

Without knowing the true intentions behind this clause, the National Association of Federal Retirees said that caution is needed to avoid any unintended consequences of repealing it without considering what could result:

This is a complex policy issue. As an organization that supports data-driven, sound public policy that seeks to improve the financial security, health, and well-being of its members and all Canadians, Federal Retirees urges the Committee to recommend appropriate scoping of the extent and impact of this issue before recommending any policy changes which, while well-intentioned, could have unintended consequences on the retirement income and health care security of veterans and other federal retirees. Clear, accurate data to define this issue and inform potential solutions is essential. The appropriateness of seeking to remedy this issue must be considered relative to the principles and goals established for federal public sector pension plans and pension policy, and how

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20 ACVA, *Evidence*, 20 May 2022, 1435, Mr. Simon Crabtree (Executive Director, Pensions and Benefits, Treasury Board Secretariat).

21 ACVA, *Evidence*, 20 May 2022, 1435, Mr. Simon Crabtree (Executive Director, Pensions and Benefits, Treasury Board Secretariat).

comparable pension plans and other jurisdictions in Canada treat this issue. Veterans deserve accountability.<sup>22</sup>

The Government of Canada appears to have taken a cautious approach by choosing not to repeal the CFSA and to instead create the Veterans Survivor Fund. However, questions still remain as to why the exclusion clause has been maintained. The committee therefore recommends:

### **Recommendation 2**

**That the Government of Canada immediately table a document explaining in detail the reasons for creating and maintaining clauses denying survivors' pensions when the relationship began after the pensioner reached age 60 (CFSA and RCMPSA).**

## **OPTIONAL SURVIVOR BENEFIT**

An Optional Survivor Benefit (OSB), which was added to the legislation in 1992 and came into force in 1994, allows Regular Force veterans who married at age 60 or older to reduce the amount of their pension benefits to allow their legally married spouse to receive benefits after their death. According to VAC, “there were approximately 95 Canadian Forces Superannuation Act (CFSA) pension plan members who participated in the Optional Survivor Benefit.”<sup>23</sup> This clause is also in the RCMPSA. As the OSB regulations have not been adopted, it is not available for common-law relationships.

The evidence and documentary research did not reveal why the government has been unable to adopt these regulations since 1992. It is also unclear why a similar benefit is not available to public service pensioners. However, it is clear that since this benefit exists, there is no valid reason for limiting eligibility to legally married spouses. The committee therefore recommends:

### **Recommendation 3**

**That the Government of Canada immediately adopt regulations to make the Optional Survivor Benefit (OSB) available to both common-law spouses and legally married spouses.**

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22 ACVA, Brief from the National Association of Federal Retirees, 29 April 2022, pp. 10–11. See also the comments by Mr. Pizzino: ACVA, *Evidence*, 29 April 2022, 1325, Mr. Anthony Pizzino (Chief Executive Officer, National Association of Federal Retirees); and Mr. Soulière: 29 April 2022, 1345, Mr. Jean-Guy Soulière (President, National Association of Federal Retirees).

23 Veterans Affairs Canada, Response to questions raised during the ACVA meeting of 20 May 2022.



According to Brigadier-General Virginia Tattersall, Director General, Compensation and Benefits at the Department of National Defence, the OSB provides protection similar to life insurance at less cost. It is also more flexible than most life insurance plans:

While there is a reduction of payments to the annuitant, those funds are still in the pension fund. That means that, in the event of the death of a spouse, they may revoke the optional survivor benefit and, therefore, the pension amount received by the annuitant goes back to 100%. While that benefit had been set up, the annuitant is not going to suffer on the death of their spouse.<sup>24</sup>

Simon Crabtree, Executive Director, Pensions and Benefits with Treasury Board Secretariat, agreed, telling the committee that “the optional survivor benefit is actually a more generous and flexible option that was added to our plan, and that doesn’t exist elsewhere.”<sup>25</sup>

Despite these intentions, the evidence heard regarding the OSB was sometimes heartbreak. Walter Pinsent joined the RCMP in 1960 at the age of 20. He retired in 1984 at age 44, after 24 years of service. Following the death of his first wife in 2005, he married Norma in 2006, at age 66. Given Mr. Pinsent’s age when he married, Mrs. Pinsent is not entitled to the survivor benefit. The option of signing on to an OSB was considered. It was likely to provide Norma with better long-term financial security, but its annual cost was higher than what they could afford. According to Mrs. Pinsent, “We would be investing our fixed, limited funds in an uncertain future and robbing ourselves of joys and necessities our combined resources could provide, and should I die first, that investment would be lost.”<sup>26</sup> Mr. Pinsent added: “We decided as a couple that the best thing for us to do is enjoy the \$500 a month that we’re required to pay in as an option. We agreed.”<sup>27</sup> Now 17 years later, the decision not to take the OSB turned out to be the right one since they were able to receive Walter’s pension together instead of having to divide it during those years. As Mrs. Pinsent said,

[I]leaving jobs and setting up housekeeping as we did, with a blended family and pooling our resources, seemed to us at the time to be the sensible thing to do. We have been together now 17 years. That is many thousands of dollars that we’ve shared with each other and family and friends that would be totally and absolutely lost if I had died

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24 ACVA, *Evidence*, 20 May 2022, 1345, Brigadier-General Virginia Tattersall (Director General, Compensation and Benefits, Department of National Defence).

25 ACVA, *Evidence*, 20 May 2022, 1435, Mr. Simon Crabtree (Executive Director, Pensions and Benefits, Treasury Board Secretariat).

26 ACVA, *Evidence*, 29 April 2022, 1320, Mrs. Norma Pinsent (As an Individual).

27 ACVA, *Evidence*, 29 April 2022, 1340, Mr. Walter Pinsent (Staff Sergeant (Retired), Royal Canadian Mounted Police, As an Individual).

before Walt... Walt got out of the service fairly early, as he indicated, so his pension in and of itself was not well padded.<sup>28</sup>

Patrick Boudreau is a correctional officer with 37 years of service. Three months after his marriage broke down in April 2015, he met his new spouse, Kelly Vankoughnett, who had been widowed in September 2014. After she paid off her mortgage and Mr. Boudreau settled his divorce payments, they decided not to pay for an OSB because they could no longer afford it<sup>29</sup>:

Kelly and I chose to be together, and I wanted to put her on my pension as a survivor. I was told that if I wanted to take some of my money, of which I'm living cheque to cheque, and pay 30%, 40% or 50% of that, she would get a survivor benefit of a very minor amount. I don't even know how much that is, because we can't afford it. Fifty per cent of my pension is just ridiculous to try to make ends meet.<sup>30</sup>

At 57, Mrs. Vankoughnett opted to receive reduced benefits from her own pension right away:

My choice is for retiring a little bit early, just because Pat's older than I am and I don't want to lose time with him ... I was fortunate enough to have my own pension, but I had to make a choice. I was not entitled to my full pension until age 65. I'm 57, so I had to decide: Do I want some quality time and maybe fewer options for things to do in retirement?<sup>31</sup>

As can be seen, a pension alone does not guarantee a family's long-term financial security. Robert Demers, an RCMP veteran, told the committee: "If I died tomorrow, my spouse would not be able to stay in the home where we live. She would have to rent a place somewhere, perhaps not low-income housing, but a lower quality place, for sure. That makes me very uncomfortable."<sup>32</sup>

The very existence of the OSB suggests that the government acknowledges the potential issues with the marriage after 60 clause, as well as all other survivor benefit exclusion clauses. This benefit directly serves to offset the inability of spouses to receive survivor benefits upon the pensioner's death. According to Mr. Crabtree,

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28 ACVA, *Evidence*, 29 April 2022, 1340, Mrs. Norma Pinsent (As an Individual).

29 ACVA, *Evidence*, 13 May 2022, 1315, Mrs. Kelly Vankoughnett (As an Individual).

30 ACVA, *Evidence*, 13 May 2022, 1345, Mr. Patrick Boudreau (As an Individual).

31 ACVA, *Evidence*, 13 May 2022, 1345, Mrs. Kelly Vankoughnett (As an Individual).

32 ACVA, *Evidence*, 29 April 2022, 1400, Mr. Robert Demers (Royal Canadian Mounted Police Veteran, As an Individual).



I would look at this like term life insurance. It's an option that is provided to members that allows them to provide for a spouse who otherwise wouldn't qualify under a normal pension survivor benefit. It's true that the member's surviving spouse will not benefit from that in all cases. It's possible that they will pay in for a benefit and take a reduction for a period of time and they won't yield the benefit of it.

Yes, the plan would not be paying out in those circumstances, and the funds would remain in the plan.

... Pension plans are a pooling of risks between members. They're not designed to pay out in every case for exactly what people pay into them. There are many employees or members who pay into these plans who never receive what they paid into them because they are deceased before they can yield those benefits or otherwise. That's true across all of our public sector plans.<sup>33</sup>

#### **Recommendation 4**

**That the department responsible for pension benefits return to the Veteran any funds that were put aside through the Optional Survivor Benefit program, upon the death of the spouse of the Veteran, if the spouse passes away before the Veteran.**

#### **Recommendation 5**

**That the Department of National Defence and the Department of Public Safety take vigorous action to ensure that members of the Canadian Armed Forces and of the Royal Canadian Mounted Police have all the necessary information about their pension plan, and have access to financial advice to make the most informed financial decisions before they retire.**

### **COST OF REPEALING THE MARRIAGE AFTER 60 CLAUSE**

During the 1990s court challenge, the government's expert actuary stated that

to allow survivor benefits to spouses who marry military pensioners who are over sixty years of age would increase the annual costs to the plan by 0.23% of the annual cost, requiring an additional contribution of between

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33 ACVA, *Evidence*, 20 May 2022, 1420, Mr. Simon Crabtree (Executive Director, Pensions and Benefits, Treasury Board Secretariat).

\$12.1 and \$108 million in addition to the amortization over fifteen years of new liabilities of between \$362 million and \$3.87 billion.<sup>34</sup>

Thirty years later, a new actuarial valuation would be needed to cost the plan on an annual basis and based on the long-term financial liability. However, it is worth noting that this valuation is in line with two more recent valuations conducted by the Office of the Parliamentary Budget Officer.

According to Brigadier-General Virginia Tattersall, Director General of Compensation and Benefits at the Department of National Defence, in the early 2010s, the Parliamentary Budget Officer conducted an actuarial assessment for the three main federal public sector pension plans of the cost of repealing the clause that excludes spouses who began a relationship with a member after retirement.<sup>35</sup> According to Simon Crabtree, Executive Director of Pensions and Benefits at the Treasury Board Secretariat,

The numbers that were calculated more than a decade ago estimated a total nearing \$1 billion as the cost to implement that. To give you a sense of order of magnitude, based on assumption changes that we've seen elsewhere, you could conservatively double that number as far as the cost goes. We would, of course, have to run exact scenarios based on the latest actuarial data, but a \$2-billion figure would probably bring you into the right ballpark.<sup>36</sup>

A [June 2022 study](#) by the Parliamentary Budget Officer estimated the budgetary cost of Bill C-221 introduced by Rachel Blaney in the House of Commons. It estimates that for the Canadian Armed Forces pension plan alone, the initial cost would be \$62 million in 2023–2024, including payments to survivors currently excluded from benefits. This cost would then increase as more survivors are added, reaching \$69 million in 2026–2027. In a [supplement](#) to this initial evaluation published in August 2022, the PBO estimated that if all federal pension plans covered in C-221 were taken into account, the annual cash expenditures would be multiplied by 5 and reach \$354 million in 2026–2027. These costs would be recurring and would stop increasing only once a balance is reached between the number of deaths of survivors receiving benefits and the number of new eligible survivors. The study assumed that these expenditures would be offset by an equivalent increase in contributions. It did not cost the government's long-term actuarial obligations and does not say how it did or did not account for inflation and the

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34      [\*Sutherland v. Canada \(1997\)\*](#), 123 F.T.R. 80 (note), 143 D.L.R. (4th) 226, 208 N.R. 1, 68 A.C.W.S. (3d) 265 (FCA).

35      ACVA, *Evidence*, 20 May 2022, 1355, Brigadier-General Virginia Tattersall (Director General, Compensation and Benefits, Department of National Defence).

36      ACVA, *Evidence*, 20 May 2022, 1355, Mr. Simon Crabtree (Executive Director, Pensions and Benefits, Treasury Board Secretariat).



indexation of benefits. Repealing the marriage after 60 clause would therefore end up being more costly than the survivor fund, with a one-time investment of \$150 million over five years, announced by the government in 2019.

According to Mr. Crabtree from the Treasury Board Secretariat, the \$1 billion cost estimate at the time accounted for the government's long-term financial liability and would likely have doubled were the calculations to be repeated today:

This \$1 billion or \$2 billion or whatever the final amount would be is an adjustment to the overall liability. This would be a one-time adjustment to the obligations of the pension plan to reflect these new expected benefits to be paid out over the course of current members' lifetimes and then in survivor benefits. This would not include members who have already retired and have predeceased. This would leave questions as to current members, I suppose, because this is on a go-forward basis.

That \$2 billion, just to reiterate, is a go-forward for those who are currently members and paying into the plan and not those who have already retired or who have already predeceased their survivors. ... That \$2-billion figure notionally is the removal of the marriage after 60 clause from all three public sector pension plans.<sup>37</sup>

## VETERANS SURVIVORS FUND

In Budget 2019, the government created the Veterans Survivors Fund:

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 5 years starting in 2019–20 to Veterans Affairs Canada. 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.

Since then, few details have been available about the fund or the \$150 million in investments it is expected to make by 2023–2024. Alexander Glenn of the RCMP Veterans' Association expressed disappointment that RCMP veterans were excluded:

We're not eligible. It's that simple. On that \$150 million, I understand that none of that has even been spent. The RCMP is not included. The Government of Canada does not recognize the RCMP as veterans. Therefore, we were excluded from that \$150 million..... I canvassed our entire association just to see how many people were impacted overall.

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37 ACVA, *Evidence*, 20 May 2022, 1450, Mr. Simon Crabtree (Executive Director, Pensions and Benefits, Treasury Board Secretariat)

Eighty-one people responded to me, stating that they were worried or were already in financial difficulties because of the legislation.<sup>38</sup>

The National Association of Federal Retirees complained about the lack of information regarding what motivated the government to back away from its commitment to repeal the exclusion clause and create this fund:

A report is due on the progress and outcomes of the \$150-million Veterans Survivors Fund administered by Veterans Affairs, including but not limited to how much of the fund has been spent, to what end, and forward plans. Veterans were promised the marriage after 60 clauses would be eliminated. That has not happened, and they deserve to know not only why not but also what the studies have revealed.<sup>39</sup>

Over the course of this study, the committee learned that VAC had asked Statistics Canada to conduct studies to better understand the characteristics of those most likely to have been disadvantaged by the exclusion clause.<sup>40</sup> During her appearance before the committee, Amy Meunier of Veterans Affairs Canada explained what this data was to be used for:

We're taking this information into account, as well as the increase in the old age security that will come into effect in July 2022, which will infuse additional funds for those aged over 75. We want to take into account the risk level of this population so that we can put into place a program and supports that will meet those needs.<sup>41</sup>

This analysis revealed the following:

- An estimated 4,490 survivors entered into a relationship with a CAF retiree after the retiree's 60th birthday.
- They are almost exclusively women, and 90% are over 70.

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38 ACVA, *Evidence*, 29 April 2022, 1350, Mr. Alexander Glenn (National President, Royal Canadian Mounted Police Veterans' Association).

39 ACVA, Brief from the National Association of Federal Retirees, 29 April 2022, p. 11.

40 Veterans Affairs Canada, "Survivor Analysis Summary," Response to questions raised during the ACVA meeting of 20 May 2022.

41 ACVA, *Evidence*, 6 May 2022, 1510, Ms. Amy Meunier (Assistant Deputy Minister, Strategic Policy and Commemoration, Department of Veterans Affairs).



- Their income is generally higher than that of other Canadian women the same age.
- Of these 4,490 survivors, 850 had incomes below the low income measure, which is about \$25,000 for a single individual.
- On average, to reach this threshold, these 850 survivors would have needed an additional \$671 per year in income.
- Widowed spouses of veterans who entered into a relationship at age 60 or after had higher personal income than spouses of living veterans, but were also more likely to be in a situation of low income, because they were more likely to be living in a 1 income household.

While these data are interesting, it is not clear to the committee why creating the Veterans Survivors Fund would be a valid alternative to repealing the exclusion clauses. However, it is clear that the government's objective is to identify those who are most economically disadvantaged and who would have benefited most from survivor benefits.

This impression appears to have been confirmed by the objectives of the preliminary study commissioned by the government through the Canadian Institute for Military and Veteran Health Research. Professor Eric Li from the Faculty of Management of the University of British Columbia (Okanagan) was awarded a \$225,000 contract. Their 20-page report was submitted in December 2020 after interviewing seven survivors and three veterans. Although Prof. Li acknowledged that "the participant pool is relatively small,"<sup>42</sup> the report makes three recommendations:

- Review the criteria for inheriting veterans' pensions;
- Overhaul the IT and social support platforms of the CAF and VAC to better serve the surviving spouses of veterans; and
- Provide additional psychological support to veterans and survivors.<sup>43</sup>

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42 ACVA, *Evidence*, 20 May 2022, 1325, Dr. Eric Ping Hung Li (Associate Professor, The University of British Columbia, Canadian Institute for Military and Veteran Health Research).

43 Eric Li, Keith Culver, Patrick Gall, Dilsora Komil-Burley, and Ariele Parker, *Qualitative Study on the Financial Well-Being of the Survivors of Veterans*, Canadian Institute for Military and Veteran Health Research, contract TA46, p. 2.

During his appearance before the committee, Prof. Li summarized the research findings as follows:

Survivors who married a veteran after his or her 60th birthday suffered the most, as the substantial cut in their income due to the loss of the military pension forced them to change their lifestyles considerably. Veterans who started a relationship after the age of 60 also concurred that the current policies on pension inheritance created uncertainty for their partners.<sup>44</sup>

Despite the efforts of Prof. Li's team, there were several serious errors in the report that may have affected the understanding of the issues discussed. For example, page 7 of the report states that "Participant 05 is entitled to her later husband's full pension. For this reason, her case was used as a benchmark in comparison of the financial well-being of survivors who do receive and those who do not receive the veteran's pension." However, according to the note accompanying this passage, the pension that Member 05 receives is the disability pension, not the retirement pension. In other words, the report does not distinguish between the disability pension, which does not have an exclusion clause, and the retirement pension, which does.

The study does provide some insight into the government's intentions regarding the Veterans Survivors Fund. The study parameters as defined by VAC primarily concern financial well-being,<sup>45</sup> which suggests that the Fund was created to address the financial needs of the most disadvantaged survivors.

That said, Mr. Crabtree suggested that if the purpose was to help the lowest-income individuals maintain a decent standard of living after retirement, then repealing the exclusion clause would not be an appropriate solution:

The challenge with pension benefits in general is that they are a fairly blunt instrument because they apply to high-income earners as well as to low-income earners. Often when we look at, say, removing a limit like the marriage after 60 limitation that's in the plan, the biggest beneficiaries of this are going to be the high-income earners.

This is not a method necessarily of targeting any specific subpopulation. The question is what we are aiming to do. If it's to, say, help ensure that low-income survivors are

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<sup>44</sup> ACVA, *Evidence*, 20 May 2022, 1325, M. Eric Ping Hung Li (Associate Professor, The University of British Columbia, Canadian Institute for Military and Veteran Health Research).

<sup>45</sup> Eric Li, Keith Culver, Patrick Gall, Dilsora Komil-Burley, and Ariele Parker, *Qualitative Study on the Financial Well-Being of the Survivors of Veterans*, Canadian Institute for Military and Veteran Health Research, contract TA46, pp. 3–4.



provided for in retirement, there are a great deal of costs and funds that are not going to be allocated to these members. It's a very small component.<sup>46</sup>

This is a convincing argument if the original purpose of repealing the exclusion clause in the CFSA was to support the most disadvantaged survivors. As to whether there is a more effective way for the Survivors Fund to achieve this, the government's intentions are still too vague to make an informed judgment. According to Patrick Imbeau of the National Association of Federal Retirees, "the veterans fund that was suggested doesn't get to the root issue."<sup>47</sup> Crystal Garrett-Baird of VAC also confirmed that "none of the funding has been used to date.... We have not accessed the \$150 million that was put forward in budget 2019."<sup>48</sup>

The Committee therefore recommends that:

#### **Recommendation 6**

**That Veterans Affairs Canada use the research and data provided by Statistics Canada and the Canadian Institute for Military and Veteran Health Research to identify survivors and immediately distribute the \$150 million Veterans Survivors Fund, focusing on those most in financial need, and publicly provide the formula and calculations for the funding allotment.**

#### **Recommendation 7**

**That the Government of Canada recognize that pension benefits must be modernized to ensure that the survivors of CAF and RCMP Veterans, mostly senior women, are not pushed into a life of poverty because their partner died without being able to leave them survivor pension benefits.**

#### **Recommendation 8**

**That the Minister of Veteran Affairs work with the RCMP and the RCMP Veterans Association to ensure survivors of RCMP Veterans will receive an equitable portion of the Veterans Survivors Fund.**

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46 ACVA, *Evidence*, 20 May 2022, 1450, Mr. Simon Crabtree (Executive Director, Pensions and Benefits, Treasury Board Secretariat).

47 ACVA, *Evidence*, 29 April 2022, 1345, Mr. Patrick Imbeau (Advocacy and Policy Officer, National Association of Federal Retirees).

48 ACVA, *Evidence*, 20 May 2022, 1415, Ms. Crystal Garrett-Baird (Director General, Policy and Research, Department of Veterans Affairs).

## COMPARISON WITH OTHER PENSION PLANS

The evidence compiled for this study mentions three pension plans that had repealed the age-related exclusion clause. These three plans are the U.S. plan, the Quebec provincial government employees' pension plan, and the Ontario municipal employees' pension plan.

### The U.S. Plan

According to the brief submitted to the committee by Brandon J. Archuleta, author of a book covering the history of military pensions in the United States,<sup>49</sup> the U.S. system went through two periods after the Second World War. Between 1948 and 2018, service members made no contributions to the plan and were "cliff-vested" after 20 years of service. Pension benefits were equal to 50% of the average income of the best three years. However, there were voluntary plans that service members could contribute to.

There was major reform in 2018, and while there are some important differences, the plan became similar to the Canadian system: it became a defined-benefit, defined-contribution plan allowing military members to become eligible to receive a retirement pension without completing 20 years of service.

With regard to survivor benefits, it is difficult to use Mr. Archuleta's brief as a reference because his comparison with the Canadian plan does not focus on the CAF pension plan, and instead deals solely with the optional survivor benefit. Furthermore, as can be inferred from his presentation of the U.S. plan, spouses who legally marry after the veteran begins receiving pension benefits are only entitled to survivor benefits if it is the veteran's first marriage. The conditions that apply to spouses from previous relationships are not spelled out.

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49 Brandon J. Archuleta, "Military Retirees, Spouses, and Survivor Pension Benefits: A Brief Examination of the American Experience," Brief submitted to ACVA on 1 August 2022; based on the book by the same author: *Twenty Years of Service: The Politics of Military Pension Policy and the Long Road to Reform* (Lawrence: University Press of Kansas, 2020).



## The Quebec Government and Public Employees Retirement Plan (RREGOP)

As mentioned by several witnesses,<sup>50</sup> the RREGOP does not have an age-based exclusion clause. It is different from the federal plan in many respects. To help explain them, the pension benefit conditions are described below.

- The employer's contribution is lower for the RREGOP, at 50% for incomes equal to or less than the maximum allowable by the Régie des rentes du Québec, which is roughly \$65,000, gradually decreasing as the contributor's gross income rises. For the CAF plan, this is roughly 63% for all contributions.
- The benefit amount is calculated the same way in both plans: years of service X average gross income of the best five years X 2%.
- Benefits are fully indexed in all federal plans, while since 2000, the RREGOP caps the indexation of benefits at the greater of 50% of inflation or inflation minus 3%.

As for the survivor benefit:

- The RREGOP does not provide the survivor benefit to children.
- The CAF plan immediately pays the survivor half of what the member would have received on their 60th birthday, without reduction or penalty. The RREGOP pays half of what the retiree was receiving, with an option to increase the amount to 60% by adding a contribution. This means that if the member takes an early retirement, the applicable reductions and penalties will be reflected in the amount of the survivor benefit and will be indexed at the rate at which the pension benefits would have been indexed (50% or -3% of inflation).

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50 See for example: ACVA, *Evidence*, 20 May 2022, 1430, Mr. Simon Crabtree (Executive Director, Pensions and Benefits, Treasury Board Secretariat); 13 May 2022, 1355, M. Maurice Gill (Co-Chair, Surviving Spouses Pension Fairness Coalition); 29 April 2022, 1310, Mr. Robert Demers (Royal Canadian Mounted Police Veteran, As an Individual).

- The RREGOP does not have an age exclusion clause. Any individual who is the spouse of the pensioner at the time of death is entitled to receive survivor benefits immediately.

Essentially, the RREGOP survivor benefits are generally less generous than those of the federal plans, but the plan will pay benefits if the relationship began after the pensioner retired.

## The Ontario Municipal Employees Retirement System (OMERS)

The contribution rates and the amount of benefits paid to retirees by OMERS are similar to those paid by the RREGOP. However, there are significant differences with respect to survivor benefits:

- The OMERS benefit is 2/3 of the amount of benefits the pensioner was receiving.
- Indexing is limited to 6%, regardless of the rate of inflation.
- The spouse entitled to priority survivor benefits is the spouse legally married at the time the pensioner retired. This constitutes an indirect marriage after retirement clause since if, after retirement, the pensioner divorces and begins a new relationship, the new spouse will not be entitled to the survivor benefit. However, the survivor will be entitled to the benefit if the pensioner was not married at the time of retirement.

This clause takes into account the division of pension credits in the event of a divorce before retirement. If the divorce occurs prior to retirement, the accrued pension credits will be divided between the former spouses, thereby reducing the amount received by the pensioner. If, following this division, the pensioner receives, for example, \$3,000 instead of \$4,000 per month, this will be reflected in the amount of the survivor's benefit since it is calculated, in the case of the RREGOP and OMERS, based on what the pensioner receives, not on what they would have received without deductions and penalties as in the federal plan.

This OMERS clause allows the spouse who divorced before the member's retirement to benefit from the contributions accumulated in the plan during their life together. This limits the employer's long-term financial liability and makes them more predictable. This clause applies only to legally married former spouses.



Such a clause may not be necessary in the case of the RREGOP, since Quebec family law instituted the mandatory division of pension credits in the event of a divorce, regardless of whether it took place before or after retirement.

The important point to note here is that the survivor benefits paid by the federal plan do not decrease, even if there has been a prior division of pension credits in a divorce. This significantly increases the government's long-term financial liability, makes it more unpredictable, and in order to contain costs, forces the government to introduce exclusion clauses that may appear arbitrary, as well as optional benefits that few retirees can afford to take advantage of.

Consequently, the committee members believe that the government should consider redesigning the CAF and RCMP pension plans to strike a balance between predictability of the government's long-term commitments and the desire of veterans to have their spouses receive a survivor benefit in the event of their death, even if the relationship began after they retired. In the words of Ms. Evanshen,

At the end of the veteran's days, when he or she gave it all for his or her country, his or her spouse will be destitute because they are not entitled to his or her benefits if they found love after the age of 60. I ask you, if any of you are over 60 and have a significant other, how would you feel if you wouldn't be able to care for them after you're gone?<sup>51</sup>

Basing the survivor benefit amount on what the pensioner was receiving, instead of what they would have received without reduction or penalty, would appear to provide equitable flexibility to both the government and veterans. If this change were to significantly reduce the government's financial liability, then the percentage applied to the calculation of the survivor benefit would have to be increased, as OMERS did by increasing it to 2/3 instead of 50% as in the RREGOP, or else the contribution rates would have to be adjusted.

### **Recommendation 9**

**That the Government of Canada repeal the “marriage after 60” clause in both the Canadian Forces Superannuation Act and the Royal Canadian Mounted Police Superannuation Act, and make survivor benefits proportional to what the pensioner was receiving rather than the unreduced benefit that they would have received, and as needed, adjust the contribution rates and percentage applicable to the survivor benefit to adequately reflect the resulting reduction in financial liability.**

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51 ACVA, *Evidence*, 13 May 2022, 1315, Ms. Tracy Lee Evanshen (As an Individual).

## CONCLUSION

Pension plans are complex programmes that form part of the total compensation package of the employees who contribute to them. Most of these plans provide survivor benefits, i.e. clauses allowing the spouse of the contributor to receive benefits in the event of the contributor's death. The features obviously vary from one plan to another, but several constants can be found in almost all benefit plans that guarantee the amount of benefits at retirement. These plans provide that the spouse is excluded from survivor benefits if the relationship began after the contributor started receiving pension benefits. This is the case for the Canadian Forces Pension Plan, the Royal Canadian Mounted Police Pension Plan and the Federal Public Service Pension Plan.

In the case of the Canadian Public Service, spouses are excluded from survivor benefits if the relationship occurs after the pensioner began receiving benefits. For the Canadian Forces and the Royal Canadian Mounted Police, spouses are excluded from survivor benefits if the relationship began after the veteran reached age 60. In the case of the Canadian Forces, this reflects the mandatory retirement age for military personnel, which is 60 years old, as well as the fact that military and RCMP officers tend to retire earlier than federal public servants. If the rule for federal public servants had been applied to veterans, it would have been at a distinct disadvantage to them.

Historically, these schemes have contained clauses that were likely to discriminate against women. Until the early 1970s, survivor benefits were only available to women, reinforcing the presumption of financial dependence of wives. In addition, until 1989, survivor benefits contained a so-called "gold digger" clause that limited the value of benefits if the age difference between spouses exceeded 25 years. However, in the late 1990s, the Federal Court and the Court of Appeal ruled that the exclusion clause itself, which excludes spouses from survivor benefits if the relationship began after the veteran reached age 60, was not discriminatory. It was, according to the court, intended to limit the government's financial obligations and the age of 60 replaced what was the retirement age in the public service plan.

Nevertheless, this clause seems to introduce an element of arbitrariness that deprives surviving spouses of a supplementary income for no other reason than the veteran's age. Several witnesses expressed in a particularly heartbreakingly manner the sense of injustice and incomprehension they experienced when they learned that their spouse would not be eligible for survivor benefits because of their age at the time their relationship began. Indeed, as the court acknowledged, the government wanted to limit its financial obligations by imposing these exclusion clauses. However, there are many



ways to achieve this result, and the government was unable to explain how the "marriage after 60" clause was the most appropriate way to achieve it.

The government has indirectly recognised the financial hardship that this clause may cause for some couples by introducing an optional survivor benefit that allows the pensioner to transfer a portion of his or her own benefits to a plan for the benefit of the survivor who will pay benefits to the survivor in the event of the pensioner's death. As several witnesses expressed, the cost of these contributions is so high that it is almost never seriously considered by veterans. In fact, fewer than 100 veterans are currently paying contributions under this plan. In addition, the accumulated value of these contributions is lost if the spouse predeceases the pensioner, and the plan is only available to legally married spouses. For these reasons, the Committee has made two recommendations to address the shortcomings of this optional survivor benefit.

Having the investments earmarked in the Veterans' Survivors Fund begin to flow as soon as possible to those survivors most in need will certainly be welcome for hundreds of survivors in difficulty, but it leaves unresolved the problem of the arbitrariness that seems to accompany the existence of this marriage clause after age 60. Perhaps the solution is to draw inspiration from the Régime de retraite des employés du gouvernement et des organismes publics du Québec (RREGOP). This plan is the only one identified in Canada that does not include an exclusion clause if the union began after the pensioner began receiving pension benefits. Under this plan, the person who receives the survivor benefits is simply the person who was the pensioner's spouse at the time of death. The amount paid is simply 50% of the benefit the pensioner was receiving at the time of death. If the pensioner's pension was reduced after a divorce or because he or she chose to retire earlier than the prescribed age, this will be reflected in the amount of the survivor benefit.

Under the Canadian Forces plan, veterans' pension benefits are equal to the average income of the best five years multiplied by the number of years of service X 2%, up to a maximum of 35 years of service. In other words, the maximum benefit is up to 70% (35 years X 2%) of pre-retirement income. If the member has less than 35 years of service and chooses to retire before the age of 60, the pension amount will be reduced. If there has been a previous division of the pension fund after a divorce, the amount of the benefit will also be reduced. However, these reductions do not apply to the calculation of the survivor's benefit. The formula for calculating the survivor's benefit is the average income of the best five years multiplied by the number of years of service, but this product is multiplied by 1% instead of 2%. Since the reduction factors do not apply, the survivor benefit in many scenarios is much more than 50% of the veteran's pension benefit. Given that the Government of Canada currently pays nearly two-thirds

of the contributions to the Canadian Forces pension plan, if the marriage after age 60 clause were simply abolished, the additional costs would be potentially significant.

The adoption of a formula similar to that of the RREGOP would both put an end to the arbitrary effects of the marriage clause after age 60 and limit the government's financial obligations in the long term. The Committee therefore recommended the adoption of this approach.

The members of the Committee are sincerely grateful to the witnesses whose contributions have helped them to seek constructive solutions to these complex problems.



## **APPENDIX A**

## **LIST OF WITNESSES**

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The following table lists the witnesses who appeared before the committee at its meetings related to this report. Transcripts of all public meetings related to this report are available on the committee's [webpage for this study](#).

<b>Organizations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>As an individual</b>	2022/04/29	12
Robert Demers, Veteran, Royal Canadian Mounted Police		
Norma Pinsent		
Walter Pinsent, Staff Sergeant (Retired), Royal Canadian Mounted Police		
<b>National Association of Federal Retirees</b>	2022/04/29	12
Patrick Imbeau, Advocacy and Policy Officer		
Anthony Pizzino, Chief Executive Officer		
Jean-Guy Soulière, President		
<b>Royal Canadian Mounted Police Veterans' Association</b>	2022/04/29	12
Alexander Glenn, National President		
<b>As an individual</b>	2022/05/13	14
Patrick Boudreau		
Tracy Lee Evanshen		
Cpl Kevin Sewell		
Kelly Vankoughnett		
<b>Statistics Canada</b>	2022/05/13	14
Josée Bégin, Director General, Labour Market, Education and Socioeconomic Well-being		
Andrew Heisz, Director, Centre for Income and Socioeconomic Well-being Statistics		
<b>Surviving Spouses Pension Fairness Coalition</b>	2022/05/13	14
Maurice Gill, Co-Chair		

<b>Organizations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>Canadian Institute for Military and Veteran Health Research</b>	2022/05/20	15
Eric Ping Hung Li, Associate Professor, University of British Columbia		
<b>Department of National Defence</b>	2022/05/20	15
BGen Virginia Tattersall, Director General, Compensation and Benefits		
<b>Department of Veterans Affairs</b>	2022/05/20	15
Crystal Garrett-Baird, Director General, Policy and Research		
<b>Treasury Board Secretariat</b>	2022/05/20	15
Simon Crabtree, Executive Director, Pensions and Benefits		
Nadine Labrie, Senior Director, Pensions and Benefits		

## **APPENDIX B**

### **LIST OF BRIEFS**

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The following is an alphabetical list of organizations and individuals who submitted briefs to the committee related to this report. For more information, please consult the committee's [webpage for this study](#).

**National Association of Federal Retirees**

**National Council of Veteran Associations in Canada**

**Surviving Spouses Pension Fairness Coalition**



# **REQUEST FOR GOVERNMENT RESPONSE**

Pursuant to Standing Order 109, the committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* ([Meetings No. 12, 14, 15, 24, 28 and 31](#)) is tabled.

Respectfully submitted,

Emmanuel Dubourg  
Chair



## **New Democrats demand accountability and fairness in survivor pensions for CAF and RCMP Veterans and federal public servants**

*Supplementary Opinion of the New Democratic Party (NDP)*

Walt and Norma Pinsent have been married for 17 years. He is in his early eighties, a retired RCMP Staff Sergeant with an autistic son from his first marriage. Norma is also retired and has been his caregiver, seeing him through multiple surgeries and supporting his family. Walt is completely devoted to Norma. Yet, when Walt dies, despite his 24 years of service and contributing to his pension, he will be unable to leave Norma a survivor benefit. As a result, she will be pushed into living on the edge of poverty, unable to live in their home or continue as guardian and caregiver for Walt's son. This causes Walt great concern.

"My stress level is resulting sometimes in restless nights. I'm continually assessing our resources. I want Norma to be able to live in her own home and continue to be an integral part of this community. I want to grant her the benefits of my pension and give us peace of mind. I'm running out of sunsets, and this issue is heavy on my heart."<sup>1</sup>

Corporal Kevin Sewell (retired) also testified how it made him feel not to be able to take care of his spouse, Tracy Evanshen, after he passed.

"When I found this out, it was like a kick in the gut. It just totally deflated me. I wouldn't be able to give her what I had planned to give her, and I did not feel like a total human or a total man."<sup>2</sup>

In this study moved by NDP MP Rachel Blaney, the Committee heard similar heart-breaking testimony from Veterans, RCMP Veterans, a retired Corrections Canada officer, and their spouses. It is clear, the Pinsents, and almost 9000 Canadians like them, are being punished by the government simply for finding love.

Survivor pension benefits do not exist for members of the Canadian Armed Forces, RCMP Veterans, and federal public servants if they marry after the age of 60, or after retirement, because of an outdated chauvinistic law that the Liberals have been promising to eliminate since 2015, known as the 'Golddigger Clause'. Trudeau and his government have continually failed to act, breaking their promises, and pushing thousands of Canadians, mostly senior women, into living in the shadow of the risk of poverty.

New Democrats believe spouses like Norma are worth fighting for.

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<sup>1</sup> ACVA testimony, Walt Pinsent, 13:17 on [April 29, 2022](#)

<sup>2</sup> ACVA testimony, Kevin Sewell, 13:25 on [May 13, 2022](#)

A government's priorities are conveyed through its budget, not its talk. Where the Government of Canada spends our tax dollars underlines the issues considered to be the priorities of that governing party. In this study, the committee was able to examine whether the elimination of the 'Marriage After 60' clause contained in the *Canadian Forces Superannuation Act (CDSA)*, the *Royal Canadian Mounted Police Superannuation Act (RCMPSA)*, the *Public Service Superannuation Act (PSSA)*, and the *Judges Act*, is considered a priority by the current Liberal government.

Eliminating the marriage after 60 clause from pension legislation was a promise made twice by the Liberal Party of Canada – in the Prime Minister's 2015 and 2017 mandate letters to the Minister of Veterans Affairs. But the Prime Minister did not keep his promises to deal with this archaic, sexist legislation. Instead, in Budget 2019, he offered survivors of Veterans a measly \$150 million over 5 years through the Veterans Survivors Fund (VSF), but did not extend the offer to RCMP Veterans, a move decried by the RCMP Veterans Association. When asked about the VSF in committee, Sandy Glenn, President, testified:

"We're not eligible. It's that simple. On that \$150 million, I understand that none of that has even been spent. The RCMP is not included. The Government of Canada does not recognize the RCMP as veterans. Therefore, we were excluded from that \$150 million."<sup>3</sup>

His testimony was recorded in April 2022. It is now December 2022 and the Veterans Survivors Fund has still not left the books. Not one penny has been spent. Veterans, family members of Veterans, advocates and pension experts are puzzled by this inaction. As Patrick Imbeau, pension policy officer with the National Association of Federal Retirees testified,

"I don't understand why the funds have not been doled out. I guess maybe there's some issue with identifying exactly who these people are. Again, I'm taking guesses, because, as Anthony spoke about, we need transparency here. We don't know what's going on. We don't know why they haven't been able to identify these people. We don't know why they haven't been given the funds. We know that there was research done from CIMVHR and it wasn't published, so what's going on?"

I understand that there are possibly issues with COVID, and that's why, for example, Eric Li's research was affected, but that shouldn't affect the numbers of take-up. The pension centre should have this information."<sup>4</sup>

The Liberal Government talked a lot about the injustice of this clause in 2015 and 2017, made an announcement in 2019, but then did nothing for survivors, even sitting on \$150 million for over three years with no sign in sight of money getting out the door to survivors. The Liberals have dismally failed Veterans and their families.

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<sup>3</sup> ACVA testimony of Alexander Glenn, 13:56 on [April 29, 2022](#)

<sup>4</sup> ACVA testimony of Patrick Imbeau, 14:49 on [April 29, 2022](#)

Veterans Affairs Canada (VAC) is mandated to support the well-being of Veterans and their families.<sup>5</sup> This includes ensuring survivors of Veterans do not fall into poverty and homelessness, because military families serve, too. And yet the department continually tries to shirk its responsibility towards survivors, as explained by Crystal Garrett-Baird, Director General, Policy and Research in reference to the VSF.

"It is important to note that this fund does not change the marriage after 60 clause in the Canadian Forces Superannuation Act. This act is under the responsibility of the Department of National Defence."<sup>6</sup>

Interestingly, this is not what the Department of National Defence (DND) has stated. At the June 6, 2022 meeting of the Standing Committee on National Defence (NDDN), in answering a question posed by MP Rachel Blaney on the Golddigger clause, Mr. Bill Matthews, Deputy Minister of National Defence, said,

"my recollection on this issue is that the lead is Veterans Affairs Canada. I'm happy to confirm that and confirm they are indeed leading."<sup>7</sup>

Pointing the finger at another department tells you all you need to know about this government's intentions and priorities. Veterans and their families are not included. On the Golddigger clause, there is no government accountability.

New Democrats have been fighting to eliminate the Golddigger clause for decades. In November 2006, a motion tabled by Peter Stoffer was agreed to by the House of Commons. It stated that the government should immediately "amend Section 31 (1) of the Canadian Forces Superannuation Act so that second spouses of CF members and veterans have access to pension rights upon the death of the Canadian Forces member or veteran."<sup>8</sup> Since 2006, seven private Member's bills to address the issue have been introduced by NDP Members of Parliament. The most recent, bill C-221, was introduced in the 44<sup>th</sup> Parliament by Rachel Blaney, Member for North Island-Powell River.<sup>9</sup>

The report from the Standing Committee on Veterans Affairs for this study suggests that the reason for inaction on this issue is economics. The government has offered no other explanation for keeping the clause, ergo the reason must be it cannot afford to pay survivor pension benefits. Yet the Parliamentary Budget Officer (PBO) analyzed bill C-221 and came to a different conclusion. Canadians deserve to know exactly how much it will cost to eliminate the Golddigger clause.

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<sup>5</sup> VAC, [What We Do](#), Mandate

<sup>6</sup> ACVA testimony, Crystall Garrett-Baird, 13:33 on [May 20, 2022](#)

<sup>7</sup> NDDN Testimony, [June 6, 2022](#)

<sup>8</sup> Hansard, [November 2, 2006](#)

<sup>9</sup> Bill [C-221](#), introduced December 16, 2021

In his analysis, the PBO found it would cost \$1.33 billion over 5 years to provide survivor pension benefits to all Veterans, RCMP Veterans, and spouses of federal public servants.<sup>10</sup> While this is a large sum of money, it must be considered in context.

According to the Canada Pension Plan Annual Report 2019-2020, the annual federal pension payout for retirement benefits was \$38.9 billion in 2020. If the government were to eliminate the clause, the additional cost to the pension fund would be less than a 2% change on an annual basis.<sup>11</sup> Therefore, eliminating the Golddigger clause would be a fair and equitable solution that supports the long-term sustainability of hard-earned pensions for CAF and RCMP Veterans, as well as federal public servants, while also ensuring their spouses receive the survivor benefits.

New Democrats believe that Veterans who marry after the age of 60 deserve to know that their spouse will be taken care of just like any other married couple. The Golddigger clause is archaic, sexist and must be eliminated.

Therefore, the NDP makes the following recommendations.

**That the Government of Canada eliminate the ‘marriage after 60’ clause from all pension legislation, immediately.**

**That Veterans Affairs Canada distribute the Veterans Survivors Fund to the identified survivors, immediately.**

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<sup>10</sup> PBO [report](#), Estimate for the entirety of Bill C-221: An act to amend certain Acts in relation to survivor pension benefits

<sup>11</sup> Canada Pension Plan [Annual Report](#) 2019-2020