

# Ombudsman Report

*on Veterans Affairs Canada*

**Veterans' Ombudsman:  
Independent Client  
Evaluation  
(V.O.I.C.E.)**

***November 2005 - Year of The Veteran***

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November 2005

Remembrance Week, Year of the Veteran

## **Introduction**

The Government has declared 2005 to be the Year of the Veteran. It is fitting to honour Canadian veterans as they have sacrificed much, so that Canada could be the great country it has become.

2005 also marks the release of the first ever Ombudsman report on Veterans Affairs Canada (VAC). *In the year of the Veteran, it is most appropriate to call on the Government of Canada to create an Ombudsman for Veterans Affairs Canada.*

The overwhelming majority, if not all disabled veterans are proud of their service, and equally proud of, and love Canada. Canada is a country of seemingly endless nature and hope. It is seen internationally as the land of opportunity and freedom. The wide expanse of responsible liberties throughout Canadian society is a beacon for the entire world.

In the midst of such hope and limitless possibilities, Canada takes care of those who cannot take care of themselves. The overwhelming majority of Canadians do not require wheelchairs and yet Canadians are a people who ensure that all public buildings and many corporate structures provide wheelchair accessible entrances and services. The majority of veterans may not need an Ombudsman. However, an Ombudsman's most valuable role is in defending the little guy, the terrified, the marginalized, those who cannot defend themselves, usually the minorities. An Ombudsman is to disabled veterans as wheelchair ramps are to all Canadians, both allow each and every Canadian and Canadian veteran to be treated as equals.

## **Scope of the Ombudsman Report-November 2005**

This Report is a compilation of input, feedback and opinions from those disabled veterans, CF members and the families of both as well as treating clinicians and others, who have either witnessed or experienced the struggles and frustrations of being disabled as a result of military service.

The report focuses on those programs and services provided by, or which will be provided by Veterans Affairs Canada for disabled CF veterans and future disabled CF members and their families. This report is about those VAC clients who need help the most and the families, practitioners and VAC employees who care for them. These veterans are the most disabled, both physically and psychologically. The overwhelming majority of these veterans are unemployable.

They have sacrificed all they can in service to their country without rendering the ultimate sacrifice. They are, therefore, the veterans who depend on VAC for their financial security, medical treatment and support. The majority will depend on VAC for the rest of their lives. *For that reason, they know the Department best while placing some of the greatest demands on Veterans Affairs Canada.*

It goes without saying that the families of these veterans are also inextricably linked to the Department. It is indescribably difficult for them to witness their veteran fathers, mothers, sons and daughters struggle to maintain dignity and independence. Meanwhile these veterans are forced to prove repeatedly their need for help to the very Department mandated to care for them.

The report has compiled the input, experiences, observations and comments on the Department of Veterans Affairs from the following:

- 1) Approximately 150 or more\* disabled veterans of all ages and their families from coast to coast who are or have attempted to be clients of Veterans Affairs Canada.
  - 2) Approximately 22 medical clinicians who have treated Veterans from across Canada whose area of expertise includes:
    - general practitioners M.D.
    - psychiatrists and other medical doctor specialists
    - psychologists
    - social workers
    - registered massage therapists
    - psychotherapists, etc.
  - 3) An undisclosed number of Veterans Affairs Canada employees who are working or have worked in many locations and offices throughout Canada.
  - 4) An undisclosed number of CF members and their families; and,
  - 5) An undisclosed number of Parliamentary Offices who have received requests for assistance from disabled veterans, families and survivors.
- \*(total claimed by contributors is more than 500 veterans not including their families)

Noticeably absent from the report are the areas of Care and Treatment programs as well as other programs such as VIP, Dental, Attendance Allowance and Exceptional Incapacity Allowance to name a few. These are large areas deserving the attention of the VAC Ombudsman once VAC and the Government of Canada realize the necessity and benefits of this office and create the position.

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### ***Disclaimer***

*Since this is a compilation of inputs, experiences and opinions none of the input can be independently verified. As such, this is an opinion piece. Therefore, the compilers do not accept any responsibility for the accuracy of the information and opinions contained herein.*

## **Selection of Quotes and Excerpts from Report**

*"I went to war and then I had to return to fight an even bigger war with VAC. I don't want to fight anymore. I just want some peace."*-disabled veteran

*"I am reminded of the military every day when I deal with my husband's disabilities. I respect his service but I will not walk into a Legion Branch with the ranks and the uniforms just so I can get Veterans Affairs to listen to me. I don't want anything to do with the military culture anymore, thank you."*-wife of a disabled veteran

*"Directors don't want to hear about problems. It is the national position to not deal with problems but to instead try to make it go away without actually solving the problem. People making decisions need to know the truth but the directors don't want to hear it (the truth)."*-VAC employee

*"Because of my disabilities I have had to deal with all kinds of government departments...CPP, DND, Social Services, Transport and even Revenue Canada but not one of them is as insensitive to me like Veterans Affairs has been. They [VAC] are the most anti-veteran of government agencies"*-disabled veteran

*"So what motivated the major overhaul to the Pension Act if the consultation suggested otherwise?"*-testimony to the Parliamentary Subcommittee on Veterans Affairs

*"They [VAC employees] act like they are running their own bank and we are nothing but bad loans."*-disabled veteran

*The bottom line is that C-45 takes away far more than it gives.*-excerpt from report

*"They [senior bureaucrats at VAC] have created an autocratic empire that operates with impunity. They do what they want precisely because there is no oversight of VAC."*-federal employee and disabled veteran

*"We have so much work now. We are already at 110%, how can we give more?"*-VAC employee commenting on implementing C-45 programs

*"Serving members of the Forces do not have an open right to comment on political/military issues in Canada. They are legally constrained against publicly correcting or even explaining policies of the government in power."*-Pamela Stewart, Calgary Herald, Nov 4, 2005.

*“When my husband retreats into his world and the Department [VAC] keeps screwing things up, where do I go? I mean, I am all alone trying to deal with a bunch of people [VAC] who have no idea what it is like to be disabled or live with a disabled husband.”-wife of a disabled veteran*

*“VAC does not want us to know what benefits and programs we’re entitled to.”-disabled veteran*

*“I have dealt with a number of insurance companies on disability issues and not one of them is as complex as VAC”-medical practitioner treating disabled veterans*

*“They threaten you and tell you if you don’t like it, you can go to federal court. They know disabled vets don’t have the money. They threaten you as if you’ve committed a crime instead of serving your country!”-disabled veteran*

*“The CF members interviewed didn’t want the \$250,000. They wanted the disability pension but the Task Force [VAC Modernization Task Force] didn’t listen.”-VAC employee*

*“I was proud to serve Canada and I was willing to die or be disabled but VAC makes me feel ashamed of receiving my disability benefits.”-disabled veteran*

*“Who does VAC and the government think you [the veterans] are? The enemy?”-concerned Canadian*

*“However constructive and valuable the relationship between VAC and the Legion may be, this relationship is not the basis of an objective and impartial ombudsman’s office.”-excerpt from the report*

*“I was privileged to sit in on information sessions that were destined to all portfolio employees, but honestly I can’t comment unless and until I see the final act. That’s filed with Parliament” –Victor Marchand testifying to Parliamentary Subcommittee on VAC one week before legislation tabled*

## **The Forgotten Sufferers: Families of Disabled Veterans**

*“Your family is equally affected by anything that happened to you... There should be more provisions for kids, or your wife, or whatever. I know, just from my own situation, everything I’ve gone through, my wife has gone through the same, if not double, because she had to put up with whatever I had to go through as well. I mean, they don’t put that down. They give you a little token amount. But you’ve got to care for the families, too. It’s not just, well, here’s a veteran, we’ll give him a little bit and send him on his way, and we don’t want to know about the rest of the baggage that comes with him.”- participant in the Review of Veterans Care Needs Focus Groups 1999*

*“My dad worked with sonar in the Navy. My father went years and years of fighting the Department for his hearing condition. Because he couldn’t hear very well we always had the TV, the radio and the telephone really loud so that now my brother and I need a hearing aid. It affects me in my work and in the family. I’m only 41 years old. Imagine if my father received help from VAC from the very beginning? We wouldn’t have this condition. He eventually received an award but he wasn’t happy with it.”-son of a disabled veteran*

The mandate of Veterans Affairs Canada is dictated by *the Department of Veterans Affairs Act* which as well as stipulating that the government of Canada must provide for the care, treatment and re-establishment of the disabled veteran back into civilian life, the government of Canada is responsible for

***“...the care of the dependants or survivors...” (of disabled veterans)***

The reality is that VAC offers minimal if non-existent care for “dependants” and only limited programmes are available for the “survivors” in the form of survivor and orphan benefits and limited house maintenance support. Except for the most exceptional of circumstances, VAC does not have a single program for the “dependents”.

***In spite of this broad mandate and clear authority, VAC has chosen to ignore this responsibility to care for dependents.***

### ***General***

Practitioners who treat disabled veterans note that families are the single most important stabilizing factor in the lives of a disabled veteran. As such, after the disabled veteran, the family should be the most important ally for any program which provides support for disabled veterans. Sadly, VAC, instead of making

allies of the family members, often alienates them. Furthermore, the stress and strain of a caring for a disabled veteran without support generally destabilizes all family members resulting in a reportedly much higher incidence of family dysfunction, marital break-up and behaviour and substance abuse problems in veterans, spouses and children.

Spouses are often better at documenting the condition of the disabled veteran than the disabled veteran him/herself. It is a sad oversight that the families are not supported in this function. Unfortunately, VAC does not have a mechanism to officially receive input on systemic problems which may be affecting clients and families at large. The families become the overworked and the forgotten sufferers in the triangle of VAC-client and family. An Ombudsman mechanism would allow an outlet for families to articulate problems and provide a corporate memory of trends, which would help diagnose and recommend cures for VAC systemic ailments.

### **Health and Dental Care for the Family**

#### **General**

VAC does not have a health or a dental plan for the family of a disabled veteran.

VAC commissioned a study called the Review of Veterans Needs (RVCN). A report on focus groups was published on June 4, 1999. This qualitative analysis clearly identified the large gap between the needs of disabled veterans and families and the programmes offered by VAC. The veterans and families who participated in the focus groups indicated a number of programmes needed for the family of disabled veterans and not available:

1. *Coverage of medications*
2. *Dental Plan*
3. *Access to physicians/continued care by health professionals*
4. *Eye Care*
5. *Physiotherapy*
6. *Participants also indicated the urgent need for psychological counselling for the family in dealing with the demands of having a disabled family member (the veteran).*

#### **Psychological Counselling for the Family**

*"The man I married is gone. I am alone in raising our kids and they suffer. They don't know their father anymore. One of them is into drugs and I don't know what to do. Who helps me? I am doing VAC's work and no one is paying me. No one is helping me. "-wife of a disabled veteran*



In spite of this call more than five and one half years ago, VAC has only implemented one very limited program for the families of existing clientele. VAC will provide for psychological counselling for the family of a disabled veteran. The Department will reimburse only up to 20% or 1/5 of the number of psychological counselling appointments of the disabled veteran in a given year.

Such a policy discriminates against the family. The mandate does not state that the Department is responsible for *the care of one in five children of the disabled veteran nor does it state that the Department is responsible for caring for only the left or the right leg of the dependent but not both*. Many spouses must quit their employment or reduce their employment to part-time in order to care for the disabled veteran. Even if the disabled veteran received psychological care every week, the spouse would only receive counselling support for a mere 10 weeks. The family will be without options if more than one member requires counselling.

As is often the case with veterans suffering disabilities, especially psychological disorders, the children suffer behavioural problems. In their adolescent years, drug and alcohol abuse are commonly reported. Dealing with such issues requires the entire family to be involved in counselling. Certainly the child suffering the behavioural problem cannot be helped with only 10 appointments annually.

Disability in the family places great strains on the marriage. Any marital therapy is also included in the 20% limit which further limits the coverage for individual family members.

Psychological disorders often manifest themselves in unpredictable cycles. Perhaps the veteran may choose to forego counselling for a given period. During this time, the family will not be eligible for any coverage.

Having said that VAC has been gracious in a number of exceptional circumstances, extending care beyond the published limits. Such exceptions do provide a breath of grace for the family. Unfortunately, information about access to such exceptions is not disseminated and the approval often requires an intimidating amount of justification from both veteran and the treating clinician.

### ***Health Care for the Family***

The only window for disabled veterans to receive health care coverage for their families is if the veteran also receives a retirement pension or superannuation. Superannuants are eligible for the Public Service Health Care Plan (PSHCP). However, in order to qualify for the pension, the disabled veteran must have more than 10 years of service. The tragedy is that the service members who

engage in the highest proportion of dangerous activities are those members who are in the earliest stages of their career, i.e., the lowest ranks. These are the very CF members who require the greatest financial assistance especially if released before they have completed 10 years of service.

Perhaps the greatest inequity is best summarized by the following testimony given to the Parliamentary Subcommittee on Veterans Affairs:

***“A member of the Federal Public Service qualifies for this program if they leave the Public Service after two years whether they are disabled or not. Is this perceived as different treatment? A double standard?”***

Surely men and women who have sacrificed the health they once took for granted in the service of the people of Canada should be granted the same opportunity as members of the Federal Public Service who have been employed for two years.

### ***Dental Care for the Family***

The same restrictions and eligibility related to disabled veterans receiving the PSHCP are equally valid for the Pensioners Dental Service Plan.

### ***Summary***

There would be real cost benefits in granting families access to psychological counselling and care not to mention health care and dental plans. The veteran would have to pay, as do all pensioners, for access to the plans and the benefit to VAC directly and society in general would be immense. A more stable family equates to a more stable veteran. A more stable veteran would likely access less health care services and would be less likely to engage in harmful behaviour such as substance abuse. A more stable family would enrich the possibilities for the spouses of disabled veterans as well as the children. Children in a more stable family would be less likely to engage in harmful behaviours and would pursue higher levels of education, more likely to be taxpayers than users of taxpayer's dollars.

### ***Recommendations***

- 1) All VAC disability clients are granted access to the Public Service Health Care Plan and Pensioners Dental Service Plan.
- 2) Access to Psychological Counselling and Support for the family without complex caveats should be a cornerstone of VAC programmes both current and future.
- 3) Families do not have access to appeal mechanisms nor is there a dialogue mechanism between VAC and families for larger issues. **The creation of a VAC Ombudsman would offer an opportunity for outreach to the most critical support mechanism of a disabled veteran.**

## **The Rarely Heard: Overworked and Frustrated VAC Employees**

*"If I don't meet your needs then I am not doing my job."*-VAC employee

*"I can't do anything to help you [a client]. I feel very very helpless."*-VAC employee

*"They [senior bureaucrats at VAC] have created an autocratic empire that operates with impunity. They do what they want precisely because there is no oversight of VAC."*-federal employee and disabled veteran

*"I find the bureaucracy in the Department difficult. It's like sitting on a bike in a pile of sand."*-VAC employee

### **General**

VAC employs approximately 3000 persons in offices throughout Canada. The single largest concentration of employees is Charlottetown PEI where the National Headquarters of VAC is located.

Presently, VAC employees at all levels are reporting excessive workloads. This situation has been a common plight of the VAC employee for a number of years. However, the creation of the Modernization Task Force to write the legislation, regulations and policies for Bill C-45, the so-called Veterans Charter, required a large shift of labor from on-going operations to feed the Modernization Project. The result is that there have been few, if any resources available to address on-going problems in the Department. VAC staffs at numerous levels have been told that any systemic problems will not be dealt with until no earlier than April 2006 when the appropriated staff returns to fulfill absent positions vacated during the preparation of C-45 programmes. Considering that April 2006 is very optimistic for the implementation of all new programmes, it is likely that systemic problems for present clients will persist well into 2007 without being adequately addressed.

Understandably concerned VAC clients and potential clients arrive at District Offices in increasing numbers asking about the new programmes. Except in a few rare instances, VAC employees are not being adequately briefed about the details of the new programmes they are to deliver. This absence of information places great stress on both the employee and the client.

## ***Hierarchy and the Paralysis to Speak Out***

*"I want to help but I also want to keep my job."*-VAC employee to a client

As in all hierarchical organizations, VAC supervisors expect employees to tow the party line. However, the rigidity of the hierarchy in VAC is of great concern as it has a direct impact on the ability of the department to fulfill its mandate to serve the veterans. One retired senior officer who has worked closely with VAC noted that when a VAC director walked into a room with VAC employees his junior,

*"the VAC employees stiffened up and were more afraid of the director than any military environment I had ever witnessed".*

Such rigidity prevents employees who have direct knowledge of key problem areas in program delivery from passing on valuable input that would most likely improve service for the disabled veteran, and consequently increase the morale of the employees. The problem is compounded by reports that the national level is insulated and isolated from the day-to-day upheaval that occurs in delivery of such complex programs with overly rigid controls. There is a "hear no evil, see no evil, speak no evil" mentality in the senior positions. As one VAC employee states:

*"Directors don't want to hear about problems. It is the national position to not deal with problems but to instead try to make it go away without actually solving the problem. People making decisions need to know the truth but the directors don't want to hear it [the truth]."*

Unfortunately, this has created an environment where VAC employees are very afraid to speak out for fear that their comments may be, at the least, a 'career-limiting move' or, at the worst, spell the end of their employment.

That should come as a grave concern to all Canadians, and especially Parliamentarians, as well as veterans and their families. One must ask the key question: **How can a Department that has its mandate to provide services to disabled veterans operate, when it refuses to listen to input from its clientele and from its front-line employees?**

When employees must choose between VAC loyalty and what is best for the client, the client most often loses since the VAC employee needs to understandably protect their career first, and deliver service second.

## ***Client Service Agents***

The Creation of TACs was meant to free workers in order to allow client service agents to have more time to deal with veterans. However, the clients in many

districts, if not all, were given a toll free number to call. They were not permitted to call their area counselors or client service agents directly. These VAC employees, in turn, were not allowed to give out their numbers, except to practitioners in certain cases as long as the practitioner did not divulge the number to the client. This situation places the care provider in a difficult position of conflicting loyalties.

The irony was that as client service agents initially had more time available to deal directly with clients, the clients were discouraged from having direct contact with the VAC employees. Over the past year, the increasing rigidity and strict adherence to policy has resulted in two unfortunate and real consequences. Not only has the flexibility of VAC in administering its treatment all but disappeared, but the Client Service Agents have been burdened by an increasing paperwork load that the initial dividend of free time has all but disappeared.

Client service agents have reported a demoralizing work environment. The creation of the TACs and the demands for paperwork have all but removed any authority and opportunity for initiative which client service agents previously enjoyed, and from which the VAC client benefited. Other than forwarding paperwork up the increasingly ponderous chain of command, Area Counselors who once were the face of VAC and the principal contact for veterans have now been relegated to processing paperwork. Many have very little, if any, direct contact with their previous clients. The result is that the disabled veteran no longer has a kind face that can help him/her negotiate the difficult and complex bureaucracy at VAC.

### **Area Counselors**

*“The number of clients area counselors carry has been a longstanding complaint of which the Union of VAC employees is aware.” –VAC employee*

One of the long-standing concerns is the overwhelming caseload for Area Counselors. In districts across Canada, Area Counselors have a caseload of anywhere between 800 to 1500 clients per Area Counselor. This equates to an Area Counselor devoting an average of 1 to 2 hours per year to each of their clients, assuming the Area Counselor does not take vacation, sick days or lunch hour. Under the new legislation, it is reported that Area Counselors will be the ‘case managers’ for the new programs. If true, such an arrangement would be negligent. Area Counselors could not manage treatment regimens, work placement, family programmes and education in 1 to 2 hours per client per year. Case managers in the separate areas of medical treatment management, rehabilitation management and work placement have a maximum of around 50 clients at any one time with half of those clients only requiring telephone follow-up and monitoring.

Area Counselors as they are presently assigned and selected do not have the skills, education or time to act as true case managers in spite of the hype from VAC spin doctors. Even if VAC were to triple the number of Area Counselors, this would barely address the problem.

### ***Pension Officers***

*“All pension officers are flooded with claims as the CF members and other veterans try to get their applications before the new programs start April 1<sup>st</sup>.”-VAC employee*

The Pension Officers have been overwhelmed with increasing pension applications as the CF client population has increased 58% over the past three years. This trend is expected to continue. Recently, as CF members hear more details about the new legislation, Pension Officers have had a dramatic increase in applications across Canada. Reports indicate that the CF applicants want to qualify for the disability pension rather than wait for the one time lump sum under the new legislation.

One disturbing report from a number of locations indicates that Pension Officers have been told not to inform clients about the opportunity to apply for pensions related to “consequential” claims. The reason given for this attempt to avoid providing legislated service is that there are not enough personnel in Charlottetown to process the claims. If true, such a mismanagement of a fundamental Pension Act program would be clearly negligent by omission on VAC’s part.

Reports from VAC employees indicate that there was an initiative to remove all Pension Officers from District Offices. The intention was to have the disabled veteran, CF or RCMP member forward applications directly to Charlottetown or via the internet. VAC proposed that this would free up the manpower necessary for the provision of the new programmes under the new legislation. However, one of the principal complaints from disability applicants is the inconsistent and limited provision of assistance in presently applying for disability pensions. Disability pension applications are the primary gateway to benefits for 150,000 clients of VAC. A proposal to remove the pension officers altogether is, frankly, an irresponsible proposal at best.

### ***VAC Employee Involvement in the New Legislation***

*(also see relevant sections on C-45)*

The new legislation and the process surrounding the creation of programmes have caused distress, low morale and heightened anxiety amongst VAC employees at all levels. Without exception, from front line workers to Regional and National Headquarters staff, VAC employees report a sense of having been

excluded from the process of creating such dramatic changes proposed for the Department.

### **Summary**

*“There are many at the Department who have heart and truly care but they are not enough because they are powerless to make a real difference”-*  
VAC employee

The culture at VAC has been changing in a disturbing direction. The timeframe, 2000 to 2003, saw some real progress to actually providing client-centered service, albeit VAC had much work to do. However, since 2003 (coincident with the arrival of the new DM Jack Stagg) the VAC has moved from an inconsistent level in the quality of service delivery, to one that is clearly focussed on placing quality of service second to stringent fiscal management at the expense of disabled veterans.

Unfortunately, there is no oversight of VAC and the disabled client population is, for the most part, understandably unable to defend itself. This has resulted in a situation as one federal employee who served as an officer in the military described VAC as *“an autocratic empire that operates with impunity”*.

### **Recommendations**

- 1) The Creation of a VAC Ombudsman to investigate organizational and systemic problems, as well as allow VAC employees a confidential outlet for their concerns.
- 2) Hiring of more personnel to assist the most overworked positions in the Department.



## **Burning Bridges: Failing to Care for the Care Providers**

*"If I prescribe something it's because the client needs it. This pettiness and bulls--- and justification required to deal with VAC is ridiculous."*- medical practitioner treating disabled veterans

*"There are fewer and fewer persons entering the field of trauma therapy every year. I go to conferences and I mostly see older clinicians near retirement. Who will be there to help the veterans when we retire because we certainly can't keep doing this forever with the way VAC treats us."*- medical practitioner treating disabled veterans

*"I will not take on anymore VAC clients. I am sorry but I cannot deal with the amount of work required to complete their paperwork. They don't pay me for it and I could use that time instead to be treating other clients for work I will be paid for."*-clinician treating disabled clients

### **General**

Due to a number of factors for which VAC is directly responsible, medical practitioners have either refused to take on any VAC clients, minimized their VAC client case load and/or refused to bill VAC directly, hence putting the responsibility on the disabled veteran to complete the arduous paperwork demanded by VAC. This is most disturbing. As the already overburdened health care system limits care to disabled veterans, disabled veterans are surely suffering.

VAC's mandate according to the *Department of Veterans Affairs Act* charges the Minister of Veterans Affairs with the following responsibilities:

*"The care, treatment, or re-establishing in civil life of any person who served in the Canadian Forces or merchant navy or in the naval, army or air forces or merchant navies of Her Majesty, of any person who has otherwise engaged in pursuits relating to war, and of any other person designated...and the care of the dependants or survivors of any person referred to..."*

VAC employs very few medical practitioners directly. Of these medical personnel, very few, if any of these practitioners directly employed by VAC, actually provide care and treatment to VAC clients. These practitioners are instead employed in a more medically administrative capacity, providing assessments and, sometimes, referrals as well as authorizing treatment plans and medication. In order to fulfill its mandate to provide "care" and "treatment" to disabled veterans, VAC must rely overwhelmingly on the goodwill and cooperation of the medical community

and health care system throughout Canada. VAC is responsible for a number of factors which have long tested the goodwill of the medical community.

### **1) *Lack of Transparency in Pension Decision Making Process***

As discussed in greater detail in the Pension Application and Decision process, veterans are required but appear to be rarely directed by VAC to provide reports from medical specialists to support an application for a disability pension. When a decision is rendered by the Department, the decision is forwarded to the client with nothing sent to the medical specialist. The disabled veteran, usually unskilled in medical jargon, must then take the decision to the reporting specialist to decipher the document. Most disturbing from the standpoint of medical specialists who submitted the reports is that the qualifications or medical experience let alone the individual who rendered the decision are not identified. The unknown author of the decision, more often than not, questions the evaluation of the medical practitioner. VAC has refused multiple requests to identify the individuals and their qualifications. In one notable case, a treatment team has made multiple requests over a ten-year period. VAC has refused to respond to these specific questions.

### **2) *Complex Bureaucracy and the Excessive Demands for Paperwork and Justification***

*"I have dealt with a number of insurance companies on disability issues and not one of them is as complex as VAC"*-medical practitioner treating disabled veterans

VAC's demand for paperwork, which far exceeds the norm required by Insurance Companies, has proven to be the most problematic and troublesome for medical practitioners. Claims are filed to Blue Cross but reports can be requested by District, Regional, National or Treatment Authorization Centre authorities. If a practitioner does not complete a claim in complete accordance with the Blue Cross requirement, Blue Cross often sends the claim back to the practitioner for even minor errors which could easily be corrected by a telephone call. Practitioners treating clients with chronic conditions encounter the most obstacles at VAC. Reporting required for on-going treatment is often denied as a matter of procedure, forcing the practitioner to submit yet another report.

### **3) *Unqualified and Unprofessional Scrutiny of Medical Reports***

In addition to the mystery surrounding the qualifications of the adjudicators who render decisions for disability pensions, non-medically trained VAC bureaucrats frequently question the reports of medical specialists. In administering treatment

programmes or authorizing medication, VAC bureaucrats will deny requests for treatment but will not provide reasons. Most disturbing is that VAC bureaucrats have ignored the entire body of a report to take one item out of context in order to deny the treatment. This obviously flies directly in the face of VAC's legislated obligation to provide "the benefit of the doubt" to the client.

#### **4) *Delays and Failure to Reimburse and Inadequate Payment for Reports***

Due to the amount of paperwork required to be reimbursed for each submission, practitioners will often submit invoices for a number of sessions. The delays for repayment often exceed 30 and even 60 days. This is an unnecessary wait time for practitioners who depend on this source of income. Contracting Blue Cross has increased wait times considerably from the two-week turn-around prior to Blue Cross involvement.

Reimbursement for reports is an almost universal complaint amongst practitioners who deal with VAC. Firstly; VAC does not readily make available payment scales for treatment let alone reports. The standard policy is to send a letter to the client stating that VAC will reimburse up to \$75(???I'm not sure of this) for a report if the client earns less than \$25,000 per year. However, most reports require at least one hour of assessment and another two hours of writing. There are not any medical practitioners that can produce a report and fairly charge such a small amount. Psychiatric reports can often cost more than \$500 and reports requiring complete physical evaluations by physiatrists can cost more than \$1000. In one reported case, a psychiatrist has waited more than two years to be reimbursed for a report directly requested by VAC. Such disrespect for practitioners by severely strains the goodwill practitioners have in dealing with VAC's complex and demanding bureaucracy.

#### **5) *Lack of Creativity in Supporting Treatment Options***

The battlefields of war have long been the leaders in churning out maladies and disabilities which have tested and expanded the capacity and understanding of medical practice. Surgical techniques, penicillin and Post Traumatic Stress Disorder are just of the few areas of medicine's understanding expanded by the war experience. VAC seems profoundly unaware of this reality. The only departmental hospital, Ste Anne de Bellevue, is overwhelmingly geared to caring for its 475 WWII and Korean disabled veterans. Modern battlefield ailments such as Gulf War Syndrome, Bosnia Syndrome, Afghanistan Syndrome as well as the well-established but increasingly declared psychological disorders continue to confound VAC in its limited ability to respond with adequate treatment and care.

The recent studies and rulings in the USA and the UK on Gulf War related-illnesses are all but ***ignored by VAC while disabled veterans are still forced into the unconscionable indignity to prove each and every condition is related to their service.*** Similar complaints have come from veterans of Yugoslavia, Rwanda and other theatres of operation.

For example, Group therapy is widely recognized as one of the pillars of psychological care and treatment. VAC only reimburses practitioners for such care in exceptional circumstances, even though DND has a national program to provide group therapy for CF members in need. This flies in the face of logic on the basis of economics and cost savings. One hour of group therapy costs marginally more (perhaps 50%) than one hour of individual therapy but upwards of seven or more suffering veterans could benefit from such care. Many practitioners will be reimbursed for individual therapy but refused reimbursement for group therapy.

In one dramatic case, an internationally renowned specialist in trauma therapy has been reimbursed by VAC for treating individuals for more than thirteen years. She has trained DND and VAC personnel as well as groups from the Department of Indian and Northern Affairs. She has also been providing group therapy for more than six years while VAC refuses to reimburse her for these services which represent more than 100 sessions during this time frame. Psychologists have also encountered similar refusals by VAC to reimburse for Group Therapy.

VAC seems unwilling to engage in sponsoring studies in improving the care of modern veterans even though research continues in the USA, the UK and many other western nations. Even when the research from these nations showing positive results is presented to senior VAC officials, there appears to be a complete lack of will to explore these options to treat chronic battlefield conditions.

## **6) *Unique (to VAC) Medical Definitions and Standards***

*“They (VAC) say one thing to the Canadian Public knowing full well that the Canadian public will understand another thing. In this way, Veteran’s affairs convinces the public that they are caring for veterans when they really aren’t”-disabled veteran*

The VAC *‘bible’* on medical ailments is the Table of Disabilities. The definitions and award equivalents, although medically based, appear dramatically out of touch with the rest of the medical world. Furthermore, when the limitations of this unique guidebook are coupled with the lack of transparency in rendering pension decisions, the negotiation of the complex bureaucracy, practitioners all but throw up their hands at the difficulty in dealing with VAC.

The creation of an alternative reality at VAC is nothing new nor does it appear to be something to be abandoned in the near future. The foundation and the gateway to programmes under the new Veterans Charter are based upon the Veteran not only being disabled but the veteran must agree to enter “work rehabilitation”. The term rehabilitation is not commonly used in North America or in Europe as it relates to work placement. The true can be said about VAC’s version of medical case management which does not actually involve medically trained case managers. According to one physical rehabilitation and case management expert, VAC could have as few as only one employee who is actually trained in the medical case management model. As one veteran states:

**7) Frustration at Seeing Clinical Work Unraveled by VAC Treatment or Mistreatment of Client**

*“The lack of support from Veterans Affairs is instrumental to the deterioration of the veterans’ conditions...if they (VAC) left us to do our work, then chances are very good that the client would progress more positively.”-medical practitioner treating disabled veterans*

The difficulties of complex and chronic combat-related injuries are challenges in treatment and care delivery. Practitioners focus great energy and time in providing care for disabled veterans. For all the obstacles detailed above, practitioners are often confounded at every opportunity to provide consistent care which addresses the injuries. This is especially true for psychological disabilities which represent the single largest claimed disability for the past two years. VAC’s inconsistent support, unnecessary and harmful scrutiny and complexity of the bureaucracy often result in VAC directly causing the deterioration of a client’s condition. In return, the workload of the practitioner increases dramatically as they continue to remain committed to do what they can to stabilize the condition of the client under such difficult circumstances.

**8) Lack of Clear Reporting Methods**

VAC has fluctuated between providing absolutely no guidance whatsoever for medical practitioners, to producing medical reporting forms which have confounded both practitioners and clients. The latter is best illustrated by the psychological questionnaire which VAC obligated practitioners to use approximately four years ago and then later withdrew due to complaints. One practitioner stated:

*“The questionnaire literally gave my clients such a headache that I needed to stop administering it. Not one practitioner I know supports the questionnaire. Why does VAC jeopardize the client’s condition with such*

*an unsound format when there are perfectly good and well-tested tools already available”?*

The most recent physicians questionnaire format released by VAC appears to provide fewer difficulties but many practitioners report that they were not consulted on the questionnaires design nor were have the practitioners been provided with copies let alone guidelines in using the new questionnaire.

### **Recommendations**

- A) Profession, identity and qualifications of the individuals rendering pension decisions must be indicated on the pension decision letter. Practitioners who submitted reports for the application should be carbon copied in the pension decision letter so that they can better support their clients.
- B) The Department must expand the work of the Special Needs Advisory Group to include a working group with VAC employees to allow any input from practitioners who could recommend changes to make the Department more practitioner-friendly.
- C) The above working group would develop guidelines for ensuring specialists recommendations for treatment and prescriptions are not questioned or denied without ample justification; and a rapid appeal process more efficient than the equally obscure administrative appeal process now in place, which must be appealed by the veteran and not the practitioner.
- D) The working group would develop rates of reimbursement for writing reports more in keeping with the work involved, and the real costs of involvement in providing such reports. The \$25,000 limit should be immediately revoked. If VAC requires a report, VAC should pay the actual cost of the clinicians' time.
- E) The working group would help improve the revised Table of Disabilities which has been promised for more than two years at time of publication as well as creating questionnaires which are more relevant to the medical community, as opposed to bureaucratic needs.
- F) The working group would hear from specialists in all areas of care to explore the possibilities of supporting newer treatments. '*Made in Canada*' research could be supported amongst the veteran population.
- G) Group therapy must be immediately supported, as well as finding a way to recognize the skills of psychotherapists by working with provincial agencies or international equivalents managing these bodies. VAC could also support and fund the creation of a body of non-VAC specialists in psychological therapy to establish and run accredited courses.
- H) VAC must employ **medically trained** case managers (occupational therapists, physiotherapists, registered nurses and social workers all with training and experience in medical case management) to deal with practitioners and manage the creation of treatment plans and care.

Medically trained case managers would then be able to provide a seamless program administration between practitioner/client and the bureaucracy.

- I) The working group and the employment of case managers should avoid the 'VAC centered client neglect' and actually focus on client-centred care, hence avoiding the scenario where poor administration actually harms the client.
- J) Rehabilitation and Case Management experts must be included in both SNAG and the working Group.
- K) Practitioners presently have no valid recourse with VAC. The creation of an Ombudsman for VAC would provide impartial and potent recourse for practitioners who are the foundation of disability management.

## **Kicked While We are Down: VAC Disability Clients have their Pensions Deducted from their Income but CF Members Do Not**

*“It’s bad enough that we don’t have our careers anymore, we were kicked out of the military because we are disabled, we are dependent on a Department [VAC] that doesn’t care. Why should we have what little disability pensions we fought so hard for deducted from the already reduced income we get from SISIP while CF members keep their salary, benefits and a VAC pension? They are kicking us when we are down. It just isn’t fair.”-disabled veteran*

Disabled veterans who collect SISIP and are fortunate to receive a VAC pension have the VAC pension deducted from the SISIP payments. However, VAC pension is not considered income. For that reason, serving CF members who are injured and still serving collect both their full salary and VAC pension. For those injured and **not** healthy enough to work, they must leave the military, apply for a reduced income replacement through SISIP at 75% of their release salary and then any other income, including their forces pension if they are eligible **as well as** the VAC disability payments are then deducted from SISIP.

This is a multiple whammy for the disabled veteran: unable to work, loss of previous earnings level and potential for promotion, a usual long fight with VAC only to have it taken away by SISIP deducting the hard-fought disability pension.

The newly appointed Ombudsman, Yves Cote, sent a letter to the Minister of National Defence on October 26, 2005. Each Member of Parliament and every Senator should read this letter to see a most concrete example of why disabled veterans rightly feel discriminated against. Mr. Cote’s letter does not require any elaboration and highlights a perfect case to show how an ombudsman can defend the rights of disabled veterans and their families when countless individuals have run up against the same bureaucratic wall:

*Dear Minister Graham:*

*I am writing with respect to the Special Report entitled Unfair Deductions From SISIP Payments to Former CF Members. As you may recall, my predecessor provided this report to former National Defence Minister John McCallum on August 27, 2003. On October 8, 2003, Minister McCallum wrote to the former Ombudsman, commenting that the report was “thoughtful and timely” and advising that he agreed with all of the recommendations it contained. The report was made public on October 30, 2003. On November 4, 2003, the House of Commons Standing Committee on National Defence and Veterans Affairs (SCONDVA) unanimously passed a motion imploring “the Defence Minister and government to accept and enact the recommendations forthwith.”*



*While three of the report's recommendations have been implemented, two remain outstanding. These concern the offsetting (deduction) of Veterans Affairs Canada (VAC) disability pensions awarded under the Pension Act, awarded as compensation for a disability resulting from military duty, from the amount paid out by SISIP Long Term Disability (LTD) as monthly income replacement benefits.*

*It might be useful to describe some of the rules, terms and conditions relevant to these recommendations.*

*The SISIP LTD plan guarantees CF members 75% of their previous salaries for up to two years if they are released, in particular, because of a service-related disability. Payments can continue to age 65 if the member remains disabled. However, SISIP LTD does not necessarily pay the whole 75% itself; under the plan, any other source of income a member receives is taken into account and offset from the amount SISIP pays directly.*

*VAC disability pensions, even though they are not considered income but rather disability benefits aimed at compensating CF members for injuries suffered in the line of duty, are considered a source of income under the SISIP LTD formula. Therefore, they are taken into consideration when SISIP LTD determines how much it will pay out to disabled former CF members in income replacement benefits.*

*The Ombudsman's report recommended that since VAC disability pensions are not income, they should not be considered as income when calculating SISIP LTD benefits. The report also recommended that individuals who had previously had their SISIP LTD benefits reduced be reimbursed retroactive to October 27, 2000. (This is the date on which all serving CF members became entitled to collect VAC disability pensions while still serving, regardless of where their injury occurred. Before that date, only those injured in a special duty area were entitled to collect the tax-free disability benefit while still serving and collecting a salary.)*

*Following my meeting with you on September 27, 2005, our General Counsel, Mary McFadyen, met with your Special Assistant, Brian O'Neil on October 5, 2005, taking the opportunity to explain why we think these recommendations should be implemented, and pointing out the inherent unfairness in considering a pension intended to compensate for a disability as a source of income deductible from SISIP LTD payments.*

*It is important to emphasize that the new Veterans Charter may correct this inequity, but this will happen only from the date of its coming into force (possibly April 2006) onward; my understanding is that the Charter will not have any retroactive effect. This means that former members not falling under the new Charter (i.e., those currently in the system and any others entering the system between now and the coming into force of the Charter) will continue to be subject to the rules under examination here. In other words, those who are collecting SISIP LTD payments and receiving VAC disability benefits under the Pension Act will continue to have their SISIP LTD payments reduced by the VAC disability benefits they receive.*

*To illustrate why I believe this is fundamentally unfair, I would like to use the following hypothetical examples.*

*Let us examine the situation of two Master Corporals serving in the same Army unit, both having eight years of service and both being injured in the same incident (before the coming into force of the Charter).*

*MCpl A suffers injuries that leave him permanently disabled, but the disability is not severe enough to prevent him from continuing to serve in the Regular Force. Let us assume he was assessed at suffering from a 20% incapacity, which results in a monthly VAC pension of approximately \$400.00. This is a pension which, normally, he would receive tax-free for the rest of his life. Assume further that this member continues to serve for another twenty-five years, and eventually retires as a Master Warrant Officer. On retirement, he will be entitled to a full (superannuation) pension based, of course, on his salary in his last five years of service at a higher rank than when he was injured.*

*According to the regime now in place, this member will receive his VAC monthly pension in addition to his Regular Force pay from the time of his injury to the time of his retirement, and, when he retires, he will receive it in addition to his superannuation pension. In other words, he will always receive his (tax-free) VAC pension in addition to his other income.*

*Let's now turn to MCpl B who was much less lucky. His injury was much more serious. In fact, it was so serious that he was released from the CF as medically unfit to serve. He applied for a VAC pension and was assessed at 70% incapacity. This entitles him to a VAC pension of approximately \$1400.00 per month (assuming he was single and had no children). Let us examine his situation in more detail:*

- he lost his job;*
- his physical impairment is so serious that the likelihood of his finding a civilian job may be extremely limited;*
- because he had only eight years of service, he is not entitled to (superannuation) pension payments;*
- under SISIP LTD his income will, upon release from the CF, be reduced to 75% of his regular force salary; and*
- he will not be able to collect his VAC pension in addition to his SISIP LTD benefits; on the contrary, the value of that pension will be offset from his SISIP payments.*

*The two examples I have just used – and I believe they are not farfetched – demonstrate why, in my view, there is a fundamental element of unfairness in the present system which leads to real and serious inequities. It is this very unfairness that the two recommendations that have not been implemented are meant to redress.*

*I believe that a strong case can be made that VAC pension payments should not be considered as income replacement as such, but rather as compensation for the consequences flowing from disabilities suffered (e.g., loss of enjoyment of life, loss of career opportunities, continuing pain and suffering, etc.). Incidentally, I presume that the changes made in 2000 to allow Regular Force members to collect their regular pay and their VAC pensions were based on a*

*similar rationale, i.e., that the VAC disability payments are **not** income replacement but rather that they are intended, as I just indicated, to act as compensation for losses other than losses of income.*

*If this is correct, and if one assumes that the primary purpose of SISIP LTD is to act as income replacement, then it seems to me that it would be logical – indeed, imperative – that a change should be made to prevent VAC pension payments from being offset from SISIP LTD benefits. Otherwise, the system will only be seen as condoning treatment that is significantly unfair and inequitable to those who, like MCpl B, are most disabled and who suffer most.*

*Because the situations that soldiers like MCpl B find themselves in result directly from their military service, from their service to their country, I believe they deserve better. They ought to be treated with care, compassion and generosity. They ought to be treated in a manner that is substantially similar to that of soldiers who are able to continue serving their country, in spite of the injuries they have suffered.*

*Given that this point was raised when we met, I would also add that, during the Office's investigation of this matter, SISIP President, Pierre Lemay, advised us that removing Pension Act disability payments from the formula for determining SISIP LTD payments would cost approximately \$5 million per year. We have not independently verified this. I will only say that if Mr Lemay is right, it does not appear that the money required to correct this serious inequity is disproportionate.*

*I understand that you have received advice from the Department on this matter, and will soon be making a decision. As you know, the role of an Ombudsman does not end after making recommendations. It continues afterwards to ensure that, to the extent possible, those recommendations are acted upon by the organization. As the recommendations in this Report have been accepted by your predecessor, the Honourable John McCallum, and also endorsed by the Honourable David Pratt, when he was Chairman of SCONDVA, I would urge you to consider giving effect to them.*

*As you know, there is considerable interest in this matter. The Royal Canadian Legion strongly supports these recommendations and we receive constant inquiries from serving and former CF members, as well as from members of Parliament and the public, as to whether or not the recommendations will be implemented.*

*I believe strongly that this inequity should be corrected. I feel a responsibility to update my constituents on this matter, and given the passage of time, I consider it imperative that I do so at the earliest opportunity. I would therefore suggest this matter be addressed on a priority basis.*

*I thank you for your thoughtful consideration of these recommendations and I look forward to what I hope will be a positive response from you.*

*Yours truly,*

*Yves Côté, Q.C.  
Ombudsman*

## **Recommendation**

- 1) That the government of Canada, specifically the Minister of National Defence, do exactly what the Ombudsman's letter urges him to do on "*a priority basis*".

## **Fighting the War Once More: The Pension Application and Decision Process for Veterans Suffering Operational Stress Injuries**

*"I had a good day until I had to deal with VAC."*-disabled veteran

*"Every file is a client. You would never put a veteran on the floor or jam the veteran into the back of a drawer and forget about the veteran. You treat each file as if the veteran were in front of you. Unfortunately, most employees have forgotten that and no one is telling the new ones."*-VAC employee

*"The application system is broken."*-disabled veteran

### **General**

*"They never gave me an interview or told me how to fill in the forms. VAC mailed me the forms and just told me to get a doctor to do it."*-disabled veteran

*"Because of my disabilities I have had to deal with all kinds of government departments...CPP, DND, Social Services, Transport and even Revenue Canada, but not one of them is as insensitive to me as Veterans Affairs have been. They [VAC] are the most anti-veteran of government agencies."*-disabled veteran

Veterans suffering from psychological disorders as a result of their service to their country are the single largest pensioned condition for CF veterans, and most likely for all disabled veterans who are clients of the Department. There are more than 8,000 clients pensioned for Post-Traumatic Stress Disorder (PTSD) alone.

Disabled veterans in general often experience many unexpected pitfalls and unnecessary delays when applying for disability pensions. Applying for a pension can be as daunting as completing Income Tax forms, with a major difference in that VAC does not always supply pension application guides or assign a pension officer to provide advice directly to the client.

Many disabled veterans report that VAC rarely informs the client, nor provides standardized responses to similar or identical requests. Veterans are fortunate if they are able to find informed and concerned VAC administrators who do know more than the basic guidelines in VAC publications or the internet website. Many employees on the other hand are uninformed and/or treat veterans as if the veteran were suffering some educational defect. This sends a debilitating message to the disabled client who is already suffering self-esteem issues due to the disability.

This is not to say that veterans need to be treated with kid gloves, rather the whole purpose of VAC is not an employment agency for civil servants, but to serve veterans with their justified entitlements.

### ***Mission Statement or Pretty Façade?***

*“To provide exemplary, client-centred services and benefits that respond to the needs of veterans, our other clients and their families, in recognition of their services to Canada; and to keep the memory of their achievements and sacrifices alive for all Canadians.”-VAC mission statement*

*“Our letters are crap.”-VAC employee*

*“VAC does not want us to know what benefits and programs we’re entitled to.”-disabled veteran*

This mission statement is not readily apparent in the service provided by VAC at many district offices, and is noticeably lacking in correspondence from higher departmental levels. The Department's announced role in the pension application process includes **providing assistance and counselling to applicants** in preparing applications, obtaining information in support of the application, requesting and reviewing service records and obtaining current medical information. Pension legislation includes a long-standing "benefit of the doubt" provision. This provision requires, in adjudicating a decision, that VAC will make every reasonable inference in favour of the applicant. Furthermore, VAC is further obligated by this section of the Pension Act that any uncontradicted evidence presented by the applicant that is credible in the circumstances be accepted, and that the decision resolve in favour of the applicant *any reasonable doubt* as to whether the applicant has established a case.

Unfortunately, the experience of an overwhelming number of clients is that VAC makes rulings with guidelines stricter than any court of law.

*“Benefit of the doubt my a--. They [VAC] expect us to prove beyond any and all doubt whatsoever and even that isn't good enough.”-disabled veteran.*

In the auditor-general's report of 1998, one recommendation was “Veterans Affairs Canada should develop service standards for the Department's role in preparing a first application for disability pension benefits.” VAC responded:

*“The Department agrees and therefore included such standards in its 1998 brochure "Veterans Affairs At Your Service" in the sections "Meeting Your Needs" and "Information and Advice".*

This brochure is frequently not provided to the clients, let alone explained what many of the complex processes and concepts involve.

***The reality is that many veterans do not receive adequate explanations as to why an application has been denied.***

Instead it seems that VAC operates like the insurance company in the John Grisham novel "The Rainmaker": the Department often denies or offers a minimal award forcing the disabled veteran to return again and again. Veterans need to know that it may take years to achieve mutual satisfaction with regards to pension benefits.

Referring again to the AG report:

*"We found inconsistencies in the level and nature of the services provided by the Department in counseling applicants. For example, in some offices, we noted that counseling was provided to applicants in identifying service-related disabilities other than those initially put forth by the applicants. In other instances, we found that the focus was limited to the conditions identified by the applicants." This is a serious problem because the quality and completeness of the application is important in obtaining the right pension decision **the first time.**" [bold not in original]*

This is an ongoing problem of near epidemic proportions more than seven years after the AG report was first released.

### ***Harmful Scrutiny: The VAC Process Worsens The Clients' Conditions***

*"I was proud to serve Canada and I was willing to die or be disabled, but VAC makes me feel ashamed of receiving my disability benefits."*-disabled veteran

*"I have to get on my knees just to get VAC to grant what I am entitled to."*-disabled veteran

*"They make our condition worse."*-disabled veteran

*"They take years off a veteran's life."*-disabled veteran

For the sufferers of psychological injuries which are the single largest pensioned condition for the past few years, dealing with the Department has side-effects which, if suffered as a result of medication, would result in the medicine pulled off the shelf immediately. In fact the whole process can be as traumatic (or worse) as the original experiences that triggered Post Traumatic Stress Disorder (PTSD), or the other severe psychological disorders veterans suffer.

Rather than give the benefit of the doubt as stated in VAC policy, the burden of proof rests with the veteran. For veterans with minor disabilities who are cognitively functional find this process extremely difficult to understand and daunting. For sufferers of psychological disorders, meeting such impossible standards accompanied with the scrutiny of the Department makes progress through the pension application process literally terrifying to paralytic proportions for the client. It is infuriating for many veterans to feel that their claims are being scrutinized as if they are attempting to defraud the government.

Further complicating matters is that there appears to be minimal, if any, co-operation between DND and VAC in defining what constitutes a disability and the specific limitations imposed on the CF member/veteran. Usually there is more than one disability, which can include both physical and mental conditions. Such complexity is difficult enough for the disabled veterans and their families to endure.

***Once they enter the pension application process, the veterans, their spouses and children all suffer the effects of an insensitive bureaucratic process which appears more geared to catching criminals defrauding Canada Revenue Agency than actually providing benefits in a manner concomitant with the dignity and honour a veteran deserves.***

For example, the most common award for PTSD appears to be in the 30% range regardless of the severity. Such an award is highly disturbing and inconsistent. Most applicants who apply for PTSD, have done so because their symptoms are severe enough to have affected their social and professional life. By definition, the VAC Table of Disabilities indicates that when PTSD reaches this stage, the sufferer is entitled to an award of 60% or more. In such instances, it appears that the policies and guidelines are not lacking, but the adherence to such guidelines are. An Ombudsman would be able to investigate such systemic allegations and make appropriate recommendations if necessary.

### ***Ignoring the Medical Evidence***

*“What is the point of VAC providing me with a medical questionnaire if they don’t read my assessment? I was fortunate enough to have been given the relevant section of the Table of Disabilities and even when I reported exactly where my client fit into the level of disability, they still ignored my report.”-clinician treating disabled veterans.*

A near universal complaint by practitioners and clients is that VAC is not considering the severity or the diagnosis provided by medical practitioners. The generally accepted reality in the medical field over the past twenty years have accumulated ample evidence to show that of those who suffer chronic PTSD will have this condition for life, hence the medical term “chronic. According to the



DND ombudsman, up to 20% of the CF may be affected by PTSD, or other OSI's, and this level is likely to increase because of the operational tempo. Gauging the impact of OSI's is complicated by the fact that military personnel are often reluctant to admit that they have psychological problems.

This reality is lost on Veterans Affairs Canada. Recent statements by the Deputy Minister are disconcertingly revealing of how **VAC has dramatically distorted medical reality:**

*“What we found in the pension system was it was a kind of perverse system, in effect, because we had quite a large number.... We took a number of files between 1998 and 2002 and looked to see how many people were coming back to us for additional pensions. People were making this their life's work. We had people coming back anywhere from 9 to 17 or 18 times, looking to boost a pension.”*

And

*“We try, of course, in Veterans Affairs, to be fair and to judge rationally how sick or how disabled someone is from the services they rendered for Canada. They will tell us they are sicker than what we believe or what they can prove, and it becomes a kind of adversarial battle.”-Deputy Minister Jack Stagg to the Parliamentary Subcommittee on VAC*

These themes have been repeated by the Minister and other senior bureaucrats at VAC. It is truly unfortunate and highly disturbing that the highest-ranking individuals in VAC are so insensitive to the disabilities of the veterans they claim to serve. The DM and the Minister have blamed, on more than one occasion, the disabled veterans for the very problems with which VAC is afflicted. *The problem is not the disabled veteran, but the system which provides inappropriate, inconsistent and inadequate decisions in a blatantly callous manner to veterans suffering not just psychological disabilities but most pensionable conditions.*

***When the Deputy Minister shows such callous insensitivity to disabled veterans, It is not surprising that, in spite of VAC protests to the contrary, sufferers of severe and chronic psychological disabilities are terrified of having their pensions taken away and forced into C-45's CF-Workfare programs.***

### **VAC Unprepared for the Reality of War**

*“I went into the district office [of VAC] hoping to have a question answered. They refused to have someone help me with the question. Of course I got angry. Anyone would get angry. I suffer from PTSD [Post Traumatic Stress Disorder]. So I raised my voice and they threatened to call the police! They said I was aggressive and threatening! I mean don't they understand the illnesses of the clients they are supposed to help especially if they are the ones making me angry?”-disabled client*

The VAC pamphlet on PTSD clearly states "Anger is often a central feature in PTSD. With sufferers feeling irritable and prone to angry outbursts with themselves, others around them, and the world in general." Perhaps it should be incumbent upon VAC to actually read their own literature.

Adding to the VAC failure to understand psychological illnesses is the fact that a number of District offices reportedly have bullet-proof glass to greet clients. Veterans, young as well as the elderly and hard of hearing, have a difficult time communicating through the tennis ball-sized hole. The catch-22 is that they need to raise their voices to be heard to receive service but if the clients raise their voices, the veteran will be threatened with forcible removal.

Interview rooms have 'panic' buttons and secondary 'escapes' exits in case the veteran becomes agitated. It is in this humiliating and degrading environment that disabled veterans must apply for a disability pension. One can only admire the determination of disabled veterans who return from war and persevere under such insulting conditions. Perhaps VAC is more concerned about caring for themselves, than actually providing the services to disabled clients for whom VAC is legislated to care.

An Ombudsman for VAC would ensure that disabled veterans do not have to suffer such indignities at the hands of the Deputy Minister or the District Office in receiving the benefits to which these brave Canadians are entitled.

### ***Recommendations***

- 1) During the initial application phase, detailed descriptions of all disabilities and their impact including potential consequential problems are provided. This will go a long way to reducing the number of appeals submitted for departmental review or heard by VRAB. The goal has to be that the process be completed in a timely manner so that the veteran is not subjected to further distress and lengthy appeals.
- 2) More coordination between DND and VAC must occur. VAC will have to 'open its books' so-to-speak, to DND doctors and casualty experts. Changes to the Table of Disabilities, intake procedures, and pension awards must be completely reevaluated.
- 3) True consultation with veterans suffering OSI's and their families would provide guidance on the above two initiatives.
- 4) An Ombudsman for VAC needs to be created to monitor such widespread systemic problems in Veterans Affairs Canada. A VAC Ombudsman would carry out extensive investigations such as those which resulted in the ground-breaking reports "***Systemic Treatment of CF Members with PTSD***" produced by the DND/CF Ombudsman.

## **Conflict of Interest?: The Bureau of Pensions Advocates**

*"They threaten you and tell you if you don't like it, you can go to federal court. They know disabled vets don't have the money. They threaten you as if you've committed a crime instead of serving your country!"-disabled veteran*

### ***Introduction***

The Bureau of Pensions Advocates (BPA) provides free advice, assistance and representation for clients dissatisfied with decisions rendered by VAC with respect to their claims for entitlement to disability pension, or any assessment awarded for their pensioned conditions. The Bureau's advocates are dedicated **exclusively** to assisting clients in the redress process.

*BPA currently employs 85 full-time employees, of whom 37 are advocates, i.e., lawyers, and there are 48 support and administrative staff.*

### ***Who do BPA Lawyers Represent?***

BPA was established so that clients did not have to retain legal representation in order to make appeals against the crown. While this is in theory a good service, there are some problems with any agency that is supposed to be adversarial with its own employer. This can be viewed as "*biting the hand that feeds it*". Most people would be leery of such an incestuous relationship.

All Pensions Advocates are lawyers and members of their respective law societies. Given their experience in pension matters, they are considered specialists in the area of disability pension claims. If a veteran seeks assistance from BPA, a veteran should expect to be treated in the same manner as if he/she were hiring a private lawyer to represent the client.

What can be confusing is why VAC has to employ lawyers to review its own decision-making process. It is reasonable to have experienced staff reviewing pension decisions given the various federal acts associated with veterans' benefits and services. What is not so easily understood is why VAC maintains an elaborate review and appeal system. If a veterans' advocate, on a detailed review of the documentation, comes to the conclusion that a claim is meritorious, then the process should be straightforward in amending the original decision by returning the file to those responsible for the incorrect decision, i.e. VAC.

The reality is quite different. In spite of the increase in Departmental review from virtually non-existent in 1998 to more than 1,000 last year, BPA lawyers often do

not explain this option to the client: instead, by omission, forcing the client into the VRAB. Evidence of this is the more than 6789 cases heard by the Veterans Review and Appeal Board between April 2004 and March 2005; almost 50% of which resulted in a favourable amendment to the original decision. That equates to more than 3,000 decisions which were incorrectly adjudicated by VAC in the first place. One must ask how many of those clients would have been better served by the less traumatic and far less costly Departmental review process.

### ***Professional Misconduct?***

*This also raises the important ethical question of whether BPA lawyers are “prejudicing their clients’ rights” by not informing them of the Departmental Review option. Such questions have direct implications as to whether the BPA lawyers responsible are guilty of professional misconduct.*

Veterans report having numerous difficulties dealing with BPA to the extent that some veterans have ‘fired’ their lawyer. Complaints of “ambivalence” and “disinterest” are common. Other veterans have reported apathy to the degree that lawyers fail to take action on cases for months. In the cases when lawyers do push for Departmental Reviews, complications of another nature can arise. One veteran represented by a lawyer during this process was not informed of the Departmental Review decision after it was rendered for more than eight months. Of course, the question as to whether BPA or the Pension Adjudication Section is at fault would need to be answered.

One would only expect such problems from an arrangement involving the obvious conflict of interest position of BPA with respect to its employer, VAC. Nevertheless, one BPA lawyer defends their ethical standard in representing disabled veterans:

*“I am a member of the Quebec Bar Association. If a client believed that I had an interest other than his or hers, I would be disbarred. It is the same thing for all of my colleagues. This goes to show what our mandate is exactly. If a client states that he believes I am working for the Crown and not for him, I can be disbarred.” - Eric Marinacci, BPA lawyer*

The reality is that BPA lawyers are paid regardless of their performance, client satisfaction or possible breaches in professional conduct.

## **Summary**

Like other agencies within VAC, BPA is short-staffed and overworked. Each lawyer can be assigned 150 or more cases per annum. Considering BPA handled 11,000 cases last year, this would imply that each lawyer has a case load close to 300 cases per annum. The quality of the service rendered to the client is predominantly based on the dedication of the lawyer. The client has limited involvement in which lawyer will represent them. At the district level, there may only be one advocate. This means that development of trust, which is an essential part of the lawyer-client relationship, is not always possible, hardly the ideal way to handle such important legal matters.

## **Recommendations**

- 1) BPA representatives could review all decisions made by VAC before a final adjudication is made. This ensures that every decision will comply with all of the legislation, and is appropriate for the number and severity of disabilities of the client.
- 2) BPA should be able to act in a capacity similar to that of the inspector-general branch of the US armed forces *but only with respect to disability pension decisions*. This would provide valuable assistance to an Ombudsman for VAC, and would ensure that clients are being fairly treated. It would also provide the minister with a tool to assess whether or not VAC is fulfilling its mandate.
- 3) BPA must be separated as a truly independent office free of any possible conflicts of interest, real or perceived.
- 4) A VAC Ombudsman is created to ensure that BPA is delivering the services to VAC clients as it is mandated to deliver.

## **Accountable to No One?: The Veterans Review and Appeal Board**

*“One of the principles of jury law is trial by my peers...I don’t think 22 political appointees who have had the proverbial silver spoon in their mouth are my peers. Military personnel, veterans who have been in modern combat and who understand the effects of modern combat are my peers. I don’t see any members of the board with such experience.”- disabled veteran*

*“Perhaps even more bizarre is the fact that both the Prime Minister’s Office and the Minister of Veterans Affairs claim the other is responsible for the Veterans Review and Appeal Board. The bottom line is that the Board is deciding on veterans’ lives, spending Canadians’ tax dollars and it is accountable to no one.”-disabled veteran testifying to Parliamentary Subcommittee on VAC*

### ***Introduction***

The Veterans Review and Appeal Board (VRAB) is an independent, quasi-judicial agency established by Parliament in 1995. The Board replaced the former Veterans Appeal Board and the former Canadian Pension Commission.

The Board considers reviews and appeals arising under the *Pension Act*, the *War Veterans Allowance Act*, the *Veterans Review and Appeal Board Act*, the *Merchant Navy Veterans and Civilian War-related Benefits Act*, and other related statutes. The Board's objective is to ensure veterans, Canadian Forces personnel, Royal Canadian Mounted Police members, certain civilians, and/or their respective dependants receive the disability pensions and benefits to which they are entitled.

Within the Veterans Affairs Portfolio, the Board is the final level for pension appeals from decisions made at the review level by the Board itself, and War Veterans Allowance appeals from decisions taken by regional Review Committees of the Department of Veterans Affairs.

### ***Independent and Arm’s Length from VAC?***

VAC claims that VRAB is independent and yet the members are selected from candidates chosen by VAC and although rubber stamped by the Governor-in-Council, the final approval rests with the Minister of VAC. The members may or may not have any affiliations with the CF, veteran organizations or be themselves

veterans. Members have, over the past few years have been composed of more than 90% non-veterans without any medical experience whatsoever.

While VAC claims that VRAB is the final level for appeals, it is often the first level (see BPA above). In practice, once a client has been referred to BPA, the advocates most frequently prepare the client's case for presentation to VRAB even though a less costly and time consuming departmental review would correct the original decision. Since VRAB is an independent agency, VAC has no further involvement until VRAB announces its decision: *"This is similar to Pontius Pilate washing his hands when he gave custody of Jesus to the Temple priests."*- disabled veteran

### **Review by VRAB**

There are two levels of appeal, both of which can be very traumatic for the client. Review (not to be confused with Departmental Review) first involves the client and the BPA advocate appearing before a VRAB in the district or regional office. This is the only time that a client is permitted to appear in person. The lawyer presents the reasons for considering a change to the client's benefits and services. After which the client has an opportunity to address the board. Then the board members can ask the lawyer and the client questions. All of this information is recorded so that VRAB can refer to the testimony during its deliberations. A decision is suppose to be rendered within a minimum of four weeks and in fact is usually longer, possibly six weeks or more.

There are three possible VRAB decisions:

- Decrease the benefits;
- Maintain the same benefits; or
- Increase the benefits.

Once the decision is made, the client is sent a copy of the decision including information on how that decision was made.

### ***The Confusion between 'Departmental Review' and 'Review by VRAB'***

Although this confusion may appear innocent, it carries serious and lasting implications for the client. Once a file goes to VRAB for review, the reality is that the client's file can never be returned to the Department for the same condition for which an application was originally submitted in spite of legislation to offer numerous opportunities for this venue. Although there exists these legislative openings which are far less costly to the Canadian government and to the health of the client, VRAB appears very resistant to explore these options.

## ***Appeal***

If the client is unhappy with the Review Board's decision, the client can then re-submit the appeal, which is reviewed by VRAB in Charlottetown. An advocate from BPA is the only representative normally permitted to attend. Following the second presentation of the appeal, for practical purposes, VRAB makes its second and final decision.

Should the client disagree with this decision, clients have unanimously reported that they were only offered an appeal to a federal judge. If this option is selected, then it is the responsibility of the client to retain a lawyer and pay for all expenses associated with a claim against the Crown. Such legal actions can cost the client tens of thousands of dollars. So financial distress is now added to the psychological distress incurred by a lengthy appeal process. Of note, very few claims in federal court have been made against VAC. One obvious reason is that it is too much for the client in terms of financial and personal health.

As in the Review process, there are practices in the Appeal process which exclude important options in the legislation. The VRAB Act allows for reconsideration of client's cases if the VRAB Review or Appeal made an error of fact or law or if there is new evidence, which would have a dramatic change in how the case would have originally been ruled. These options are rarely offered to the client and there has not been a single client in this study who has been informed of this option let alone had it pursued by their BPA representative.

### ***The Problem May not Necessarily Lie with VRAB***

*"What you're telling me is that the appeals come by, you rule on them, they get shelved, and nobody really knows that the changes have happened. I'm just thinking of the principles of common law here. You're basing yourself on previous cases. You're telling me that you have a legal system, you're very close to being a legal tribunal, and yet you're not allowing the courts, or the people who are making the judgements out there, to base themselves on a precedent that's been appealed at a higher level."* -Anthony Rota , Charman of the Parliamentary Subcommittee on VAC directing a comment to the Chairman of VRAB

Most clients who enter the VRAB process need never have done so if VAC adjudicated fair and just decisions in accordance with their mandate, legislation and policies in the first place. One long-standing complaint is the lack of transparency in the VAC adjudication process. An Ombudsman for VAC could investigate these longstanding complaints and make impartial recommendations for the benefit of all.



As already mentioned, in the period between April 2004 and March 2005, VRAB heard 6789 claims. This number should be considered excessive because it is greater than the normal number of pension applications received by VAC per annum. It also indicates that there is a serious problem with how VAC determines benefits for veterans.

Yet the VRAB caseload apparently is not used as a call to action to determine what is causing the increasing number of cases. What should be apparent is that there are thousands of veterans who are dissatisfied with their pension assessments. This is a major error on the part of VAC and should be viewed as an example of the failure of the department to adjudicate appropriate decisions.

One of the Members of the Parliamentary Subcommittee on VAC developed two analogies about where the problem may reside in the increasing caseload at VRAB while directing comments to the Chair of VRAB, Victor Marchand:

*“In fact, if we did this with all of the government programs...it just amazes me how many problems we had the first time around. I wonder if you could make any recommendations resulting from your work that might prevent us from making mistakes the first time round, so we don't have to get to that stage. Could you identify systemic problems that you might see and make some recommendations, other than on the individual cases? You know, an ounce of prevention is worth a pound of cure”*

and

*“That's certainly good, but I was talking about the reasons people are coming to you in the first place. If I was dealing with my brain surgeon or 737 pilot, hopefully there wouldn't be too many mistakes. Obviously, we've had a lot of mistakes that have had to come to your level, so I'm just saying that when you find the reasons for those, you could feed them back into the system so that some veteran in the future doesn't have to go to an appeal.”-MP Larry Bagnell*

### **Recommendations**

- 1) A VAC Ombudsman be appointed which also has the authority to oversee the Veterans Review and Appeal Board.
- 2) VRAB to develop and publish clear guidelines for reconsideration of pension decisions by Review and Appeal
- 3) VRAB to provide VAC with clear guidelines which would allow a decision to be referred back to VAC for reconsideration.
- 4) Initiatives 2) and 3) once clearly outlined must be provided to BPA and made readily available for clients
- 5) VRAB should refer clients back to Department if case can be resolved by a Departmental Review.

## **Democracy Abandoned: The Creation of Bill C-45, The so-called New Veterans Charter**

*“If the process was transparent as the Minister claims, why were vet groups sworn to secrecy if not to keep the majority of veterans and public unaware? No other reason but manipulation.”*-disabled veteran talking about how C-45 was created

*“However, the language of Bill C-45 is not quite as comforting; you might consider it as the fine print on an insurance contract. And like fine print, it is full of limitations and restrictions. As the saying goes, “the devil is in the details.””*-disabled veteran testimony to the Senate hearing on C-45

*“I was privileged to sit in on information sessions that were destined to all portfolio employees, but honestly I can't comment unless and until I see the final act. That's filed with Parliament”* –Victor Marchand testifying to Parliamentary Subcommittee on VAC

*“We are not social experiments. We are not lab rats to be tested by a few power-hungry bureaucrats who have no idea what it means to be a veteran, let alone a disabled veteran.”*-disabled veteran talking about the New Veterans Charter

### **Background**

On 4 May 2004, Veterans Affairs Minister John McCallum and Minister of National Defence, David Pratt, unveiled plans to help Canada's modern-day veterans reintegrate into civilian life upon completion of duty.

On 20 April 2005, the Honourable Albina Guarnieri, Minister of Veterans Affairs, introduced legislation in the House of Commons for a new Veterans Charter for Canadian Forces members, veterans, their families and their survivors. The legislation was passed by the House of Commons on 10 May 2005 in under five minutes, *without debate and without going to committee*. This rapid passage was as a result of a meeting between the PM and the party leaders on the return flight from VE Day ceremonies in Europe marking the 60th anniversary of the end of WW2. The political leaders agreed on a deal to fast-track the package through the House of Commons and the Senate. This agreement followed unprecedented pressure from a number of key elements. Reportedly, Conservative and Bloc party leaders had been threatened by both the Liberal and NDP MPs, as well as the leadership of the six veteran organizations with which VAC has an exclusive relationship. Any politician who opposed the fast-tracking of C-45 would be accused as “*veteran haters*”.

On 13 May, Bill C-45 CF members and Veterans Re-establishment and Compensation Act received royal assent from the Governor-General.

### ***Due Process?***

*What strikes many veterans as odd (and even unbelievable) is that in the rush to honour veterans, our political parties have forgotten **that the core issue for which veterans in all wars fought was for responsible democracy.** In our system, responsible democracy requires consideration of government Bills by committees, input by witnesses and stakeholders and the oft-mentioned sober second thought of the Senate.”-veteran testifying in front of Senate Committee regarding C-45*

Bill C-45 was not considered by any Commons committees, and was the subject of only one meeting of the Standing Senate Committee on National Finance. This meeting was attended by the minister of VAC, several senior VAC officials, representatives of the six veterans' organizations with which VAC has an exclusive relationship. Due to the unusual rapidity with which it was forced through Senate and Parliament, only three veterans, with no ties or affiliations with any veterans groups, were able to come forward. The rest of the disabled veteran population and their families were excluded from having the chance to be heard.

C-45 was the subject of no discussion whatsoever by Parliament, even though there are several points within the legislation that needed to be worked out according to members of both the Commons and the Senate. VAC assured that the charter would be the subject of follow-on meetings open to disabled veterans at large and their families before its implementation in 2006.

### **VAC Claims Extensive Consultations Carried out in Creating C-45: Did this Occur?**

#### ***Consultation with Veteran Organizations***

*“Since the spring of last year, our modernization task force has undertaken extensive consultations with stakeholder groups, including the national veterans’ associations”-testimony of Minister VAC to Senate on C-45*

VAC involved **only six** of the dozens of veteran and ex-service organizations which exist throughout Canada. These six organizations represent as little as 20% or less of the entire veteran population. Nevertheless, the extent of the involvement of these six organizations was limited to a very select group of their leadership, perhaps a dozen, if not as few as only six individuals. These individuals were sworn to confidentiality by the Department from revealing

anything to do with the details of the discussions between the organizations and the veterans.

The leadership of the six organizations agreed in or around January 2004 to support the legislation in principle, as they had not seen the actual details of the proposed legislation. *These individuals offered this support in principle only* .

**The leadership of these six organizations agreed to support the new legislation upon the explicit understanding that any legislation concerning new programs would be guaranteed and subjected to full scrutiny and given due democratic process.**

In return for their support for this unseen legislation, VAC promised the leadership of these veteran organizations open public discussions, committee hearings and extensive consultations with the veteran community at large once the details of the legislation were tabled. In short, VAC promised that C-45 would be given the same respect Canadians have been promised by their democratic institutions in treating all legislation.

One may question the wisdom after the fact about supporting the legislation without any written guarantees. However, even those close to VAC were wise enough not to sign a blank cheque:

*“I was privileged to sit in on information sessions that were destined to all portfolio employees, but honestly I can't comment unless and until I see the final act. That's filed with Parliament” –Victor Marchand testifying to Parliamentary Subcommittee on VAC one week before legislation tabled*

When the Minister tabled and introduced the legislation on April 20, 2005, the leadership was seated in the Parliamentary Gallery above. They saw the legislation for the first time as little as 24 hours prior to the Minister tabling Bill C-45. Once again, their presence in the gallery was based on their *support in principle*, with the full understanding that C-45 would be given due process.

This due process never occurred. The leadership was never allowed to consult with their membership. Thus, the so-called consensus of veterans' organizations could be based on the views of as few as six people who actually saw the draft of the Bill before it was tabled. Furthermore, their support was conditional on the government granting due process to Bill C-45. This did not occur. Therefore, it would be safe to conclude that the Department had forfeited the support of even the select few representatives of the six veteran organizations.

## **VAC CF Advisory Council**

*"I was never told that the Council was disbanded. VAC just stopped holding meetings. I believe we did some very valuable work. This is no way to treat veterans and experts who have devoted so much time to helping the Department."*-prior member of VAC/CF Council

Established to address the needs of veterans, the Council included representatives of the same six veteran organizations as well as representatives from the CF. Medical specialists in rehabilitation, psychiatry and psychology were also present. The Council released a report in March 2004 titled "*Honouring Canada's Commitment: Opportunity with Security for Canadian Forces Veterans and Their Families in the 21<sup>st</sup> Century*". VAC claims that this document was the foundation for the programs under the new Charter. This is a strange claim since, according to insiders in the process, VAC had already written up the public document on the Veterans Charter which was to become the key document used for the next year in briefing CF members, politicians and informing veterans and the public.

Moreover, included in the report are 17 principles and processes as well as six priority issues which should guide the VAC task force in creating new programs. Although more general in their approach, C-45 manages to avoid including most of these principles and priority issues *as recommended by the VAC-CF Advisory Council document*.

Even more disturbing is that sometime before or shortly after the Council released its report, **meetings were suspended by the Department**. The Council was never allowed to discuss if the proposed Charter followed their many recommendations. *It goes without saying that the council was not only never shown the actual legislation, but was never allowed to provide feedback to the Department as to whether the new legislation would meet the needs according to the experience of the Council.*

The Council has been disbanded, and has never met during this entire and very limited, legislative process.

### **Feedback from Serving CF Members about the \$250,000 Lump Sum Payment**

*The CF members interviewed didn't want the \$250,000. They wanted the disability pension but the Task Force [VAC Modernization Task Force] didn't listen."*-VAC employee

A number of information gathering sessions were carried out on CF bases *after the proposed Charter programmes had already been developed*. The most

salient point that emerges is that CF members were asked questions about the then proposed Charter, only as it related to very general concepts as publicized in the VAC press releases. One of the few details available was the proposed \$250,000 lump sum payment for disability, in lieu of a disability pension. As confirmed in testimony to the Parliamentary Subcommittee on VAC, the overwhelming majority of CF respondents did not want the lump sum. Almost all, if not all, preferred the disability pension. This is quite telling as the details of C-45 had not been released explaining that the lump sum would be tied to pension award percentages as well as to the system of “fifths”. VAC had promised the Advisory Council and the representatives of the six veteran organizations that the ‘fifth’ system would be abolished.

### ***Consultation versus Marketing***

*“The truth is that there has been remarkably little consultation on the charter and the government appears to be more interested in public perceptions than in lasting results.”-veteran testifying to Senate Committee hearing on C-45*

The six veteran’s organizations at large and opposition political parties based their support on a 4-page press release. However C-45 is not a press release; it is a 50-page piece of legislation formally titled *the Canadian Forces Members and Veterans Re-establishment and Compensation Act*.

The Department has claimed to have carried out dozens, if not over 100 information briefings on the Veterans Charter. There is, however, a fundamental difference between marketing a product, and taking feedback during a consultation session. A few key VAC officials had already created the Veterans Charter first, and then carried out so-called consultation sessions afterwards. There is broad support for the principle of a Veterans’ Charter, however most MPs, Senators and their staff have did not have time to actually read Bill C-45. Therefore, to say that “there is strong consensus among political parties and veterans’ organizations” for Bill C-45 would be more than a slight exaggeration. Taking into account the points written above, *one wonders who, outside the few self-interested Department mandarins steering this process, actually support the legislation.*

***VAC built the product and then marketed the product. It was marketing that was shared with the public, the veterans, the politicians and the CF. Marketing is not consultation; it is selling an idea or product in its best light, while hiding its defects and drawbacks.***

## **Consultation with VAC Employees**

*“We’ve been told that if you have any problems, don’t expect them to get fixed until at least April 2006 when the new programmes for the Charter are in place.”-VAC employee*

*“No one from the Department has ever asked me what I think about the new Charter and of course they never asked our advice in creating it. I don’t know any of us on the front line delivering services who was asked for their opinion or advice. I guess we are just bottom feeders in the food chain.”-VAC employee*

*“The new Charter is causing angst and dissatisfaction for the clients and amongst staff”-VAC employee*

There is no indication that those bureaucrats in VAC responsible for designing the legislation, consulted in any manner with the very VAC employees who have had years of training and experience in dealing with clients and implementing programs for disabled veterans.

## **VAC Unilaterally Changed the Social Contract**

*“Who does VAC and the government think you [the veterans] are? The enemy?”*

-concerned Canadian

*“VAC’s mandate is **not** to protect the public purse at all costs but to make sure that veterans and their families receive what they need!”-disabled veteran*

Apparently the designers of the new Legislation did not consult with veterans’ organizations at large, disabled veterans, their families, the CF or the front line employees. If neither the clients who will receive the programs or those at VAC who will administer the programs were consulted, one can only conclude that bureaucrats wrote C-45 for bureaucrats in the best interests of bureaucrats

What actually occurred in the creation of C-45?

Why the confidentiality since this level of secrecy is reserved for threats to national security?

Are veteran’s issues or veterans themselves threats to national security?

Why did the authors exclude all parties and stakeholders?

Canadians deserve to know what took place to develop this most dramatic and fundamental change in the way Canada treats its disabled veterans and their

families. This complete scrapping of a social contract between Canadians and their veterans throws away 80 years of respect and dignity. This social contract was not negotiated away; it was taken away by what appears to be a few key self-interested VAC bureaucrats. The Department and especially these few bureaucrats had no right to take away that which was not theirs to take. The sacred contract between Canada, Canadians and its Veterans can only be changed as long as all parties agree. In fact, no parties participated in the actual details of changing the contract except for certain VC personnel. What gave them the right to change this sacred social contract?

### ***Recommendations***

- 1) A Public Inquiry must be immediately established to look into wrong-doing, and the secretive process surrounding the creation of C-45. Those responsible for the unilateral actions of VAC must be immediately fired.
- 2) The Public Commission would require an explanation as to why VAC did not address all of the 17 principles and processes as well as six priority issues contained in the report submitted by VAC-CF Advisory Council document.
- 3) C-45 must be returned to Committee to pass through the due process which Canada's democratic principles guarantee.
- 4) An Ombudsman's Office for VAC Canada needs to be created to assist in this process, as well as monitoring on-going complaints with the administration of existing VAC programs.



## **Hand in the Cookie Jar: VAC and the Process for Creating Regulation for C-45**

*“Serving members of the Forces do not have an open right to comment on political/military issues in Canada. They are legally constrained against publicly correcting or even explaining policies of the government in power.”-Pamela Stewart, Calgary Herald, Nov 4, 2005.*

*“No one has asked me for my opinion.”-VAC employee*

### **General**

Just as employees in VAC were excluded from the preparation of the legislation, VAC appears to be repeating this same mistake of ignoring the valuable input from VAC front line employees in the creation of the regulations. Furthermore, in spite of promises made during the Senate Hearing on C-45, VAC is not carrying out open and widespread consultations with disabled veterans, the CF and the families of both. In this manner, ***the VAC bureaucrats in charge of writing C-45 regulations are snubbing their noses at the institutions of the Parliament of Canada.***

### ***“Consultations” with an Exclusive Group of Six Veteran Organizations***

The same six organizations with which VAC had a confidential and exclusive relationship in the creation of C-45 are the only veteran groups who have been invited to be involved in the reviewing proposed regulations for C-45. VAC has not invited, nor has it allowed the participation of any of the dozens of veteran organizations in this process let alone families and the majority of veterans who don't belong to organizations.

The six organizations, as part of Phase I, were given less than one week to review proposed regulations, understand them, distribute them to their members, solicit feedback, record said feedback and report back to VAC. Since this was an impossibility, five of the six organizations apparently provided one dimensional responses. The sixth organization, although more comprehensive, expressed their concern that the process was artificially and detrimentally rushed. None of the organizations were able to solicit feedback from their membership at large.

Phase II, and III proceeded in a similar fashion with not a single veteran organization out of the six consulting with their membership at large. Input from members was limited to no more than a select handful.

All six organizations are reporting to Ken Miller. The representatives do not know if their concerns about this flawed process are being passed on to the DM and Minister.

***Most importantly, the six veteran groups do not know if any of their recommendations will be adopted, if any, nor will they be able to veto the final product if unacceptable.***

### ***Special Need Advisory Group (SNAG)***

*“...Bill C-45 is sound and sensible. It is the product of broad consultation, and is ready to go. I urge its immediate adoption.”-Dr. Neary, Chariman of SNAG*

In response to protests from a few brave veterans who actually read C-45, reporting on the VAC breach of promise to allow disabled veterans and families to have a voice, a Special Needs Advisory Group (SNAG) was established. In spite of the fact that the ‘consultations’ with the six veteran organizations have been underway since July, VAC created SNAG at the last minute to examine the potential impact of the charter on disabled veterans.

So what will SNAG achieve? This group is chaired by Dr Peter Neary, a history professor, and includes approximately four veterans, two medical practitioners, one CF member and two VAC representatives. SNAG has been told that the six veteran organizations will report to Dr. Neary, but the six veterans organizations have been told that they report to Ken Miller, the VAC front man for C-45.

Dr Neary has been proclaimed by VAC to be one of the major players in the development of the new charter. He claims to support veterans' issues even though he is paid by VAC for his services. Dr Neary is a professor of History at the University of Western Ontario. He has never served in the military, nor does he have any medical background. How does that qualify him to know what it is to go to war, suffer a disability and fight the system? Then why does he head an advisory group that is dealing with medical, bureaucratic and military issues?

If the Chairman of SNAG could not see any flaws in the Legislation while repeating the same flawed claims of certain representatives of VAC that C-45 was the product of broad consultations, how receptive will he be to criticism of, C-45? Dr. Neary is likely well-intentioned, but one must consider the saying about the road to hell being paved with good intentions.

The remaining members of SNAG all have a reputation of having a genuine concern for the welfare of veterans, without the possible bias of Dr. Neary. There are a number of factors, besides the possible bias of the Chair, which could severely hinder their good intentions:

- 1) The group members have been obligated to sign confidentiality agreements, further reinforcing the errors in the 'consultation' process with the leadership of the six veteran organizations to create C-45 (**of note, the participants of the six veteran organizations were not forced to sign such agreements, and they appear to have access to the same documentation**).
- 2) Although minutes are taken at the meetings, they are not available for public disclosure.
- 3) The Advisory Group reports to Ken Miller, a very vocal supporter, and the public face on C-45 who is the champion of pushing through the legislation, regulations, policies and implementation as soon as possible
- 4) By reporting to Ken Miller, valuable input would likely be filtered, and those that need to make difficult decisions to address the multiple limitations of C-45 will not be receiving the information directly. **Once again, the Minister will be protected from knowing the real situation by a few key bureaucrats.**
- 5) VAC appears to be controlling the agenda including timelines, meeting agendas, which individuals will testify, etc. How can the body provide objective, independent and well-researched advice if VAC has such control over the situation?
- 6) The six veteran organizations are already on the final phase of the consultation process. VAC and the Minister have committed publicly to putting the program in place by April 2006. How much leeway will SNAG be given to fully and thoroughly research the regulations and policies with deadlines already in place?
- 7) What if employees of VAC want to testify in confidence? They would not risk losing their employment as long as VAC is controlling many aspects of SNAG.
- 8) The Public, the CF and the overwhelming majority Veterans at large have no idea that SNAG exists. How can SNAG collect information and input on those who most depend on the Department, if stakeholders are unaware of the existence of SNAG or how to contact its members?

### **Focus Groups**

*"It was a farce"*-veteran who participated in a focus group

VAC has commissioned a private company to carry out interviews and focus groups with veterans regarding the new Veterans Charter. The focus groups have taken place in at least two major Canadian centres. Veterans are asked what they think about C-45 and how it would impact them. The problems immediately become obvious when most, if not all, veterans participating are not familiar with C-45 or the details of the Charter. The interviewers are apparently even less familiar, and do not understand the subject about which they are interviewing. The problems with the methodology of VAC's focus groups in summary are:

- 1) Most participants have not had access, or do not understand the details of the Charter,
- 2) Those participants that are given Charter information are given very little time to sufficiently understand what the Charter actually does or does not do,
- 3) Interviewers have very little, if any, understanding of the Charter; and,
- 4) Participants are picked by referral from SNAG or VAC. An overwhelming majority of veterans do not know about the existence of the Focus Groups, and couldn't participate even if they wanted to due to the exclusive referral process.

### ***How do CF Members Give their Feedback?***

The feedback and input of CF personnel at large is once again being ignored during the regulation process. However, unlike the few disabled veterans willing to overcome fear of reprisal and suffer ill health by speaking out, CF members are not allowed to speak out.

*“Serving members of the Forces do not have an open right to comment on political/military issues in Canada. They are legally constrained against publicly correcting or even explaining policies of the government in power.*

*The military is constrained, even when governmental decisions hurt the Forces' ability to fulfil its primary function: the ordered application of effective force. And such constraint is required even when members know they are being put into harm's way and may lose life or limb as a result of decisions made in Ottawa that have not been publicly debated.*

*Unlike civil servants in Ottawa, members of the Forces do not have a strong union to advocate their concerns.”-Pamela Stewart, Calgary Herald, Nov 4, 2005.*

C-45 ultimately applies to serving CF personnel. Due to the constraint on CF personnel to speak out, the VAC bureaucrats responsible are able to force through any program they wish, and the CF are impotent to do anything. This is the dignity and respect VAC wishes to bestow on future veterans? This is not how Canadians want to treat those willing to sacrifice their lives in order to preserve and protect Canada, Canadians and Canadian institutions.

### ***Recommendations***

- 1) The immediate creation of a VAC Ombudsman to investigate the regulation process and make binding recommendations.
- 2) If the VAC Ombudsman does not investigate the matter, the Board of Inquiry should do so as part of their mandate to investigate the creation process for C-45.

## **Throwing Away 80 Years of Dignity: VAC's Unilateral Creation of Bill C-45, The So-called 'New Veterans Charter'**

*"We are not social experiments. We are not lab rats to be tested by a few power-hungry bureaucrats with no idea what it means to be a veteran, let alone a disabled veteran."*-veteran talking about the New Veterans Charter

*"The new Charter is causing angst and dissatisfaction for the clients and amongst staff"*-VAC employee

*"I look at this and I couldn't do what they want me to do to get benefits. I would be homeless. I would be an alcoholic begging at Rideau Hall."*-veteran commenting on the details of C-45 legislation and regulations

*"We have so much work now. We are already at 110%, how can we give more?"*-VAC employee commenting on implementing C-45 programs

*"If the process was transparent as the Minister claims, why were vet groups sworn to secrecy if not to keep the majority of veterans and public unaware? No other reason but manipulation."*-veteran talking about the how C-45 was created

*"We are all humans. We all have a life. We have to seriously contemplate how we are going to handle this"*-VAC employee commenting on implementing C-45 programs

*"Who is going to handle the operation when the rest of us are training on the new programs?"*- VAC employee commenting on implementing C-45 programs

### ***Introduction***

VAC has proclaimed C-45 as the New Veterans Charter. This proclamation is highly misleading as the original Veterans Charter established under the mandate of the Department of Veterans Affairs Act consisted of 44 pieces of legislation and regulations. These 44 pieces respected all War Veterans, whether they served overseas or stayed at home. They provided opportunities for education, re-establishment and job placement and training for those who were healthy enough to benefit from those programs. Furthermore, the 44 pieces of legislation and regulations endowed upon disabled veterans and their families the dignity and honour they deserved. More importantly, disabled veterans and

their families were given the security necessary to support a veteran suffering a lifelong disability.

Korean Veterans were not originally granted access to these War Veteran benefits. However, through the mandate of the Department of Veterans Affairs Act, the Minister was able to have these programs apply to veterans of the Korean War and their families.

CF veterans to follow were not granted this respect. For fifty years CF Veterans have been denied these same benefits granted to 'war veterans' even though more than 40,000 CF veterans have been disabled in conflict and training since the end of World War II. The minister has parroted words from those mandarins in VAC championing the legislation:

*"To give you some history, returning veterans from the Second World War were offered a program that boasted of opportunity and security. But as they aged, the programs for veterans aged with them. Opportunity programs were dismantled and faded into history."*-VAC Minister's testimony to the Senate hearing on C-45.

One may then ask the question: instead of 'fading' programs into history, why did VAC not grant CF members access to these programs? The truth is that many of the programs have not been removed from history. Ministers have, and always had, the authority to revive the programs with a stroke of a pen. No legislation would necessarily be required. Even if legislation were required, the program details are already present and need only be updated as times changed. This upheaval caused by VAC in unilaterally forcing C-45 on the public, disabled veterans and their families would be unnecessary.

### ***Are CF Veterans Really So Different? CF Members are Already on Active Service***

*"And today we are embarking on the most profound transformation of veterans benefits in half a century. The New Veterans Charter I have tabled today represents an unprecedented investment in the futures of future veterans."*-Minister VAC

Veterans of WWII were granted access to programs based on the principle of 'active service'. Initially, active service was only applicable to those military members who had volunteered for service in the war. However, it was later extended to conscripted members and the others that remained in Canada.

Since CF members have been ordered, and can be ordered into harm's way merely by being members of the CF, the argument can be made that CF members are on 'active service' as soon as they join. This was especially the case after November 20, 1973 when Order in Council (PC1973) placed the regular component of the CF on active service both in Canada and abroad. Nevertheless, CF veterans have been denied access to these key programs.

The reasons for the inequality are likely many. The CF does not have a union to engage in collective bargaining. As a result, the government has been able to do as they wished with the forces without opposition from within the military. Being disabled may be a full-time job with all the commitment, and few if any of the benefits of employment. VAC has long benefited from the in-fighting and rivalry between veterans' organizations. The veteran membership of the most powerful organizations is overwhelmingly composed of War Veterans. These organizations have been unwilling to 'go to the wall' for the CF Veterans in such matters. As a result, it appears that these organizations have been tacitly, if not openly, willing to treat CF veterans differently from 'war veterans'.

***VAC has taken every step necessary to treat CF veterans differently so that now that they have backed themselves into a legal and ethical corner.***

The legal case could be easily made that CF veterans are being discriminated against by the Government of Canada. Just as important, the 44 pieces of legislation and regulations are the result of the oft-mentioned sacred social contract between Canada, Canadians and veterans. VAC does not have the right to unilaterally make this most "*profound transformation of veteran's benefits*" without involving **all** those who are part of the social contract: the Government of Canada, Canadians and Veterans. Does VAC have the right to speak for all of these participants? Certain senior VAC bureaucrats think so.

Canada needs to know what is happening. An Ombudsman and a Board of Public Inquiry could investigate this matter more fully and report on the validity of these comments.

### ***The So-called Charter (C-45) does Not Correct Existing Problems at VAC***

*"It's like they [VAC] are constructing a huge building on a crumbling foundation."*-disabled veteran commenting on C-45

C-45 programs when implemented apply prospectively to CF members and Veterans who make an application to VAC once the programs are in place (April 2006, to be confirmed). However, the New Veterans Charter was initiated, in large part, in response to long-standing complaints concerning VAC including the pension application, decision and, review and appeal process. Furthermore, the absence of programs for the families of chronically disabled veterans, as well as

the often-begrudging treatment and care provided by departmental programs fueled the process to create C-45.

However, C-45 programs are predominantly for future CF clients. For current clients to access the programs, they would have to enter an even more complex administrative process including re-evaluations of their conditions as well as the indignity of being forced into a job placement program merely in order to access some of the basic family health care programs. Most chronically disabled veterans do not have their health, and have too much pride to enter into a process which would place them in far more scrutiny than any present VAC programs.

This means that the existing clients of VAC will continue to experience widespread problems in getting services and benefits. Most of the problems would be eliminated if VAC adhered to the letter of the law, such as the Pension Act and 43 other bills written for the benefit of veterans. The Auditor-General and other agencies have reported that VAC often ignores the legislation and employs its own interpretations. One result is a large number of appeals submitted through the Bureau of Pension Advocates (BPA) to the Veterans Review and Appeal Board (VRAB). There are large numbers of appeals that have been dragging on for 10 or more years; meanwhile veterans go without benefits and services.

### ***Are the C-45 Benefits Really Better than the Existing System?***

Even with the long-standing complaints about existing VAC benefits and programs, one must ask whether the C-45 benefits are an improvement over the present system. The authors of C-45 and the Minister have been stating this with virtual impunity. The truth is the secretive process has denied the public, the CF and disabled veterans and their families' access to the details of C-45 legislation (until it was too late). The process for developing the regulations appears equally flawed.

More importantly, the bigger question would be whether the C-45 benefits are better than existing benefits. At first glance, one might question why did War Veterans opt out of the programs? If the C-45 benefits are better, why aren't current clients complaining to be included? Why all the secrecy, bullying, marketing, limited consultations and exclusion of employees, stakeholders, practitioners and CF members? Why were clients of VAC not consulted if the benefit the Veterans Charter is such an improvement?

The Following Table makes a more graphic, albeit simplified summary comparing principle C-45 benefits with existing benefits:



**Table A: Comparison of Proposed C-45 Benefits and Existing Benefits**

Benefit Category	C-45 Benefits	Existing Benefits	Comments
Disability Benefits	Up to \$250,000 lump sum payment tax free tied to % award -no additional amount for children and spouses	VAC Disability Pension Tax free pension <b>for life</b> tied to % award -additional amounts for children and spouses	Lump sum payment if invested would provide a 'taxable income' which when paying the after tax equivalent to the disability pension would last less than 10 years if single and even less if married with children*
Income Loss/Replacement	75% of release salary taxable -all income deducted from this amount -must be disabled and approved for vocational rehabilitation plan -continual scrutiny especially if unable to work	<i>SISIP Earnings Loss</i> 75% of release salary taxable -all income deducted from this amount -must be disabled -rehabilitation program optional but not condition of receiving benefits -reports on periodic basis confirming disability	C-45 Earnings Loss much more scrutiny than SISIP plan and <u>disabled veteran must enter vocational rehabilitation plan to receive benefits</u> -existing program more accessible
Education	-disabled veteran must agree to enter rehabilitation program -no university available -excessive scrutiny	<i>SISIP rehabilitation</i> has approved university in exceptional circumstance -must be disabled -minimal scrutiny <i>CF Skills Completion Program</i> has also approved university in exceptional circumstance -only qualification is being CF member	VAC still has Pensioners Training Regulations on the books which could be revived with the stroke of the Minister's pen and solve the discrepancies -existing programs more extensive and more accessible
Medical Care	Veteran must agree to enter rehabilitation program -excessive scrutiny -claims of softer limits	<i>SISIP medical care</i> -only qualification is veteran disabled -does not require entrance into rehab program -harder limits but not absolute <i>SISIP Rehab Program</i> -softer limits VAC Program -disabled veteran <i>Public Service Health Care Plan(PSHCP)</i> -available to retired CF members >20 yrs or >10 yrs if disabled -hard limits	PSHCP does not require entrance in work rehab Present programs more extensive and more accessible

Benefit Category	C-45 Benefits	Existing Benefits	Comments
Family Medical	Disabled Veteran must agree to enter VAC controlled rehab program -hard limits -excessive scrutiny	SISIP -covers family -hard limits PSHCP -covers family VAC -no family coverage	PSHCP does not require entrance in work rehab -existing programs more extensive and more accessible
Dental	Disabled Veteran must agree to enter VAC controlled work rehabilitation program -hard limits	VAC-veteran must have certain disability level (>48% ?) or have dental conditioned pensioned but does not have to enter rehabilitation <i>Pensioners Dental Service Plan (PDSP)</i> -available to retired CF members >20 yrs or >10 yrs if disabled -hard limits	PDSP does not require entrance in work rehab -in most cases, existing program more accessible
Dental Family	Disabled Veteran must agree to enter VAC controlled work rehabilitation program -hard limits	<i>Pensioners Dental Service Plan (PDSP)</i> -available to retired CF members >20 yrs or >10 yrs if disabled -hard limits	PDSP does not require entrance in work rehab -existing program more accessible
Job Placement	Federal Public Service Priority placement -2 years after release -one priority placement only -all vets qualify	1)Federal Public Service Priority placement -2 years after release -one priority placement only -all vets qualify 2)DND Employment Equity Program -no time limit -disabled from SDA/SDO 3)DND Omnibus -no time limit -catch all who don't meet above 4) TAPs-job sharing with employers agreeing to accept former DND employees -limited assistance to families	Present system has far more options -existing program more extensive and more accessible

Benefit Category	C-45 Benefits	Existing Benefits	Comments
Earnings Minimum	CF Income Support Disabled Veteran must agree to enter VAC controlled work rehabilitation program and have failed repeatedly -excessive scrutiny	War Veterans Allowance is very similar in amounts and rules -is very similar and involves less scrutiny and more accessible than CF Income Support	VAC War Veterans Allowance could be applied to modern veterans
Family Job Training	-veteran must have suffered "catastrophic injury"	none	-definition of catastrophic injury excludes all psychological disabilities including OSI's

- \*assumes a 2% return above inflation/Consumer Price Index or approximately 5% for 2004/2005
- all C-45 programs have *been proposed* to be capped at a maximum of 2% adjustment regardless of higher Consumer Price Index numbers. This same cap does not exist for any of VAC's Pension Act programs.

As the saying goes, a picture is worth a thousand words and in this case, the table saves much discussion. C-45 offers only two programs beyond the existing suite of programs, but all fall far short of the original Veterans Charter of 44 regulations and programs, which VAC awarded War Veterans. The CF-Income support in C-45 was unnecessary as War Veterans Allowance fills the same purpose. Therefore, the only additional benefit of any of the major C-45 programs is the job training for spouses. Unfortunately, the veteran must suffer a "catastrophic injury" defined as narrowly as the phrase is dramatic.

All C-45 programs have excessive scrutiny, which places unnecessary burdens upon the disabled veteran to enter work rehabilitation or CF Workfare as it has come to be known. The unprecedented powers of VAC to access private information in order for clients to continue receiving benefits is likely to be a basis of legal action against the government in the future.

***The bottom line is that C-45 takes away far more than it gives.***

## **Lump Sum Payments up to \$250,000**

*"I think my pay was around \$1.20 a day or something but I was only allowed half. You could have deferred pay. I got my other half when the war was over: \$1,500. I went to Vancouver and got drunk for a month and spent my \$1,500."-Ernest "Smokey" Smith, Canada's last living recipient of the Victoria Cross (MacLean's, August 15, 2005)*

*"I am of the belief that to give a soldier who suffers from Post Traumatic Stress Disorder or any severe Psychological disorder large lump sums of money would be therapeutically counterproductive and irresponsible. With large sums of money, sufferers could do harm to themselves or others. At the very least, the shame of losing such a large sum of money due to their symptoms of their illness would be, retrospectively, very difficult to bear for the veteran and the family."-medical clinician who treats disabled veterans*

*"What point is \$250,000? Once it's spent, it's gone! I don't need them to pay me and make me go away. I can't work. I need the security of a pension for the rest of my life without all the hassle they [VAC] put you through."-disabled veteran*

C-45 replaces the security and lifetime dignity of a disability pension with a one-time, lump sum payment of up to \$250,000. For those severely physically disabled, a duplicate program is already in place through C-44, the *Injured Military Members Compensation Act*. Will CF members have access to both?

However, it is the psychologically disabled who will face the greatest obstacles. Sufferers of chronic unremitting psychological illnesses such as PTSD are the single largest category of pension awards. As of early 2005, more than 8,000 VAC clients were receiving disability pensions for PTSD.

The designers of C-45 are obviously very uncomfortable with the psychological reality of war and have structured the legislation to force said sufferers into the workplace. PTSD must be chronic if it is to receive a disability pension. That means that the sufferers will, unfortunately have the condition for life. ***What these sufferers need is long term security since PTSD is principally an illness about the ultimate insecurity: the ongoing perceived and real threats to one's life.***

Veterans suffering from chronic psychological disorders are every bit as permanently disabled as those that suffer physical ailments, and yet VAC does not seem to appreciate this fact. Awarding lump sums to sufferers of Operational Stress Injuries (OSI's as DND refers to psychological injuries), in the initial stages of their release is grossly irresponsible and counter therapeutic. Many OSI

sufferers initially engage in harmful behaviors to escape the real suffering due to their condition. Addictions and substance abuse are quite common. Even if the substance abuse is temporary, the potential for dangerous behaviour with large sums of money is real. “Smokey” Smith, a great hero and honoured Canadian speaks to this reality when returning from World War II (see quote above).

If the lump sum awards of C-44 and C-45 are combined, disabled veterans could be receiving amounts of up to \$500,000. Yes, veterans need to be honoured with compensation for their injuries. *However, disabled veterans’ injuries are often for life. Their compensation needs to offer security for life.*

### **Consultations on the Lump Sum Payment**

*“Another example is in the Canadian Forces Advisory Council’s fact finding travels across the country to the bases a few years ago, we asked if members of the CF would rather have a lump sum for disability payment. The majority replied that they would prefer a monthly payment as is currently the case.”-disabled veteran testifying to Parliamentary Subcommittee on VAC*

*So what motivated the major overhaul to the Pension Act if the consultation suggested otherwise?”-testimony to the Parliamentary Subcommittee on Veterans Affairs*

*“The legislation calls for a one-time lump-sum payment of \$250,000. Most disabled veterans will likely receive only a fraction of that amount. Nevertheless, one must question the wisdom of giving lump-sum payments to sufferers of operational stress injuries, while many are in the depths of depression and crisis. Currently, veterans enjoy a lifelong yet modest disability pension. The lump-sum payment is equivalent to no more than seven to 10 years of disability pension. Most disabled veterans live for 20, 30 or even 40 years after release. Such appropriate compensation, as the minister terms it, appears to dodge responsibility for caring for the disabled veteran rather than accepting responsibility for what are lifelong disabilities. If people are not convinced about the lump sum, then I suggest the Senate recommend that they make an amendment so that veterans can make a choice between lump sum and pension.”-testimony to the Senate Committee hearing on C-45*

Others involved in the process including Veterans Affairs employees confirm and add to the results of this consultation: the overwhelming majority, if not all CF members, asked this question replied that they would prefer the disability pension. The greatest proof can be found in the reported “**flood**” of pension applications VAC pension officers have noted since the passing of C-45. CF members with pensionable disabilities as well as veterans are submitting their

applications before the announced cut-off date of April 2006. Is this not the necessary proof that the recipients do not want what was decided unilaterally by bureaucrats who do not have an ability to understand what it is to be disabled?

### ***Recommendations***

- 1) The process of implementation of C-45 be immediately stopped.
- 2) A Public Inquiry into the process involved, the 'consultations' claimed to have occurred by VAC and the real value of C-45 programs when compared to existing and past programs. There is no doubt that once legislation is implemented, there will be more than sufficient evidence to prove that the legislation and the processes are fundamentally flawed. However, this is an unconscionable cost to have disabled veterans and their families suffer to prove something that is already glaringly obvious.
- 3) Once implementation occurs, CF members must be given the choice of the new legislation programs or existing programs.
- 4) The link between receiving benefits and entering the 'CF Workfare' must be removed. The gateway for accessing any new program should be if one is a veteran and disabled, if relevant.

## **Failure in Oversight: The Urgent Need for an Ombudsman at VAC**

*“When my husband retreats into his world and the Department [VAC] keeps screwing things up, where do I go? I mean, I am all alone trying to deal with a bunch of people [VAC] who have no idea what it is like to be disabled or live with a disabled husband.”-wife of a disabled veteran*

*“Our office has been waiting over two years to be reimbursed for assessments [from VAC]. We have sent letters to Directors, DG’s and Minister’s. We can’t go to the Review Board. Who do we turn to now for help?”-medical clinician treating disabled veterans*

*“I put my first pension application in the year after I returned from the war in 1946. I have been through the whole system. I still have a claim in now waiting for Appeal. I can’t wait much longer.”-disabled veteran*

*“They [VAC] don’t even have the courtesy to talk to me to resolve a problem in my application before denying my claim. Then I have to wait and go to that stupid tribunal [Veterans Review and Appeal Board] for something that could have been fixed by a phone call.”-disabled veteran*

### **Introduction**

More than seven and one half years ago, on June 15, 1998, the Office of the Ombudsman for National Defence and the Canadian Forces was established to make sure that none of the 80,000 CF members is unfairly treated. The position has met with great success amongst those that most need the offices assistance; the men and women of DND and the CF who have no where else to turn in an often complex bureaucracy with a military hierarchical structure not always responsive to feedback.

However, once CF members leave the Forces, they become “veterans”. Canada has approximately 700,000 veterans, almost ten times the number in the CF yet the Ombudsman has no mandate to represent veterans in matters concerning Veterans Affairs. The *irony* is that whereas *healthy*, for the most part, *employable* soldiers in DND do have an independent ombudsman, *disabled* and *often unemployable* veterans do not.

This obvious oversight was addressed on March 30 2005 by André Marin, the departing Ombudsman for the Department of National Defence and Canadian Forces. In his White Paper “Overhauling Oversight” he wrote:

*“Denying to veterans access to the Ombudsman to address . . . their issues, makes little practical sense. The door should not close on them*

*once the scope of their problem reaches into the realm of Veterans Affairs Canada. The stereotype of a veteran may well be the wizened, elderly gentleman giving a shaky but dignified salute beside a memorial—someone who is far removed in time and life-experience from his military days—but the reality is that Veterans Affairs Canada administers benefits for those who only hours or days before, were members of the Canadian Forces. All former members, even those who have been discharged for decades, maintain a close connection to the institution, not only because their military experiences are etched in their character but also because their personal welfare remains tethered to the government they served. Their financial security, their mental and physical health, and their sense of belonging are all inextricably linked to the military.*

*It was inevitable that veterans would call, as they have, for the creation of an ombudsman's office or an inspector general to assist them. It is a call that must be answered."*

The call was echoed in a confidential Senate analysis of Bill C-45 that stated:

*"While this legislation will provide veterans with much-needed job assistance, it does not provide them with an ombudsman."*

### **Bill C-45: The Veteran's Charter**

The recent creation of the Veterans Charter underscores the necessity and urgency for an Ombudsman for VAC.

Ironically, while the Veterans' Charter was motivated in part by the neglect and mistreatment of the 45,000 veterans pensioned for disabilities since the Korean conflict, VAC did not engage in *meaningful* consultation or feedback with the very veterans the legislation was intended to assist.

Most surprisingly, VAC carried out consultations with the leadership of six veterans' organizations only on condition that the leadership *was forbidden* to discuss any details of the proposed charter with their membership. Thus, the so-called consensus of veterans' organizations in support of Bill C-45 could have been based on the views of as few as six persons. Then, because of the virtually unprecedented way the charter was expedited through the House of Commons in under five minutes on May 10<sup>th</sup>, veterans were denied *any meaningful opportunity to provide input on the charter's potential impact on them.*

The fact is VAC was so interested in the public perception of being seen as client-focused in this, the year of the veteran, that they actually completely forgot about meaningful consultation. In this regard, they are a little bit like the zealous volunteer who sees an immobile victim who moments earlier dived into shallow



water. The eager volunteer rushes to move the victim and give mouth to mouth without checking to see if the victim's neck is not broken.

One disabled veteran commented on the need for an ombudsman during the C-45 process:

*“Heroin based narcotics have a lot of good properties too but like every dangerous medication, it must be carefully administered and monitored.”*

Some help that is not carefully and thoughtfully applied does more harm than good.

A VAC Ombudsman would have been able to and could still provide the following services in the creation/revision of the legislation, regulations and policies:

- 1) Monitor the process of preparation of C-45-related legislation, regulations and policies to ensure transparency,
- 2) Provide unfiltered and, therefore, valuable information to the Minister and Deputy Minister to ensure fairness, accountability and efficacy,
- 3) When transparency, accountability and fairness are ensured through an Ombudsman, the creation of legislation under such guidance would increase the respect for the Department, the Minister and the Portfolio amongst veterans and their families as well as Canadians at large while creating such an important legacy; and,
- 4) The validity or invalidity of dissenting voices within and outside the Department such as veteran groups or individuals could receive an objective judgement hence allowing the Department to focus on following the principles of transparency, accountability and fairness
- 5) There is much to indicate that the flawed process has not substantially changed. Not rectifying the situation will likely embarrass the Department and the government for years if not decades. Fixing it now would go a long way to restoring Trust.

In this regard, an Ombudsman would be a neutral and objective sounding board for veterans and a strong proof that the government's new commitment to Veterans goes beyond lip service.

### ***Pension Application, Decision and Appeal Process***

When someone has been disabled as a result of his/her service to Canada while serving in the Canadian Forces he or she has a right to assistance. In order for that assistance to be meaningful, VAC must learn to listen. However, VAC's track record does not inspire confidence. As one veteran stated concerning his experience with VAC's perceived ability to understand disabled veterans:

*“They [VAC] just don't get it”.*

In the early 1990's, processing times for favourable decisions were approaching 18 months. This sparked a public scandal resulting in a complete overhaul of VAC in 1995. Although the department has since accelerated claim process times, the real story isn't quite that simple.

The modern disabled veteran often suffers from complex medical conditions with which VAC is unfamiliar. As a result initial pension awards are often far below the reality of the disabilities suffered. For example, awards of 20% or \$400/month have been quite common for disabilities which make the veteran totally *unemployable*.

As a result of such inadequate decisions, the psychologically and/or physically disabled veteran is forced to enter an indescribably demoralizing Review and Appeal process. Investigations indicate that process times for an adequate decision for a disability claim can take three to five years and that a considerable number of claims remain outstanding even after five years.

In spite of Auditor General Reports on VAC in 1998 and 2000, many veterans who receive unfavourable decisions from the Department *are still being forced* to appeal to the Veterans Review and Appeal Board (VRAB) when other more efficient, less costly and less traumatic avenues such as Departmental Reviews are available.

Worse, despite the Prime Minister's promises to the contrary, the VRAB board members are still politically appointed. Out of the 22 members, only one has a prior military background and *none* are or have been medical practitioners.

The entire process is rife with apparent conflicts of interest. The veteran is represented at the Board hearings by a lawyer working for and responsible to VAC, consulting files maintained by National Defence and defending the case to a board, whose members according to the Prime Minister's Office are recommended by VAC.

Perhaps even more bizarre is the fact that both the Prime Minister's Office and the Minister of Veterans Affairs claim the other is responsible for the Veterans Review and Appeal Board. The bottom line is that the Board is deciding on veterans' lives, spending Canadians' tax dollars and it is accountable to no one.

In this environment a VAC Ombudsman would add much to the lives of the veterans and their families and would be an undeniable asset to the effective management of all levels at VAC:

- 1) The Ombudsman would also be a place to turn for information about existing channels of assistance and redress within VAC that are presently poorly publicized if at all.

- 2) The Office would have the authority to investigate complaints where other mechanisms are not available. An Ombudsman could cut through much of the bureaucracy for the sake of not just an individual case but for the benefit of hundreds if not thousands of veterans to follow.
- 3) An ombudsman's office at Veteran's Affairs is the perfect organization for investigating the long-standing criticisms of how Bureau of Pensions Advocates (BPA), VAC and VRAB all interact.
- 4) Furthermore, a VAC Ombudsman would ensure that systemic problems would not be filtered by middle managers. Instead, senior department officials would have the tools to manage more efficiently and ensure mission statements and service values are upheld.
- 5) Front-line employees and Middle managers would be able to articulate concerns without fear of reprisal.
- 6) Veterans and families would not have to fear losing benefits as they could speak confidentially to the ombudsman knowing their case will be dealt with.
- 7) The DND/CF Ombudsman has increased the prestige of DND/CF, the men and women who serve and the honour of the Minister who has the portfolio. This has come about because of the transparency and trust the office has engendered in all Canadians for the Department's operations. There is no doubt similar prestige for not only veterans and the VAC employees will be a dividend but the portfolio will rise in importance in the eyes and hearts of all Canadians.

### ***Summary***

The time for a VAC Ombudsman has never been more relevant, urgent or just. The New Veterans Charter will add a new category of veteran and create inevitable uncertainty and confusion both in the veterans being served as well as the VAC staff implementing new and untried programs and policies. This is a perfect atmosphere to introduce an Ombudsman in order to objectively monitor and report on systemic glitches and malfunctions as the process of preparation and implementation continues.

**Change in VAC has been ponderous and stubborn at best over the past five decades. The present legislation is the consequence of fifteen years of inadequate care for the modern CF veteran. VAC initiated studies to this effect over eight years ago. An Ombudsman can investigate and report on systemic problems as well as make real and lasting recommendations in a much shorter time frame.**

***Recommendation***

- 1) That the Government of Canada immediately create an Office of the Ombudsman for Veterans Affairs Canada.

## **There are Many Pretenders: Why Present Mechanisms are not a True Ombudsman**

*"I am reminded of the military every day when I deal with my husband's disabilities. I respect his service but I will not walk into a Legion Branch with the ranks and the uniforms just so I can get Veterans Affairs to listen to me. I don't want anything to do with the military culture anymore, thank you."-wife of a disabled veteran*

### **Veterans' Organizations as Ombudsman?**

Ironically, the main obstacles to the creation of an ombudsman are the Royal Canadian Legion allied with Veterans Affairs itself. No one would deny the immense value and superb service and conviction of the Royal Canadian Legion. Their involvement at the community level surpasses outstanding. All veterans and Canadians take their hat off to the sacrifices of the Legion's veteran members and the work of all Legion members.

However, the close working relationship of Dominion Command and the Department over the years raises questions of objectivity of the Legion. The Minister of VAC even points to the Legion as a reason not to have an ombudsman for her Department. A recent article in the Montreal Gazette illustrates the limitations to the impartiality of Dominion Command:

*An elderly veteran was prescribed pressure stockings for phlebitis some years ago and Veterans Affairs agreed to pay for three pairs a year because they wear out. But when the supplier recently asked for permission to renew the order, the department first cut it back to two and, after an appeal by the veteran, cut it to one pair.*

*Another veteran receives a partial disability pension because of hearing loss related to his military service. The department has paid for state-of-the-art hearing aids in the past, but now it has refused to pay more than a fraction of the cost of upgraded replacement aids prescribed by his doctor and audiologist.*

*The veterans who are complaining link the change in policies to the decision by the federal Veterans Affairs Canada department to contract out the processing of claims to Atlantic Blue Cross.*

*However, Pierre Allard, **director of the Royal Canadian Legion's Dominion Command Service Bureau**, describes what's happened as part of a program to "standardize" the system of granting medical benefits and aids across Canada. "Assessment of claims in the past may have been more generous in some cases than the official policies provided and, **as a taxpayer, I think I approve of the changes,**" he said. [bold lettering not in original] (Hugh Anderson, 31/10/05 Montreal Gazette)*

Who is to stand up for these two clients of Veterans Affairs after they have exhausted departmental mechanisms? How do two vulnerable citizens of Canada have their interests defended against a monolithic bureaucracy? VAC has enough of its personnel controlling the purse strings without outside forces like the Legion supporting the cuts to much needed programs. This highlights the need for an impartial body with the legal power and resources to monitor the Department for fairness, accountability and transparency.

In his White Paper, "Overhauling Oversight" André Marin, makes a clear and just distinction between the strong advocacy of the Legion and the legal mandate of an Ombudsman, arguing:

*"To be sure, the Canadian Legion is a magnificent organization that has done its best to establish committees and to liaise with government administrators, often with great effect, but it is not an institutionalized ombudsman. It does not have the powers of proactive investigation, the resources, or the professional staff, nor does it have the power to report officially to the government and the public."*

The Legion's Dominion Command details an impressive array of at least 23 programs and operations during the previous year. Everything from sports programs for the CF to the invaluable Poppy campaign and the Veterans/Seniors housing project. All are outstandingly commendable initiatives. One may note that the **last program** on the list is Advocacy Initiatives to the Government.

Nevertheless, an ombudsman is very different from an advocate. An institutionalized ombudsman, if properly created and legislated into being, **unlike any of the veterans organizations**, has

- 1) true investigative powers,
- 2) full-time dedicated resources,
- 3) trained and experienced professional staff,
- 4) the power to report officially to the government and the public,
- 5) potential prestige amongst **all** veterans (as it has no membership to include or exclude), families, the bureaucracy and the public,
- 6) the power of moral suasion for all parties to 'do the right thing',
- 7) the power of '**sit-up and take notice**' which, although similar to moral suasion involves the obvious respect, and perhaps a deferential regard an Ombudsman's office as an impartial investigative body inspires. The parties 'sit-up and take notice' which motivates all involved to be more forthcoming and respond to the situation with efficiency, greater honesty and a softening of the extremes which would otherwise make a resolution difficult; and,
- 8) An Ombudsman, above all else, is mandated and/or legislated to be impartial.

In the question of the legion or any other special interest group, the bottom line is that they are by their very nature, *partisan organizations* that, ultimately, represent the interests of their membership. Approximately 80% of Canada's veterans or 550,000 veterans are not members of the Legion. An estimated 75% of all veterans do not belong to any veteran organization whatsoever.

***All Canadian veterans should, and do have the choice to belong to the Legion.*** In fact the Legion is generous and embraces many non-veterans. More than 60 % of the Legion membership is non-veteran. However, if Canadian veterans choose not to join, that should be their right also.

Canadians, especially some of the most disabled and, therefore, disenfranchised, should not be forced to deal with a special interest group to have their needs met, especially when it is the legislated mandate of the government of Canada to care and provide for those needs.

Such farming out of responsibility is contrary to the fundamental right of equal access to services for all Canadians. ***An Ombudsman would level the playing field*** admirably in this situation. All members and non-members, as well as the often forgotten families and RCMP clients, would be treated equally in weight and voice.

The Minister, her staff and the senior bureaucrats appear to be even bigger advocates of the 'legion as the ombudsman' than the legion itself. Such enmeshed interests have *long raised alarm bells* with the modern veteran and his/her family. ***However constructive and valuable the relationship between VAC and the Legion may be, this relationship is not the basis of an objective and impartial ombudsman's office.*** This enmeshment is far from the values of an independent, professional and objective ombudsman required to monitor and investigate systemic problems. A VAC Ombudsman would provide a confidential and potent mechanism for veteran's complaints, free of the politics of a special interest group such as the Legion or *any other veteran organization*.

### ***Individual Veteran Advocates as Ombudsman?***

*"I am tired of fighting with them [VAC]. They don't know how to deal with disabled veterans. I don't care about my treatment. It's not worth it anymore. I just want my pension and for them to leave me alone."*-disabled veteran

*"I went to war and then I had to return to fight an even bigger war with VAC. I don't want to fight anymore. I just want some peace."*-disabled veteran

The indignation suffered by individual veterans in the disability and treatment process has long fueled responses ranging from internalized frustration and

suffering to the creation of a movement or veterans' organization. In spite of this, no veteran consulted believes that a veteran or group of disabled veterans and their families were a solution to the lack of oversight at VAC. Disabled veterans often do not have the health or the obvious resources and investigative skills to act as a true Ombudsman.

Nevertheless, individual disabled veterans, disabled CF members, disabled RCMP and their families are the true stakeholders and clients of VAC, not veteran organizations, lobby groups or self-interested senior mandarins in the Department. As such, the disabled clients and their families have the most to offer and would work very closely with an Ombudsman Office. Except for the commemoration programs, VAC exists to serve the needs of their disabled clients and their respective families. Any Ombudsman could do an effective job only if these needs are clearly monitored, investigated and understood. The clients and their families determine those needs, not VAC. An Ombudsman would ensure VAC respects this fundamental principle of client care.

### ***Veterans Review and Appeal Board (VRAB) as Ombudsman?***

*“They sit up there in their suits and ask me questions that have nothing to do with my case like whether my wife works or not and then tell me I don’t need a pension if my wife works.”-disabled veteran.*

*“Who are these guys anyway? They haven’t a f----- clue what it is to shoulder a rucksack with full gear for 20K’s in a forced night march or triage wounded prisoners who are infested with lice and anyone of them could have a knife or a grenade. I thought I was supposed to receive a trial by my peers. Well I would like to be earning their salary and denying them a pension.”-disabled veteran*

The Minister of Veterans Affairs has also stated that there is no need for an Ombudsman because the Department offers the services of the Bureau of Pensions Advocates and the Veterans Review and Appeal Board (or VRAB). Victor Marchand, the Chairman of VRAB, in his testimony to the Parliamentary Subcommittee on VAC, stated proudly that VRAB heard 6,500 cases in 2004, 3,400 of which received favorable decisions. Although impressive numbers, every Canadian and Parliamentarian should be very concerned about the more than 3,000 that did not receive favorable decisions. Three thousand is almost **three times** the number of cases that the DND Ombudsman investigated in the same year.

Something is dramatically and disturbingly wrong with a system that has 6,500 individuals who must appeal their decisions annually, where almost 50% of those appeals are still left unsatisfied. A VAC Ombudsman would not replace VRAB but would track and report on systemic problems which are causing such large



numbers of unsatisfied clients. A VAC Ombudsman would likely be able to pinpoint the problems in the Department itself which resulted in such a disproportionate number of veterans being forced into the difficult VRAB process in the first place.

*“...it just amazes me how many problems we had the first time around. I wonder if you could make any recommendations resulting from your work that might prevent us from making mistakes the first time round, so we don't have to get to that stage. Could you identify systemic problems that you might see and make some recommendations, other than on the individual cases? **You know, an ounce of prevention is worth a pound of cure.**” [bold not in original]*

and

*“That's certainly good, but I was talking about the reasons people are coming to you in the first place. If I was dealing with my brain surgeon or 737 pilots, hopefully there wouldn't be too many mistakes. Obviously, we've had a lot of mistakes that have had to come to your level, so I'm just saying that when you find the reasons for those, you could feed them back into the system so that some veteran in the future doesn't have to go to an appeal.” (MP and Committee Member Larry Bagnell Speaking to the Chairman of VRAB during presentation to the Subcommittee on VAC)*

VRAB essentially avoids the responsibility to ensure that what one veteran endures or suffers does little if anything to benefit a veteran in a similar situation who follows in the VRAB process. For example, if one veteran has received an original award which failed to separate major depression and Post Traumatic Stress Disorder, VRAB apparently does not send a note to either its own members or the Department informing them of the problem in VAC. As a result, the original problem in the Department which failed to separate the two conditions (a commonly reported error on the Department's part) is not corrected.

Likewise, whether one veteran or two thousand veterans were denied the option of a departmental review because the Department and BPA instead counseled the Veteran to appear in front of the Board is not addressed by VRAB. Even though a departmental review could have resolved the issue, VRAB apparently does not send guidance to the Department to fix the failure to counsel clients more thoroughly to exhaust the Departmental Review option before appearing before VRAB (also a very commonly reported problem).

One of the fundamental roles of a VAC Ombudsman is to track and report on systemic problems. By doing so, VAC could fix the original source of the problem; be it in pension adjudication or VAC so that not just one individual benefits, but all to follow do not have to endure the same errors. VRAB does not

have the mandate nor does it have the skills, resources or power to track and report on systemic problems.

VRAB primarily focuses upon disability pension decisions. Although VRAB has ruled on issues related to treatment and medications, this aspect of the Department is mostly handled by administrative decisions and administrative appeals. An Ombudsman would excel at monitoring, investigating and reporting on issues related to the morass of regulations and policies related to treatment care and medication. Neither BPA nor VRAB have the skills or experience to wade into this complex area of policy manuals and departmental guidelines.

Furthermore, VRAB does not have the resources or the power to carry out investigations for and report on individual cases as well as tracking these cases to report on systemic problems.

### ***Bureau of Pension Advocates (BPA) as Ombudsman?***

*“They put up a stink because I wanted to spend more than 5 minutes with them before the hearing. The lawyer obviously hadn’t read my file before we went in [to VRAB hearing]. They don’t give a s--- about their clients. They are paid by the bloody Department anyway.”-disabled veteran*

The Bureau of Pension Advocates is a body which solely provides legal representation to veterans and clients through the process of Departmental Review, and the Review and Appeal stages of VRAB. Just as the detectives in a police department have very defined and different responsibilities, BPA in no way has the powers or mandate of an Ombudsman. The Bureau does not track and report on systemic problems, nor do they have the skills, resources or experience to do so.

There is a widespread perception that they are more loyal to the Department than the client. This perceived conflict of interest has some basis in fact. As they are employed by and report to a Department ADM and have been mandated to handle such Departmental responsibilities as informing clients about the Departmental review option (contrary to the Auditor General’s report of 1998 and 2000), the impartiality of BPA is questionable.

Like VRAB, BPA does not have the skills, resources or powers of investigation to deal with the massively complex issue of treatment and care policy.

## **Summary**

The DND/CF Ombudsman *did not* replace existing mechanisms of organization and control. The office exists alongside the Public Service Union, and has enhanced the command structure of the CF. Furthermore, the DND/CF Ombudsman has validated the work of special interest groups such as universities, the Conference of Defence Associates as well as serving member and retired member organizations including the Volunteer Patricia Program (VPP). A VAC Ombudsman will *likewise* not replace the Director Generals, the Veterans Review and Appeal Board, the Bureau of Pensions Advocates nor the Legion or the dozens of other Veteran's organizations.

***A VAC Ombudsman would coexist along side such organizations, likely enhancing the value of all and undoubtedly increasing the efficiency, prestige and service delivery of Veterans Affairs Canada and the Veterans Review and Appeal Board.***

## **Recommendation**

1) That the Government of Canada create an independent, impartial and legislated Ombudsman "*with teeth*" for Veterans Affairs Canada.

## **Doing it Right: The Options and Considerations in Creating the Office for a VAC Ombudsman**

Whatever technical obstacles there may be in creating an Ombudsman, Andre Marin in his latest White paper states:

*“Access to the Office of the Ombudsman could be granted simply by the Minister of Veterans Affairs signing a Ministerial Directive. Or, more appropriately, a Canadian Forces/Veterans Affairs Ombudsman’s office having co-ordinate jurisdiction could be entrenched in statute, with the Ombudsman reporting to the Minister of National Defence on DND/CF issues, and to the Minister of Veterans Affairs on issues related to Veterans Affairs Canada. The truth is that departmental organization is a technical obstacle, not an impediment to doing the right thing, and it is a maxim of good government that technical obstacles never be allowed to impede doing the right thing. Instead, technical obstacles should be managed and overcome.”*

Three possibilities of how to structure a VAC Ombudsman:

### **A) Completely Integrated DND/CF/VAC Ombudsman**

The first is to merely have the Minister of VAC sign a Ministerial Directive granting VAC employees, veterans (disabled and non-disabled), disabled RCMP members and the family’s access to the Office of the DND Ombudsman. Of course, the DND/CF Ombudsman would require additional resources to deal with the increased responsibilities.

#### *Advantages*

- i) This option would expedite the ‘set-up’ process as the organization is already in place.
- ii) The existing body of experienced investigators and managers would be able to rapidly train any additional personnel.
- iii) VAC issues could benefit from the prestige already enjoyed by the DND/CF Ombudsman
- iv) The new Veterans Charter (C-45) could be immediately addressed providing impartial and valuable oversight to the preparation and implementation of regulations and policies.
- v) Cost savings by having a combined office with shared resources.

### *Disadvantages*

- i) The drawback to this option is that the VAC portfolio could possibly take a back seat to the DND/CF portfolio or vice versa.
- ii) The unique nature of VAC regulations and its bureaucracy could be more difficult to navigate effectively if employees of the Ombudsman's office wear a dual hat.
- iii) Veterans could see themselves fighting for attention as CF/DND interests dominate the agenda.
- iv) The reporting relationship could be convoluted with the ultimate power of the Ombudsman blunted.
- v) Veterans feel their priorities placed second.

## **B) *Completely Separate and Independent CF/DND and VAC Ombudsman Offices***

The second option is to create a completely separate VAC Ombudsman with dedicated resources.

### *Advantages*

- i) Dedicated resources could devote full attention to portfolio
- ii) Separate Ombudsman could build individual prestige of portfolio
- iii) The reporting relationship would be clear and uninterrupted between the VAC Ombudsman and the Minister, Governor-in-Council and/or Parliament.

### *Disadvantages*

- i) DND/CF Ombudsman took approximately 6 months to set-up and almost two years before the office felt confident in all areas of their mandate. A similar delay could affect the efficacy of a VAC Ombudsman for this option.
- ii) The New Charter (C-45) regulation and policy writing and implementation process needs oversight immediately. The VAC employees are at their breaking point and likely cannot manage the dramatic increase in workload while still delivering essential services.
- iii) Greater cost to have a stand-alone organization.
- iv) The synergistic prestige between DND/CF and VAC portfolios would be lost.

**C) *The Canadian Compromise: Two Quasi-Independent Directorates Reporting to an Overall DND/CF/VAC Ombudsman***

The third option could be called the Canadian compromise. A separate Directorate or section assigned the oversight of VAC could be created within an expanded DND/CF/VAC Ombudsman office with its own dedicated resources and personnel. This directorate would have a VAC Ombudsman to head the organization but which administratively reports to the CF/DND/VAC Ombudsman. The head of the entire office would then report to the appropriate bodies concerning matters such as the Minister of DND for DND/CF matters, the Minister of VAC for VAC matters and Governor in Council or Parliament for VRAB matters.

This reporting process could be made much simpler by having the entire office report directly to Parliament but have the authority to work directly with DND/CF, VAC and VRAB to attempt quick resolutions of individual and systemic problems. Reporting to parliament would likely require or would at least benefit from the overall office enshrined in legislation (see below).

*Advantages*

- i) Experienced DND/CF could expedite training and organizational set-up.
- ii) Physical resources are already in place and need only be expanded to accommodate the new personnel.
- iii) As a result of the above two advantages, there would be minimal delay in having the office up and running.
- iv) The uniqueness of the VAC portfolio complete with separate bureaucratic culture and regulations/policy would be given dedicated resources to attend to the mandate.
- v) The prestige of the DND/CF ombudsman would be enhanced and likewise would enhance the prestige of VAC, the Minister, employees and the veterans and their families.
- vi) The VAC portfolio would see a synergy of understanding between CF veterans and traditional War Veterans. Through its impartiality, the Ombudsman's office could find a common ground between these two classes of veterans, thus enhancing the response of the Department for all.
- vii) Cost savings as resources shared.

### *Disadvantages*

- i) The focus VAC concerns merit could be lost somewhat due to the strong, 'current' nature of ongoing and new DND/CF concerns such as new operations and deployments.
- ii) Veterans feel their priorities placed second.

**The Canadian Compromise, like all good compromises, offers the most advantages with the least disadvantages.**

Whatever the structure government ultimately chooses, there are three fundamental considerations to ensure the effective functioning of a VAC Ombudsman.

**1) *VAC ombudsman must have dedicated resources and personnel***

First, ***a VAC ombudsman must have dedicated resources and personnel*** whether the office exists on its own, administratively reports to an overall VAC/DND ombudsman or is integrated in the DND/CF Ombudsman portfolio. The reason for this is simple. The overall population of veterans is much larger than the population of serving CF Members. Even the VAC client population is almost three times that of the serving members. Furthermore, although there are a number of CF/VAC coordinated initiatives, the legislation, policies and procedures are very different. As such, they require a different skill set for both investigation and understanding as well as the additional resources required for the increased workload required for the oversight of VAC.

**2) *A VAC Ombudsman must report to either Governor-in-Council or Parliament.***

Secondly, a VAC Ombudsman can report to the Minister, Governor in Council or Parliament for matters relating to the Department and that which falls under its jurisdiction. However, VRAB does not fall under VAC jurisdiction. Reporting only to the Minister does not offer the Minister any administrative direction, legislative power or moral suasion over VRAB. Since VRAB's members are appointed by Governor-in-Council (Prime Minister and the Cabinet), ***a VAC Ombudsman must report either to Governor-in-Council or Parliament.*** However, there could be a conflict of interest in reporting to Governor in Council. The PMO and his cabinet have openly shrugged responsibility for dealing with concerns and complaints regarding VRAB. As such, only Parliament would have the moral force to bring about any necessary changes at VRAB. We therefore recommend that any VAC Ombudsman be given power to report to parliament concerning any issue relating to VRAB.

### 3) ***A VAC Ombudsman must be entrenched in Legislation.***

Most importantly, ***a VAC Ombudsman must be entrenched in Legislation.*** The DND/CF Ombudsman is, unfortunately, not enshrined in law. In spite of calls from the office of the Ombudsman as well as outsiders and CF members, the government has been disconcertingly silent in responding. This creates great insecurity within an office which is supposed to be independent but can be abolished at the stroke of a minister's pen, the same minister to which the Ombudsman reports.

The need to enshrine a VAC Ombudsman in law is even greater. Legal recognition is paramount of an Ombudsman is to have the ability to review existing statutory complaint mechanisms such as the often and justly criticized Veterans Review and Appeal Board.

An even more compelling argument for enshrining a VAC Ombudsman in legislation is to honour and respect the tens of thousands of veterans who have disabilities *for life*. A disabled veteran cannot simply leave his or her "job", for want of a more appropriate word, as a *disabled veteran*. VAC is not an employer and the disabled veterans do not have a union and cannot engage in collective bargaining. VAC is an office which is mandated to fulfill the sacred trust in caring for the disabled veterans and their families.

Disabled Veterans are, for the most part, more dependent on VAC than they were dependent on DND for financial security, mental and physical health and their sense of belonging, dignity and independence.

These last two words, ***dignity and independence***, are often loosely thrown around by VAC representatives. However, to the disabled veteran, they are the true medals of self-respect while enduring disability for having fulfilled their duty to Canada and Canadians. Unfortunately, the words dignity and independence are concepts too often sacrificed for political expediency. Merely because a Minister or a bureaucrat sends out a press release or publishes a vision statement committed to honouring the dignity and independence of veterans is far from a guarantee that the Department is doing so. The public persona of the Department has too often been one of a paper-thin façade. Meanwhile the disabled veterans and their families know all too well their legacy of service: program delivery and oversight is frequently sacrificed on the altar of bureaucratic inefficiency and complexity, as well as service and treatment inconsistencies.

As an individual Canadian citizen said to a veteran:

***"You deserve more than words."***



An Ombudsman office is the only mechanism that can objectively monitor and guarantee such “values”, “morals” and “ethics” in a complex bureaucratic environment. No other mechanism exists in government to guarantee the provision of such important value-oriented mandates and mission statements, such as those unique to Veterans Affairs Canada.

More than 100,000 veterans **are disabled for life** as a result of their service to Canada, Canadians and the world. They deserve to have a watchdog to ensure the quality and consistency of care written in legislation are actually **provided for the rest of their lives**.

### ***Recommendation***

1) That the Government of Canada create an Ombudsman for the Department of Veterans Affairs Canada and the Veterans Review and Appeal Board in accordance with the above three fundamental considerations and organized in accordance with the Option guidelines outlined above.

## **Further Quotes and Excerpts from Report**

*"The man I married is gone. I am alone in raising our kids and they suffer. They don't know their father anymore. One of them is into drugs and I don't know what to do. Who helps me? I am doing VAC's work and no one is paying me. No one is helping me."*-wife of a disabled veteran

*"We've been told that if you have any problems, don't expect them to get fixed until at least April 2006 when the new programs for the Charter are in place."*-VAC employee

*"My dad worked with sonar in the Navy. My father went years and years of fighting the Department for his hearing condition. Because he couldn't hear very well we always had the TV, the radio and the telephone really loud so that now my brother and I need a hearing aid. It affects me in my work and in the family. I'm only 41 years old. Imagine if my father received help from VAC from the very beginning? We wouldn't have this condition. He eventually received an award but he wasn't happy with it."*-son of a disabled veteran

*"No one from the Department has ever asked me what I think about the new Charter and of course they never asked our advice in creating it. I don't know any of us on the front line delivering services who was asked for their opinion or advice. I guess we are just bottom feeders in the food chain."*-VAC employee

*"The new Charter is causing angst and dissatisfaction for the clients and amongst staff"*-VAC employee

*"I will not take on anymore VAC clients. I am sorry but I cannot deal with the amount of work required to complete their paperwork. They don't pay me for it and I could use that time instead to be treating other clients for work I will be paid for."*-clinician treating disabled clients

*"I put my first pension application in the year after I returned from the war in 1946. I have been through the whole system. I still have a claim in now waiting for Appeal. I can't wait much longer."*-disabled veteran

*"VAC built the product [C-45] and then marketed the product. It was marketing that was shared with the public, the veterans, the politicians and the CF. Marketing is not consultation; it is selling an idea or product in its best light, while hiding its defects and drawbacks."*-excerpt from report

*"The truth is that there has been remarkably little consultation on the charter and the government appears to be more interested in public perceptions than in lasting results."*-veteran testifying to Senate Committee hearing on C-45

*"I was never told that the Council was disbanded. VAC just stopped holding meetings. I believe we did some very valuable work. This is no way to treat veterans and experts who have devoted so much time to helping the Department."*-prior member of VAC/CF Council

*"The leadership of these six [Veterans] organizations agreed to support the new legislation upon the explicit understanding that any legislation concerning new programs would be guaranteed and subjected to full scrutiny and given due democratic process."*-excerpt from report

*"Since the spring of last year, our modernization task force has undertaken extensive consultations with stakeholder groups, including the national veterans' associations"*-testimony of Minister VAC to Senate on C-45

*"If the process was transparent as the Minister claims, why were vet groups sworn to secrecy if not to keep the majority of veterans and public unaware? No other reason but manipulation."*-disabled veteran talking about how C-45 was created

*"However, the language of Bill C-45 is not quite as comforting; you might consider it as the fine print on an insurance contract. And like fine print, it is full of limitations and restrictions. As the saying goes, "the devil is in the details"'"*-disabled veteran testimony to the Senate hearing on C-45

*"I am exhausted. I can't keep doing this ridiculous dance with VAC. It is very difficult to watch my clients suffer because of what the Department does to them. I honestly don't know how much longer I can keep working in this field."*-medical clinician treating disabled veterans

*"If I were to break a law I was unaware of, I am still responsible for going to jail. Why is it bureaucrats and the minister are not responsible for what goes on in a department even if they are unaware?"*-disabled veteran

*"Once again, the Minister will be protected from knowing the real situation by a few key bureaucrats."*-excerpt from report

*"We are not social experiments. We are not lab rats to be tested by a few power-hungry bureaucrats who have no idea what it means to be a veteran, let alone a disabled veteran."*-disabled veteran talking about the New Veterans Charter

*"They [VAC employees] act if it is their own money, like we are stealing directly from their wallet."*-disabled veteran

*“A member of the Federal Public Service qualifies for this [Public Service Health Care] program if they leave the Public Service after two years whether they are disabled or not. Is this perceived as different treatment? A double standard?”-testimony to Parliamentary Subcommittee on VAC*

*“It’s bad enough that we don’t have our careers anymore, we were kicked out of the military because we are disabled, we are dependent on a Department [VAC] that doesn’t care. Why should we have what little disability pensions we fought so hard for deducted from the already reduced income we get from SISIP while CF members keep their salary, benefits and a VAC pension? They are kicking us when we are down. It just isn’t fair.”-disabled veteran*

*“Our office has been waiting over two years to be reimbursed for assessments [from VAC]. We have sent letters to Directors, DG’s and Minister’s. We can’t go to the Review Board. Who do we turn to now for help?”-clinician treating disabled veterans*

*“They [VAC] don’t even have the courtesy to talk to me to resolve a problem in my application before denying my claim. Then I have to wait go to that stupid tribunal [Veterans Review and Appeal Board] for something that could have been fixed by a phone call.”-disabled veteran*

*“The lack of support from Veterans Affairs is instrumental to the deterioration of the veterans’ conditions...if they (VAC) left us to do our work, then chances are very good that the client would progress more positively.”-medical practitioner treating disabled veterans*

*“Denying to veterans access to the Ombudsman to address . . . their issues, makes little practical sense. The door should not close on them once the scope of their problem reaches into the realm of Veterans Affairs Canada. The stereotype of a veteran may well be the wizened, elderly gentleman giving a shaky but dignified salute beside a memorial—someone who is far removed in time and life-experience from his military days—but the reality is that Veterans Affairs Canada administers benefits for those who only hours or days before, were members of the Canadian Forces. All former members, even those who have been discharged for decades, maintain a close connection to the institution, not only because their military experiences are etched in their character but also because their personal welfare remains tethered to the government they served. Their financial security, their mental and physical health, and their sense of belonging are all inextricably linked to the military.”-Andre Marin, First DND/CF Ombudsman*

*“While this legislation will provide veterans with much-needed job assistance, it does not provide them with an ombudsman.”-confidential Senate analysis of C-45*

*“Heroin based narcotics have a lot of good properties too but like every dangerous medication, it must be carefully administered and monitored.”-disabled veteran commenting on C-45 and the need for an Ombudsman*

*“They [VAC] just don’t get it.”-disabled veteran*

*“You deserve more than words.”-friend of a veteran*

*“If I prescribe something it’s because the client needs it. This pettiness and bulls--- and justification required to deal with VAC is ridiculous.”-medical practitioner treating disabled veterans*

*“There are fewer and fewer persons entering the field of trauma therapy every year. I go to conferences and I mostly see older clinicians near retirement. Who will be there to help the veterans when we retire because we certainly can’t keep doing this forever with the way VAC treats us.”-medical practitioner treating disabled veterans*

*“To be sure, the Canadian Legion is a magnificent organization that has done its best to establish committees and to liaise with government administrators, often with great effect, but it is not an institutionalized ombudsman. It does not have the powers of proactive investigation, the resources, or the professional staff, nor does it have the power to report officially to the government and the public.”-Andre Marin, First DND/CF Ombudsman*

*“They [VAC] are profiling and discriminating.”-disabled veteran*

*“I am tired of fighting with them [VAC]. They don’t know how to deal with disabled veterans. I don’t care about my treatment. It’s not worth it anymore. I just want my pension and for them to leave me alone.”-disabled veteran*

*“Who are these guys anyway? They haven’t a f----- clue what it is to shoulder a rucksack with full gear for 20K’s in a forced night march or triage wounded prisoners who are infested with lice and anyone of them could have a knife or a grenade. I thought I was supposed to receive a trial by my peers. Well I would like to be earning their salary and denying them a pension.”-disabled veteran referring to federal appointees on Veterans Review and Appeal Board*

*“Why can’t I call my area counsellor directly. Do they think I am a criminal or a stalker?”-disabled veteran*

*"I hope that you take into account what is best for the veteran and not what is easiest for the clerk".* –disabled veteran talking with VAC employee

*"I can't do anything to help you [a client]. I feel very very helpless."*-VAC employee

*"I find the bureaucracy in the Department difficult. It's like sitting on a bike in a pile of sand."*-VAC employee

*"I want to help but I also want to keep my job."*-VAC employee to a client

*"The VAC employees stiffened up and were more afraid of the director than any military environment I had ever witnessed."*-veteran

*"The number of clients area counselors carry has been a longstanding complaint of which the Union of VAC employees is aware."* –VAC employee

*"All pension officers are flooded with claims as the CF members and other veterans try to get their applications before the new programs start April 1<sup>st</sup>."*-VAC employee

*"No one has asked me for my opinion."*-VAC employee

*"...Bill C-45 is sound and sensible. It is the product of broad consultation, and is ready to go. I urge its immediate adoption."*-Dr. Neary, Chariman of SNAG

*"If the Chairman of SNAG could not see any flaws in the Legislation while repeating the same flawed claims of certain representatives of VAC that C-45 was the product of broad consultations, how receptive will he be to criticism of, C-45?"*-excerpt from report

*"I look at this and I couldn't do what they want me to do to get benefits. I would be homeless. I would be an alcoholic begging at Rideau Hall."*-veteran commenting on the details of C-45 legislation and regulations

*"If the process was transparent as the Minister claims, why were vet groups sworn to secrecy if not to keep the majority of veterans and public unaware? No other reason but manipulation."*-veteran talking about the how C-45 was created

*"We are all humans. We all have a life. We have to seriously contemplate how we are going to handle this"*-VAC employee commenting on implementing C-45 programs

*“Who is going to handle the operation when the rest of us are training on the new programs?”- VAC employee commenting on implementing C-45 programs*

*“VAC has taken every step necessary to treat CF veterans differently [than War Veterans] that they have now backed themselves into a legal and ethical corner.”-excerpt from report*

*It’s like they [VAC] are constructing a huge building on a crumbling foundation.”-disabled veteran commenting on C-45*

*“I think my pay was around \$1.20 a day or something but I was only allowed half. You could have deferred pay. I got my other half when the war was over: \$1,500. I went to Vancouver and got drunk for a month and spent my \$1,500.”-Ernest “Smokey” Smith, Canada’s last living recipient of the Victoria Cross (MacLeans, August 15, 2005)*

*“I am of the belief that to give a soldier who suffers from Post Traumatic Stress Disorder or any severe Psychological disorder large lump sums of money would be therapeutically counterproductive and irresponsible. With large sums of money, sufferers could do harm to themselves or others. At the very least, the shame of loosing such a large sum of money due to their symptoms of their illness would be, retrospectively, very difficult to bear for the veteran and the family.”-medical clinician who treats disabled veterans*

*“What point is \$250,000? Once it’s spent, it’s gone! I don’t need them to pay me and make me go away. I can’t work. I need the security of a pension for the rest of my life without all the hassle they [VAC] put you through.”-disabled veteran*

*“What these sufferers need is long term security since PTSD is principally an illness about the ultimate insecurity: the ongoing perceived and real threats to one’s life. However, disabled veterans’ injuries are often for life. Their compensation needs to offer security for life.”-excerpt from report*

*“Another example is in the Canadian Forces Advisory Council’s fact finding travels across the country to the bases a few years ago, we asked if members of the CF would rather a lump sum for disability payment. The majority replied that they would prefer a monthly payment as is currently the case.”-testimony to Parliamentary Subcommittee on VAC*

*“The legislation calls for a one-time lump-sum payment of \$250,000. Most disabled veterans will likely receive only a fraction of that amount. Nevertheless, one must question the wisdom of giving lump-sum payments to sufferers of operational stress injuries, while many are in the depths of depression and crisis. Currently, veterans enjoy a lifelong yet*

*modest disability pension. The lump-sum payment is equivalent to no more than seven to 10 years of disability pension. Most disabled veterans live for 20, 30 or even 40 years after release. Such appropriate compensation, as the minister terms it, appears to dodge responsibility for caring for the disabled veteran rather than accepting responsibility for what are lifelong disabilities. If people are not convinced about the lump sum, then I suggest the Senate recommend that they make an amendment so that veterans can make a choice between lump sum and pension.”-testimony to the Senate Committee hearing on C-45*

*“Every file is a client. You would never put a veteran on the floor or jam the veteran into the back of a drawer and forget about the veteran. You treat each file as if the veteran were in front of you. Unfortunately, most employees have forgotten that and no one is telling the new ones.”-VAC employee*