

***SEVERELY INJURED VETERANS AND THEIR FAMILIES:
IMPROVING ACCESSIBILITY TO VETERANS AFFAIRS
PROGRAMS FOR A BETTER TRANSITION***

***Report of Recommendations to Resuscitate the Promise of a
“Living” New Veterans Charter***

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House of Commons/ Chambre Des Communes

Standing Committee on Veterans Affairs (ACVA)/ Comité Permanent Des Anciens Combattants

Statutory Review of the New Veterans Charter Act

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A Brief History

The New Veterans Charter (The Canadian Forces Members and Veterans Re-establishment and Compensation Act) was enacted on April 6, 2006. It represented the single greatest change since World War II in how Canada honoured military sacrifice. Significant changes were to erase the stated legal obligation for Canada and Canadians to care for veterans and their families while replacing lifelong monthly pain and suffering payments with a one-time lump sum.

This change occurred in the midst of what was Canada's most costly war (Afghanistan) since Korea and arguably since WW II. Not one serving member of that war or their families were publicly asked whether they agreed with the changes in the legislation. Representatives of six veteran organisations met the Veterans Affairs Minister in Toronto in January 2005 and committed to support the passage of this new legislation without having seen the actual legislation. These six or so representatives also committed to a confidentiality agreement: they could not reveal what few details they did know of the legislation to anyone including their membership.

The support of these six individuals was contingent on full parliamentary due process including comprehensive committee reviews by both chambers of parliament. The legislation now known as the New Veterans Charter was passed in Parliament in less than one minute without a single word of debate in the House. No committee of elected parliamentarians was permitted to review it or make changes. Nevertheless, five of these individuals delivered testimony on May 11, 2005 to a hastily arranged Senate National Finance Committee. These individuals claimed that their organisations supported the new legislation. Sean Bruyey, Louise Richard and Harold Leduc were the only Canadians to speak on the parliamentary record of their dissent with the process and the legislation itself.

The Veterans Affairs-Canadian Forces Advisory Council was created in 2000. The Chair, Dr. Peter Neary, a historian, wrote the Council report and recommendations for new programs in March 2004. Of the seventeen broadly written and interpreted recommendations, the New Veterans Charter fulfilled just one fully and perhaps very loosely addressed a half-dozen more. Since that time, politicians and bureaucrats continue to insist that the NVC was fully supported by not just the Council's report but also the "most widespread consultations in VAC's history". The Council has never been able to respond to these specious claims. VAC ceased meetings of the Council a year before the NVC was tabled.

The Minister of Veterans Affairs in 2005 committed to smaller reviews of the legislation every two to three months and full-scale reviews every two years by Committee. The first published Parliamentary review of the New Veterans Charter did not appear until 2010 which provided 18 recommendations, most requiring Parliamentary approval. Sean Bruyey submitted the most comprehensive report of any of the witnesses before committee with 40 recommendations along with a supplementary report with an additional 15 recommendations. The Parliamentary Committee only acknowledged and then

dismissed one recommendation in its report: replacing the lump sum and returning to monthly Pension Act payments. VAC ignored all recommendations.

Meanwhile, VAC initiated two advisory groups, the Special Needs Advisory Group (SNAG) in 2005 and the New Veterans Charter Advisory Group (NVCAG) later in 2006. The two groups provided 299 detailed recommendations between 2006 and 2009, many requiring Parliamentary approval. VAC ceased operations of these groups in 2009. In 2011, Parliament enacted four changes from all the above recommendations with VAC claiming the four changes addressed most recommendations.

In February 2012, the Veterans Stakeholder Committee was informed by VAC that it enacted 160 recommendations. In November 2013, in response to an article Sean Bruyeyea authored in the National Post, VAC posted these 160 enacted recommendations online. None of these enacted recommendations have been independently audited either by the groups which proposed them (they ceased operations) or outside auditing bodies.

This Report's Recommendations

Prior Recommendations

This report repeats the multiple calls of the Veterans Stakeholder letter of February 9, 2012 to enact all outstanding recommendations from the Special Needs Advisory Group, the New Veterans Charter Advisory Group and the Gerontological Advisory Group, with specific emphasis on the “three priorities” from the Legion Consultation Group. Sean Bruyeyea’s recommendations from the 2010 report “Honouring Sacrifice with More than Words” as well as the 15 additional recommendations still stand.

This report also calls for the enactment of the Ombudsman’s report on “*Improving the New Veterans Charter*” with two strong caveats taking into account that SNAG, NVCAG and the Veterans Consultation Group unanimously endorse the following principles:

Recommendation #1

- Earnings Loss Benefit (ELB)/SISIP LTD pegged at 100% (taxable) of current military salaries for the applicable rank, (This would match most Canadian workers’ compensation schemes)

Recommendation #2

- Annual Increases of ELB/SISIP LTD- Greater of: Full Consumer price index or track typical average career progression up to a maximum rank of Warrant Officer for Non-commissioned Members and up to Major for Commissioned Members. Should the member have been released at a higher rank than that above, ELB and SISIP LTD would track rank on release.

Most Seriously Injured-Greater Participation in and therefore Contribution to Society

The most seriously injured veterans were the focus of recommendations from the Veterans' Consultation Group, the Ombudsman, NVCAG and SNAG. In the face of the many recommendations from these groups, government has claimed that there are a host of programs including vocational rehabilitation (VR), career transition services (CTS) and psychosocial rehabilitation to assist them. However, the most seriously injured are typically declared Totally and Permanently Incapacitated (TPI). TPI veterans are prohibited from accessing any VR, CTS and psychosocial rehab initiatives (see below).

However, the principles of psychosocial rehabilitation place employment as integral to social integration, whatever the level of psychological disability. Committee testimony from experts emphasized that "Across literally all causes of death, the mortality rates among the unemployed Canadians over 10 years were higher than among the employed Canadians." Repeated academic and government studies have shown that all indicators of well-being including use of lower healthcare resources was assisted by both continued education and employment.

Recommendation #3

- Totally and Permanently Incapacitated veterans be allowed to access Vocational Rehabilitation and Career Training Services (without penalty to allowances) as fully as non-TPI veterans.

TPI by definition determines that a seriously injured veteran may not achieve gainful employment. Certainly that veteran should not be prevented from seeking any and all employment. However **the NVC discourages employment**. The monthly Pension Act payment offered clear **opportunity with security** contrary to the bureaucratic rhetoric. Section 35(4) of the Pension Act indicates:

"No deduction shall be made from the pension of any member of the forces because the member undertook work or perfected themselves in some form of industry."

ELB and SISIP LTD both deduct dollar for dollar any and all monies earned while not on a VR plan and 50 cents for every dollar when on VR plan (*Public Servants keep every dollar of earnings while on a VR plan*). The dollar for dollar deduction is a clear disincentive to work. CPP Disability allows individuals to earn \$5100 without notifying CPP. Even when CPP does not deduct the \$5100 from the TPI veteran, ELB and SISIP LTD would deduct all of this. Therefore, *in order to keep receiving NVC benefits, the TPI veteran must focus on disability rather than ability*.

According to a 2009 VAC and Statistics Canada Income Study, regarding post-release income, "Females experienced a 30% decline, the medically released personnel a 29% decline and Veterans who served from 10 to 19 years a 21% decline... VAC clients had experienced the greatest declines in income post-release at 32% for NVC clients, 19% for DP [disability pension] clients and 4% for non-clients. NVC clients were also more likely to have received EI and to have had low incomes."

The 2011 enhancements may have remedied some of the NVC-DP client discrepancy for lower ranks but it would not have affected the ranks above corporal and those not in receipt of Permanent Impairment Allowance (PIA). In spite of 2011 NVC enhancements, PIA continues to be overly restrictive in both its access criteria as well as its “grades” of impairment. In 2013, of 651 recipients of PIA, 593 received the lowest Grade 3, 64 Grade 2 and only 1 veteran received Grade 1.

Recommendation #4

- All ELB and SISIP LTD recipients on VR plans be allowed to keep 100% (taxable) of their employment earnings up to 100% (taxable) of their pre-release adjusted salary (same as Public Service).

Recommendation #5

- Permanent Impairment Allowance be expanded to five grades similar to Exceptional Incapacity with criteria more compassionate than current criteria. Whatever the grade system used, awarding should be automatic based upon level of disability pension and/or award.

Recommendation #6

- An advisory group of female veterans and experts reporting directly to the Minister be established to look at issues of female transition, well-being and income.

Recommendation #7

- Further to Recommendation #6 above, working/advisory groups at the Parliamentary/Minister level be established to deal with Veterans’ issues in accordance with recommendation #13 of “Additional Recommendations to Honouring Sacrifice with More than Words”

By being allowed to test the waters of employment, more than just the well-being of TPI veterans would benefit. Government is deeply concerned about the fiscal liability of veterans’ benefits. TPI veterans would pay tax on their modest employment earnings, offsetting costs of these benefits.

Recommendation #8

- All ELB and SISIP LTD recipients not on VR plans be allowed to keep first \$5100 (increasing annually with CPP Disability limits) without notifying either plan.

Recommendation #9

- All ELB and SISIP LTD recipients not on VR plans have earnings offset by an additional 10% for each successive \$5000 earned (e.g. \$5100 to \$10100, 10% offset; \$10100 to \$15100, 20%). Full taxes would be paid on any of these earnings.

Most Seriously Injured-Pre and Post NVC: One Veteran, One Standard

The NVC was created to address the needs of modern post-Korean war veterans. The VAC-CF Advisory Council made a specific recommendation to grant all CF veterans access to all programs in the new legislation. The 2011 NVC enhancements were intended to assist all seriously injured CF veterans making it possible for Pension Act recipients to apply for PIA when not in receipt of the Pension Act Exceptional Incapacity Allowance (EIA). It is true that EIA is similar in purpose to the NVC PIA but the PIA supplement of \$12,000 annually has no equivalent in the Pension Act. A veteran in receipt of EIA cannot receive the PIA supplement.

Recommendation #10

- All CF veterans collecting EIA should be given access to the annual PIA supplement.

The Pension Act Attendance Allowance (AA) is intended specifically for seriously injured veterans and yet no equivalent program exists in the NVC. The criteria for AA were unilaterally rewritten to be more stringent in 2003 excluding most psychologically injured, although veterans in receipt at that time were grandfathered.

Recommendation #11

- All CF veterans whether in receipt of Pension Act and/or NVC benefits be given access to Attendance Allowance should their condition meet the criteria

Recommendation #12

- Attendance Allowance criteria be rewritten with more accessible and compassionate criteria

Most Seriously Injured and the New Veterans Charter-The Myth of Psychosocial Rehabilitation (PSR)

PSR is a relatively young field, commencing when developed nations began closing psychiatric institutions and leaving psychiatric patients to their own devices. The vast majority of psychosocial research and practices are centred upon sufferers of schizophrenia and other psychotic disorders. The military specifically screens for psychotic disorders at recruitment.

VAC sold the NVC in 2005 on the promise of psychosocial rehabilitation. Canada did not and still does not have a universally accepted regulatory body for or definition let alone the practice of PSR. VAC did not have a definition of the practice until 2009, the same year VAC published a study asking, *inter alia*, what is the definition of case management? The WHO consensus paper could provide guidance on applying PSR to treatment of psychological injuries of military service but even the Veterans Administration in the US did not begin any work of note on PSR until 2007.

PSR is a highly complex method of integrated team case management. The most well-known and effective evidence based program is known as Assertive Community Treatment (ACT). ACT typically requires a dedicated team of 10 to 12 practitioners in multiple medical/treatment disciplines working closely together to provide treatment and support 24 hours a day, 7 days a week to an ideal caseload of 100 persons in total with programs lasting months or longer. Key to PSR is ensuring even the most psychologically disabled are employed, supported by graduated work entry, extensive and unlimited coaching and care from integrated medical teams.

In 2006, the NVC budgeted \$782.27 per veteran annually both for medical and psychosocial treatment. This amount would cover 4 psychologist appointments. In 2006 and currently, it was and is impossible for VAC to offer psychosocial rehabilitation not merely because of insufficient funds, true PSR does not exist in Canada in any consistent functioning model applicable to the veteran experience.

Recommendation #13

- VAC initiate and support, over the long term, an expert independent working group to explore, develop and monitor a model of psychosocial rehabilitation in its application to psychological and other serious injuries of military service.

Recommendation #14

- VAC either establish partnerships with existing PSR bodies in Canada or develop a military/veteran unique certification standard for the treatment of veterans.

The New Veterans Charter Limits Program Access through Pettiness, Insensitivity and Cruelty in Bureaucratic Obstacles

There is no expiration date to gratitude and Canada's obligation to our veterans and their families is lifelong. Time limits in veterans' legislation can never benefit the veteran. Why then is the NVC replete with cruel and unnecessary time limits not to mention petty and insensitive bureaucratic red tape? The Veterans Bill of Rights guarantees that veterans and families, "*Be treated with respect, dignity, fairness and courtesy.*" The NVC through copious petty time limits and inhumane bureaucratic obstacles violates all of these rights while contradicting the rhetoric that VAC is "*cutting red tape*".

Recommendation #15

- VAC remove all time limits in the NVC legislation and regulations as well as 5 year limit on PS priority placement for medically released. Examples include:
 - Legislation
 - s. 9(2) 120 days after release to make application to Rehab program

- s. 18(2) ELB begins payable to veteran when Minister determines not on date of application
- s. 22(2) ELB payable to widow/orphan on later of date of death or one year prior to application approved (same for CFIS s. 32)
- s. 39 PIA payable on later of date of application or date one year prior to application approval (Same for Clothing Allowance s. 62)
- Regulations
 - s. 2(1) two years after release to apply for Career Transition Services
 - s. 11(1) spouses of TPI veterans have only 1 year to apply for Voc Rehab
 - s. 31 Six month deadline to apply for CFIS for spouse after veteran death
 - s. 68(1) application for review must be made within 60 days after decision

Recommendation #16

- VAC establish an advisory group similar to SNAG's parameters to diligently review NVC statutes and policies for unnecessary and/or insensitive red tape as well as counterproductive limits.

Examples include:

- \$1000 and 13 hour limit for Career Transition Services (similar amount DND offers through SCAN for assistance to healthy transitioning members)
- Medical examinations by "person specified by the Minister" (In Pension Act, veteran can chose "qualified" practitioner whom veteran trusts)
- For spouse to qualify for Voc Rehab, ELB, CFIS and SRB, spouse must provide death certificate, *"medical reports or other records that document the member's or veteran's injury or disease, diagnosis and cause of death"* as well as *"a declaration attesting to the truth of the information provided"*
- VAC deducts \$5.00 from taxi reimbursement costs of veterans seeking medical care

SISIP LTD, workers compensation schemes and insurance plans including the public service plan freeze offsets (such as CPP disability, CF pension) at amounts on the later date of: first payment of offset or income benefit. The Earnings Loss Benefit (ELB) not only limits annual increases to maximum CPI of 2% annually, but ELB is reduced by annual increases in offsets, limiting the actual increase in ELB paid.

Recommendation #17

- VAC freeze offsets to ELB for purposes of calculating annual increases in ELB benefit proper.

The New Veterans Charter Limits Access and support to Families, Hindering Caregiving to the Seriously Injured

The Minister of VAC and the department are legally responsible for the "the care, treatment or re-establishment in civil life of any... [veteran]...and the care of the dependents or survivors" of veterans.

Family and veteran should be treated equally with all the implications of access to programs that this entails. However, government through all legislation including the NVC places family far in the back-seat as a sometimes-recipient of benefits. DND has a “Family Covenant”. *VAC has no such covenant and the NVC does not include a covenant for veterans or families unlike the Pension Act.*

Family members, while the veteran is still alive, may not access NVC benefits independently. They are not given their own file number but must rely on the veteran’s file reference. This is far from equality and dignity. The House Standing Committee on National Defence and Veterans Affairs as early as 1998 identified multiple gaps in supporting family members of seriously disabled veterans. The Ombudsman, SNAG, the NVCAG, VAC internal audits and the current Veterans Affairs Committee all point out shortcomings and provide recommendations to support families so that they may support the seriously injured veteran. It is safe to say that VAC has overwhelmingly ignored most recommendations.

Recommendation #18

- Family along with Veterans be given a VAC identification card with consideration for unique family member file numbers.

Recommendation #19

- In addition to the inevitable covenant which VAC (through court action) will be required to create, VAC to create a family covenant detailing Canada’s obligations to veteran families.

Recommendation #20

- VAC establish a permanent advisory group of experts and family members to ensure that VAC programs embrace families as equal partners. The advisory group would report to the Minister.

Transitioning veterans healthy enough to upgrade education and seek employment through Voc Rehab programs in VAC or through SISIP are supported through these programs with subsidized child care. However, family members of seriously injured veterans who do not enjoy respite care and endure unspeakable grief and stress, while spouses are forced to delay, curb or cease career aspirations altogether in order to care for the veteran, are not assisted whatsoever with child care.

Recommendation #21

- VAC fund full childcare for all TPI veterans.

Furthermore, family units of the severely injured as a whole suffer a significant drop in income after military release when veterans are put on ELB or SISIP LTD. As spouses are forced to curtail their careers to care for the veteran, the resultant drop in income from the spouse significantly exacerbates often dire financial situations. Meanwhile, family members can only seek medical and psychological care if the veteran does so. How is this treating all members of the veteran family with any dignity?

Even if the veteran does not suffer a psychological injury, the stresses on the family in caring for a severely ill veteran are well known, taking a significant toll on the psychological health of the family members.

We also know that financially and emotionally healthy families increase the health outcomes of seriously injured veterans while attaining better health outcomes themselves, thus lessening longer term healthcare costs. Families with greater well-being also correlate with families earning higher incomes. Higher incomes mean higher taxes, offsetting the costs of veterans' benefits.

Recommendation #22

- Family members independently receive full benefits of psychological treatment

Recommendation #23

- During the initial two years after release, spouses of TPI veterans be offered the opportunity to apply for ELB independently. If opting out of ELB or after the two year period, VAC provide a dignified attendant allowance directly to the spouse or adult child caring for the TPI veteran.

Recommendation #24

- Spouses of TPI veterans be permitted to independently access Voc Rehab and Career Transition Services while allowing veteran the option to access same program (see Recommendation #3)

The New Veterans Charter: Process Interrupted-How to Re-establish Trust with Veterans, their Families and Canadians

Government concedes the NVC is the single greatest change since WWII in how Canada honours veterans and their families. However, this change was not accompanied by a Royal Commission or public hearings allowing veterans and families to speak directly to legislators. It was not accompanied by public meetings of experts, all levels of government, industry, educators, veterans or their families as was the case in WW II. The NVC was unilaterally created by a task force headed by a VAC senior Director, Darragh Mogan. This was in sharp and sad contrast to the original Veterans Charter which involved 14 or so parliamentary committees comprised of employers, all levels of government, veterans, serving military, education experts and administrators, and senior Ministers in Ottawa.

Critics of the NVC such as Sean Bruyey have been systematically isolated, discredited and had their benefits removed or threatened to be taken away. Not a single VAC bureaucrat suffered sanctions of any kind as a result of the Privacy Commissioner's findings in Bruyey's case. And those responsible received performance pay not only in the years following the reprisals against Mr. Bruyey but even after the Privacy Commissioner's findings in 2010.

Recommendation #25

- Veteran and family whistleblower protection be included in the NVC legislation. There is nothing more threatening to security than being dependent for all medical, financial and benefit needs on a single institution that offers no binding guarantee against reprisals.

Meanwhile, senior bureaucrats at VAC have manipulated the consultation process into something resembling a racquetball court where veterans, experts and even parliamentarians frustratingly and repeatedly volley hundreds of recommendations at a glossy, loud and intransigent wall that is VAC in Charlottetown and Treasury Board in Ottawa.

Recommendation #26

- Parliament create a special committee of Cabinet Ministers to coordinate a thorough evaluation of the New Veterans Charter improvements and expansion, including addressing on a priority manner the lump sum issue and necessity of a clear statement of a social contract/covenant/obligation/duty of government to care for Canada's veterans and their families. This effort will restore faith of Canadians and Canada's veterans in Ottawa during one of the worst and persistent policy and PR disasters of the past decade.

Recommendation #27

- Repeating recommendations from "Honouring Sacrifice with More than Words" senior VAC managers be required to work the front lines for at least five working days per year mentored by a Client Service Agent, call centre employee, Case Manager, Pension Officer or Service Canada employee.

Parliamentarians have sided far more with the bureaucracy than with Canada's most severely disabled and their families. This has shattered much of the deep trust veterans have with their government. It can be restored but it will take much effort on the part of Parliamentarians to **directly engage veterans and their families** in many creative and substantive ways. *Politicians must throw off the rhetoric that the NVC is wonderful and the bureaucracy is even better.* This only rubs salt in open wounds, offends an increasing number of Canadians and it convinces few that life is better for our veterans.

Most importantly, Parliamentarians must reign in the bureaucracy and make its senior managers in VAC and Treasury Board truly become servants of the public working at the pleasure of elected officials not the other way around. *The military does not serve bureaucrats, military members serve and sacrifice for a democratic Canada.*

Regarding the most controversial aspect of the NVC, the lump sum, courts and public opinion will most certainly force government to increase the amount significantly or revert back to the Pension Act. The

more proactive government is in fixing this most unjust and unpopular program, the greater the opportunity to restore faith with Canada's veterans and families not to mention Canadians at large.

Recommendation#28

- Veterans Affairs Committee spends four months travelling to Canada's communities holding public hearings, inviting veterans, family members and practitioners who work daily with injured veterans. SCNDVA did this in 1998 for serving members. It is time Canada's veterans are finally honoured with their cross-country hearings to heal wounds.

Recommendation #29

- Echoing the Ombudsman, Parliament enshrine in legislation that the New Veterans Charter be "comprehensively" reviewed every two years by both chambers of Parliament.

Minister Fantino recently claimed that "We didn't have to do a comprehensive review of the New Veterans Charter." He is wrong. The legislation states:

*Within two years after the day on which this section comes into force, a comprehensive review of the provisions and operations of this Act **must** be undertaken by any committees of the **Senate and of the House of Commons** that are designated or established by the Senate and the House of Commons for that purpose (emphasis added)(s.20.1 of Provisions of NVC)*

Note that both the Senate and the House "must" carry out a review. However the current government is not granting permission to the Senate to carry out that review. Why is it that Canadians must pay a fine, be incarcerated or face some other form of sanction for breaking the law and yet lawmakers can break the law and suffer no consequences? Shirking laws hardly builds the desperately needed trust between Ottawa and our veterans and their families as well as greater Canada.

Recommendation #30

- Government immediately grant a mandate in the Senate to carry out a "comprehensive review" of the New Veterans Charter.

During a recent meeting of the Senate Subcommittee of Veterans Affairs, Minister Fantino scoffed at Senate's insistence on providing a timeline to address the needs of the most disabled veterans. "I have read about a committee that came out with 255 recommendations. Try to implement that."

When someone's house is falling around them, "try[ing] to implement that" is quite simple: implement the recommendations one at a time and very quickly.