

# Veterans Legislation and Policies

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## A. Progressive Future Loss of Income (New Career Impact Allowance)

### Recommendation

Establish a newly structured Career Impact Allowance that would reflect the following standard of compensation: “What would the veteran have earned in their military career had the veteran not been injured?” This form of progressive income model, which has been recommended by the MPAG and the OVO, would be unique to the New Veterans Charter/Veterans Well-being Act and would bolster the potential lifetime compensation of the disabled veteran as to their projected lost career earnings, as opposed to the nominal one per cent increase provided in the proposed legislation.

- NCVA encourages VAC to revisit the MPAG proposition of consolidating the Income Replacement Benefit and a newly structured CIA to provide a single stream of income for life that would include the “projected career earnings” approach.
- Access to the new structured CIA benefit should be available through the lifetime of the veteran, providing a financial safety net that includes application to pre- and post-release income scenarios.

As a matter of legislative history, it is to be noted that VAC converted the former Career Impact Allowance (CIA) and the Career Impact Allowance Supplement (CIA(S)) into the Additional Pain and Suffering Compensation benefit as part of the Pension for Life transition enactment. It remains the position of NCVA, in concert with the Policy Advisory Group, that the department should revisit this legislative model for career impact funding and address the future loss of income suffered by a disabled veteran on the basis of the following fundamental question – “What would the disabled veteran have earned in their projected military career if the veteran

had not been injured?” – as opposed to the nominal one per cent increase in the Income Replacement Benefit provided in the current legislation.

A number of members of NCVA and the MPAG indicated a serious concern that the current income replacement program leaves lower-ranked CAF members at a minimal level of income replacement for life in circumstances where such a veteran qualifies for the VAC Diminished Earnings Capacity program or the SISIP long-term disability benefit.

It has been our position from the outset that the financial benchmarks for a progressive income model can be established in accord with the various reports emanating from the OVO over recent years and as proposed by the New Veterans Charter Advisory Group in 2009. These evaluations have demonstrated the relative predictability of the elevation of a CAF member through their military career in recognizing the specific ranks the member would have achieved had the member not been injured.

It is also of considerable import that the Canadian civil courts, over the last number of decades, have evaluated the cases of severely injured plaintiffs by consistently applying the concept of future loss of income in assessing monetary damages. In a similar fashion to the proposals emanating from NCVA and the MPAG on the progressive income replacement model, the courts consider the probable career earnings of an injured plaintiff from the perspective of future loss of income or,

alternatively, future loss of earnings capacity as part and parcel of the damage award granted to plaintiffs in the Canadian judicial system.

It is of interest that, in the context of VAC, the department has a distinct advantage over the courts, as the judicial system only has “one bite at the apple” at the time of the court hearing or settlement. VAC, on the other hand, is able to monitor the income position of a disabled veteran throughout their life to determine the differential between the benchmark established by this newly structured benefit for career impact funding and the actual income received by the veteran.

Query: why should an injured Canadian veteran receive less than an injured plaintiff with reference to “future loss of income”?  
We have, in effect, paralleled the Disability Award under the NVC/VWA with the general pain and suffering damage awards in the Canadian courts – why not replicate the philosophy of the future loss of income concept as well?

## B. Veterans Education and Training Benefit

### Recommendation

NCVA proposes that:

- a) VAC eliminate the limitations as to the applicability of the new Veterans Education and Training Benefit so as to make this particular benefit available to all veterans and not just those who have served since April 1, 2006.
- b) Family members (spouses and dependent children) should not only have an independent right to VAC VOC-REHAB and employment policies, but also to the Education and Training Benefit without the current restrictions that curtail their opportunity to access these programs.

We would concur with the considered opinion of former Deputy Minister Walt Natynczyk that this program represented a landmark proposal that substantially enhances the Education and Training Benefit for all eligible veterans. The deputy minister suggested at the time of the formal announcement that it was based on the United States G.I. Bill in relation to extending educational benefits beyond disabled veterans so as to include all released veterans who qualify under this new program.

The benefit is available for ten years going forward following the release of the veteran and is retroactive to April 1, 2006. Unfortunately, veterans released from the CAF prior to 2006 do not qualify for this benefit, which, in our judgment, reflects a rather arbitrary cut-off date and conceivably is a Government decision founded on actuarial objectives in the budgetary process.

This program was initiated on April 1, 2018, for all veterans honourably released on or after April 1, 2006 – veterans with six years of eligible service will be entitled to up to \$40,000 of benefits, while veterans with twelve years of eligible service will be entitled to up to \$80,000 of benefits. The minister/ deputy minister of the day emphasized that the benefit would provide more money for veterans to go to college, university or technical school after they complete their service.

For those veterans who find education is not their solution, the department has indicated that there would be further monies available under this program for career development



courses in the neighbourhood of \$5,000 per veteran.

NCVA is of the opinion that the current eligibility date of 2006 should be changed to encompass a larger class of veterans prior to that date. The present policy actually splits the application of the ETB so that only veterans who served in Afghanistan after 2006 are eligible. In our view, there is no justification for this cut-off date.

In this context, the present ten-year rule for qualifications should also be eliminated so that the more inclusive veteran class would be eligible and not barred by this arbitrary ten-year limitation period.

We would also strongly recommend that family members (spouses and dependent children) should also have the independent right to access the Education and Training Benefit without the current restrictions that curtail their opportunity to utilize these programs.

## C. Partial Disabilities

### Recommendation

NCVA strongly recommends that VAC grant automatic entitlement to those veterans currently in receipt of consequential or partial entitlement rulings at one-fifth/two-fifths/three-fifths to a four-fifths level of assessment. In so doing, the department will address a significant amount of the backlog in relation to the numerous appeals that are currently in the department system re: fractional awards.

In early 2018, VAC created a new policy with reference to partial entitlement flowing from veterans legislation, i.e., disabilities arising in part out of military service or consequential disabilities arising in part from a primary disability.

The VAC policy amendment established a principle that any partial entitlement award would either be granted at four-fifths or five-fifths. In the past, fractional entitlements in this context were granted in fifths – one-fifth, two-fifths, three-fifths et al. The background information given to NCVA and the MPAG from VAC indicated that these fractional entitlements were often appealed one-fifth at a time, clogging up the entire VAC adjudicative system. It was felt that it would be prudent to simply eliminate the one-fifth, two-fifths and three-fifths entitlements and grant a four-fifths for any partial entitlement award.

This is clearly a beneficial policy insofar as a substantive increase in pension to be received by a veteran, but we felt it was important to raise a number of questions following the introduction of this amendment that still remain of concern as to the administration of this policy amendment:

1. Will these fractional entitlements be granted retroactively to all veterans who have received a one-fifth, two-fifths or three-fifths entitlement in the past?

It has been established by VAC that this will not be done automatically but will only be triggered by individual veterans initiating a review of their files by the department in order to achieve a potential increase in their fractional entitlement. NCVA strongly recommends that VAC grant automatic entitlement to those veterans currently in receipt of consequential or partial entitlement rulings at one-fifth/two-fifths/three-fifths to a four-fifths level of assessment. This will also alleviate the significant backlog of



the numerous appeals with respect to fractional awards that are currently in the VAC adjudicative system.

2. Will there eventually be any limitation period as to how far back this form of increased fractional entitlement will be granted, given the magnitude of appeals that have been generated by this new policy?
3. Will the standard of assessment be more stringent when it is recognized that the partial entitlement award will be granted at a minimum of four-fifths? In the past, one-fifth awards were occasionally granted on the basis of giving the veteran applicant the benefit of the doubt – will this relative generosity be altered in the new policy guideline adjudication?

## D. SISIP LTD/VOC-REHAB Programs

### Recommendation

NCVA continues to take the long-held position that SISIP LTD/VOC-REHAB should be eliminated, placing all SISIP LTD and VOC-REHAB under VAC for all service attributable and non-service attributable medical releases with no premiums – one program/one service delivery model.

NCVA continues to have a fundamental concern as to whether SISIP LTD for service-related disabilities should be continued at all or whether it should be eliminated due to the multiple standards that exist not only with the SISIP LTD program but also the SISIP VOC-REHAB program.

One of the priority recommendations of NCVA, the MPAG, the New Veterans Charter Advisory Group, numerous veteran consultation groups, the Standing Committee on Veterans Affairs and the OVO for many years has been to suggest that the insurance culture needs to be removed from the compensation made available to veterans and their families. The compensation of veterans and their dependants should not be a function of the insurance industry whose mandate, in many situations, is to minimize exposure of

the insurer's policy when applied to injured or disabled individuals.

As a matter of background, a fundamental commitment made by the Government at the time of the enactment of the New Veterans Charter was the recognition that the SISIP LTD program should be eliminated and fully replaced by a liberalized income replacement loss benefit administered by VAC. The constraints placed on the NVC/VWA by the restrictive provisions of the SISIP LTD program and the SISIP VOC-REHAB program are felt in the present context and should be removed as soon as possible. This government commitment made by the minister and deputy minister of the day was part and parcel of the understanding between the veteran stakeholder community and VAC in consideration of the immediate passage of the Charter by Parliament in 2006.

It is to be noted that the “wellness program” strongly advocated by VAC and, more particularly, by former Deputy Minister Walt Natynczyk, is clearly impacted by the fact that the greater majority of medically released CAF members fall under the administration of the SISIP VOC-REHAB program. In effect, VAC does not have the capacity to control and operate this portion of the VOC-REHAB program and is left with little accountability as to the impact that the SISIP program will have on veterans in regard to this essential element of the NVC/VWA.

With reference to the question of service- and non-service-related disabilities, it has been the experience of the veterans’ community that this entire question of whether a member of the Canadian Forces is to be considered “on duty” for the purposes of pensionability either under the Pension Act or the New Veterans Charter/Veterans Well-being Act has been a long-standing grievance.

The regulations in this area would be far clearer and more equitable if the Government/department agreed to adopt the “insurance principle” in this context so that all members of the military would be considered “on duty” at all times and thus eligible for various financial benefits such as the PSC and Income Replacement programs once they put on a uniform. This would clear up the potential interpretive issues that are raised in the regulations to the NVC/VWA and would address the confusion and ambiguity that often results when individual hypothetical cases reflect “grey areas” or areas of dispute.

The resultant effect of this recognition would also further the objective of eliminating the SISIP LTD program even for non-service-related disabilities, which, of course, was its original and exclusive mandate in the 1970s when it was first created.

## **E. Partners in Canadian Veterans Rehabilitation Services Program/Rehabilitation Services and Vocational Assistance Project (RSVP)**

### **Recommendation**

NCVA will continue to monitor the implementation of the new Partners in Canadian Veterans Rehabilitation Services Program/Rehabilitation Services and Vocational Assistance Project (RSVP) to ensure that the objective of VAC to provide improved medical, psycho-social and vocational rehabilitation services to our veterans and their families is achieved.

We would express our appreciation to Major (Ret’d) Bruce Henwood for his insights on this topic. He represents the NCVA as a member of the Minister of Veterans Affairs Canada Care and Support Advisory Group, and is also a Senior Consultant to The War Amputations of Canada (a member organization of the NCVA). Major Henwood is a seriously disabled veteran.

As reported in last year's NCVA Legislative Program, we remain of the view that the "devil will be in the details" on how this RSVP program is being implemented.

Beginning in November 2022, VAC merged two expiring national contracts delivering medical, psycho-social and vocational services to veterans and their families into one contract. It is a joint venture, provided by WCG International Consultants and Lifemark Health Group, called Partners in Canadian Veterans Rehabilitation Services (PCVRS). At times, RSVP and PCVRS acronyms are used interchangeably.

Both of the PCVRS organizations have a wealth of experience in the field and a national network of service providers.

As could be expected, there was some pushback and issues plaguing the rollout of this program. There unfortunately remains coordination issues between VAC and SISIP/Manulife on who does what to whom and when. The two do not work well together as there are different eligibility criteria and different suites of benefits. It appears the default setting is SISIP/Manulife first, then VAC. This is confusing to our veterans and their families.

Under the VAC program, as of September 2023, migration of all existing rehabilitation participants has been completed. There were some issues with regards to PCVRS Rehabilitation Services Specialists or RSS; as a result, more are being hired and are coming on board. Additionally, PCVRS has increased its clinics nationally from 600 to 795 with over 12,000 registered providers such as psychologists, physicians,



nurses, physiotherapists, massage therapists, chiropractors, social workers, clinical counsellors and vocational rehab specialists, just to name a few. Not all veterans have been assigned a rehab support specialist or have even been contacted, as many have active rehabilitation and/or treatment plans already in place and have been grandfathered. Others were actually not transitioned to the new program as they were scheduled to complete their rehab plan in the short term.

There was, as mentioned, pushback from within the department that essentially boiled down to the roles of the VAC case managers, veterans services agents and the PCVRS rehab service specialists. There was concern over job security and the quality of delivery of appropriate services to veterans and their families. There was also concern about funding issues and, as these are being discovered, fixes are being implemented. There was a lack of communication to the veteran community, but VAC is addressing this through a series of brochures, service bulletins and frequently asked questions handouts. The program is still evolving and the "devil will be in the details" remains to be seen!

One final note: there are still deficiencies with this program regarding the Canadian Armed Forces Reserve veterans.

### VAC Health-Care and Treatment Benefit Policy Improvements

It goes without saying that there are many areas within VAC that can be improved to provide a better experience for the veteran and their family. The following can be summarized as “*Wouldn’t it be nice if...!*”

- VAC were to assign a Veteran Service Agent (VSA) to all veterans, either upon request or at a high-level of disability, to support the veteran through their life journey. This is not the current practice; many seriously disabled veterans do not have VSA support.
- VAC were to implement a Health Spending Account (HSA) or similar benefit to cover small over-the-counter purchases. For example, a cane that costs approximately \$40 requires a family physician prescription in order for VAC to cover the purchase. With an HSA, the veteran could simply purchase a cane or even shop for products on sale!
- VAC were to implement a veterans dental plan similar in nature to the existing Canadian Armed Forces Pensioners Dental Service Plan, with the ability for veterans upon retirement from the Canadian Armed Forces to opt into the plan, similar to how opting into the current Public Service Health Care Plan currently exists.
- The VAC benefit grid search engine were more user-friendly by expanding the language database to include common terminology that a veteran would use; for example, the search engine does not recognize “wheel chair” (it does, however, recognize “wheelchair”), or the search engine changes “ointments” to “appointments.”
- The VAC benefit grid search engine would allow for the insertion of the Drug Identification Number (DIN) or Natural Product Number (NPN) to find a product.
- VAC and the VAC benefit grid recognized kinesiologists. Presently, rehabilitation services provided by kinesiologists are not recognized by VAC except in Ontario (so much for the “one veteran – one standard”!).
- VAC were to amend the benefit grid “prescriber required” criteria to include pharmacists, other health-care specialists, and home-care and medical supply vendors. It is presently too restrictive, recognizing only physicians, occupational therapists, physiotherapists or registered nurses.
- Yoga, especially for posture, became an approved treatment benefit covered by VAC.
- VAC, or indeed the Government of Canada, developed a disability identification card for travel abroad, similar to what many other countries already provide.

## F. Post-65 Benefits

### Recommendation

NCVA proposes that VAC should establish that the Income Replacement Benefit (former Earnings Loss Benefit) be continued for life without deduction, and that the post-65 diminishment be eliminated as the financial plight of the eligible seriously disabled veteran at age 65 remains essentially unchanged.

It is to be noted that the legislative amendments emanating from Budget 2018 (which consolidated a number of income replacement provisions into one benefit, the Income Replacement Benefit) unfortunately still retain the inadequacies of the Retirement Income Security Benefit, which was enacted earlier by the former Conservative government in its attempt to address the post-65 financial security for seriously disabled veterans and their families. As aforementioned, the post-65 benefit provides a limited number of disabled veterans (less than 6 per cent) with 70 per cent of 90 per cent of the IRB, should the veteran be deemed as suffering a “diminished earnings capacity” as defined under the regulatory provisions of the new act, less certain potentially significant deductions prescribed by these policy provisions.

In our view, to apply a 70 per cent formula to the post-65 period for a permanently incapacitated veteran based on a public/private sector pension model is not appropriate when it is recognized that the plight of such a seriously disabled veteran post-65 remains unchanged and their financial costs continue to be essentially the same.

During the course of initial discussions surrounding the enactment of these post-65 provisions, strong arguments were made by NCVA and various veteran stakeholder groups that the full Earnings Loss Benefit/Income Replacement Benefit should be continued for life, particularly given the fact that the principal recipients of this post-65 “pension” will be totally incapacitated veterans.

We would underline that our proposal for a progressive future loss of income approach would address this inequity by providing a more realistic form of income replacement for seriously disabled veterans.

