



Government  
of Canada

Gouvernement  
du Canada

Veterans  
Ombudsman

Ombudsman  
des vétérans

# FAIR COMPENSATION TO VETERANS AND THEIR SURVIVORS FOR PAIN AND SUFFERING

---

Veterans  
Ombudsman  
July 2016

A photograph of a person sitting in a forest, their back to the camera. They have a large, dark bandage wrapped around their right arm and hand. The person's head is resting on their hands, suggesting a state of distress or grief. The background shows a dense forest with sunlight filtering through the trees.

Canada

## OFFICE OF THE VETERANS OMBUDSMAN

---

360 Albert Street, Suite 1560  
Ottawa, Ontario K1R 7X7

Toll-free: 1-877-330-4343

Email: [info@ombudsman-veterans.gc.ca](mailto:info@ombudsman-veterans.gc.ca)

Facebook: [Canada's Veterans Ombudsman](#)

Twitter: [@VetsOmbudsman](#)

This publication is available in electronic format at [www.ombudsman-veterans.gc.ca](http://www.ombudsman-veterans.gc.ca).

Cette publication est aussi disponible en français au lien ci-haut.

V104-13/2016E-PDF  
978-0-660-06049-1

## TABLE OF CONTENTS

MESSAGE FROM THE OMBUDSMAN.....	2
MANDATE OF THE VETERANS OMBUDSMAN.....	3
<i>VETERANS BILL OF RIGHTS</i> .....	4
EXECUTIVE SUMMARY.....	5
INTRODUCTION.....	7
METHODOLOGY.....	9
THE EVOLUTION OF FINANCIAL BENEFITS FOR CANADIAN VETERANS.....	10
CURRENT NON-ECONOMIC BENEFITS PROVIDED BY VETERANS AFFAIRS CANADA.....	11
<i>Pension Act</i> .....	11
New Veterans Charter.....	15
NON-ECONOMIC BENEFITS PROVIDED BY ALLIED COUNTRIES.....	18
OTHER CANADIAN FEDERAL AND PROVINCIAL/TERRITORIAL PROGRAMS THAT PROVIDE NON-ECONOMIC BENEFITS.....	20
Federal Programs.....	20
Provincial/Territorial Workers Compensation Board Programs.....	21
CANADIAN COURT AWARDS FOR NON-PECUNIARY DAMAGES.....	25
ANALYSIS.....	27
Comparing Non-Economic Benefits provided by VAC to Canadian Court Awards for Non-Pecuniary Damages.....	27
Comparing Non-Economic Benefits provided by VAC to WCB Benefits.....	27
Comparing Non-Economic Benefits Provided by VAC and Other Countries.....	28
Defining Fairness in the Context of Compensation for Non-Economic Loss.....	28
Is the NVC Disability Award Fair?.....	29
Are the Critical Injury Benefit and Detention Benefit Fair?.....	30
IMPROVEMENTS REQUIRED TO THE NEW VETERANS CHARTER.....	31
Provide Compensation under the NVC for the effects of Exceptional Incapacity.....	31
Provide the Death Benefit to the Designated Beneficiaries of a Single CAF Member.....	33
CONCLUSION.....	35
RECOMMENDATIONS.....	36
ANNEX A - THE EVOLUTION OF CANADIAN VETERANS' FINANCIAL BENEFITS.....	37
ANNEX B - NON-ECONOMIC BENEFITS PROVIDED BY ALLIED COUNTRIES.....	46
ANNEX C - NON-ECONOMIC BENEFITS PROVIDED BY PROVINCIAL/TERRITORIAL WORKERS COMPENSATION BOARDS.....	50

## MESSAGE FROM THE OMBUDSMAN

I am pleased to publish *Fair Compensation to Veterans and their Survivors for Pain and Suffering*, which assesses the fairness of compensation provided under the New Veterans Charter<sup>1</sup> (NVC) for non-economic loss.

While no amount of money can provide full restitution, Veterans who have suffered from an illness or injury due to their service need to be fairly compensated for the impact their disability has on their lives and on the lives of their families. Also, families must receive fair compensation for the loss of their loved one in the case of a sudden, service-related death.

This report uses measures of **fairness** – *adequacy*, *sufficiency* and *accessibility* – to analyze the NVC as it applies to compensation for non-economic loss provided by Veterans Affairs Canada (VAC) to disabled Canadian Armed Forces (CAF) members and Veterans and their survivors. The report compares what Veterans and their survivors receive to compensate for non-economic loss with what other Canadians may receive under other federal, provincial and/or territorial programs, and it also looks at what Veterans in other countries may receive.

The findings in this report indicate that there are some concerns of fairness in the non-economic compensation that is provided by VAC, and I make three recommendations to address these concerns. My objective is to ensure fair recognition of the sacrifice made by Veterans who are experiencing pain and suffering, regardless of whether they fall under the *Pension Act* or the NVC. Our Veterans and their families deserve no less.

---

<sup>1</sup> The document's official name is the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*. S.C. 2005, c.21. Source: <http://laws-lois.justice.gc.ca/eng/acts/C-16.8>

## MANDATE OF THE VETERANS OMBUDSMAN

The Office of the Veterans Ombudsman (OVO), created by Order in Council<sup>2</sup>, works to ensure that Veterans, serving members of the CAF and the Royal Canadian Mounted Police (RCMP), as well as other clients of VAC, are treated respectfully, in accordance with the *Veterans Bill of Rights*<sup>3</sup>, and receive the services and benefits that they require in a fair, timely and efficient manner.

The OVO addresses complaints, emerging and systemic issues related to programs and services provided or administered by VAC, as well as systemic issues related to the Veterans Review and Appeal Board.

The Veterans Ombudsman is an independent and impartial officer who is committed to ensuring that Veterans and other clients of VAC are treated fairly. The Veterans Ombudsman measures **fairness** in terms of *adequacy* (Are the right programs and services in place to meet the needs?), *sufficiency* (Are the right programs and services sufficiently resourced?), and *accessibility* (Are eligibility criteria creating unfair barriers, and can the benefits and services provided by VAC be accessed quickly and easily?).

---

<sup>2</sup> Order in Council P.C. 2007-530, April 3, 2007. Source: <http://www.ombudsman-veterans.gc.ca/eng/about-us/ombudsman/order>

<sup>3</sup> *Veterans Bill of Rights*. Source: <http://www.veterans.gc.ca/eng/about-us/veterans-bill-of-rights/vbor>

## **VETERANS BILL OF RIGHTS**

The *Veterans Bill of Rights* applies to all clients of Veterans Affairs. It states:

“You have the right to:

- Be treated with respect, dignity, fairness and courtesy.
- Take part in discussions that involve you and your family.
- Have someone with you for support when you deal with Veterans Affairs.
- Receive clear, easy-to-understand information about our programs and services, in English or French, as set out in the *Official Languages Act*.
- Have your privacy protected as set out in the *Privacy Act*.
- Receive benefits and services as set out in our published service standards and to know your appeal rights.

You have the right to make a complaint and have the matter looked into if you feel that any of your rights have not been upheld.”

## EXECUTIVE SUMMARY

VAC provides two types of financial benefits to compensate for the effects of service-related disability or death: economic benefits and non-economic benefits. These benefits have different purposes and achieve different outcomes. Economic benefits are designed to compensate for the monetary impacts of illness, injury or death, such as loss of salary, loss of earning capacity and various expenses. Economic benefits provided by VAC include the Earnings Loss Benefit (ELB) and the Permanent Impairment Allowance (PIA), among others. These types of economic benefits have been reviewed by the Veterans Ombudsman in the past, and are not discussed in this report.

Non-economic benefits, which are the subject of this report, are non-taxable, lump-sum or periodic payments that compensate for the non-monetary impacts of illness, injury or death, such as loss of or diminished body function, pain and suffering, emotional distress, limitations on daily activities, impact on quality of life, and loss of companionship and guidance. In civil litigation cases involving personal injury, this type of compensation is referred to as non-pecuniary or general damages – money awarded to a plaintiff to provide reasonable solace for his or her intangible losses.<sup>4</sup>

An analysis of compensation for non-economic loss is inherently challenging because of the ambiguous nature of non-economic loss. Unlike economic loss where one can calculate the income lost or one's out-of-pocket expenses as a result of an illness or injury, it is challenging to establish a benchmark with respect to non-economic loss. Justice Dickson described the ambiguity inherent in compensating for non-economic loss in the Supreme Court of Canada decision in *Andrews v. Grand and Toy Alberta Ltd.*, where he stated that:

*“...The monetary evaluation of non-pecuniary losses is a philosophical and policy exercise more than a legal or logical one. The award must be fair and reasonable, fairness being gauged by earlier decisions; but the award must also of necessity be arbitrary or conventional. No money can provide true restitution...”<sup>5</sup>*

The purpose of this report is to assess the fairness of compensation provided under the NVC for non-economic loss and to compare this to what other Canadians can receive. The report compares the benefits provided by VAC to the compensation provided to other Canadians by Canadian federal and provincial/territorial programs and by the Canadian courts.

In addition, the report reviews what other Allied countries provide to their armed forces members and Veterans, and their survivors, for the non-economic effects of service-related disability or death. It is challenging, however, to compare the benefits provided to Canadian

<sup>4</sup> AMJ Law (2014). *General Damages for Pain and Suffering, or Non-Pecuniary Damages*. Source: <http://www.amjlaw.ca/general-damages-for-pain-and-suffering-or-non-pecuniary-damages/>

<sup>5</sup> *Andrews v. Grand & Toy Alberta Ltd.*, [1978] 2 SCR 229, 1978 CanLII 1 (SCC), pg. 261, 262 Source: <http://www.canlii.org/en/ca/scc/doc/1978/1978canlii1/1978canlii1.html>

Veterans to what other countries may provide to their Veterans. There are many differences among the various countries, including: how benefits are delivered; service-delivery approaches; eligibility criteria; payment schemes and monetary amounts, and therefore benefit-to-benefit comparisons are not easily made. Every country designs its programs to meet its own needs, national imperatives and economic realities, and programs take into account external factors such as cost of living, availability of other Government programs and the economic environment. As a result, Allied country compensation schemes should not be used as a benchmark for assessing how well Canadian Veterans are compensated for non-economic effects of disability or death.

There are differences between how VAC compensates CAF members and Veterans for the non-economic effects of disability and how provincial/territorial Workers Compensation Board (WCB) benefit programs compensate individuals for the non-economic effects of work-related permanent impairment. While the WCB programs generally compensate for the effects of permanent impairment of a body part or function, every program provides compensation for non-economic loss in a different way using a variety of assessment tools, and different benefit calculation methodologies and compensation amounts.

Furthermore, there are also a number of differences between how VAC compensates CAF members and Veterans for the non-economic effects of disability and how Canadian courts award damages for personal injury. While VAC uses a systemic and legislated approach to awarding compensation, the courts have flexibility to make determinations regarding the amount of non-pecuniary damages that are awarded for injury based on the unique factors in each case. However, both VAC and the courts have an upper limit (approximate limit for the courts) for the amount of compensation that can be awarded for non-economic loss or general damages. Unlike the courts however, a CAF member or Veteran can appeal the amount of compensation awarded for non-economic loss and can ask for a reassessment should their illness or injury worsen. There is no recourse within the courts once a settlement has been reached.

The report uses the Veterans Ombudsman's measures of **fairness** – *adequacy*, *sufficiency* and *accessibility* – to analyze the fairness of NVC compensation provided by VAC to disabled CAF members, Veterans, and survivors for non-economic loss. When the Disability Award is analyzed in this manner and is compared to how other Canadians are compensated for the non-economic effects of impairment/injury, the award paid to a maximum of \$360,000 is considered to be fair.

However, when this fairness lens is applied to other non-economic benefits provided by VAC, two inconsistencies are apparent. First, disabled CAF Veterans covered under the *Pension Act* are compensated for the non-economic effects of exceptional incapacity, while disabled CAF Veterans covered under the NVC are not. Second, compensation for death under the NVC is different depending on the marital status of the CAF member.

The report makes three recommendations to address these inconsistencies. First, Veterans (and their survivors) should be compensated under the NVC for the non-economic effects of exceptional incapacity. Second, the criteria to qualify for compensation for exceptional incapacity should not be based on a specific minimum disability percentage. Third, a designated family member of a single CAF member with no dependent children who dies in service to Canada should be permitted to apply for the Death Benefit.

By addressing these three recommendations, VAC will provide fair compensation to CAF members, Veterans, and survivors for non-economic loss.



## INTRODUCTION

CAF members and Veterans who are disabled due to illness or injury in service to Canada may be eligible for a number of financial benefits from VAC under the *Pension Act*<sup>6</sup> and/or the NVC. Survivors may also be eligible for financial benefits under these two Acts.

VAC provides two types of financial benefits to compensate for the effects of service-related disability or death: economic benefits and non-economic benefits. These benefits have different purposes and achieve different outcomes.

- Economic benefits<sup>7</sup> are usually taxable periodic payments designed to compensate for lost earnings and earning potential, lost retirement pension potential and for expenses such as homecare, transportation, clothing, and education assistance. In civil litigation cases involving personal injury, these are referred to as pecuniary or special damages – damages intended to compensate a plaintiff for a quantifiable monetary loss.<sup>8</sup>
- Non-economic benefits are non-taxable lump-sum or periodic payments that recognize and compensate for the non-monetary impacts of illness, injury or death such as loss of or diminished body function, pain and suffering, emotional distress, limitations on daily activities, impact on quality of life, and loss of companionship and guidance.<sup>9</sup> In civil litigation cases involving personal injury, this type of compensation is referred to as non-pecuniary or general damages – money awarded to a plaintiff to provide reasonable solace for his or her intangible losses.<sup>10</sup>

### **ECONOMIC BENEFITS**

are usually taxable, periodic payments to compensate for **monetary loss**.

### **NON-ECONOMIC BENEFITS**

are non-taxable, lump sum or periodic payments that compensate for **intangible elements like pain and suffering and loss of companionship**.

The June 2013 Veterans Ombudsman's report *Improving the New Veterans Charter – the Report*<sup>11</sup> and the June 2014 report from the Standing Committee on Veterans Affairs *The New Veterans Charter: Moving Forward*<sup>12</sup> identified numerous shortcomings with the economic and non-economic financial benefits provided by VAC. The Veterans Ombudsman's report

<sup>6</sup> *Pension Act* (R.S.C., 1985, c. P-6). Source: <http://laws.justice.gc.ca/eng/acts/P-6/>

<sup>7</sup> Economic benefits provided by VAC to CAF members, Veterans and their survivors have been analyzed by the Veterans Ombudsman in the past and are not discussed in this report. Information about these benefits can be found on the [VAC website](#).

<sup>8</sup> Hosseini Law Firm (2015). *Types of Damages in Civil Litigation*. Source: <http://www.hosseini.com/types-of-damages-in-civil-litigation/>

<sup>9</sup> The Free Dictionary by Farlex. Definition of Pain and Suffering. Source: <http://legal-dictionary.thefreedictionary.com/pain+and+suffering>

<sup>10</sup> AMJ Law (2014). *General Damages for Pain and Suffering, or Non-Pecuniary Damages*. Source: <http://www.amilaw.ca/general-damages-for-pain-and-suffering-or-non-pecuniary-damages/>

<sup>11</sup> Office of the Veterans Ombudsman (2013). *Improving the New Veterans Charter: the Report*. Source: <http://www.ombudsman-veterans.gc.ca/eng/reports/reports-reviews/improving-new-veterans-charter>

<sup>12</sup> House of Commons Standing Committee on Veterans Affairs (June 2014). *The New Veterans Charter: Moving Forward*. Source: <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6635229&Language=E&Mode=1&Parl=41&Ses=2>

recommended that the shortcomings be addressed separately, stating that economic financial support benefits needed to be addressed as a first priority. Once lifetime financial security is achieved, then the provision of fair compensation for non-economic losses can be addressed more effectively. In 2015 and 2016, the Government introduced new benefits and policies to improve economic financial support for ill and injured Veterans and their survivors. While more improvements are required, now is the time to address non-economic financial benefits.

The purpose of this report is to assess the fairness of compensation provided by VAC for non-economic loss. The report provides details on the non-economic benefits awarded by VAC to CAF members, Veterans, and survivors to compensate them for the effects of service-related disability and death. Also, it compares these benefits to what other Canadians would receive, either through federal and provincial/territorial programs, such as WCB or through the Canadian courts for personal injury. No comparisons were made with Allied countries because every country designs and administers its programs differently to meet its own needs, national imperatives and economic realities.

## METHODOLOGY

The approach employed in this report included:

- A review of *Pension Act* and NVC legislation and regulations, and VAC policy, guidelines and business practices with regards to compensation for non-economic loss;
- A review of four Allied nations' non-economic programs that compensate for disability and death;
- A review of Canadian federal and provincial/territorial non-economic programs that compensate for work-related permanent impairment;
- An independent legal review of Canadian court awards for non-pecuniary damages; and
- An analysis of the **fairness** of NVC compensation for non-economic loss in terms of *adequacy, sufficiency and accessibility*.

## THE EVOLUTION OF FINANCIAL BENEFITS FOR CANADIAN VETERANS

Canada has a distinguished military history and has long recognized its commitment to the men and women in uniform who put themselves at risk for their country. Many of the social benefits Canadians take for granted today originated from or were pioneered in the context of Veterans' benefits, such as income support for the needy, vocational retraining for the disabled, free hospital coverage, and business development loans.<sup>13</sup>

[Annex A](#) provides a historical overview of salient events, reviews and reports that shaped how Canadian Veterans' financial benefits evolved over time. While the focus of this report is on non-economic benefits, Veterans' financial benefits were not labelled as economic or non-economic until the NVC came into effect in 2006. Consequently, the historical overview provides insight into how Veterans' financial benefits in general evolved over time.

*“Veterans have been a building block of the Canadian social welfare state. They have provided a social laboratory for Canadians and made them aware of what is possible when government acts decisively to meet a demonstrated social and economic need.”<sup>14</sup>*

---

<sup>13</sup> Veterans Affairs Canada – Canadian Forces Advisory Council (March 2004). *The Origins and Evolution of Veterans Benefits in Canada 1914-2004*, pg. 3. Source: <https://www.veterans.gc.ca/public/pages/forces/nvc/reference.pdf>

<sup>14</sup> Ibid, pg. 2

## CURRENT NON-ECONOMIC BENEFITS PROVIDED BY VETERANS AFFAIRS CANADA

This section describes the non-economic benefits<sup>15</sup> currently provided by VAC to ill and injured CAF members, Veterans, and survivors. Information about economic benefits, such as the ELB, PIA and others, can be found on the VAC website.<sup>16</sup>

### PENSION ACT

#### Disability Pension

According to VAC's August 2010 *Evaluation of Disability Pensions, and Awards*, the ultimate outcome of the Disability Pension (and the NVC Disability Award discussed later), is that Veterans and other benefit recipients feel that the effects of their service-related disabilities have been recognized. The evaluation further states that the underlying rationale for the Disability Pension is to provide compensation for the severity of a particular disability endured and its relative impact on earning capacity.<sup>17</sup>

The Disability Pension monthly payment is provided to eligible War Service Veterans, CAF members and Veterans, their survivors, certain civilians, and current and former members of the RCMP.<sup>18</sup> The amount payable is reduced by amounts received from other sources such as the *Government Employees Compensation Act*<sup>19</sup> (GECA), provincial/territorial WCB benefits, and amounts arising from a legal liability to pay damages.<sup>20</sup> Additional pension amounts may be awarded to qualified dependants.

The Disability Pension is based on the degree to which the disability<sup>21</sup> is related to service (entitlement) and the extent of disability (assessment). The Table of Disabilities<sup>22</sup> is the statutory instrument used to assess the extent of disability. The Table considers the relative importance of a certain body part/system to assess the level of medical impairment and the impact that

#### PENSION ACT

- Disability Pension
- Exceptional Incapacity Allowance
- Prisoner of War Allowance
- Survivor Pension

<sup>15</sup> The *Pension Act* Attendance Allowance and the NVC Family Caregiver Relief Benefit are considered to be economic in nature as they are provided to eligible Veterans to support their care.

<sup>16</sup> Improvements have been made to economic benefits. In 2015, Government introduced the Retirement Income Security Benefit and Family Caregiver Relief Benefit, expanded eligibility for the Permanent Impairment Allowance (PIA), and improved the Earnings Loss Benefit (ELB) for part-time reservists. In Budget 2016, the ELB was increased to 90 percent of gross salary and the indexation cap of 2 percent on the ELB was removed. Access was expanded to higher PIA grade levels and the name of the benefit was changed to the Career Impact Allowance. Source: <http://www.veterans.gc.ca/eng/>

<sup>17</sup> Veterans Affairs Canada (August 2010). *Evaluation of Disability Pensions and Awards*, pg. ii. Source: <http://www.veterans.gc.ca/pdf/deptReports/2010-08-dadp.pdf>

<sup>18</sup> Since the coming into force of the NVC on April 1, 2006, CAF members, Veterans, and survivors can no longer apply for a Disability Pension under the *Pension Act*. The only exceptions are for claims previously applied for/ruled upon under the *Pension Act* or claims requiring an assessment with a condition currently ruled under the *Pension Act*. RCMP Veterans, members and their survivors are provided *Pension Act* benefits as they are not eligible for NVC benefits.

<sup>19</sup> *Government Employees Compensation Act* (R.S.C., 1985, c. G-5). Source: <http://laws-lois.justice.gc.ca/eng/acts/G-5/>

<sup>20</sup> *Pension Act*, sections 25 and 26.

<sup>21</sup> According to article 3(1) of the *Pension Act*, "disability" is defined as the loss or lessening of the power to will and to do any normal mental or physical act. Source: <http://laws.justice.gc.ca/eng/acts/P-6/page-1.html#h-2>

<sup>22</sup> Veterans Affairs Canada (2006). *Table of Disabilities*. Source: <http://www.veterans.gc.ca/eng/services/after-injury/disability-benefits/benefits-determined/table-of-disabilities>

impairment has on the individual's quality of life.<sup>23</sup> The medical impairment rating is added to the quality of life rating to arrive at the disability assessment, expressed as a percentage.

Payment rates are based on 21 classes of disability assessment ratings. The Disability Pension is payable to a maximum of 100 percent in accordance with Schedule I of the *Pension Act*.<sup>24</sup>

The following are examples of pension amounts. A single pensioner would receive \$134.79 per month for a 5-percent disability and \$2,695.73 per month for a 100-percent disability. A pensioner with a spouse and one child would receive \$186.01 per month for a 5-percent disability; the same pensioner with a spouse and one child would receive \$3,720.10 per month for a 100-percent disability.<sup>25</sup>

**71,194**

**DISABILITY  
PENSION  
RECIPIENTS**

As of January 1, 2016

PENSION AMOUNT EXAMPLES		
	SINGLE PENSIONER	PENSIONER WITH SPOUSE AND 1 CHILD
5% DISABILITY	\$134.79/month	\$186.01/month
100% DISABILITY	\$2,695.73/month	\$3,720.10/month

As of January 1, 2016, there were 71,194 Veteran recipients of the Disability Pension.<sup>26</sup>

<sup>23</sup> Quality of life indicators assess the impact of the disability on the individual's ability to perform activities of independent living, to participate and maintain appropriate and customary personal relationships, and to take part in recreational and community activities. Source: <http://www.veterans.gc.ca/eng/services/after-injury/disability-benefits/benefits-determined/table-of-disabilities/ch-02-2006>

<sup>24</sup> *Pension Act* (R.S.C., 1985, c. P-6), Schedule I. Source: <http://laws.justice.gc.ca/eng/acts/P-6/page-16.html#h-19>

<sup>25</sup> Veterans Affairs Canada (January 2016). *Monthly Rates of Pensions for Disabilities Based on Schedule "I" and Section 75 of the Pension Act*. Source: Internal document.

<sup>26</sup> Includes Veterans in receipt of both the Disability Pension and the NVC Disability Award, but excluding RCMP recipients. Email from VAC Statistics Directorate, February 10, 2016.

### **IS THE DISABILITY PENSION ECONOMIC OR NON-ECONOMIC?**

The December 2005 Regulatory Impact Analysis Statement (RIAS) that forms part of the NVC Regulations states that the Disability Pension is a multi-purpose financial benefit. The Disability Pension compensates for non-economic impacts such as pain and suffering, it provides some income support and it serves as a gateway to other programs and benefits, such as health care.<sup>27</sup>

The linkage between the Disability Pension and income support is questioned in the May 1, 2012 Federal Court ruling on the class action suit *Manuge v. Canada*. In the ruling, Federal Court Justice Barnes states that Veterans' pension benefits are not indemnity for lost income, but rather represent compensation for impairments to activities of daily living, including loss of function and reduction in quality of life.<sup>28</sup>

Considering the inconsistency between the RIAS, the Federal Court ruling and the aforementioned 2010 VAC evaluation, there is ambiguity as to whether the Disability Pension compensates for both non-economic and economic effects of disability. For the purposes of this report, the benefit is considered to be non-economic, at least in part.

### **Exceptional Incapacity Allowance**

Introduced into the *Pension Act* in 1971, the purpose of the Exceptional Incapacity Allowance (EIA) is to provide additional monthly compensation to pensioners who suffer extraordinary physical, social and psychological impairments and who, because of the nature of their disabilities, are exceptionally incapacitated.<sup>29</sup>

Section 72 of the *Pension Act* specifies that in determining whether the incapacity suffered is exceptional, account shall be taken of the extent to which the disability for which the member or Veteran is receiving a Disability Pension or a Disability Award, "...has left the member in a helpless condition or in continuing pain and discomfort, has resulted in loss of enjoyment of life or has shortened the member's life expectancy."<sup>30</sup>

To qualify for the EIA, the Veteran must:

- have a Disability Pension of 98 percent or more; or
- have a Disability Pension in a lesser amount than 98 percent, and Prisoner of War compensation, and/or a Disability Award, if the sum of these is equal to or greater than 98 percent; **and**
- have an exceptional incapacity that is a consequence of, or is caused in whole or in part by, the condition(s) for which the Veteran has received a Disability Pension and Disability Award.<sup>31</sup>

---

<sup>27</sup> *Canadian Forces Members and Veterans Re-establishment and Compensation Regulations*, Regulatory Impact Analysis Statement, Canada Gazette Part 1, Vol 139, No. 51, December 17, 2005, pg. 4240. Source: <http://publications.gc.ca/site/eng/home.html>

<sup>28</sup> The context for this judgement is provided at the following link: <http://reports.fja.gc.ca/eng/2013/2012fc499.html>.

<sup>29</sup> Department of Veterans Affairs *Memorandum to Cabinet – Exceptional Incapacity*, June 10, 1969, pg. 1-2.

<sup>30</sup> *Pension Act*, R.S.C. 1983, Art 72(1)(b) and 72(2) <http://laws.justice.gc.ca/eng/acts/P-6/page-11.html#h-15>

<sup>31</sup> Veterans Affairs Canada (2014). *Exceptional Incapacity Allowance*. Source: <http://www.veterans.gc.ca/eng/services/after-injury/disability-benefits/disability-pension/allowances>

Any of the following factors may produce an exceptional incapacity, as per the Table of Disabilities:<sup>32</sup>

- The degree of helplessness due to the pensioner's physical limitations (e.g. inability to perform activities of daily living);
- The severity and type of pain experienced by the pensioner, methods used for pain relief/control and level of discomfort;
- The inability to participate in activities previously enjoyed in life;
- The shortening of life expectancy based on the pensioner's age and medical condition; and
- How the disabilities have contributed to psychological problems.

**1,473 VETERAN**

**77 SURVIVOR**

**EXCEPTIONAL  
INCAPACITY  
ALLOWANCE  
RECIPIENTS**

As of January 1, 2016

The allowance is paid in five grade levels, with monthly rates ranging from \$475.70 at grade 5 to \$1,427.05 at grade 1 (January 1, 2016 rates), based on the extent of the pain and loss of enjoyment of life or shortened life expectancy.

If the pensioner was awarded the allowance at the time of death, it continues to be paid to the survivor for a period of one year following the death.

As of January 1, 2016, there were 1,473 Veterans and 77 survivors receiving the EIA.<sup>33</sup>

### Prisoner of War Allowance

A Veteran of the CAF or Canadian merchant marine who was a prisoner of war (POW) for 30 days or more, or who evaded capture or escaped from the enemy for 30 days or more, may be entitled to compensation under the *Pension Act*. Veterans who meet the criteria for the POW Allowance may receive an addition to their monthly Disability Pension amount ranging from 5 to 50 percent, depending on where and how long they were a POW.<sup>34</sup> The allowance may also be paid to survivors.

As of January 1, 2016, there were 364 Veterans and 1,356 survivors receiving the POW Allowance.<sup>35</sup>

**364 VETERAN**

**1,356 SURVIVOR**

**PRISONER OF WAR  
ALLOWANCE  
RECIPIENTS**

As of January 1, 2016

<sup>32</sup> Veterans Affairs Canada (2012). *Table of Disabilities Chapter 7 – Exceptional Incapacity Allowance*. Source: <http://www.veterans.gc.ca/eng/services/after-injury/disability-benefits/benefits-determined/table-of-disabilities/ch-07-2006>

<sup>33</sup> Email from VAC Statistics Directorate, February 10, 2016.

<sup>34</sup> Veterans Affairs Canada (2008). *Prisoner of War*. Source: Internal document.

<sup>35</sup> Email from VAC Statistics Directorate, February 10, 2016.



## Survivor Pension

A monthly Survivor Pension is paid to the survivor of a disability pensioner.<sup>36</sup> Based on the Veteran's disability pension, there are three payment scenarios for survivors. If the Veteran was in receipt of a pension at:

- less than 48 percent, the survivor will receive the married rate for one year, after which they convert to a proportionate survivor's pension;
- between 48 and 62 percent, the survivor will automatically receive a full survivor's pension; or
- between 63 and 100 percent, or dies as a result of a service-related disability, the survivor will receive the married rate for one year, after which they convert to a full survivor's pension.<sup>37</sup>

**55,196**

**SURVIVOR PENSION  
RECIPIENTS**

As of January 1, 2016

As of January 1, 2016, there were 55,196 recipients of the Survivor Pension.<sup>38</sup>

## NEW VETERANS CHARTER

### Disability Award

The primary NVC benefit to compensate for the non-economic effects of disability is the Disability Award. The purpose of the Disability Award is to recognize sacrifice and to compensate CAF members and Veterans and, in prescribed cases, surviving spouses/common-law partners and surviving dependent children, for the non-economic impacts of service-related disability<sup>39</sup> – such as pain and suffering, physical and psychological loss and the impact on quality of life.<sup>40</sup>

The Disability Award is based on the degree to which the disability is related to service (entitlement) and the extent of disability (assessment). As with the Disability Pension under the *Pension Act*, the Table of Disabilities is used to assess how the disability impacts the claimant's overall physical and/or mental function (degree of medical impairment) and quality of life.<sup>41</sup> The medical impairment rating is added to the quality of life rating to arrive at the disability assessment, expressed as a percentage.

---

<sup>36</sup> *Pension Act*, Section 45 <http://laws.justice.gc.ca/PDF/P-6.pdf>

<sup>37</sup> When a disability pensioner dies, the survivor will continue to receive for a period of one year, if he or she was pensioned at 5 percent or greater, the same [Disability Pension](#), the EIA, POW Allowance and the Attendance Allowance (AA) that was being paid to the pensioner. The AA is economic in nature as it is provided to eligible Veterans to support their personal care.

<sup>38</sup> Does not include RCMP survivors. Source: Email from VAC Statistics Directorate, February 10, 2016.

<sup>39</sup> The definition of "disability" with regards to the Disability Award is the same as the one discussed above with regards to the Disability Pension under the *Pension Act* (i.e. the loss or lessening of the power to will and to do any normal mental or physical act).

<sup>40</sup> Veterans Affairs Canada (2015). *Lump Sum Disability Award*. Source: <http://www.veterans.gc.ca/eng/news/vac-responds/just-the-facts/lump-sum>.

<sup>41</sup> Veterans Affairs Canada (2014). *How Benefits are Determined*. Source: <http://www.veterans.gc.ca/eng/services/after-injury/disability-benefits/benefits-determined>

Payment rates for the Disability Award are based on 24 classes of disability assessment ratings. The award is payable to a maximum of 100 percent in accordance with Schedule 3 of the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*.<sup>42</sup> The CAF member/Veteran can choose to receive the Disability Award as a lump sum, annual payments or a combination of both payment options.

In determining the original maximum amount for the Disability Award when the NVC came into effect in 2006 (\$250,000), VAC reviewed four benchmarks:<sup>43</sup>

- provincial/territorial WCB awards;
- personal injury awards by Canadian courts;
- benefits paid to armed forces members and Veterans of certain Allied nations; and
- amounts paid by insurance plans.

The current maximum amount payable (as of January 1, 2016) is \$310,378.59. Budget 2016 announced that the Disability Award maximum will be increased to \$360,000 in 2017, and indexed to inflation.<sup>44</sup> Higher awards would be paid retroactively to all veterans who have received an Award since the introduction of the NVC in 2006, based on an indexation formula.<sup>45</sup>

Like the Disability Pension, the amount of Disability Award payable is reduced by amounts received from other sources such as the GECA, provincial/territorial Workers Compensation Board (WCB) benefits, and amounts arising from a legal liability to pay damages.<sup>46</sup>

As of January 1, 2016, 54,089 CAF members/Veterans and 1,119 survivors received the Disability Award.<sup>47</sup>

### Critical Injury Benefit

On July 1, 2015, the Critical Injury Benefit (CIB) was added to the non-economic benefits provided under the NVC. The benefit is a lump-sum award of \$70,840 (January 1, 2016 rate) provided to CAF members and Veterans who, after March 31, 2006, sustained a service-related severe and traumatic injury or developed an acute disease caused by a sudden and single incident which resulted in an immediate and severe impairment and interference in quality of life.

**54,089** CAF MEMBER/  
VETERAN AND

**1,119** SURVIVOR

**DISABILITY AWARD  
RECIPIENTS**

As of January 1, 2016

<sup>42</sup> *Canadian Forces Members and Veterans Re-establishment and Compensation Act* S.C. 2005, c.21 Source: <http://laws-lois.justice.gc.ca/PDF/C-16.8.pdf>

<sup>43</sup> Veterans Affairs Canada (August 2010). *Evaluation of Disability Pensions and Awards*, pg. 18. Source: <http://www.veterans.gc.ca/pdf/deptReports/2010-08-dadp.pdf>; and (2009). *New Veterans Charter Evaluation – Phase I*, pg. 18 and 22. Source: [http://www.veterans.gc.ca/pdf/deptReports/NCAC\\_phase1\\_2009.pdf](http://www.veterans.gc.ca/pdf/deptReports/NCAC_phase1_2009.pdf)

<sup>44</sup> Source: <http://www.budget.gc.ca/2016/docs/plan/budget2016-en.pdf>

<sup>45</sup> Pending royal assent of Bill C-15.

<sup>46</sup> *Canadian Forces Members and Veterans Re-establishment and Compensation Regulations* (SOR/2006-50), *Disability Awards*. Source: <http://laws.justice.gc.ca/eng/regulations/SOR-2006-50/page-7.html#h-15>

<sup>47</sup> Includes Veterans in receipt of both the Disability Pension and the NVC Disability Award, Email from VAC Statistics Directorate, February 10, 2016.

The CIB is paid in recognition of the immediate stress and hardship a CAF member or Veteran experiences after a traumatic incident. It spans the time between the initial incident and when the CAF member or Veteran becomes medically stable. The CIB is separate from the Disability Award payment.<sup>48</sup>

As of January 1, 2016, there were 77 recipients of the CIB.<sup>49</sup> VAC forecasts that there will be two recipients of the CIB per year over the next four years.<sup>50</sup>

### Detention Benefit

The Detention Benefit is a lump-sum payment that compensates CAF members and Veterans who, while serving in the CAF, were detained by an enemy, opposing force or person or group carrying out a terrorist activity, or who evaded capture or escaped from any power. The minimum period of time spent in detention required to qualify for the benefit is 30 days. The benefit is calculated based on the number of days of detention, with the amount of compensation ranging from 5 to 40 percent.<sup>51</sup>

As of January 1, 2016, there were no recipients of the Detention Benefit.<sup>52</sup>

### Death Benefit

The Death Benefit is a lump sum in the amount of \$310,378.59 (January 1, 2016 rate) payable to the surviving spouse, common-law partner and/or dependent children in the case of service-related death that occurs within 30 days of a CAF member's injury or illness.<sup>53</sup> The benefit recognizes the impact the death of a service member has on the functioning of their immediate family, including the permanent loss of guidance, care and companionship.<sup>54</sup>

Budget 2016 announced that the Death Benefit will be increased to \$360,000 in 2017. The calculation of the payment will be done in the same manner as the Disability Award, described previously.<sup>55</sup>

As of January 1, 2016, there were 418 recipients of the Death Benefit.<sup>56</sup>

**77**

### CRITICAL INJURY BENEFIT RECIPIENTS

As of January 1, 2016

**418**

### DEATH BENEFIT RECIPIENTS

As of January 1, 2016

<sup>48</sup> Veterans Affairs Canada (2016). *Critical Injury Benefit*. Source: <http://www.veterans.gc.ca/eng/services/after-injury/critical-injury-benefit>

<sup>49</sup> Email from VAC Statistics Directorate, February 10, 2016.

<sup>50</sup> VAC Facts and Figures Book, September 2015 Edition, pg. 5. Source: Internal document.

<sup>51</sup> *Canadian Forces Members and Veterans Re-establishment and Compensation Regulations* (SOR/2006-50), Detention Benefits. Source: <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2006-50/page-8.html#h-18>

<sup>52</sup> Email from VAC Statistics Directorate, February 10, 2016.

<sup>53</sup> When a member or Veteran dies after 30 days as a result of an injury or disease for which a Disability Award has been paid, in whole or in part, the member or Veteran is deemed to have been assessed at 100 percent for that disability. The survivor will receive the difference between the paid Disability Award and the amount for a 100-percent disability.

<sup>54</sup> Veterans Affairs Canada (2014). *Death Benefit*. Source: <http://www.veterans.gc.ca/eng/services/financial/death-benefit>

<sup>55</sup> Pending royal assent of Bill C-15.

<sup>56</sup> Email from VAC Statistics Directorate, February 10, 2016.

## NON-ECONOMIC BENEFITS PROVIDED BY ALLIED COUNTRIES

Veterans and Veterans' advocacy groups often compare the benefits provided by VAC to benefits provided by other entities. In addition, in developing the NVC, VAC examined how other countries support their disabled armed forces members and Veterans, and their survivors.<sup>57</sup>

Table 1 lists the non-economic benefits provided by Canada, the United States (US), the United Kingdom (UK), Australia and New Zealand (NZ). [Annex B](#) provides more details from publicly available sources regarding the non-economic benefits provided by the Allied countries.

There are many differences between how Canada and Allied countries compensate their armed forces members and Veterans, and their survivors, for service-related disability or death. These differences include: how benefits are delivered; service-delivery approaches; eligibility criteria; payment schemes and monetary amounts. The description of benefits illustrates that it is difficult to compare specific benefits between the countries because of these differences. Our research suggests that countries design benefit programs to meet the particular needs of their Veterans and likely consider a variety of economic and social realities, such as cost of living, availability of universal health care, and economic challenges, for example. Every country designs its programs to meet its own needs, national imperatives and economic realities. As a result, Allied country compensation schemes should not be used as a benchmark for assessing how well Canadian Veterans are compensated for non-economic effects of disability or death.

---

<sup>57</sup> *Canadian Forces Members and Veterans Re-establishment and Compensation Regulations*, Regulatory Impact Analysis Statement, Canada Gazette Part 1, Vol 139, No. 51, December 17, 2005, pg. 4214. Source: <http://publications.gc.ca>  
New Zealand benefits were not reviewed in developing the NVC, but are added here to provide another example.

**Table 1: Summary of Canadian and Allied Country Non-Economic Benefits**

CANADA	US	UK	AUSTRALIA	NEW ZEALAND
<p><b><i>Pension Act</i></b></p> <p>Disability Pension (monthly payment)</p> <p>EIA (monthly payment)</p> <p>POW Allowance (monthly payment)</p> <p>Survivor Pension (monthly payment)</p> <p><b><i>New Veterans Charter</i></b></p> <p>Disability Award (lump sum, periodic or both)</p> <p>Critical Injury Benefit (lump sum)</p> <p>Death Benefit (lump sum)</p> <p>Detention Benefit (lump sum)</p>	<p>Disability Compensation (monthly payment)</p> <p>Special Monthly Compensation (monthly payment)</p>	<p><b><i>War Pension Scheme</i></b></p> <p>War Disablement Pension (periodic payment)</p> <p>Gratuities (lump sum)</p> <p><b><i>Armed Forces Compensation Scheme</i></b></p> <p>Compensation for Injury (lump sum)</p> <p>Supplementary Award (lump sum)</p> <p>Bereavement Grant (lump sum)</p>	<p><b><i>Veterans' Entitlements Act</i></b></p> <p>General Rate of Disability Pension (periodic payment)</p> <p>Extreme Disablement Adjustment (periodic payment)</p> <p>Additional amounts for specific disabilities (periodic payment)</p> <p><b><i>Military Rehabilitation and Compensation Act</i></b></p> <p>Permanent Impairment Compensation (periodic and/or lump-sum payment)</p> <p><b><i>Safety, Rehabilitation and Compensation Act</i></b></p> <p>Compensation for Permanent Impairment (lump sum)</p> <p>Non-Economic Loss Award (lump sum)</p> <p>Severe Injury Adjustment (through <i>Defence Act</i>) (lump sum)</p>	<p><b><i>War Pension Act</i></b></p> <p>War Disablement Pension (periodic payment)</p> <p>Terminal Pension (lump sum)</p> <p><b><i>Veterans' Support Act</i></b></p> <p>Disablement Pension (periodic payment)</p> <p>Terminal Pension (lump sum)</p> <p>Independence Allowance (periodic or lump-sum payment)</p> <p>Lump-sum Payment for Permanent Impairment (lump sum)</p>

## OTHER CANADIAN FEDERAL AND PROVINCIAL/TERRITORIAL PROGRAMS THAT PROVIDE NON-ECONOMIC BENEFITS

Canadian federal and provincial/territorial governments provide economic and non-economic financial programs. The following describes the programs that compensate for the non-economic effects of disability/impairment and death.

### FEDERAL PROGRAMS

#### Canadian Forces Accidental Dismemberment Insurance Plan

Since 2003, the Canadian Forces Accidental Dismemberment Insurance Plan (CF ADIP)<sup>58</sup> provides a non-economic lump-sum award to a CAF member who suffers an accidental dismemberment, loss of use of a limb or loss of sight, hearing or speech resulting from a service-related accident. Amounts of \$62,500, \$125,000 or \$250,000 are payable depending on the level of dismemberment or loss. This is a CAF-funded benefit provided in addition to other non-economic benefits awarded by VAC for a service-related disability.

As of February 1, 2016, there were 87 recipients of the CF ADIP benefit.<sup>59</sup>

**87**

**CANADIAN FORCES  
ACCIDENTAL  
DISMEMBERMENT  
INSURANCE PLAN  
BENEFIT RECIPIENTS**

As of February 1, 2016

#### Government Employees Compensation Act

The GECA covers all federal government employees who work in Canada or overseas. The legislation also covers CAF Reserve Force members, but excludes members of the CAF Regular Force and RCMP. It authorizes provincial and territorial WCBs and Commissions to process claims for a federal government employee who:

- is caused personal injury by an accident arising out of and in the course of his or her employment; or
- is disabled by reason of an industrial disease due to the nature of the employment; and
- is a dependant of an employee whose death results from such an accident or industrial disease.

Compensation for disability or death is paid in accordance with the rates and conditions provided under the laws of the province/territory in which the federal employee works.<sup>60</sup> There are jurisdictional differences for employees who work in the Northwest Territories, Yukon and Nunavut, and outside Canada.

<sup>58</sup> The insurance is provided at no cost to the CAF member. Source:

<https://www.cfmws.com/en/AboutUs/SISIPFS/download/Documents/906906.AD.pdf>

<sup>59</sup> Email from Associate VP Operation, Policy & Product Management, SISIP Financial Services, February 3, 2016.

<sup>60</sup> Labour Program, (2015). *Federal Government Employees and Employers*. Source: [http://www.labour.gc.ca/eng/health\\_safety/compensation/federal.shtml](http://www.labour.gc.ca/eng/health_safety/compensation/federal.shtml)

## PROVINCIAL/TERRITORIAL WORKERS COMPENSATION BOARD PROGRAMS

Compensation programs for injuries or death that occur in the Canadian workplace are administered by provincial/territorial WCBs. Each province and territory has its own WCB, except for the Northwest Territories and Nunavut, which have a combined WCB.

The funding for WCB programs is generally provided by the employer, though there are exceptions. Employers such as the Canadian federal government, certain provincial governments, and certain agencies and corporations are self-insured. In these cases, the WCBs normally administer compensation claims on behalf of the self-insured entities, and the entities reimburse the WCBs for the cost of benefits provided to their injured workers.

Benefits provided by WCBs usually fall into one of four categories: wage loss benefits; permanent disability benefits; fatal and dependency benefits for survivors; and rehabilitation. Most benefits are economic in nature and are intended to replace income or to compensate for expenses such as rehabilitation costs, medical costs, and funeral costs. All WCBs, except British Columbia, the Northwest Territories and Nunavut, also provide a non-economic benefit based on the level of permanent impairment.

*Each provincial/territorial program provides non-economic compensation using different assessment tools, payment structures and compensation amounts.*






The Association of Workers Compensation Boards of Canada publishes comparison tables that contain information related to the types of benefits available in each province and territory, the amounts paid and how they are calculated, the rationale behind the payments (i.e. economic or non-economic), the maximum earnings that are covered by the various plans, etc.<sup>61</sup>

Table 2 summarizes how WCB non-economic benefits are calculated. [Annex C](#) describes the benefits in greater detail.







---

<sup>61</sup> Association of Workers' Compensation Boards of Canada. Source: <http://awcbc.org/>

**Table 2: Non-Economic Benefits Provided by Workers' Compensation Boards**

	PROVINCE	NON-ECONOMIC BENEFIT
	NEWFOUNDLAND & LABRADOR	<b>Permanent Functional Impairment Compensation</b> based on the level of impairment expressed as a % of total body function. Minimum lump-sum payment - \$1,000; maximum - \$61,615.
	PRINCE EDWARD ISLAND	<b>Impairment Award</b> for measurable loss of body function. The award is based on the % of total body impairment. The lump sum is determined by multiplying the impairment (%) by the maximum insurable earnings at the time of the accident (\$52,100 for 2015). Minimum - \$500.
	NOVA SCOTIA	<b>Permanent Impairment Benefit</b> for permanent loss of physical ability. Monthly benefit is paid for life and calculated based on the % of the permanent impairment multiplied by 30% of 85% of the worker's net average earnings before the injury occurred. Can be paid as a lump sum if the Permanent Medical Impairment rating is 30% or less.
	NEW BRUNSWICK	<b>Permanent Physical Impairment Award:</b> Calculated by multiplying the injured worker's impairment rating by the maximum annual earnings for the year in which the accident occurred. Maximum \$60,900 in 2015 as a lump-sum payment for 100% Permanent Physical Impairment. Minimum - \$500.
	QUEBEC	<b>Lump-sum indemnity amount for bodily injury:</b> Calculated by multiplying the percentage of permanent impairment by a base dollar amount which is adjusted according to the injured employee's age. Maximum - \$105,042; minimum - \$1,049 (January 2016 rates).



	<p>ONTARIO</p>	<p><b>Non-Economic Loss Awards:</b> Calculated by multiplying the % of impairment by the adjusted base amount. The adjusted base amount is \$58,219.06, plus \$1,294.23 for each year under age 45, up to a maximum of \$84,093.66, and minus \$1,294.23 for each year over age 45, with a minimum of \$32,344.43. For 2015, the benefit is paid as a lump sum if it is \$12,937.30 or less. Over this amount, the award can be a monthly payment calculated using an actuarial table, based on the worker's age at time of maximum medical recovery and level of impairment.</p>
	<p>MANITOBA</p>	<p><b>Permanent Partial Impairment Award:</b> Usually a lump sum calculated as follows: \$1,300 for each full % less than 30% and \$39,000 plus \$1,570 for each full % over 30%.</p>
	<p>SASKATCHEWAN</p>	<p><b>Permanent Functional Impairment:</b> A lump-sum award based on a % rating applied to the maximum award. For 2015, the maximum award for a 100 % Permanent Functional Impairment is \$45,200. Minimum - \$2,200.</p>
	<p>ALBERTA</p>	<p><b>Non-Economic Loss Payment:</b> A permanent clinical impairment rating is multiplied by a maximum award amount to arrive at a one-time lump-sum payment. Maximum - \$88,233.98; minimum - \$1,764.68.</p>
	<p>YUKON</p>	<p><b>Permanent Impairment Award:</b> Lump-sum award based on the % of permanent impairment x 125% of the maximum wage rate in effect during the year of injury. For 2015, the maximum wage rate was \$84,837.</p>
	<p>BRITISH COLUMBIA, NORTHWEST TERRITORIES &amp; NUNAVUT</p>	<p>Do not provide non-economic benefits.</p>

## Summary

There are several differences in how federal and provincial/territorial programs compensate individuals for the non-economic effects of disability. Federal Government employees and CAF Reserve Force members are compensated for injury or illness through provincial/territorial WCB programs. All CAF members are also provided a CAF non-economic benefit for accidental dismemberment in addition to benefits provided by VAC.

Ten provincial/territorial WCB programs provide non-economic benefits that compensate for the effects of permanent impairment. However, each program provides compensation using different assessment tools, payment structures and compensation amounts. Because of the many differences, it is difficult to compare benefits to each other and to benefits provided by VAC.

## CANADIAN COURT AWARDS FOR NON-PECUNIARY DAMAGES

Non-pecuniary damages are awarded for injuries by Canadian courts by referring to:

- governing statutes; and
- binding and influential case law that outlines how judges analyze and quantify non-pecuniary losses, the similarities and differences between former cases, and the particular circumstances of the case before the court. The similarities and differences include characteristics that are unique to each individual: the nature of the injury; the severity of pain; emotional suffering; loss of or interference with lifestyle; impairment of family, marital or social relationships; age; pre-existing medical history; credibility of the plaintiff; etc.<sup>62</sup>

Canadian courts do not use a prescribed approach for awarding non-pecuniary damages for personal injury. This is in contrast to the structured and legislated approach followed by VAC for awarding disability benefits. Because every case is unique, judges and juries have flexibility to make determinations regarding the damages that are awarded. There are interprovincial differences in how non-pecuniary damages are awarded.<sup>63</sup> In addition, judges and juries provide a global award for intangible losses based on a consideration of all the unique factors listed above (nature of the injury, severity of pain, etc.). Finally, once a settlement has been reached on the amount of non-pecuniary damages awarded, a plaintiff has no recourse with the courts to adjust the settlement. In contrast, a CAF member or Veteran can appeal the amount of compensation awarded for non-economic loss and can ask for a reassessment should their illness or injury worsen.

Of note, one of the unique factors that all Canadian courts consider in their determination of a non-pecuniary award is the age of the plaintiff. A younger plaintiff will typically receive a higher award for non-pecuniary losses over a longer period of time than an older plaintiff. Therefore, two plaintiffs with similar injuries and circumstances may receive different awards based on their age difference.<sup>64</sup>

Notwithstanding the flexibility that courts have in making determinations regarding non-pecuniary damages, there is an approximate upper limit on the amount of damages that can be awarded.

In 1978, the Supreme Court of Canada, in a trilogy of cases,<sup>65</sup> established an approximate upper limit of \$100,000 for non-pecuniary losses (general damages) for bodily injury claims, including pain and suffering, loss of amenities, loss of enjoyment of life, and loss of expectation of life. Subsequently, in the case of *Lindal v. Lindal*, it was established that this rough upper limit

---

<sup>62</sup> Howie, Sacks & Henry (April 2016). *The Contrast Between Canadian Courts and Veterans Affairs Canada's Treatment of Non-Pecuniary Damages Awards*, pg. 1.

<sup>63</sup> *Ibid*, pg. 10.

<sup>64</sup> *Ibid*, pg. 8.

<sup>65</sup> *Andrews v. Grand & Toy Alberta Ltd.*, [1978] 2 S.C.R. 229, *Arnold v. Teno*, [1978] 2 S.C.R. 287, *Thornton v. School Dist. No. 57 (Prince George)*, [1978] 2 S.C.R. 267. The plaintiffs in these cases were all catastrophically injured victims who were dependent on others for the remainder of their lives.

should be adjusted for the effects of inflation.<sup>66</sup> The current upper limit is approximately \$362,000.<sup>67</sup>

The Supreme Court of Canada's position in establishing the approximate upper limit was that non-pecuniary damages was an area open for extravagant claims and there was a need for accessibility, uniformity and predictability in the area of assessing bodily injury damages. The approximate upper limit was set to reflect this desire for uniformity and predictability of awards and to provide a Canadian answer to the spiralling damage awards that were occurring in the US at the time.<sup>68</sup>

Another reason for setting an approximate upper limit was the recognition that plaintiffs can seek other forms of compensation that are better suited to returning the plaintiffs to the position they were in prior to their accident. Plaintiffs can seek compensation for damages other than non-pecuniary losses such as: loss of earning capacity; past and future care costs; housekeeping and home maintenance expenses; and other out-of-pocket expenses.<sup>69</sup>

In both the trilogy and follow-up case of *Lindal*, the Supreme Court stated that there were very rare exceptional circumstances where the upper limit would be insufficient to compensate a victim. Since the *Lindal* case, very few cases have actually exceeded the upper limit, even for the most catastrophic of injuries.<sup>70</sup>

Finally, courts have indicated that non-pecuniary damages cannot be arithmetically calculated because they compensate the plaintiff for intangible losses arising from physical and psychological pain and suffering, as well as from any loss of amenities or expectations of life.<sup>71</sup> In summary, courts have the flexibility to make their own determinations regarding the awarding of non-pecuniary damages. They compare awards made in previous cases involving similar injuries, adjusted to fit the unique factors of a particular plaintiff.<sup>72</sup> However, in awarding non-pecuniary damages, courts rarely exceed the approximate upper limit established by the Supreme Court of Canada.

---

<sup>66</sup> *Lindal v. Lindal* (No.2), (1981) 2 S.C.R. 629

<sup>67</sup> Howie, Sacks & Henry (April 2016). *The Contrast Between Canadian Courts and Veterans Affairs Canada's Treatment of Non-Pecuniary Damages Awards*, pg. 13.

<sup>68</sup> Dr. Bruce Garrow and Katherine L. Ayre (2009). *The Recovery of Non-Pecuniary Damages in Canada: The Cap on Recovery, Jury Trials, and other Unique Considerations for General Damage Awards*. Source: <http://monmexique.com/5-Garrow.pdf>

<sup>69</sup> Howie, Sacks & Henry (April 2016). *The Contrast Between Canadian Courts and Veterans Affairs Canada's Treatment of Non-Pecuniary Damages Awards*, pg. 11.

<sup>70</sup> *Ibid*, pg. 3.

<sup>71</sup> *McIntyre v. Docherty*, (2009) ONCA 448 para 55.

<sup>72</sup> *Ibid*, pg. 261.

## ANALYSIS

### COMPARING NON-ECONOMIC BENEFITS PROVIDED BY VAC TO CANADIAN COURT AWARDS FOR NON-PECUNIARY DAMAGES

There are differences between how VAC compensates CAF members and Veterans for the non-economic effects of disability and how Canadian courts award non-pecuniary damages for personal injury. While VAC uses a systemic and legislated approach to award compensation, courts have flexibility to make determinations regarding the amount of non-pecuniary damages that are awarded based on case law and on the unique factors in each case, including the age of the plaintiff. VAC also provides an appeal mechanism should the CAF member or Veteran's illness or injury worsen whereas there is no such mechanism in the courts once a settlement or award has been finalized.

#### **VAC vs. courts**

*In both cases, the upper limit for non-economic/non-pecuniary compensation is approximately \$360,000.*

While there are differences, there are also two notable similarities. In both cases, the upper limit for non-economic/non-pecuniary compensation is approximately \$360,000.<sup>73</sup> In addition, the amount awarded by the courts can be complemented by other monetary amounts to compensate for the economic effects of the disability or injury, such as earnings loss, lost career opportunities, education upgrading, and homecare expenses, similar to the economic benefits provided by VAC (for example, Clothing Allowance, ELB, etc.).

### COMPARING NON-ECONOMIC BENEFITS PROVIDED BY VAC TO WCB BENEFITS

There are also many differences in how provincial/territorial WCB benefit programs compensate individuals for the non-economic effects of work-related permanent impairment. While the programs generally compensate for the effects of permanent impairment of a body part or function, every program provides compensation for non-economic loss in a different way using a variety of assessment tools, and different benefit calculation methodologies and compensation amounts. In Ontario and Québec, payments are adjusted to account for the age of the claimant.

#### **VAC vs. WCB**

*WCB compensation for the non-economic effects of an impairment are much lower than VAC's NVC Disability Award.*

Notwithstanding these many differences, the amounts provided by WCBs to compensate for the non-economic effects of impairment are much lower than the NVC Disability Award provided by VAC. For example, a 30-year-old CAF member who is assessed a disability rating of 70 percent could receive a Disability Award amount of approximately \$217,265. A 30-year-old worker in Ontario who is assessed a 70-percent level of impairment could receive a non-economic loss award of approximately \$54,300.<sup>74</sup>

<sup>73</sup> This amount for the Disability Award will be implemented in 2017, pending royal assent of Bill C-15.

<sup>74</sup> The non-economic loss award is calculated as follows:  $(\$58,219.06 + (\$1,294.23 \times (45-30))) \times 70\% = \$54,342.76$ .

## COMPARING NON-ECONOMIC BENEFITS PROVIDED BY VAC AND OTHER COUNTRIES

The non-economic benefits provided by Canada, the US, the UK, Australia and NZ have similar intent in that they all provide compensation to their armed forces members and/or Veterans based on the severity of service-related disability. However, there are many differences in how the benefits achieve the intent, including: how benefits are provided; level of service; eligibility criteria; payment schemes; and monetary amounts.

*Every country designs and administers its programs differently to meet its own needs, national imperatives and economic realities.*

Canadian Veterans and Veterans' advocacy groups often compare benefits they receive from VAC to benefits provided to Veterans of other countries. VAC may also review programs provided by others when it develops new benefits. While examining how other countries provide benefits is informative, these compensation schemes should not be used to measure how well CAF members, Veterans, and survivors, are compensated by VAC because every country designs and administers its programs differently to meet its own needs, national imperatives and economic realities.<sup>75</sup>

## DEFINING FAIRNESS IN THE CONTEXT OF COMPENSATION FOR NON-ECONOMIC LOSS

### Veterans Ombudsman's Measures of Fairness

The Veterans Ombudsman measures **fairness** objectively as an outcome for Veterans' benefits and services in the following terms:

- *adequacy* - are the right programs and services in place to meet the needs;
- *sufficiency* - are the right programs and services sufficiently resourced; and
- *accessibility* - are eligibility criteria creating unfair barriers, and can the benefits and services provided by VAC be accessed quickly and easily.

In the context of non-economic benefits, the question of fairness depends on whether the right NVC benefits, at the right payment rates, are accessible by CAF members, Veterans, and survivors to properly recognize the effects of disability and death.

Recognition is a subjective measure and recipients of NVC non-economic benefits will undoubtedly have different perceptions of whether the compensation they receive is adequate and sufficient recognition for disability or death. For some, no amount will be deemed to be sufficient to compensate for the loss of a body part or function, or a loved one. For others, the amount of compensation is deemed to be reasonable and it allows them to move on with their lives.

The subjective nature of recognition makes it challenging to precisely establish what fair and reasonable compensation for the non-economic effects of disability and death should be. As discussed earlier, the Supreme Court of Canada also recognized that intangible losses cannot be precisely calculated and must, by necessity, be arbitrary.

---

<sup>75</sup> Economic realities include cost of living, value for money, inflation, etc.

## IS THE NVC DISABILITY AWARD FAIR?

The primary NVC benefit to compensate for the non-economic effects of disability is the Disability Award. This award has been the most frequently debated benefit by Veterans and Veterans' advocacy groups since the NVC came into effect in 2006. Considering the recent increase of the maximum amount to \$360,000, it is timely to assess the fairness of this benefit. This should be done by comparing the Disability Award to how other Canadians are compensated for the non-economic effects of disability, impairment or injury.

### Adequacy

Most WCBs compensate for the non-economic effects of impairment or injury. While the nomenclature used to define WCB benefits is different between provinces, the benefits all provide compensation for non-economic loss based on an assessment of impairment. Compensation is usually a lump-sum amount. The amount awarded is based on an assessment of disability. Payment is also usually a lump-sum amount, but it can be converted to an annual payment.

When awarding non-pecuniary damages for injury, Canadian courts consider a number of factors unique to the circumstances of the case. Three of the factors are: severity and duration of pain and of the disability; impairment of physical and mental abilities; and, loss of or interference with pre-accident lifestyle.<sup>76</sup> These factors are similar to those considered by VAC when assessing the level of disability for the purpose of awarding the Disability Award.

The Disability Award, WCB non-economic benefits and Canadian court awards for non-pecuniary damages share a similar intent – to compensate for the non-economic effects of disability, impairment or injury. There are also certain similarities in the assessment criteria to determine eligibility for compensation. Considering these similarities, the Disability Award is an adequate benefit to compensate CAF members and Veterans for the non-economic effects of disability.

### Sufficiency

Budget 2016 announced that the Disability Award will be increased to a maximum of \$360,000. This maximum amount is sufficient when compared to the approximate maximum amount awarded by Canadian courts for non-pecuniary damages (\$362,000). This maximum amount is also sufficient when it is compared to the maximum amounts awarded by provincial/territorial WCBs to permanently impaired Canadian workers for their non-economic loss.

Assessing the sufficiency of the Disability Award should not be based on a comparison of how other countries compensate for the non-economic effects of disability. For example, the fact that

### ***NVC Disability Award vs. WCB***

*Considering the similarities of the Disability Award and WCB non-economic benefits, the Disability Award is an adequate benefit to compensate CAF members and Veterans for the non-economic effects of disability.*

<sup>76</sup> Howie, Sacks & Henry (April 2016). *The Contrast between Canadian Courts and Veterans Affairs Canada's Treatment of Non-Pecuniary Damages Awards*, pg. 1.

the UK Compensation for Injury benefit is a maximum of £570,000 (CDN\$1,175,277) does not mean that the Disability Award maximum of \$360,000 is insufficient. It simply means that the amounts are different because the UK and Canada decided to support their Veterans in different ways, through a different suite of benefits that address unique needs, national imperatives and economic realities.

### **Accessibility**

Measuring the accessibility to the Disability Award requires a review of various factors, such as eligibility criteria, application process and service standards. Conducting such an in-depth review is beyond the scope of this report. In general terms however, all CAF members and Veterans, regardless of rank and component of service (Regular or Reserve Force), who suffer a service-related illness or injury can apply for a Disability Award.

In conclusion, the Disability Award is a fair NVC benefit to compensate for the non-economic effects of service-related disability.

### **ARE THE CRITICAL INJURY BENEFIT AND DETENTION BENEFIT FAIR?**

The fairness of the CIB and Detention Benefit has not been assessed at this time due to their limited eligibility. The CIB has only been in effect since July 1, 2015, and has been awarded to only 77 individuals as of January 1, 2016. There is no evidence of issues regarding its fairness to date. Also, there is no evidence to assess the fairness of the Detention Benefit, which to date has had no recipients.



## IMPROVEMENTS REQUIRED TO THE NEW VETERANS CHARTER

When the fairness lens described earlier is applied to other non-economic benefits provided by VAC to CAF members, Veterans, and survivors, two inconsistencies are apparent.

First, disabled CAF Veterans covered under the *Pension Act* are compensated for the pain and loss of enjoyment of life or shortened life expectancy that results from an exceptional incapacity through the EIA, but disabled CAF Veterans covered under the NVC are not. Second, compensation for the effects of death under the NVC is different depending on the marital status of the CAF member.

In order to provide fair compensation for non-economic loss under the NVC to CAF members, Veterans, and survivors, these inconsistencies need to be rectified.

### PROVIDE COMPENSATION UNDER THE NVC FOR THE EFFECTS OF EXCEPTIONAL INCAPACITY

The EIA is a special non-economic allowance, provided under the *Pension Act*, which recognizes and compensates a Veteran for pain and loss of enjoyment of life or shortened life expectancy as a result of exceptional incapacity. The benefit provides additional monthly compensation over and above the Disability Pension to pensioners who suffer extraordinary physical, social and psychological impairments. A similar benefit does not exist under the NVC.

#### Adequacy

The NVC does not provide additional compensation for the non-economic effects of exceptional incapacity. It provides an economic benefit – the PIA and the PIA Supplement.<sup>77</sup> The PIA compensates permanently and severely impaired CAF Veterans for lost employment and career progression opportunities, and the Supplement compensates totally and permanently incapacitated CAF Veterans who are unable to participate in any occupation that is considered to be suitable and gainful employment.<sup>78</sup> A Veteran in receipt of PIA is not eligible for the EIA because the latter is a benefit provided under the *Pension Act*.<sup>79</sup>

VAC also provides the CIB under the NVC to CAF members and Veterans who sustain a service-related severe and traumatic injury or develop an acute disease which results in an immediate and severe impairment and interference in quality of life. However, the CIB does not compensate for life-long exceptional incapacity.

CAF Veterans should be compensated under the NVC for the non-economic effects of exceptional incapacity. The rationale for compensating Veterans who suffer extraordinary physical, social and psychological impairments is as pertinent for Veterans covered under the NVC as it is for those covered under the *Pension Act*. Survivors should also continue to receive the allowance under the NVC for a period of one year after the death of the Veteran.

---

<sup>77</sup> *Canadian Forces Members and Veterans Re-establishment and Compensation Act* (S.C. 2005, c.21) s.38 Source: <http://laws.justice.gc.ca/eng/acts/C-16.8/page-5.html#h-11>. The PIA will be renamed the Career Impact Allowance when Bill C-15 receives royal assent.

<sup>78</sup> Suitable and gainful employment is defined in NVC Regulations as employment for which the Veteran is reasonably qualified by reason of education, training and experience and that provides a monthly rate of pay equal to at least 66 2/3 percent of the imputed income of the Veteran (i.e. 66 2/3 percent of the Veteran's monthly pre-release military salary) *Canadian Forces Members and Veterans Re-establishment and Compensation Regulations* SOR/2006-50, SOR/2009-225 s.6) Source: <http://laws.justice.gc.ca/eng/regulations/SOR-2006-50/page-1.html#h-1>

<sup>79</sup> *Pension Act*, RSC 1985, c. P-6, s.72. Source: <http://laws-lois.justice.gc.ca/eng/acts/P-6/page-11.html#h-15>

## Sufficiency

To ensure consistency between the *Pension Act* and the NVC with respect to the level of compensation, payment rates for the EIA should be the same under both benefit regimes. Determining whether the current EIA payment rates are sufficient to compensate for the non-economic effects of exceptional incapacity is beyond the scope of this report and requires further analysis.

## Accessibility

The eligibility criteria for the EIA should not be based on a specific minimum disability level as is currently the case (i.e. minimum of 98-percent disability level). A Veteran can suffer from exceptional incapacity even though his or her assessed disability level is less than 98 percent. This observation appears to be corroborated in section 7.04 of the Table of Disabilities which states that “incapacity” has a much broader meaning than “disability”, and it may involve considerations other than medical, such as the ability to work, social activities, and family problems.<sup>80</sup>

Criteria that are consistent with contemporary methods of assessing exceptional incapacity should be used to determine whether a Veteran qualifies for the allowance. VAC could work with entities such as the Canadian Institute for Military and Veteran Health Research<sup>81</sup> to develop appropriate eligibility criteria.

## Summary

When life-long monthly payments for exceptional incapacity are added to the full suite of NVC non-economic benefits, the net effect is fair recognition of sacrifice and improved financial support for life for the most seriously-disabled and financially-vulnerable Veterans.

**Recommendation 1:** That the Minister of Veterans Affairs provide compensation to Veterans and their survivors under the NVC to recognize the non-economic effects of exceptional incapacity.

**Recommendation 2:** That Veterans Affairs Canada develop new eligibility criteria for the non-economic benefit that compensates for exceptional incapacity (i.e. criteria that are not based on a specific minimum disability percentage).

---

<sup>80</sup> Veterans Affairs Canada (2014). *Table of Disabilities Section 7.04 – General Approach*. Source: <http://www.veterans.gc.ca/eng/services/after-injury/disability-benefits/benefits-determined/table-of-disabilities/ch-07-2006#a02>

<sup>81</sup> Canadian Institute of Military and Veteran Health Research. Source: <https://cimvhr.ca/>

## PROVIDE THE DEATH BENEFIT TO THE DESIGNATED BENEFICIARIES OF A SINGLE CAF MEMBER

The NVC Death Benefit is a lump sum in the amount of \$310,378.59<sup>82</sup> payable to the surviving spouse, common-law partner or dependent children in the case of service-related death that occurs within 30 days of a CAF member's injury or illness. The benefit recognizes the non-economic impact the sudden death of a CAF member has on his or her immediate family, including loss of guidance, companionship and care.<sup>83</sup> No other family members are entitled to the Death Benefit if the CAF member is single and has no dependent children.

The Department of National Defence reports that since 2006, 91 single CAF members have died for service-related reasons. Most of these deaths (86 percent) were related to service in Afghanistan. Since 2014, there have been two service-related deaths of single CAF members.<sup>84</sup> It was not possible to determine whether all these deaths occurred within 30 days of the CAF member's injury or illness.

On September 17, 2007, Mr. Lincoln Dinning filed a complaint with the Canadian Human Rights Commission regarding the awarding of the NVC Death Benefit. Mr. Dinning's son, Corporal Matthew Dinning, was killed in Afghanistan in April 2006. Because Corporal Dinning's marital status was single, no Death Benefit was paid by VAC. Mr. Dinning contended in his complaint that by not providing him, as a parent of a single fallen soldier, with the opportunity under the NVC to collect the Death Benefit, VAC was treating his family differently than the family of a married fallen soldier. Mr. Dinning claimed that VAC was engaging in discriminatory practices based upon the prohibited grounds of family status and marital status under section 3 of the *Canadian Human Rights Act*.<sup>85</sup>

During the hearing before the Canadian Human Rights Tribunal in March and April of 2011, Mr. Dinning argued that VAC treated the life of his late son as being worth less than the life of a married fallen soldier. He reasoned that it is fundamental that Government treat equitably all soldiers who die as a result of a service-related injury, whether married or single, and that it be governed in this regard by generosity, not regulatory logic.<sup>86</sup>

VAC's position at the hearing was that the Death Benefit provided compensation to aid family members most in need. It was not discriminatory to exclude other family members such as parents who did not have the same needs as the immediate family.<sup>87</sup>

In its 17 September 2011 decision, the Canadian Human Rights Tribunal dismissed Mr. Dinning's complaint because VAC was able to establish that Corporal Dinning had a common-law partner and dependent child at the time of his death. The Death Benefit was therefore paid to his partner and child.

By dismissing the complaint, the Canadian Human Rights Tribunal refrained from ruling on the broader question of whether the Death Benefit is discriminatory based on family and marital

---

<sup>82</sup> January 1, 2016 rate. The rate will be increased to \$360,000 in 2017, retroactive to 2006, when Bill C-15 receives royal assent.

<sup>83</sup> Veterans Affairs Canada (2014). *Death Benefit*. Source: <http://www.veterans.gc.ca/eng/services/financial/death-benefit>

<sup>84</sup> Email from DND Acting Director Casualty Support Management 2 on March 21, 2016. The numbers include members who indicated that their marital status was "separated" and who may or may not have had dependants. An additional 7 deaths are currently under review and could be added to the total of 91.

<sup>85</sup> *Dinning v. Attorney General of Canada* as represented by Veterans Affairs Canada and the Canadian Human Rights Commission 2011 CHRT 20, November 25, 2011, para 3. Source: <http://decisions.chrt-tcdp.gc.ca/chrt-tcdp/decisions/en/item/7252/index.do?r=AAAAAQAPTGUy29sbiBEaW5uaW5nAQ>

<sup>86</sup> *Ibid*, para 21.

<sup>87</sup> *Ibid*, para 26.

status. Since the dismissal, new complaints regarding the Death Benefit are now pending before the Tribunal.

### Adequacy and Sufficiency

There is no evidence to suggest that the NVC Death Benefit is an inadequate benefit to recognize the non-economic impact of the sudden death of a CAF member. The amount of \$360,000 is consistent with the Disability Award and is considered to be sufficient.

### Accessibility

There are three inconsistencies regarding accessibility. First, where a CAF member or Veteran is eligible for a Detention Benefit but dies before making an application, or makes an application but dies before a decision is made, the CAF member's or Veteran's estate may make an application and receive the benefit. Yet, the single member's designated family member cannot apply for and receive the Death Benefit.<sup>88</sup>

Second, in the Dinning hearing VAC argued that the Death Benefit is provided to aid family members most in need. In the case of the death of a single CAF member without dependent children, the closest family members are usually the parents, and they are the ones most in need of support for the loss of companionship caused by the death of their son or daughter.

Finally, the Memorial Cross is issued to three recipients designated by the CAF member or Veteran as a memento of personal loss and sacrifice. While not financial in nature, this gesture by the Government of Canada recognizes that the service-related death of a CAF member or Veteran affects more loved ones than only the immediate household.

The NVC is founded on the values of fairness, generosity, respect and caring.<sup>89</sup> The Death Benefit recognizes the impact the sudden death of a CAF member has on his or her immediate family, including loss of guidance, companionship and care. Considering the NVC values, the intent of the Death Benefit, and the three inconsistencies noted above, it is reasonable and fair to provide access to the benefit to a single CAF member's designated family member after his or her sudden service-related death.

**Recommendation 3:** That the Minister of Veterans Affairs amend NVC legislation and regulations to permit a single CAF member with no dependent children to designate a family member to apply for and receive the Death Benefit.

---

<sup>88</sup> *Canadian Forces Members and Veterans Re-establishment and Compensation Act* (S.C. 2005, c. 21), art 65(2). Source: <http://laws.justice.gc.ca/eng/acts/C-16.8/page-9.html#docCont>

<sup>89</sup> Regulatory Impact Analysis Statement to *Canadian Forces Members and Veterans Re-establishment and Compensation Regulations*, Canada Gazette, Part 1, Vol 139 No.51, December 17, 2005, pg. 4214.

## CONCLUSION

This report provides information on how CAF members, Veterans, and survivors are compensated for the non-economic effects of service-related disability or death and compares this compensation to what other Canadians would receive under provincial programs or through the Canadian courts for personal injury. To provide context for comparing how VAC compensates for the non-economic effects of disability and death, it also describes the non-economic benefits provided by select Allied countries.

The Veterans Ombudsman measures **fairness** as an outcome for Veterans' benefits in terms of *adequacy* (are the right programs in place), *sufficiency* (are the right programs sufficiently resourced) and *accessibility* (are the benefits accessed quickly and easily).

In respective reports published in 2013 and 2014, the Veterans Ombudsman and the Standing Committee on Veterans Affairs recommended that the maximum amount of the NVC Disability Award be increased to the approximate upper limit for non-pecuniary damages awarded by Canadian courts. In response, Budget 2016 announced that the maximum Disability Award (and Death Benefit) will be increased to \$360,000 commencing in 2017. This increase addresses the recommendation. In addition, when the Veterans Ombudsman's measures of fairness are applied to the increased Disability Award, the benefit is considered to be fair compensation for the non-economic effects of disability.

However, the report shows that when the fairness lens is applied to other non-economic benefits provided under the NVC, two inconsistencies are apparent. First, CAF Veterans covered under the *Pension Act* are compensated for the non-economic effects of exceptional incapacity, but CAF Veterans covered under the NVC, who suffer from the same exceptional incapacity, are not. Second, compensation for death under the NVC is different depending on the marital status of the CAF member.

The report makes three recommendations to address these inconsistencies. First, compensation should be provided under the NVC in recognition of the non-economic effects of exceptional incapacity. Second, and related to the first recommendation, the criteria to qualify for compensation for exceptional incapacity should not be based on a specific minimum disability percentage. Third, the NVC Death Benefit should be accessible to the designated family member of a single CAF member with no dependent children.

By addressing these three recommendations, VAC will provide fair compensation to CAF members, Veterans, and survivors for non-economic loss.

*This report makes three recommendations to address inconsistencies in how compensation for non-economic loss is provided under the NVC.*

## RECOMMENDATIONS

The Veterans Ombudsman makes the following recommendations:

**Recommendation 1:** That the Minister of Veterans Affairs provide compensation to Veterans and their survivors under the NVC to recognize for the non-economic effects of exceptional incapacity.

**Recommendation 2:** That Veterans Affairs Canada develop new eligibility criteria for the non-economic benefit that compensates for exceptional incapacity (i.e. criteria that are not based on a specific minimum disability percentage).

**Recommendation 3:** That the Minister of Veterans Affairs amend NVC legislation and regulations to permit a single CAF member with no dependent children to designate a family member to apply for and receive the Death Benefit.

## ANNEX A - THE EVOLUTION OF CANADIAN VETERANS' FINANCIAL BENEFITS

### The Early Years

The awarding of Veterans' benefits in Canada began before Confederation in 1867. Demobilized soldiers in New France and Veterans of the Revolutionary War, the War of 1812, and the Fenian Raids were given land grants as a means of helping them to re-establish themselves in civilian life. Disability pensions were first authorized at the time of the Fenian Raids. In August 1866, an Order in Council was passed granting pensions to "...the militia men wounded or disabled or who may be hereafter wounded or disabled in encountering any hostile invasions of Canada, and to the widows and children of those who have been killed in battle or have lost their lives from actual service in the field."<sup>90</sup>

Disability pensions were also extended to the officers and men who took part in the Northwest Rebellion in 1885. This set the stage for future pensions and compensation programs that would become the norm for Canadian military Veterans who served in Canada or who returned from military campaigns overseas.

### First World War

Prior to the First World War, the Department of Militia and Defence had sole responsibility for the administration of disability pensions payable to wounded Veterans. The volume of pension applications at that time was relatively low. Shortly after the First World War broke out, and the demand for pensions grew, the Government of Canada recognized that a more streamlined pension system was required to address the ever-increasing needs of the war-wounded and their families. As a result, in 1916, a special Parliamentary Committee was established to address the requirement for a more generous and efficient pension scheme.

Upon recommendation of the Committee, a Board of Pension Commissioners was established to administer pensions. In addition, a new principle for awarding pensions – the insurance principle – was applied to pension applicants with wartime service. Prior to 1916, a pension was awarded for death or disability caused by service. Under the insurance principle, no causal link between disability or death and military service was necessary for Veterans who served overseas.<sup>91</sup>

Parliamentary Committee recommendations were eventually incorporated into the *Pension Act* in 1919. The *Pension Act* was the first tangible piece of federal legislation designed to demonstrate that the Government of Canada owed an obligation to compensate members of the armed forces who suffered disability during service, and to the dependants of members killed while serving.<sup>92</sup>

Disability pensions were awarded on a percentage basis according to a table of disabilities. The percentage of disability was determined based on information supplied in the pension application and the results of the applicant's medical assessment. Disability ratings were assigned in 5 percentage point increments from 5 to 100 percent. An additional rating was used

---

<sup>90</sup> Thomas W. Miller (2012). *The Praeger Handbook of Veterans' Health: History, Challenges, Issues, and Developments*, pg. 238.

<sup>91</sup> Gardham, N.I., Harrison, D.H., Linton, J.I., Dept. Of Veterans Affairs (Canada), *An Historical Perspective of Veterans Legislation*, 1986, Part II, pg. 7-8

<sup>92</sup> Ibid.

for applicants considered to have less than a 5-percent disability, for a total of 21 individual ratings.<sup>93</sup>

The pension payment was based on the percentage of disability, and amounts varied according to the military rank of the applicant.<sup>94</sup> The income level of the applicant before enlistment in the armed forces was not taken into consideration for the purpose of calculating pension benefits. Pension rates were related to average earnings in the general labour market. In addition, the pension was paid on a graduated scale based on the number of dependants for which the male pensioner was responsible.<sup>95</sup> Female pensioners were not entitled to an additional amount for dependants until 1952.<sup>96</sup>

The historical literature for this period does not label the benefits provided to disabled Veterans and survivors as economic or non-economic. However, a VAC pension evaluation study<sup>97</sup> from March 1993 indicates that three universal principles were incorporated in early pension legislation: gratitude, payment of debt and subsistence.

The “gratitude” principle was typically addressed through the award of ribbons and medals. The “payment of debt” principle considered that a contract exists between the soldier and his country, resulting in a debt payable by the state. The state owed a debt to the soldier for his disability incurred in service to the country, or to the widow and children for the soldier’s death.

Finally, the “subsistence” principle considered, at a time when state-funded social assistance was almost non-existent, that no Veteran should become a public charge. Under this principle, a pension was provided for the essentials of life, on an income-tested basis. When combined with the fact that pension amounts were based on average earnings in the general labour market, this principle suggests that the rationale for granting disability pensions included an economic component.

In addition to the disability pension, First World War Veterans were provided other benefits, such as: medical care; a small clothing allowance; a service gratuity based on length and area of service; a land settlement scheme; a life insurance plan; vocational or university training; and, preference in appointment to the civil service.<sup>98</sup> A survivor pension was also provided in the event of service-related death.

By today’s standards, programs for First World War Veterans were limited in scope. Eligibility criteria were complex and restrictive, and the administration of the *Pension Act* was tedious. In addition, the demobilization and return to civilian life of approximately 423,000 soldiers would prove to be very challenging.<sup>99</sup>

---

<sup>93</sup> Veterans Affairs Canada – Canadian Forces Advisory Council (March 2004). *The Origins and Evolution of Veterans Benefits in Canada 1914-2004*, pg. 4. Source: <https://www.veterans.gc.ca/public/pages/forces/nvc/reference.pdf>

<sup>94</sup> In the late 1960s, pensions were equalized irrespective of rank.

<sup>95</sup> Veterans Affairs Canada – Canadian Forces Advisory Council (March 2004). *The Origins and Evolution of Veterans Benefits in Canada 1914-2004*, pg. 4. Source: <https://www.veterans.gc.ca/public/pages/forces/nvc/reference.pdf>

<sup>96</sup> Early pension legislation was drafted at a time when men were the family “breadwinners” and were expected to support their families. Even if the wife was a working woman, her husband as the “breadwinner” was expected to support himself. Therefore no additional pension was provided to the female pensioner.) VAC Evaluation Directorate Corporate Services Division (March 1993). *Pension Evaluation Study, Volume 2 – Evolving Trends and Secondary Clients*, pg. B-2.

<sup>97</sup> Ibid, pg. B-1.

<sup>98</sup> Veterans Affairs Canada – Canadian Forces Advisory Council (March 2004). *Honouring Canada’s Commitment: Opportunity with Security for Canadian Forces Veterans and Their Families in the 21st Century*, pg. 6. Source: [https://www.veterans.gc.ca/public/pages/forces/nvc/discuss\\_paper.pdf](https://www.veterans.gc.ca/public/pages/forces/nvc/discuss_paper.pdf)

<sup>99</sup> Veterans Affairs Canada – Canadian Forces Advisory Council (March 2004). *The Origins and Evolution of Veterans Benefits in Canada 1914-2004*, pg. 3. Source: <https://www.veterans.gc.ca/public/pages/forces/nvc/reference.pdf>



## Post-War Period

The limitations of the *Pension Act* would soon give rise to many complaints from Veterans and the Great War Veterans' Association (GWVA), a Veterans' advocacy group that would later become known as the Royal Canadian Legion. Complaints revolved largely around how eligibility for benefits was interpreted and applied.

In 1923-24, the *Pension Act* was reviewed by a Royal Commission headed by Lieutenant-Colonel J.L. Ralston.<sup>100</sup> The commission found that there was merit to the complaints raised by the GWVA around the restrictive application of eligibility guidelines, the lack of transparency of the Pension Board and the absence of an appeal and review mechanism.<sup>101</sup>

Also in 1923, provision was made for the payment of unemployment assistance to unemployed Veterans whose disability pension did not fully satisfy their needs. This was the first official unemployment assistance program offered in Canada.<sup>102</sup>

In 1930, an amendment to the *Pension Act* created the Veterans' Bureau, an independent organization comprised of lawyers and pension advocates whose mandate was to assist Veterans with pension applications and to represent them at appeal hearings. Also, the *War Veterans Allowance Act* was passed as a way of compensating Veterans for the more insidious effects of wartime service. Known as the "burnt-out pension", the allowance was provided to Veterans with overseas service who could no longer make a living. This benefit presaged later income support schemes such as the Canada Assistance Plan and Old Age Security.<sup>103</sup>

In 1933, responsibility for the adjudication of disability pensions was transferred to the Canadian Pension Commission, which performed this function until 1995.

## Second World War

The Government of Canada under-estimated the number of Veterans who would need to be rehabilitated and re-established into civilian life after the First World War. It learned from this experience, and with the Second World War looming, the government began the process of planning for the unprecedented demobilization that was to come after the war. In December 1939, the Cabinet Committee on Demobilization was stood up and promised rehabilitation benefits "to those whose lives were interrupted by service to their country."<sup>104</sup>

Benefits under the *Pension Act* were extended to those who served during the Second World War, but these benefits were now awarded in accordance with two principles: the "compensation principle" and the "insurance principle". Under the "compensation principle", individuals who served in Canada were pensionable for disability or death that was directly linked to their military service. As discussed earlier, under the "insurance principle", those serving overseas were covered for disability or death regardless of the causal link to service.

Before the end of the Second World War, Parliament elaborated its position on the awarding of disability pensions:

---

<sup>100</sup> During the First World War, he commanded the 85<sup>th</sup> Battalion (Nova Scotia Highlanders). He would later become the Minister of National Defence during the Second World War.

<sup>101</sup> Veterans Affairs Canada – Canadian Forces Advisory Council (March 2004). *The Origins and Evolution of Veterans Benefits in Canada 1914-2004*, pg. 7. Source: <https://www.veterans.gc.ca/public/pages/forces/nvc/reference.pdf>

<sup>102</sup> Gardham, N.I., Harrison, D.H., Linton, J.I., Dept. Of Veterans Affairs (Canada) (1986). *An Historical Perspective of Veterans Legislation*, Part II, pg. 10.

<sup>103</sup> Veterans Affairs Canada – Canadian Forces Advisory Council (March 2004). *The Origins and Evolution of Veterans Benefits in Canada 1914-2004*, pg. 8. Source: <https://www.veterans.gc.ca/public/pages/forces/nvc/reference.pdf>

<sup>104</sup> Ibid, pg. 9.

*“The basic principle recognized by Parliament in awarding disability pensions payable on account of a relation to service is that it is money owed by the state to ex-servicemen or ex-servicewomen because of their service disablement. A disability pension is not awarded for length of service or even for wounds. It is awarded for the loss or lessening of normal abilities...”<sup>105</sup>*

*Except where total disability exists, the disability pension is not intended to provide complete maintenance, but only that part of maintenance which the man or woman has lost the power to provide owing to service-related disablement.”<sup>106</sup>*

The concept recognized by Parliament that a disability pension is awarded for the “loss or lessening of normal abilities” is similar to that in effect today. Under the current version of the *Pension Act*, a disability for which a pension is awarded is defined as the “loss or lessening of the power to will and to do any normal mental or physical act.”<sup>107</sup>

In addition to the pension, other benefits were provided to Second World War Veterans, including: the payment of gratuities and re-establishment credits; the ability to apply for land (for farming); rehabilitation benefits; a medical plan; a clothing allowance of \$100; civil service preference; insurance; War Veterans Allowance schemes; and the right to reinstatement in civilian employment.<sup>108</sup>

Finally, in 1944, the *Department of Veterans Affairs Act* created the Department of Veterans Affairs to coordinate all Veterans-related activities within the government.<sup>109</sup>

---

<sup>105</sup> Minister of Pensions and National Health, Honorable Ian A. MacKenzie (Second ed., rev. Aug 25, 1944). *Back to Civil Life*, pg. 27. Source: [http://timetraces.ca/nene/post\\_war/Back\\_to\\_Civilian\\_Live\\_1944\\_edited.pdf](http://timetraces.ca/nene/post_war/Back_to_Civilian_Live_1944_edited.pdf)

<sup>106</sup> *Ibid*, pg. 30.

<sup>107</sup> *Pension Act*, R.S.C 1985, article 3(1). Source: <http://laws.justice.gc.ca/eng/acts/p-6/page-1.html#h-2>

<sup>108</sup> Veterans Affairs Canada – Canadian Forces Advisory Council (March 2004). *Honouring Canada’s Commitment: Opportunity with Security for Canadian Forces Veterans and Their Families in the 21st Century*, pg. 9. Source: [https://www.veterans.gc.ca/public/pages/forces/nvc/discuss\\_paper.pdf](https://www.veterans.gc.ca/public/pages/forces/nvc/discuss_paper.pdf)

<sup>109</sup> James Cox, International Affairs, Trade and Finance Division, Parliament of Canada (November 2010). *The Evolution of Veterans Benefits in Canada*. Source: <http://www.parl.gc.ca/Content/LOP/ResearchPublications/2010-71-e.htm>

## Post-Second World War and Korean War

In 1947, the diverse program of benefits for Veterans of the Second World War was given an all-encompassing name: the Veterans Charter. The Charter brought all the statutes and regulations together under one cover.<sup>110</sup>

The planning and preparation for the return from operations of military personnel that began prior to the declaration of the Second World War, and continued until the cessation of hostilities, paid dividends in the ensuing post-war years. Many Veterans took advantage of the various government compensation and rehabilitation programs to rebuild their lives. Canada's investment in Veterans was one of the driving forces that ushered in a golden era of economic prosperity in the 1950s.<sup>111</sup>

The needs of Korean War Veterans were initially addressed by the Department of Veterans Affairs through a series of Orders in Council. Benefits were eventually formalized and made available to Korean War Veterans through the *Veterans Benefits Act* in 1951, and its subsequent amendments. These Acts extended to Veterans of the Korean War the benefits of the Veterans Charter, except for those of the War Veterans Allowance, which were granted to them separately in 1952.<sup>112</sup>

## The Woods Committee (1965)

In September 1965, another process of Veterans' benefits reform was launched by the government when it established the Woods Committee to review the workings of the Canadian Pension Commission. The mandate of the Woods Committee was to "...study the organization, methods and procedures used in the adjudication of disability and other pensions paid under the provisions of the Pension Act and to study the interpretations by the Pension Commission of such Sections of the Pension Act as it deemed should be considered."<sup>113</sup>

The Committee reviewed numerous aspects of the Canadian Pension Commission and the *Pension Act* and made 149 recommendations in 43 areas. The work of the Committee was extensive and groundbreaking, and it set the stage for many amendments that were subsequently made to the *Pension Act* and to the way the Canadian Pension Commission conducted its business. Some of the areas reviewed by the Committee included:

- the "benefit of the doubt" principle;
- attribution of injuries or disability to service;
- supplementary pension for multiple disabilities greater than 100 percent;
- attendance allowance; and
- earnings standard used to establish the rate of pension.

Among its many observations, the Committee remarked that the compensation system developed under the *Pension Act* includes both a non-economic and economic component. First, physical damage is measured in exact terms and a percentage of assessment is approved in each individual case. Second, the monetary value of this percentage is based on the formula

---

<sup>110</sup> Veterans Affairs Canada – Canadian Forces Advisory Council (March 2004). *The Origins and Evolution of Veterans Benefits in Canada 1914-2004*, pg. 13. Source: <https://www.veterans.gc.ca/public/pages/forces/nvc/reference.pdf>

<sup>111</sup> Ibid.

<sup>112</sup> Ibid, pg. 19.

<sup>113</sup> Hon Mr. Justice Mervyn Woods (1968), *Synopsis of the Report of the Committee to Survey the Work and Organization of the Canadian Pension Commission*, Terms of Reference, pg. 1.

that a 100-percent pension equates to a complete loss of earning power for an unskilled employee in the Public Service of Canada.<sup>114</sup>

### White Paper on Veterans Pensions (1969)

The government's response to the Woods Committee report took the form of a *White Paper on Veterans Pensions*, produced in 1969 under the authority of the Minister of Veterans Affairs. The White Paper addressed various observations and recommendations made by the Woods Committee.

With regards to the purpose of providing compensation under the *Pension Act*, the White Paper provided the following position:

*“For the past 50 years, Canada has recognized and freely accepted her obligation to pay compensation for disability and death arising out of military service, in so far as it is reasonable and practicable to equate monetary values with human suffering and bereavement...”*<sup>115</sup>

With respect to the recommendation by the Woods Committee that compensation be provided for disabilities assessed at greater than 100 percent, the government decided to take a different approach. The White Paper acknowledged that Veteran pensioners who were rated as 100-percent disabled suffered extraordinary physical, social and psychological impairments. Besides being 100-percent unemployable, these pensioners suffered unusual social and psychological disadvantages, and they suffered pain and distress in varying degrees more or less continually. In addition, their capacity to enjoy life was materially lessened.<sup>116</sup>

For the first time, the government committed to recognizing the exceptional burden of disablement by providing an Exceptional Incapacity Allowance (between \$400 and \$1,200 per year at the time). The Minister of Veterans Affairs acknowledged that while the number of 100-percent disabled Veterans was less than 5 percent of all pensioners, there were some Veterans whose disabilities result in the need for a very great deal of help. Assessing the degree of loss of bodily function was not something that could easily be determined from a table of disabilities, and any consideration about such losses should take into account not only the physical disability, but also the psychological and social impacts of such severe impairment.<sup>117</sup>

---

<sup>114</sup> Hon Mr. Justice Mervyn Woods (1968). *Synopsis of the Report of the Committee to Survey the Work and Organization of the Canadian Pension Commission*, Representations and Evidence, pg. 131.

<sup>115</sup> Department of Veterans Affairs (July 1969). *White Paper on Veterans Pensions*, pg. 3.

<sup>116</sup> *Ibid*, pg. 12

<sup>117</sup> Department of Veterans Affairs (June 1969). *Memorandum to Cabinet – Exceptional Incapacity*, pg. 1-2.

The intent of the exceptional incapacity payment was stated as:

“... (payment) for specified amenities to relieve pain and discomfort, and to increase as far as possible, the enjoyment of life for the pensioner and to provide for him the essential will to live.”<sup>118</sup>

### 1970s

In 1972, a Joint Study Group comprised of members of the Department of Veterans Affairs, Canadian Pension Commission and Veterans’ organizations published a report on the basic rate of pension payable under the *Pension Act*. The Group commented on various aspects of the pension rate such as the formula for determining the rate, married rate, rates for dependent children, annual adjustments and taxation. The Group re-affirmed that the basis for the pension should be the earning power of the unskilled labourer in the Public Service.<sup>119</sup>

The needs of former prisoners of war (POWs) were also addressed in the 1970s. Many returning POWs were found to be suffering from both physical and psychological effects of their incarceration, but the symptoms they were experiencing had not been previously identified under any type of medical condition. Because disability pensions were normally paid in regards to a documented medical condition, many POWs found themselves ineligible for benefits, even though they were suffering from significant disabilities related to their captivity.

Recognizing this deficiency, in 1971 the government amended the *Pension Act* to ensure that former POWs captured by the Japanese during the Second World War would be eligible for a 50-percent minimum Disability Pension if they could prove that they were suffering from any disability. In 1976, the legislation was extended to cover former European POWs from the Second World War, POW Veterans from the First World War and the Korean conflict, and those who had escaped their captors from any theatre of war.

### 1980s

In the early 1980s, the administration of the *Pension Act* was once again under government review as the improvements generated by the Woods Committee were more than a decade old.

Veterans were aging, and by 1985 the majority had celebrated their 65<sup>th</sup> birthday. As they embarked on life as senior citizens, many Veterans were raising new concerns regarding Veterans’ benefits. Concurrently, stories of Veterans’ frustrations to earn disability pensions were making national headlines.<sup>120</sup>

---

<sup>118</sup> Department of Veterans Affairs (July 1969). *White Paper on Veterans Pensions*, pg. 11.

<sup>119</sup> Joint Study Group (November 1972) *Report of the Joint Study Group on Basic Rate of Pension*, pg. 22.

<sup>120</sup> Veterans Affairs Canada – Canadian Forces Advisory Council (March 2004). *The Origins and Evolution of Veterans Benefits in Canada 1914-2004*, pg. 32-33. Source: <https://www.veterans.gc.ca/public/pages/forces/nvc/reference.pdf>

The Marin Commission identified a number of problems with how Veterans benefits were delivered, including delays in benefit adjudication, Veterans not receiving the benefit of the doubt, and Veterans not being treated courteously and generously.<sup>121</sup> Their work influenced a number of changes to Veterans' benefits that were introduced by the Minister of Veterans Affairs, George Hees. Changes included:

- The rates for disability pensions were tied to those of a composite group of junior public service employees;
- The ceiling on combined disability and POW payments was lifted (primarily to benefit Hong Kong and Dieppe POWs who had been incarcerated the longest);
- Measures were implemented to ensure Veterans' estates were more equitably passed on to heirs; and
- Pension benefits were restored to surviving Veterans' spouses whose benefits had been suspended when they remarried.<sup>122</sup>

### 1990s to Present

From 1996 to 2000, VAC conducted a series of studies entitled "Review of Veterans' Care Needs" to examine the issues and gaps related to the care and support of Veteran clients and families. One of the many findings was that the Disability Pension process was an overused and inappropriate tool with which to address the needs of the younger cohort of Veterans (needs such as rehabilitation and skills upgrading).<sup>123</sup>

In 2003, VAC stood up a Services and Program Modernization Task Force with the mandate to develop a comprehensive and improved suite of programs and services to aid the successful transition of CAF members and families to civilian life. Based on the work conducted by the task force, recommendations from the Veterans Affairs Canada - Canadian Forces Advisory Council<sup>124</sup> and findings from various other reports,<sup>125</sup> the government introduced the NVC suite of programs, which came into force on April 1, 2006.

One of the underlying design features of the NVC was to separate non-economic benefits to compensate for pain and suffering and functional loss, from economic benefits to mitigate lost earnings, lost career opportunities and the inability to contribute to a retirement pension plan.<sup>126</sup> The NVC would now provide a dual financial benefits approach to compensate separately for the non-economic and economic effects of a service-related and career-ending disability, and death.

When the NVC came into effect in 2006, the government announced that it would be a living document and that it would evolve as Veterans' needs changed. The first substantive change came five years later with the enactment of Bill C-55 in March 2011 – the *Enhanced New*

---

<sup>121</sup> Ibid, pg. 33-34.

<sup>122</sup> Ibid, pg. 35.

<sup>123</sup> Ibid, pg. 64.

<sup>124</sup> Veterans Affairs Canada – Canadian Forces Advisory Council (March 2004). *Honouring Canada's Commitment: "Opportunity with Security" for Canadian Forces Veterans and Their Families in the 21st Century*. Source:

[https://www.veterans.gc.ca/public/pages/forces/nvc/discuss\\_paper.pdf](https://www.veterans.gc.ca/public/pages/forces/nvc/discuss_paper.pdf)

<sup>125</sup> For example, the 1997 Stow report on the treatment of members released from the CF on medical grounds, the 1997 MacLellan report on the care of injured personnel and their families and the 1998 House of Commons Standing Committee on National Defence and Veterans Affairs report on quality of life improvements in the Canadian Forces.

<sup>126</sup> Veterans Affairs Canada (August 2010). *Evaluation of Disability Pensions and Awards*, pg. 31. Source:

<http://www.veterans.gc.ca/pdf/deptReports/2010-08-dadp.pdf>

*Veterans Charter Act*.<sup>127</sup> A number of amendments to the NVC were made, including changes to payment options for the Disability Award. In 2015, the *Support for Veterans and Their Families Act*<sup>128</sup> introduced new benefits to better support disabled Veterans and their survivors, including a new non-economic benefit, the Critical Injury Benefit.

Finally, Budget 2016 announced more improvements to Veterans' benefits, including to both economic and non-economic benefits. Regarding the latter, the Disability Award will be increased commencing in 2017 to a maximum of \$360,000 to match the approximate maximum amount awarded by Canadian courts for non-pecuniary damages. The increase will be retroactive to April 1, 2006.

---

<sup>127</sup> The full title was *An Act to amend the Canadian Forces Members and Veterans Re-establishment and Compensation Act and the Pension Act*. Source: <http://www.parl.gc.ca/legisinfo/BillDetails.aspx?Mode=1&billId=4751553&Language=E>

<sup>128</sup> Bill C-58 (Historical) – *Support for Veterans and Their Families Act*. Source: <https://openparliament.ca/bills/41-2/C-58/>

## ANNEX B - NON-ECONOMIC BENEFITS PROVIDED BY ALLIED COUNTRIES

The following describes the non-economic benefits provided by the US, the UK, Australia and NZ. In most instances, the UK and Australia specify which benefits are awarded to compensate for the non-economic or economic effects of disability or death. However, the US and NZ are not specific. Consequently, the US and NZ benefits described below are those that were deemed to be similar to non-economic benefits provided by the UK, Australia and/or Canada.

### United States

The US Department of Veterans Affairs provides a number of financial benefits to disabled Veterans and their survivors.

The tax-free monthly Disability Compensation benefit compensates honourably discharged ill or injured US Veterans for the effects of diseases, disabilities or injuries incurred or aggravated during active military service.<sup>129</sup> The benefit is similar to Canada's Disability Pension in that monthly payments are provided based on the degree of disability, and additional amounts are paid in respect of dependants.

Two examples of Disability Compensation monetary amounts are as follows. A Veteran with a spouse and one child and assessed a 30-percent disability would receive US\$491.75 per month (CDN\$681.07). A Veteran with a spouse and one child and assessed a 100-percent disability would receive US\$3,187.60 per month (CDN\$4,140.20).<sup>130,131</sup> Of note, these amounts are offset (reduced) if the Veteran is in receipt of military retirement pay, disability severance pay or separation incentive payments.

Veterans with severe disabilities may be eligible for an additional Special Monthly Compensation benefit. This benefit, which shares similarities to Australia's Severe Injury Adjustment benefit (described later), is a higher rate of compensation paid for a specific disability such as the loss of use of one hand or leg or for special circumstances such as the need for aid and attendance by another person.<sup>132</sup>

Benefits awarded to survivors are economic in nature as they help them deal with the financial impact of the death of an armed forces member.

### United Kingdom

The financial benefits that the UK provides to its disabled armed forces members and Veterans, and their survivors, depend on whether service occurred before or after April 6, 2005. The primary non-economic benefit awarded under the Armed Forces Compensation Scheme to armed forces members and Veterans who were injured as a result of service on or after April 6, 2005 is the Compensation for Injury benefit. The benefit is a lump-sum payment based on a 15-level tariff system to a maximum of £570,000 (CDN\$1,175,277).<sup>133</sup>

---

<sup>129</sup> U.S. Department of Veterans Affairs (2013). *Compensation*. Source: <http://www.benefits.va.gov/COMPENSATION/types-disability.asp>

<sup>130</sup> 2014 rates. Disability Compensation amounts are reduced by applicable offsets. Source: [http://www.benefits.va.gov/COMPENSATION/resources\\_comp01.asp#BM01](http://www.benefits.va.gov/COMPENSATION/resources_comp01.asp#BM01)

<sup>131</sup> All conversions to Canadian dollars in this report are based on the January 1, 2016 exchange rate.

<sup>132</sup> U.S. Department of Veterans Affairs (2013). *Types of Compensation*. Source: <http://www.benefits.va.gov/COMPENSATION/types-compensation.asp>

<sup>133</sup> Statutory Instruments, *The Armed Forces and Reserve Forces Compensation Scheme Order (AFCS) 2011 in force from 6 April 2015 to 30 May 2016*, Schedule 3, Part 1, Table 10, pg. 86. Source: <http://www.infolaw.co.uk/mod/docs/AFCS-2015-04-06.pdf>



An additional lump-sum payment – the Supplementary Award – is awarded to a maximum of £60,000 (CDN\$123,714) if the injury is accompanied by certain specified conditions such as incontinence, impotence and infertility.<sup>134</sup> In the case of death, the UK provides the survivor with economic support benefits and a Bereavement Grant.<sup>135</sup> It is not clear whether this lump-sum grant is non-economic or economic.

For service before April 6, 2005, the War Pension Scheme provides a War Disablement Pension – a periodic payment based on the level of disability – and gratuities for certain severe disabilities such as amputations and loss of sight.<sup>136</sup>

## Australia

A number of benefits are provided specifically to compensate for non-economic effects of impairment to Australian ill and injured armed forces members and Veterans, and their survivors. These benefits complement various economic benefits and the type of compensation and the amounts payable depend on the time period and type of service when the illness, injury or death occurred.

The primary non-economic benefit provided under the *Military Rehabilitation and Compensation Act* (2004) is the Permanent Impairment Compensation benefit. It is provided to a member or Veteran of the Australia Defence Force who suffers from permanent impairment as a result of injuries or disease sustained in service after July 1, 2004. The benefit is a periodic payment or an age-based lump sum that compensates for functional loss, pain and suffering and lifestyle restrictions.<sup>137</sup> The maximum lump-sum amount is approximately AUD\$441,500 (CDN\$444,300).<sup>138</sup> Because the benefit is age-based, older claimants receive less lump-sum compensation than younger claimants for similar injuries or disease.

For peacetime and peacekeeping service before June 30, 2004, and operational service between April 7, 1994 and June 30, 2004, compensation for permanent impairment is paid under the *Safety, Rehabilitation and Compensation Act* (1988) as a lump sum, to a maximum of AUD\$179,975 (CDN\$181,055). An additional amount of up to AUD\$67,491 (CDN\$67,896) can be awarded for non-economic loss caused by the impairment such as pain and suffering, loss of enjoyment of life and the loss of previously enjoyed sporting or recreational activities.<sup>139</sup>

In addition, if impairment is assessed at 80 percent or more from a single specified injury or disease sustained or suffered on or after June 10, 1997, a Severe Injury Adjustment may be awarded in the amount of AUD\$76,928 (CDN\$77,390). A further lump sum of AUD\$83,986 (CDN\$84,490) is payable for each child up to the age of 16 years (up to 25 years in the case of

---

<sup>134</sup> However, the total lump-sum compensation for disability, including any Supplementary Award, cannot be greater than £570,000. Source: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/485419/20151203 - JSP765\\_FINAL-Official.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/485419/20151203_-_JSP765_FINAL-Official.pdf) pg. 13

<sup>135</sup> Ibid, pg. 32-33.

<sup>136</sup> Ministry of Defence Veterans UK (March 2016). *War Pension Scheme: what you need to know*. Source:

<https://www.gov.uk/government/publications/war-pension-scheme/war-pension-scheme-what-you-need-to-know>

<sup>137</sup> Australian Government Department of Veterans' Affairs (October 2011). *Military Rehabilitation and Compensation Information Booklet*. Source: <http://www.dva.gov.au/sites/default/files/files/benefits%20and%20payments/myp/mrcinfobook.pdf>.

<sup>138</sup> Australian Government Department of Veterans' Affairs. *Factsheet MRC29 – Australian Government Actuary Tables Used for Age Adjusting Lump Sum Payments*. Source:

<http://factsheets.dva.gov.au/factsheets/documents/MRC29%20Actuary%20Tables.htm>

<sup>139</sup> Australian Government Department of Veterans' Affairs. *Factsheet MRC43 – Compensation Payment Rates*. Source: <http://factsheets.dva.gov.au/factsheets/documents/MRC43%20Compensation%20Payment%20Rates.pdf>

a full-time student) who was dependent on the injured member at the time the injury or disease occurred.<sup>140</sup>

Injuries or death that occurred during wartime and certain operational deployments, as well as peacetime service between December 7, 1972 and June 30, 2004, are covered under the *Veterans' Entitlements Act* (1986). The General Rate of Disability Pension takes into account the medical impairment and lifestyle effects of a medical condition and is paid in 10-percent increments to a maximum bi-weekly amount of AUD\$476.90 (CDN\$479.96) for a 100-percent disability rating.<sup>141</sup>

The Extreme Disablement Adjustment is available to Veterans who have reached 65 years of age and whose degree of incapacity is extreme and has resulted from war or defence-caused conditions. The bi-weekly rate for the Extreme Disablement Adjustment is AUD\$741.00 (CDN\$745.45).<sup>142</sup>

Additional amounts are payable to Veterans with specific disabilities that are "war-caused." They generally apply to amputations and blindness. The maximum bi-weekly payment for the most serious amputations is AUD\$653.60 (CDN\$657.52).<sup>143</sup>

Finally, death benefits for survivors are characteristic of economic benefits because the surviving partner must be wholly dependent on the member for economic support at the time of his or her death.

There are parallels between this approach and the Canadian NVC dual financial benefits approach (i.e. separation of economic and non-economic benefits).

## New Zealand

A variety of financial benefits can be provided to NZ armed forces members and Veterans who suffer a service-related impairment. These benefits also depend on when the service occurred. While financial benefits are not specifically labelled as non-economic, the following benefits share certain similarities with non-economic benefits provided by Canada or Australia (i.e. pensions based on impairment levels, lump-sum payment to compensate for the loss of a body part or the loss of function in a body part, and periodic payments that can be converted to a lump sum).

A Disablement Pension may be granted under the *Veterans Support Act* (VSA) on a permanent or temporary basis to Veterans who are affected by a disablement caused by a service-related illness, injury or medical condition. Weekly rates range from NZD\$10.91 to \$383.78 (CDN\$10.13 to \$356.34) depending on the disablement rating.<sup>144</sup>

Under the legislative predecessor to the VSA – the *War Pensions Act (1954)* – a War Disablement Pension was granted for service-related disablement. Weekly tax-free amounts

---

<sup>140</sup> Ibid

<sup>141</sup> Australian Government Department of Veterans' Affairs. *Factsheet DP43 – Disability Pension and War Widow(er)'s Pension Rates and Allowances*. Source:

<http://factsheets.dva.gov.au/factsheets/documents/DP43%20Disability%20Pension%20and%20War%20Widow%60s%20Pension%20Rates%20and%20Allowances.htm>

<sup>142</sup> Ibid.

<sup>143</sup> Ibid.

<sup>144</sup> New Zealand Veterans' Affairs. Rates for Disablement Pension. Source: <http://www.veteransaffairs.mil.nz/support/rates/dp/>

range from NZD\$10.90 at the lowest level of disablement at the ordinary rate, to NZD\$383.78 at the highest level of disablement for Veterans over the age of 60 (CDN\$10.13 to \$356.34).<sup>145</sup>

A Veteran in receipt of a Disablement Pension or War Disablement Pension and who has a terminal service-related medical condition, is eligible to receive a Terminal Pension at the maximum rate payable for the Disablement Pension. A terminal medical condition means an advanced progressive disease likely to cause death within a 12-month period.

In addition to these pensions, two types of impairment compensation can be provided under the VSA to Veterans who suffer a permanent service-related illness or injury: the Independence Allowance (if the illness or injury occurred before April 1, 2002) and the Lump-sum Payment for Permanent Impairment (if the illness or injury occurred on or after April 1, 2002).<sup>146</sup> The Independence Allowance is paid at the same rate as the Disablement Pension, while the Lump-sum Payment for Permanent Impairment is paid at a minimum of NZD\$2,500 to a maximum of NZD \$100,000 (a minimum of CDN\$2,325 to a maximum of CDN\$92,983).<sup>147</sup>

New Zealand also provides all its residents and visitors, including military personnel, no-fault personal injury coverage through a civilian Accident Compensation Commission. Benefits provided to military personnel through this scheme are topped up by benefits provided by the Department of Veterans Affairs.

Finally, benefits provided to survivors are described as economic in nature.

## Summary

The foregoing description of benefits illustrates that it is difficult to compare benefits between the countries because of the many differences in the type of benefits, eligibility criteria, payment schemes and monetary amounts.

---

<sup>145</sup> New Zealand Veterans' Affairs (2016). *Payment Rates*. Source: <http://www.veteransaffairs.mil.nz/support/payment-rates-2015/>

<sup>146</sup> Accident Compensation Corporation New Zealand (2010). *All about the Independence Allowance*. Source: [http://www.acc.co.nz/PRD\\_EXT\\_CSMP/groups/external\\_ip/documents/publications\\_promotion/wpc095202.pdf](http://www.acc.co.nz/PRD_EXT_CSMP/groups/external_ip/documents/publications_promotion/wpc095202.pdf); and *Making a Claim*. Source: <http://www.acc.co.nz/making-a-claim/what-support-can-i-get/ECI0034>

<sup>147</sup> New Zealand Legislation. *Accident Compensation Act 2001*, article 56. Source: [http://www.legislation.govt.nz/act/public/2001/0049/latest/whole.html?search=sw\\_096be8ed80ce33e0\\_schedule+1\\_25\\_se&p=1#DL\\_M2508268](http://www.legislation.govt.nz/act/public/2001/0049/latest/whole.html?search=sw_096be8ed80ce33e0_schedule+1_25_se&p=1#DL_M2508268)

## ANNEX C - NON-ECONOMIC BENEFITS PROVIDED BY PROVINCIAL/TERRITORIAL WORKERS COMPENSATION BOARDS\*

\*Note: Please note that all terms used below are the official terms used by the relevant provincial authorities.

### Newfoundland and Labrador

A non-economic benefit is provided for permanent functional impairment. Compensation is based on the level of impairment expressed as a percentage of total body function. The impairment rating schedule recognizes impairment of body function that causes the injured worker to modify his or her activities, whether or not it affects his or her earning capacity.<sup>148</sup> The maximum lump-sum amount is \$61,615; the minimum is \$1,000.

### Prince Edward Island

A non-economic Impairment Award can be provided for loss of body function as measured using the American Medical Association Guides to the Evaluation of Permanent Impairment. The lump-sum amount is determined by multiplying the impairment rating (expressed as a percentage to a maximum of 100 percent) by the maximum insurable earnings at the time of the accident (\$52,100 for 2015). The minimum impairment award is \$500.<sup>149</sup>

### Nova Scotia

A non-economic Permanent Impairment Benefit is payable for permanent loss of physical ability, as measured using the American Medical Association Guides to the Evaluation of Permanent Impairment. A permanent medical impairment also accounts for the usual pain that accompanies the type of injury and resulting impairment.

A monthly benefit is paid for life and is calculated based on the percentage of the permanent impairment multiplied by 30 percent of 85 percent of the worker's net average earnings before the injury occurred.<sup>150</sup> Where a worker is found to have chronic pain that is connected to an original compensable injury, the Board pays the worker a benefit based on a permanent impairment rating of 3 percent where the worker experiences a slight pain-related impairment, or 6 percent where the worker experiences a substantial pain-related impairment.<sup>151</sup>

The Permanent Impairment Benefit can be paid as a lump sum if the permanent medical impairment rating is 30 percent or less.

### New Brunswick

A non-economic Permanent Physical Impairment Benefit is payable for a permanent loss of an anatomical structure or physical body function arising out of a work-related injury. The benefit is based on the injured worker's permanent physical impairment rating, measured in accordance with a rating schedule.

---

<sup>148</sup> Workplace Health, Safety & Compensation Commission of Newfoundland and Labrador (2015). *Policies & Procedures – EN-01 Permanent Functional Impairment Rating Schedule*. Source: <http://www.whscc.nf.ca/policiesandprocedures.whscc>

<sup>149</sup> Workers Compensation Board of PEI (February 2011). *Policy Number POL-89*. Source: [http://www.wcb.pe.ca/DocumentManagement/Document/pol89\\_impairment.pdf](http://www.wcb.pe.ca/DocumentManagement/Document/pol89_impairment.pdf)

<sup>150</sup> Workers' Compensation Board of Nova Scotia (September 2004). *Policy Number 3.3.1R*. Source: <http://www.wcb.ns.ca/Portals/wcb/Policy%20Manual/Section%203/Section%203.3/3-3-1R.pdf>

<sup>151</sup> Workers' Compensation Board of Nova Scotia (September 2004). *Policy Number 3.3.5R*. Source: <http://www.wcb.ns.ca/Portals/wcb/Policy%20Manual/Section%203/Section%203.3/3-3-5R.pdf>

Impairment ratings are estimates determined by medical consensus that reflect the severity of the limitation of the body part. These impairment ratings also reflect the loss of opportunity that individuals experience in their ability to perform normal activities of daily living, self-care, physical activity and/or sensory function.

A permanent physical impairment rating is not provided for psychological or mental impairment in the absence of a physical injury. Pain and suffering are not considered in impairment ratings in the absence of a physical injury. They are only considered when they directly affect impairment of the body's function. Finally, the level of permanent physical impairment refers only to a person's medical status, and not to the person's ability or inability to work or perform other activities.

The lump-sum Permanent Physical Impairment Award is calculated by multiplying the injured worker's impairment rating by the maximum annual earnings for the year in which the accident occurred.<sup>152</sup> The maximum award is \$60,900 for a 100-percent impairment rating and the minimum award is \$500 (2015 rates).<sup>153</sup>

### Quebec

A worker who suffers a work-related accident or disease and who sustains permanent physical or mental impairment is entitled to compensation for bodily injury that takes into consideration the degree and severity of the disability, physical disfigurement, pain and suffering and loss of enjoyment of life. The lump-sum amount of the indemnity is calculated by multiplying the percentage of permanent impairment by an age-based dollar amount listed in the "Schedule for Calculating the Amount of the Indemnity". For example, a 34-year-old worker suffers a back injury as a result of a work-related accident and is assessed a permanent impairment of 2.2 percent. The compensation for bodily injury in this case would be \$1,917.61 (2.2% x \$87,164 (base dollar amount for a 34-year-old worker)).

The maximum award (as of January 1, 2016) for a person aged 18 or less who suffers a 100-percent permanent impairment is \$105,042. The maximum award for a person aged 65 or over who suffers a 100-percent permanent impairment is \$52,524. The minimum benefit is \$1,049.<sup>154</sup>

### Ontario

A Non-Economic Loss Award can be provided to an injured or ill worker to compensate for the physical, functional or psychological loss resulting from a work-related permanent impairment. A prescribed rating schedule is used to determine the degree of permanent impairment once the impairment has been identified. The benefit is payable regardless of whether or not the impairment affects a worker's ability to work.

The Non-Economic Loss Award is calculated by multiplying the percentage of impairment by an adjusted base amount. The 2015-adjusted base amount is \$58,219.06 plus \$1,294.23 for each year under age 45, up to a maximum of \$84,093.66, and minus \$1,294.23 for each year over age 45, with a minimum of \$32,344.43.

---

<sup>152</sup> Work Safe New Brunswick (2008). *Policy: Permanent Physical Impairment*. Source: <http://www.worksafenb.ca/pdf/resources/policies/21-250.pdf>

<sup>153</sup> Association of Workers' Compensation Boards of Canada (2015). *Permanent Disability Awards and Escalation Benefits – Summary – 2015*. Source: [http://awcbc.org/wp-content/uploads/2013/12/Permanent\\_Disability.pdf](http://awcbc.org/wp-content/uploads/2013/12/Permanent_Disability.pdf)

<sup>154</sup> Commission des normes, de l'équité, de la santé et de la sécurité du travail (2016). *Compensation and reimbursement of expenses*. Source: [http://www.csst.qc.ca/en/workers/Pages/compensation\\_reimbursement\\_expenses.aspx#B](http://www.csst.qc.ca/en/workers/Pages/compensation_reimbursement_expenses.aspx#B)

The benefit is paid as a lump sum if the award is below a threshold amount that is set annually. If the award is above this threshold, the worker may choose to receive the benefit either in monthly installments for life or as a lump sum.<sup>155</sup>

### Manitoba

A Permanent Partial Impairment Award can be provided for a work-related injury or illness based on the degree of impairment. The degree of impairment is determined as a percentage of body function as a whole according to a Permanent Partial Impairment Rating Schedule. Impairments are rated (separately or in combination) based on: loss of a body part; loss of mobility in the joints; loss of organ function; or cosmetic disfigurement of the body. Pain and suffering are not considered in the rating.<sup>156</sup>

The impairment award is equal to \$1,300 for each full percentage point of permanent impairment less than 30 percent, and \$39,000 plus \$1,570 for each full percentage point of permanent impairment that is 30 percent or higher. If the injury occurred after January 1, 1992, the award will be paid as a lump-sum amount (in most cases).

### Saskatchewan

A Permanent Functional Impairment Award is payable based on the degree of impairment and/or disfigurement resulting from a workplace injury or illness. The permanent impairment rating is determined using the American Medical Association Guides to the Evaluation of Permanent Impairment. Functional impairment is defined as any adverse reaction in a worker as a result of a work injury which interferes with the normal performance of the worker's body or mind.<sup>157</sup>

A lump-sum Permanent Functional Impairment is awarded based on a percentage rating applied to the maximum award. For 2015, the maximum award for a 100-percent permanent functional impairment is \$45,200. The minimum award is \$2,200.

### Alberta

A Non-Economic Loss Payment recognizes permanent clinical impairment resulting from a workplace injury or illness. The permanent clinical impairment rating is determined using the Alberta Permanent Clinical Impairment Guide<sup>158</sup> or the American Medical Association Guides to Rating Permanent Impairment.

Impairment is defined as the loss of, loss of use of, or derangement of any body part, system or function. Disability is defined as the decreased capacity or loss of ability of an individual to meet occupational demands, measured as loss of earning capacity. Any worker who suffers a permanent disability as a result of an injury will, when applicable, receive a non-economic loss payment based on measurable clinical impairment.

---

<sup>155</sup> Workplace Safety Insurance Board Ontario. *Benefits for non-economic loss*. Source: [http://www.wsib.on.ca/WSIBPortal/faces/WSIBDetailPage?cGUID=WSIB014550&rDef=WSIB\\_RD\\_ARTICLE&\\_afLoop=5113377292087355&\\_afWindowMode=0&\\_afWindowId=null#%40%3FcGUID%3DWSIB014550%26\\_afWindowId%3Dnull%26\\_afLoop%3D5113377292087355%26rDef%3DWSIB\\_RD\\_ARTICLE%26\\_afWindowMode%3D0%26\\_adf.ctrl-state%3Dfwrqj4ypl\\_4](http://www.wsib.on.ca/WSIBPortal/faces/WSIBDetailPage?cGUID=WSIB014550&rDef=WSIB_RD_ARTICLE&_afLoop=5113377292087355&_afWindowMode=0&_afWindowId=null#%40%3FcGUID%3DWSIB014550%26_afWindowId%3Dnull%26_afLoop%3D5113377292087355%26rDef%3DWSIB_RD_ARTICLE%26_afWindowMode%3D0%26_adf.ctrl-state%3Dfwrqj4ypl_4)

<sup>156</sup> Workers Compensation Board of Manitoba (2016). *Permanent Partial Impairment Award*. Source : <https://www.wcb.mb.ca/permanent-partial-impairment-award>

<sup>157</sup> Workers' Compensation Board of Saskatchewan (January 2016). *Policy Manual*. Source: <http://www.wcb.sask.com/wp-content/uploads/2013/11/PolicyManual.pdf>

<sup>158</sup> The Workers' Compensation Board of Alberta (June 1996). *Alberta Permanent Clinical Impairment Guide*. Source: [http://www.wcb.ab.ca/pdfs/public/policy/manual/a\\_d.pdf](http://www.wcb.ab.ca/pdfs/public/policy/manual/a_d.pdf)

The permanent clinical impairment rating (percentage of impairment) is used to determine the amount of Non-Economic Loss Payment. The permanent clinical impairment rating is multiplied by the maximum award amount to arrive at a one-time lump-sum payment. The maximum payment for 2015 is \$88,233.98. The minimum payment is \$1,764.68.

### **British Columbia**

British Columbia does not compensate for the non-economic effects of permanent impairment.

### **Yukon**

An award is payable for permanent impairment; that is, work-related injuries that cause conditions that diminish or disturb the function of a worker's body. The degree of permanent impairment is assessed using the American Medical Association Guides to Rating Permanent Impairment.

To calculate the lump-sum award amount, the percentage of permanent impairment is multiplied by 125 percent of the maximum wage rate that was in effect for the year the injury occurred.<sup>159</sup> For 2015, the maximum wage rate was \$84,837.<sup>160</sup>

### **Northwest Territories and Nunavut**

The Northwest Territories and Nunavut do not compensate for the non-economic effects of permanent impairment.

---

<sup>159</sup> Yukon Workers' Compensation Health and Safety Board (2015). *Permanent Impairment*. Source: <http://www.wcb.yk.ca/Document-Library/Policies/Entitlement/POL-00119.aspx>.

<sup>160</sup> Yukon Workers' Compensation Health and Safety Board (2015). *Maximum Wage Rate*. Source: <https://www.wcb.yk.ca/QuestionResults/Assessments/Rates/Q0070.aspx>