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The New Veterans Charter: Developments Since Its Adoption in 2006

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(Background Paper)

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THE NEW VETERANS CHARTER: DEVELOPMENTS SINCE ITS ADOPTION IN 2006

1 INTRODUCTION

On 1 April 2006, the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*¹ came into force. Commonly known as the New Veterans Charter (NVC), it became the legislative framework for the programs, services and benefits provided to Canadian veterans through Veterans Affairs Canada (VAC).

Before the NVC took effect, the services and benefits plan for veterans was governed by the *Pension Act*,² which first came into force in 1919. People who applied for services or benefits from VAC before April 2006 still receive them under that Act.

The NVC was passed with the support of all parties in the House of Commons, without amendment or debate; in fact, several routine stages were skipped to expedite its adoption and coming into force. For that reason, the NVC was presented as a so-called “living” document that would be modified over time, as needed.

Since the NVC was adopted, various stakeholders have reviewed the regime it established. They noted its positive aspects, but also identified significant shortcomings. Many recommendations to improve the new programs have been put forward by, among others, the Veterans Ombudsman, the parliamentary committees on veterans’ affairs, the New Veterans Charter Advisory Group, and various veterans’ rights groups.

Changes have been made to address some of these shortcomings. For example, the budget implementation bills of June 2014, 2015, 2016 and 2017 brought in changes and added new provisions to the NVC.

This document summarizes the purpose and content of the NVC, the changes made to date, and some ongoing issues.

2 THE NEW VETERANS CHARTER: PURPOSE AND CONTENT

Since the early 2000s, the number of Canadian Armed Forces (CAF) members released each year has increased considerably, as has the proportion of members being released for medical reasons. Most of the members being released either served in the peace-keeping missions Canada has been involved in since the 1990s or were deployed in Afghanistan between 2001 and 2014.

Accordingly, the NVC was developed to provide programs for veterans that focused on rehabilitation and re-establishment in civilian life. The Minister of Veterans Affairs at the time described the reason for establishing the new Charter as being “to advance the prospects of a better life” for future veterans.³

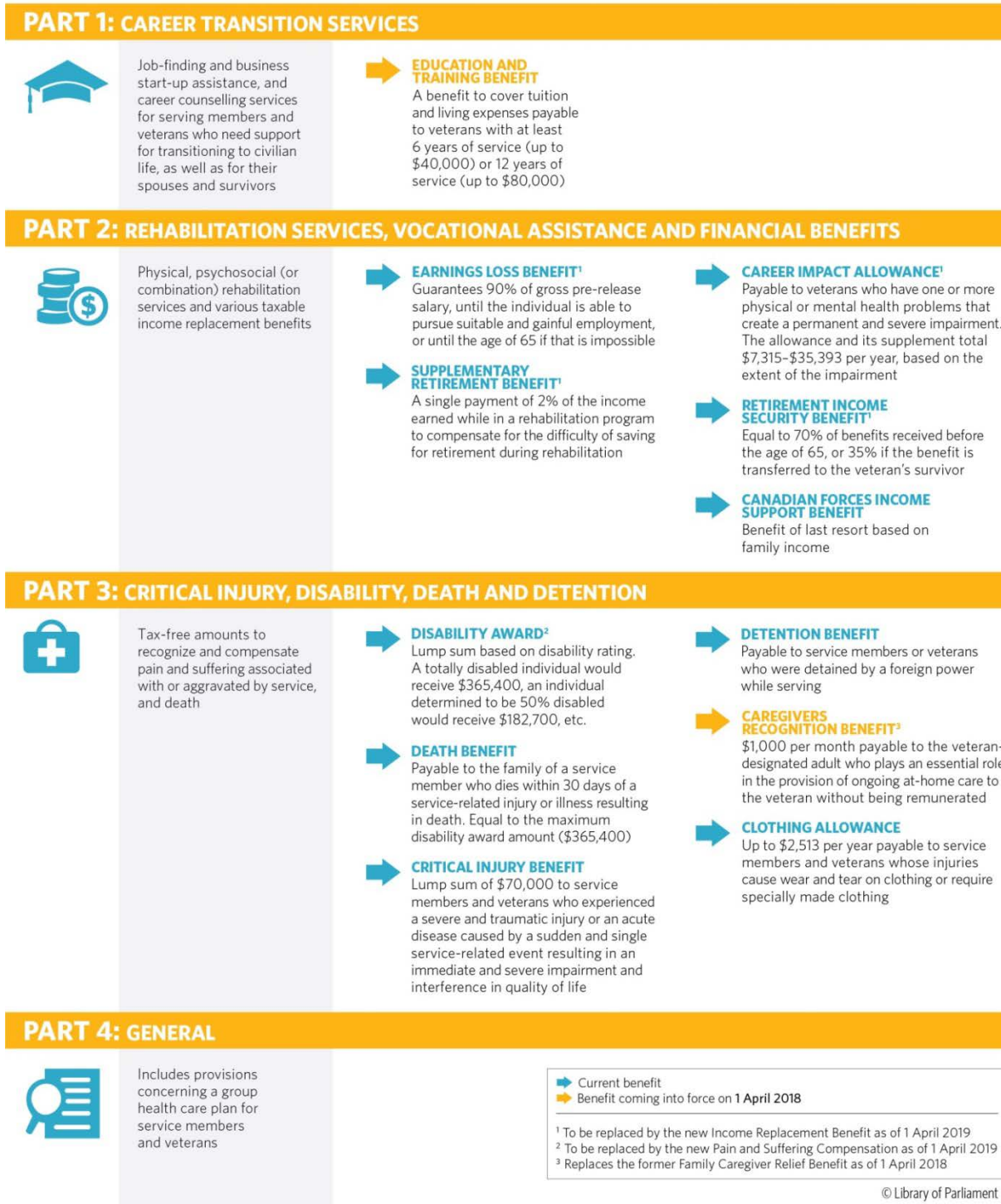
The underlying purpose of the NVC – to help veterans readjust to civilian life – has been and continues to be widely praised. However, many believe that the programs offered under the NVC have not provided enough assistance to ensure that veterans can achieve this objective.

Figure 1 gives an overview of the primary allowances and benefits offered under the NVC as of February 2018. It should be noted that the *Canadian Forces Members and Veterans Re-establishment and Compensation Regulations* (the regulations) outline the nature of the services being offered and the amounts of certain allowances, as well as details about the eligibility criteria.⁴

Figure 1 – Overview of the Primary Allowances and Benefits Under the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*

CANADIAN FORCES MEMBERS AND VETERANS RE-ESTABLISHMENT AND COMPENSATION ACT

Overview of the Primary Allowances and Benefits (2018 Rates)



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Source: Figure prepared by the author using data obtained from Veterans Affairs Canada documents.

3 KEY CHANGES TO DATE

3.1 LEGISLATIVE CHANGES

Five bills have amended the NVC since it was adopted:

- Bill C-55, Enhanced New Veterans Charter Act;⁵
- Bill C-31, Economic Action Plan 2014 Act, No. 1;⁶
- Bill C-59, Economic Action Plan 2015 Act, No. 1;⁷
- Bill C-15, Budget Implementation Act, 2016, No. 1;⁸ and
- Bill C-44, Budget Implementation Act, 2017, No. 1.⁹

Table 1 summarizes the main changes brought about by these bills, and the following sections of this Background Paper explain the changes to some key aspects of the NVC.

Table 1 – Key Legislative Changes to the New Veterans Charter

Bills (Short Title)	Key Changes
Bill C-55, Enhanced New Veterans Charter Act (assented to on 24 March 2011)	<ul style="list-style-type: none"> • Payment options for the Disability Award are introduced. • Access to the Permanent Impairment Allowance is expanded, and the allowance for veterans who are totally and permanently incapacitated is increased.
Bill C-31, Economic Action Plan 2014 Act, No. 1, Part 6, Division 1 (assented to on 19 June 2014)	<ul style="list-style-type: none"> • Retroactive to 29 May 2012, disability pension benefits payable under the <i>Pension Act</i> are no longer taken into account when calculating the Earnings Loss Benefit and the Canadian Forces Income Support benefit.*
Bill C-59, Economic Action Plan 2015 Act, No. 1, Part 3, Division 17 (assented to on 26 June 2015)	<ul style="list-style-type: none"> • Three new benefits are established: <ul style="list-style-type: none"> ▪ a Retirement Income Security Benefit; ▪ a Critical Injury Benefit; and ▪ a Family Caregiver Relief Benefit. • VAC is allowed to begin working with CAF members before they are released in order to ensure a smoother transition to civilian life. • The Government of Canada's obligation to CAF members and veterans is formally recognized.
Bill C-15, Budget Implementation Act, 2016, No. 1, Part 4, Division 2 (assented to on 22 June 2016)	<ul style="list-style-type: none"> • The Earnings Loss Benefit is increased from 75% to 90% of the member's gross income at the time of the member's release. • The Disability Award and the Death Benefit amounts are increased as of 1 April 2017 and terms and conditions for retroactive payment are introduced. • The Permanent Impairment Allowance becomes the Career Impact Allowance to better reflect the main purpose of the allowance. • The eligibility criterion "totally and permanently incapacitated" is replaced with "diminished earning capacity," retaining the same definition in the regulations.

Bills (Short Title)	Key Changes
Bill C-44, Budget Implementation Act, 2017, No. 1, Part 4, Division 12 (assented to on 22 June 2017, but the provisions of Division 12 are set to come into force on 1 April 2018)	<ul style="list-style-type: none"> • An education and training benefit is created. • The Family Caregiver Relief Benefit is replaced by the Caregiver Recognition Benefit. • The short title of the <i>Canadian Forces Members and Veterans Re-establishment and Compensation Act</i> becomes the <i>Veterans Well-being Act</i>.

Note: * This change stems from the class action judgment handed down on 1 May 2012 by the Federal Court in *Manuge* on behalf of 4,500 disabled veterans. According to the judgment, the disability pension payable under the *Pension Act* should be considered non-pecuniary compensation, not income. The disability pension cannot therefore be taken into account to reduce the amount of other benefits that are calculated based on income. See [Manuge v. Canada](#), 2012 FC 499.

Source: Table prepared by the author using the above-mentioned bills.

3.1.1 EARNINGS LOSS BENEFIT

The amount of the Earnings Loss Benefit (ELB) was one of the most contested of the measures included in the NVC. This taxable benefit is paid to veterans participating in a VAC rehabilitation program until they are able to pursue suitable and gainful employment, or until the age of 65 if that is impossible. The amount was first set at 75% of pre-release military salary, less certain deductions.

It was repeatedly pointed out that the amount was insufficient and unfair, particularly for veterans who sustained service-related injuries and cannot return to employment as a result.¹⁰ The House of Commons Standing Committee on Veterans Affairs noted in 2010 that income replacement measures under the NVC had “not achieved a fair balance between providing an incentive for occupational reintegration and financial security that is commensurate with the considerable sacrifices expected” of veterans.¹¹

In 2016, Bill C-15 increased the ELB amount from 75% to 90% of the member’s gross income at the time of the member’s release, less certain deductions.¹²

In December 2017, VAC announced that the ELB would be replaced by the new Income Replacement Benefit (IRB) starting in April 2019.¹³ This new benefit is examined in greater detail in section 4 of this Background Paper.

3.1.2 DISABILITY AWARD

The Disability Award, payable to a serving member or a veteran, is to compensate for pain and suffering that resulted from an injury or illness associated with or aggravated by service.

Very soon after the NVC came into effect, the payment of the Disability Award in a lump sum was identified as a major problem. Concern was expressed that CAF members and veterans could have difficulty dealing with such a large sum of money at a time when they were experiencing great upheaval.

In 2011, Bill C-55 amended the NVC to give CAF members and veterans the choice of receiving their award as a lump sum, annual payments or a combination of the two.

It was agreed that this change was an improvement, but many said they were concerned that most individuals continue to opt for a lump-sum payment, even if some of them might not be in a state of mind that allows them to manage their funds wisely.¹⁴

In 2013–2014, the Veterans Consultation Assembly, which represents 20 veterans' organizations, identified increasing the maximum Disability Award as one of the three key issues affecting veterans. According to the organization, "the maximum disability award must be increased consistent with what is provided to injured civilian workers who received general damages in law court."¹⁵

In 2016, Bill C-15 amended the NVC so that as of 1 April 2017, the maximum Disability Award was increased from \$310,379 to \$360,000 for a 98%–100% disability.¹⁶ As of 1 January 2018, the maximum award is set at \$365,400 after indexing. The award is calculated as a percentage of the extent of disability; for example, an individual with a 48%–52% disability is entitled to \$182,700.

In December 2017, VAC announced that the Disability Award would be replaced by Pain and Suffering Compensation in April 2019.¹⁷ This new benefit is examined in greater detail in section 4 of this Background Paper.

3.1.3 CAREER IMPACT ALLOWANCE (FORMERLY THE PERMANENT IMPAIRMENT ALLOWANCE)

Formerly known as the Permanent Impairment Allowance, the Career Impact Allowance (CIA) is paid to veterans who have one or more physical or mental health problems that are creating a permanent and severe impairment.

In 2011, Bill C-55 created a CIA supplement for veterans who, due to a permanent physical or mental health problem, are unable to perform an occupation that would be considered suitable and gainful employment. In 2018, the supplement was \$1,120.71 a month.¹⁸

Bill C-55 also made the CIA available to severely disabled veterans who receive both a Disability Award and a pension under the *Pension Act*. These veterans were previously excluded due to an administrative deficiency that affected the terms and conditions of both the CIA and the Exceptional Incapacity Allowance provided for under the *Pension Act*.

In December 2017, VAC announced that, starting in April 2019, the CIA and its supplement will be replaced by the new IRB. This change is described in greater detail in part 4 of this publication.

3.1.4 RETIREMENT INCOME SECURITY BENEFIT

Created in 2015 by Bill C-59, the Retirement Income Security Benefit makes it possible for a significant portion of the financial support provided to a disabled veteran or his or her surviving spouse to continue after the veteran attains, or would have attained, the age of 65.

The ELB and the Service Income Security Insurance Plan long-term disability benefits are no longer paid out once veterans attain the age of 65. The Retirement Income Security Benefit pays veterans 70% of the benefits they received before age 65, less certain deductions if they earn other income. When the veteran dies, 50% of this benefit may be paid to the veteran's surviving spouse, if applicable.

In December 2017, VAC announced that the Retirement Income Security Benefit will be replaced by the new IRB starting in April 2019.¹⁹ This new benefit is examined in greater detail in section 4 of this publication.

3.1.5 CRITICAL INJURY BENEFIT

Also established in 2015, the Critical Injury Benefit awards a tax-free lump-sum amount of \$70,000 to CAF members or veterans who sustained severe and traumatic injuries or acute diseases that

- were service-related;
- were the result of a sudden and single incident occurring after 31 March 2006; and
- immediately caused a severe impairment and interference in their quality of life.

3.1.6 CAREGIVER RECOGNITION BENEFIT (FORMERLY THE FAMILY CAREGIVER RELIEF BENEFIT)

In 2015, Bill C-59 created the Family Caregiver Relief Benefit, an annual tax-free grant of \$7,238 that gives informal caregivers the opportunity to take time off while ensuring that the care they usually provide continues in their absence.

In 2017, Bill C-44 eliminated the Family Caregiver Relief Benefit and established the Caregiver Recognition Benefit, which will come into effect on 1 April 2018. The new benefit provides \$1,000 a month to an adult person designated by the veteran who plays an essential role in the provision or coordination of the ongoing care to the veteran without being remunerated.

3.1.7 EARLY INTERVENTION BY VETERANS AFFAIRS CANADA TO FACILITATE THE TRANSITION TO CIVILIAN LIFE

Until the summer of 2015, VAC did not have the authority to begin dealing with CAF members who were in the process of being released, but who were still serving members. This situation and the resulting delay created a gap in the services offered to veterans and affected the success of the Department's programs.

In 2015, to facilitate the transition to civilian life, clause 218 of Bill C-59 amended the NVC

by allowing the Minister of Veterans Affairs to make decisions in respect of applications made by those members for services, assistance and compensation under that Act before their release from the Canadian Forces and to provide members and veterans with information and guidance before and after their release.²⁰

3.1.8 EDUCATION AND TRAINING BENEFIT

In 2017, Bill C-44 established the Education and Training Benefit, which will provide a veteran with six years of service up to \$40,000 and a veteran with 12 years of service up to \$80,000 to cover tuition or training costs and living expenses during his or her course of study. Eligible veterans will have 10 years after release (or starting on 1 April 2018, the benefit's effective date, for those who were released between 1 April 2005 and 31 March 2018) to access this benefit.

3.2 REGULATORY CHANGES

Some amendments that did not require legislative changes were made to the regulations over the years, including the following:

- establishing a minimum threshold for the ELB amount; increasing the deemed salary for reservists, which is used to calculate their benefit amount; and ensuring that the disability pension amount is excluded from the calculation of the ELB amount;²¹
- increasing flexibility as regards career transition services and training in vocational rehabilitation programs;²²
- expanding the eligibility criteria for the Permanent Impairment Allowance,²³ and
- applying the minimum threshold for the ELB amount to part-time reservists.²⁴

4 RETURN OF THE PENSION FOR LIFE: NEW BENEFITS ANNOUNCED AS OF APRIL 2019

One of the current government's key promises to veterans during the 2015 election campaign was to restore the lifelong pension for injured veterans. This was a major demand by certain groups of veterans who believe that the system introduced in 2006 by the NVC is inequitable and disadvantages individuals who applied for benefits to VAC after 1 April 2006, compared to their fellow veterans compensated under the former *Pension Act* regime.

One group of severely injured veterans, the Equitas Society, sued the Government of Canada over this issue in 2012.²⁵ After the new Pension for Life plan was announced on 20 December 2017 by the Minister of Veterans Affairs, the Equitas Society decided to resume its court action and apply to the Supreme Court of Canada for leave to appeal,²⁶ as it was dissatisfied with the proposed changes.

The Minister's announcement of the Pension for Life set out three new benefits, to be introduced in April 2019. These new benefits, which are outlined below, are expected to be included in a future bill.

4.1 PAIN AND SUFFERING COMPENSATION

On 1 April 2019, the Pain and Suffering Compensation benefit is set to replace the Disability Award introduced in 2006. Serving members and veterans with a disability resulting from a service-related injury or illness will have two options:

- receive a lump sum payment provided under the current Disability Award, whose amount is based on the extent of the disability (maximum non-taxable amount of \$365,400, based on the 2018 rate); or
- receive a monthly tax-free payment of up to \$1,150 a month for life, indexed annually, also based on the extent of the disability.

Individuals who received the Disability Award between 2006 and 2019 will be entitled to an additional monthly payment equal to the difference between the amount paid and the amount they would have been entitled to had they received a monthly payment.²⁷

4.2 ADDITIONAL PAIN AND SUFFERING COMPENSATION

The Additional Pain and Suffering Compensation benefit, which will also be introduced in April 2019, will provide additional compensation to veterans “who are experiencing barriers to establishment in life after service due to a service-related permanent and severe impairment”²⁸ for which they have already received VAC compensation.

There are three possible grades, based on “the extent of the Veteran’s impairment and barriers to re-establishment,” with benefit amounts of \$500, \$1,000 or \$1,500 per month, indexed annually and tax-free.

4.3 INCOME REPLACEMENT BENEFIT

On 1 April 2019, the IRB will combine the following benefits (see Figure 1 for an overview of these benefits, and 3.1.1 and 3.1.4 for further information):

- the Earnings Loss Benefit and Extended Earnings Loss Benefit;
- the Supplementary Retirement Benefit; and
- the Retirement Income Support Benefit.

The IRB will be a taxable monthly benefit equal to 90% of the veteran’s salary on release, indexed annually, with a guaranteed minimum amount of \$48,600 a year. It will be paid to veterans who are eligible for VAC’s Rehabilitation Program, as well as to those with a health problem that results in a diminished earnings capacity, until age 65.

Recipients will be able to earn up to \$20,000 a year in employment income before any reductions to the IRB.

In addition, the Career Impact Allowance and its supplement (see 3.1.3) will be replaced by an annual 1% increase in the new IRB for “Veterans who have not yet served a full career in the military.”²⁹ For eligible veterans, the IRB will be adjusted each year until the veteran would have reached 20 years of service or age 60 “to account for a Veteran’s loss of potential career progression.”³⁰

After age 65, the IRB will be reduced to 70% of the veteran’s pre-release salary.

The survivor and orphans of a serving member or veteran whose death was service-related and occurred before age 65, or whose death occurred after age 65, will be able to receive the same IRB amount to which the serving member or veteran was entitled. For a non-service-related death before age 65, a lump sum will be paid to the survivor and orphan.

5 ON THE HORIZON

There are at least two developments involving services and benefits for veterans to watch for over the coming year: the Supreme Court decision as to whether or not it will hear the Equitas Society’s appeal in its legal action against the Government of Canada, and the introduction of a bill to implement the changes announced by the Minister on 20 December 2017.

NOTES

1. [Canadian Forces Members and Veterans Re-establishment and Compensation Act](#), S.C. 2005, c. 21. This Act received Royal Assent on 13 May 2005, and came into force on 1 April 2006. Its short title will become the *Veterans Well-being Act* as of 1 April 2018, in accordance with the [Budget Implementation Act, 2017, No. 1](#), S.C. 2017, c. 20.
2. [Pension Act](#), R.S.C. 1985, c. P-6.
3. House of Commons, [Debates](#), 1st Session, 38th Parliament, 10 May 2005, 1110 (Honourable Albina Guarnieri, Minister of Veterans Affairs).
4. [Canadian Forces Members and Veterans Re-establishment and Compensation Regulations](#), SOR/2006-50.
5. [Bill C-55, An Act to amend the Canadian Forces Members and Veterans Re-establishment and Compensation Act and the Pension Act](#) (short title: Enhanced New Veterans Charter Act), 3rd Session, 40th Parliament (S.C. 2011, c. 12).
6. Bill C-31, An Act to implement certain provisions of the budget tabled in Parliament on February 11, 2014 and other measures (short title: Economic Action Plan 2014 Act, No. 1), Part 6, [Division 1](#), 2nd Session, 41st Parliament (S.C. 2014, c. 20).

7. Bill C-59, An Act to implement certain provisions of the budget tabled in Parliament on April 21, 2015 and other measures (short title: Economic Action Plan 2015 Act, No. 1), Part 3, [Division 17](#), 2nd Session, 41st Parliament (S.C. 2015, c. 36). Bill C-59 included the provisions of Bill C-58, An Act to amend the Canadian Forces Members and Veterans Re-establishment and Compensation Act and to make consequential amendments to another Act, 2nd Session, 41st Parliament, introduced in the House of Commons on 30 March 2015.
8. [Bill C-15, An Act to implement certain provisions of the budget tabled in Parliament on March 22, 2016 and other measures](#) (short title: Budget Implementation Act, 2016, No. 1), Part 4, Division 2, 1st Session, 42nd Parliament (S.C. 2016, c. 7). Bill C-15 included in their entirety the 37 clauses of Bill C-12, An Act to amend the Canadian Forces Members and Veterans Re-establishment and Compensation Act and to make consequential amendments to other Acts, 1st Session, 42nd Parliament, introduced in the House of Commons on 24 March 2016.
9. [Bill C-44, An Act to implement certain provisions of the budget tabled in Parliament on March 22, 2017 and other measures](#) (short title: Budget Implementation Act, 2017, No. 1), Part 4, Division 12, 1st Session, 42nd Parliament (S.C. 2017, c. 20). Bill C-44 included the provisions of Bill C-42, An Act to amend the Canadian Forces Members and Veterans Re-establishment and Compensation Act, the Pension Act and the Department of Veterans Affairs Act and to make consequential amendments to other Acts, 1st Session, 42nd Parliament, introduced in the House of Commons on 24 mars 2017.
10. See, for example, the positions stated in 2013–2014 by the Veterans Consultation Assembly (formerly the Veterans Consultation Group) in [Letter to the Hon. Julian Fantino, Minister of Veterans Affairs](#), 15 November 2013.
11. House of Commons, Standing Committee on Veterans Affairs [ACVA], [A Timely Tune-up for the Living New Veterans Charter](#), First Report, 3rd Session, 40th Parliament, June 2010, p. 45.
12. As of 29 May 2012, disability pension benefits payable under the *Pension Act* are no longer considered income to be deducted when calculating the Earnings Loss and Income Support benefit.
13. Veterans Affairs Canada [VAC], [Overview: Introducing Pension for Life](#).
14. ACVA, [The New Veterans Charter: Moving Forward](#), Third Report, 2nd Session, 41st Parliament, June 2014, pp. 18–19.
15. Veterans Consultation Assembly (2013).
16. The Death Benefit paid to the survivor or dependent child of a member whose death is a result of an injury or disease that is service-related or aggravated by service is equal to the maximum Disability Benefit of \$365,400.
17. VAC, [Overview: Introducing Pension for Life](#).
18. VAC, [“Rates,” Services](#).
19. VAC, [Overview: Introducing Pension for Life](#).
20. Bill C-59, [“Summary”](#) (see Division 17 of Part 3).
21. ACVA (2014), [Appendix D: Amendments to the New Veterans Charter and Regulations Since 2006](#).
22. Ibid.
23. Government of Canada, [“Expansion of Permanent Impairment Allowance Eligibility,”](#) Backgrounder.

24. Government of Canada, "[Respect for reservists – Enhancing benefits for Reserve Force Veterans](#)," Backgrounder.
25. See Equitas Society, [Legal Action](#).
26. Daniel Christopher Scott et al., [Notice of Application for Leave to Appeal](#), 30 January 2018. This is the application for leave to appeal the 4 December 2017 judgment of the Court of Appeal for British Columbia in [Scott v. Canada \(Attorney General\)](#), 2017 BCCA 422. See also Supreme Court of Canada, [Daniel Christopher Scott, et al. v. Attorney General of Canada](#), Docket 37930.
27. VAC, "[Pain and Suffering Compensation](#)," Fact sheet.
28. VAC, "[Additional Pain and Suffering Compensation \(non-taxable\)](#)," Fact sheet.
29. VAC, "[Income Replacement Benefit](#)," Fact sheet.
30. VAC, *Overview: Introducing Pension for Life*.