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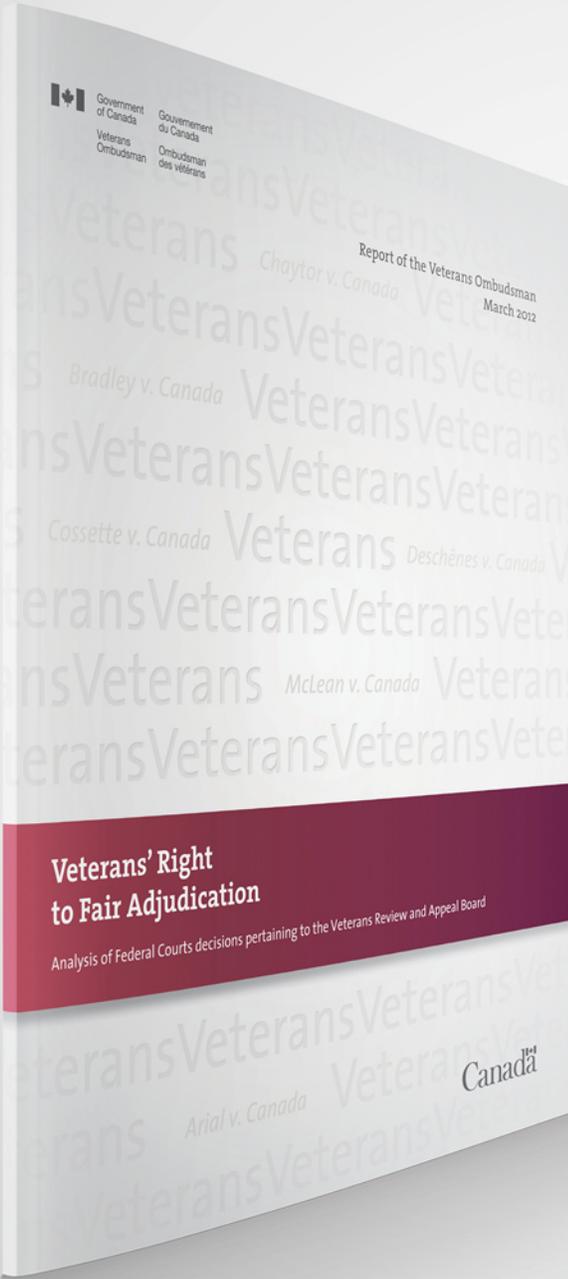
Gouvernement  
du Canada

Veterans  
Ombudsman

Ombudsman  
des vétérans

VETERANS OMBUDSMAN

DECEMBER 2014



# Veterans' Right to Fair Adjudication: The Follow-up Report

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## MESSAGE FROM THE OMBUDSMAN

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I am pleased to publish *Veterans' Right to Fair Adjudication: The Follow-up Report*, this Office's first in a series of follow-up reports. This Report assesses the implementation of the recommendations put forth in *Veterans' Right to Fair Adjudication*, published in 2012, which identified areas of improvement for the Veterans Review and Appeal Board (VRAB) to ensure fairness in the redress process.

The assessment found, through an analysis of appeal level decisions and Federal Court decisions, that significant progress has been made in the implementation of the recommendations made to VRAB. However less progress has been made regarding the recommendations made to the previous Minister of Veterans Affairs.

I am encouraged by the progress made towards ensuring fairness to Veterans in the adjudication of their claims. I will however continue to monitor the effect of VRAB's newly implemented procedures and initiatives.

I encourage the Minister of Veterans Affairs to consider the timely implementation of the unaddressed and partially addressed recommendations. In particular, priority should be given to implementing the recommendation that allows Veterans to be compensated retroactively to the date of application for treatment expenses.

## MANDATE OF THE VETERANS OMBUDSMAN

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The Office of the Veterans Ombudsman (OVO), created by Order in Council<sup>1</sup>, works to ensure that Veterans, serving members of the Canadian Armed Forces (CAF) and the Royal Canadian Mounted Police (RCMP), as well as other clients of Veterans Affairs Canada (VAC), are treated respectfully, in accordance with the Veterans Bill of Rights, and receive the services and benefits that they require in a fair, timely and efficient manner.

The Office 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 (VRAB).

The Veterans Ombudsman (VO) is an independent and impartial officer who is committed to ensuring that Veterans and other clients of VAC are treated fairly. The VO 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?).

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<sup>1</sup> Order in Council P.C. 2007-530, April 3, 2007. Source: <http://www.ombudsman-veterans.gc.ca/eng/about-us/ombudsman/order>

## VETERANS' BILL OF RIGHTS

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The *Veterans' Bill of Rights*<sup>2</sup> 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 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 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 any of your rights have not been upheld.”

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<sup>2</sup> Veterans' Bill of Rights. Source: <http://www.veterans.gc.ca/eng/about-us/veterans-bill-of-rights/vbor>

## REPORT SUMMARY

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The VRAB has a critical role to play in ensuring that Veterans and other clients of VAC receive the disability benefits to which they are entitled.

On March 29, 2012, the VO released the report *Veterans' Right to Fair Adjudication*<sup>3</sup> (hereinafter referred to as the VO VRAB Report). The VO VRAB Report contained seven recommendations based on the analysis of judgements issued by the Federal Court and the Federal Court of Appeal on applications for judicial reviews of decisions made by VRAB.

This Report, *Veterans' Right to Fair Adjudication: The Follow-up Report* (hereinafter referred to as the VO VRAB Follow-up Report), is an assessment of the implementation of these recommendations with the purpose of evaluating whether or not they have been addressed and, if so, to what degree.

To accomplish this evaluation, the OVO analyzed VRAB's appeal level decisions rendered in March, April and May 2014 as well as the Federal Court's decisions from January 1, 2014 to August 31, 2014. The OVO used a representative sample<sup>4</sup> of the VRAB's appeal level decisions based on the established timeframe.

This report found that of the four recommendations in the VO VRAB Report related to VRAB, three have been fully implemented and one has been partially addressed. Furthermore, of the three recommendations made to the previous Minister of Veterans Affairs, two have been accepted in principle and one has been partially implemented. The VO has committed to continue monitoring progress towards the full implementation of each recommendation made to the Board and the Minister.

The VO VRAB Report and this follow-up report were produced in an effort to ensure fairness to Veterans engaged in the redress process.

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<sup>3</sup> Office of the Veterans Ombudsman, 2012. *Veterans' Right to Fair Adjudication*. Source: <http://ombudsman-veterans.gc.ca/eng/reports/reports-reviews/vrab-tacra-03-2012>

<sup>4</sup> A 90 percent confidence level is attached to the representative statistical sample provided by Veterans Affairs Canada (+/- 10 percent).

## FIGURE 1: IMPLEMENTATION PROGRESS OF THE RECOMMENDATIONS PRESENTED IN VO VRAB REPORT

Accepted	Fully Implemented	Partially Implemented	Not Implemented
			
Recommendations			
1			
That the Veterans Review and Appeal Board report to Parliament on its performance using the <i>percentage of Federal Court judgments that uphold Board decisions</i> as an indicator of fairness in the redress process, and on remedial measures to attain the 100 percent target.			
2			
That the Veterans Review and Appeal Board, Veterans Affairs Canada, and the Bureau of Pensions Advocates establish a formal mechanism to review each Federal Court decision rendered in favour of the Veteran or other applicant, for the purpose of remedial action to procedures and adjudication practices.			
3			
That the Veterans Review and Appeal Board provide reasons for its decisions that clearly demonstrate that its obligation to liberally construe the legislation has been met, as well as its obligations under Section 39 of the <i>Veterans Review and Appeal Board Act</i> to draw every reasonable inference in favour of applicants, to accept credible uncontradicted evidence, and to give applicants the benefit of evidentiary presumptions (benefit of the doubt).			
4			
That the Minister of Veterans Affairs ensure that the Veterans Review and Appeal Board is sufficiently resourced so that the Board may publish all of its decisions on its Web site and all Federal Court judgments pertaining to Board decisions.			
5			
For the Minister of Veterans Affairs to mandate the Bureau of Pensions Advocates to represent applicants on judicial review of decisions of the Veterans Review and Appeal Board in the Federal Court.			
6			
For the Veterans Review and Appeal Board and the Bureau of Pensions Advocates to review their processes and service standards for the priority treatment of cases returned by the Federal Courts for rehearing.			
7			
For the Minister of Veterans Affairs to put forward the necessary legislative and regulatory amendments to allow Veterans to be compensated retroactively to date of application under the <i>Pension Act</i> and the <i>Canadian Forces Members and Veterans Re-establishment and Compensation Act</i> .			

## METHODOLOGY

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The VO VRAB Report, published in March 2012, contained seven recommendations for improvements to ensure fairness in the redress process.

The purpose of this Follow-up Report is to determine the extent to which VAC, VRAB and the Minister of Veterans Affairs have implemented the recommendations made in the VO VRAB Report.

To do so, the OVO analyzed VRAB’s appeal level decisions rendered from March 1, 2014 to May 31, 2014, and Federal Court decisions for the period of January 1, 2014 to August 31, 2014.

The OVO examined 170 VRAB appeal level decisions. The representative sample of decisions identified by VAC included 133 VRAB decisions in English (80 percent) and 37 decisions in French (20 percent). It included 70 cases adjudicated under the *Pension Act*<sup>5</sup> (41 percent) and 100 cases under the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*<sup>6</sup>, commonly known as the New Veterans Charter (59 percent). Thirty-seven of the cases reviewed pertained to simple conditions such as hearing loss or tinnitus (20 percent), while 133 were complex conditions such as Post Traumatic Stress Disorder or multiple conditions (80 percent).

The VO VRAB Follow-up Report also considered VAC and VRAB administrative policies, practices, annual reports, and plans and priorities, as well as consultations with affected parties as required.

## ANALYSIS OF RECOMMENDATION IMPLEMENTATION

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### RECOMMENDATION 1:

“That the Veterans Review and Appeal Board report to Parliament on its performance using the percentage of Federal Court judgments that uphold Board decisions as an indicator of fairness in the redress process, and on remedial measures to attain the 100 percent target.”

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<sup>5</sup> *Pension Act* (R.S.C., 1985, c. P-6)

<sup>6</sup> *Canadian Forces Members and Veterans Re-establishment and Compensation Act* (S.C. 2005, c. 21)

**Fully Implemented** - In response to the VO's recommendation, VRAB resumed reporting to Parliament on its performance at Federal Court as an indicator of fairness in its 2012-13 Departmental Performance Report.<sup>7</sup>

The OVO's analysis found that for the period of January 1, 2014 to August 31, 2014, the Federal Court of Canada rendered four public judgments in relation to VRAB decisions. A summary of the judgments can be found in Annex A.

The Federal Court dismissed all four applications, having found that the VRAB decisions were reasonable and therefore did not contain any errors. The Federal Court confirmed that VRAB has reduced the number of applications allowed (ruled in favour of the Veteran) from 60 percent at the time of the OVO VRAB Report<sup>8</sup>, to nil at the time of this Report. This means that no cases were overturned by the Federal Court during the established timeframe (i.e. January 1 to August 31, 2014). The OVO has no information concerning consent judgments for this time period.

In order for VRAB to meet the 100 percent target, it implemented several measures to support fair and legally correct decisions. These included:

- improving the understandability of decisions by writing them in plain language;
- involving Board members and staff in Business Process Redesign; and
- working with the RCMP and the CAF to share information about the appeal process and to allow Board members to better understand policing and military cultures.<sup>9</sup>

Given that VRAB has: 1) reported to Parliament on the number of its decisions being overturned by the Federal Court, 2) achieved the 100 percent target during the review period, and 3) put additional measures in place to attain its target, the VO considers this recommendation fully implemented.

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<sup>7</sup> The Veterans Review and Appeal Board met its performance target of less than two percent of decisions being overturned by the Federal Court, as stated in its *2012-2013 Departmental Performance Report*, with 0.4 percent of cases overturned during the reporting timeframe. Source: <http://www.vrab-tacra.gc.ca/Plans/2012-13-DPR-RMR-eng.cfm>

<sup>8</sup> Office of the Veterans Ombudsman, 2012. *Veterans' Right to Fair Adjudication*. Source: <http://ombudsman-veterans.gc.ca/eng/reports/reports-reviews/vrab-tacra-03-2012> Pg. 5.

<sup>9</sup> Veterans Review and Appeal Board, 2013. *2012-2013 Departmental Performance Report*. Section II. Analysis of Program Activities by Strategic Outcome. Source: <http://www.vrab-tacra.gc.ca/Plans/2012-13-DPR-RMR-eng.cfm>

## RECOMMENDATION 2:

“That the Veterans Review and Appeal Board, Veterans Affairs Canada, and the Bureau of Pensions Advocates establish a formal mechanism to review each Federal Court decision rendered in favour of the Veteran or other applicant, for the purpose of remedial action to procedures and adjudication practices.”

**Partially implemented** - In order to implement this recommendation, VRAB established a Task Force to review and discuss trends emerging from Federal Court decisions. It was expected that the other parties would send representatives and share the role of chairing and setting meeting agendas. The VRAB coordinated two Task Force meetings in 2012, but these did not achieve the desired result. Subsequently, VRAB decided to continue to host quarterly meetings with VAC and a separate meeting with Bureau of Pensions Advocates (BPA)<sup>10</sup> every three weeks in lieu of the Task Force meetings with all three parties. The VO considers this recommendation partially implemented as it is crucial that VAC and the BPA actively participate in the Task Force to ensure long-term improvements.

## RECOMMENDATION 3:

“That the Veterans Review and Appeal Board provide reasons for its decisions that clearly demonstrate that its obligation to liberally construe the legislation has been met, as well as its obligations under Section 39 of the *Veterans Review and Appeal Board Act* to draw every reasonable inference in favour of applicants, to accept credible uncontradicted evidence, and to give applicants the benefit of evidentiary presumptions (benefit of the doubt).”

**Fully implemented** - The criteria for evaluating VRAB’s reasons for decisions were established based on the VO’s Report *Veterans’ Right to Know Reasons for Decisions: A Matter of Procedural Fairness*<sup>11</sup> (hereinafter referred to as the RFD Report). In the RFD Report, the VO confirmed that:

“It is not sufficient for decision-makers simply to outline applicable statutory provisions and the evidence and arguments, and then to state their conclusions. Good reasons for decisions do require the listing of evidence considered in rendering a decision ...”<sup>12</sup> and they must also reveal

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<sup>10</sup> Note that Veterans have access to free legal representation from the Bureau of Pensions Advocates at all levels of appeal, except for Federal Court.

<sup>11</sup> Office of the Veterans Ombudsman, 2011. *Veterans’ Right to Know Reasons for Decisions: A Matter of Procedural Fairness*. Source: <http://ombudsman-veterans.gc.ca/eng/reports/reports-reviews/reason-raison>

<sup>12</sup> Ibid. Pg. 18

the rationale for the decision. “For each conclusion of fact, law and policy relevant to the decision, the reasons should establish a rational connection between the evidence presented and the conclusions reached by the decision-maker. The decision and the reasons supporting it must then be communicated clearly.”<sup>13</sup>

These principles were used in this report to evaluate VRAB’s reasons for decision. Specifically, the following three elements were considered:

- Is the key evidence for both entitlement (service relationship) and assessment (medical impairment and quality of life) specifically itemized?
- Do the reasons for decision relate key evidence to entitlement and assessment calculations that either produce an approved claim or result in the denial of the claim?
- Do the reasons for decision elaborate on the evidence that is missing to support an approved claim?

All three elements were answered by either *yes* or *no*.

From the representative sample provided by VAC, the key evidence for both entitlement (service relationship) and assessment (medical impairment and quality of life) was specifically itemized in 100 percent of VRAB decisions. The reasons for decision related key evidence to each calculation pertaining to entitlement and assessment in 100 percent of VRAB decisions. In addition, 41 percent of VRAB decisions described the evidence that was missing to support an approved claim.

In October 2012, VRAB implemented a decision writing checklist that:

- describes the components of a quality decision;
- encourages clear, concise writing that includes only what is relevant;
- supports the use of bullets and endnotes to organize information where logical; and
- requires that every decision include a clear explanation of how section 39 has been applied to the facts and evidence of the case.

The VRAB has done significant work in implementing this recommendation and the results of the analysis reflect the effort. The VO considers that the recommendation has been fully implemented.

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<sup>13</sup> Ibid. Pg. 18

## RECOMMENDATION 4:

“That the Minister of Veterans Affairs ensure that the Veterans Review and Appeal Board is sufficiently resourced so that the Board may publish all of its decisions on its Web site and all Federal Court judgments pertaining to Board decisions.”

**Partially Implemented** – In the Minister of Veterans Affairs’ response (found in Annex B), he outlined the steps the Board has taken to meet the intent of this recommendation. For example, he stated that, “In May 2012, the Board began publishing noteworthy decisions on its website and on CanLII, a well-known online legal resource, for the benefit of Veterans and their legal representatives”. Further, “... the Chair of the Board has advised [the Minister] that it will soon begin publishing on its website links to relevant Federal Court judgements as well as Board decisions from cases it has reheard at the Court’s request.” The OVO acknowledges the strides made by the Board and the Minister to meet the intent of this recommendation. However, the VO echoes the statement made in the VO VRAB Report that publishing all VRAB decisions would increase the Board’s transparency and allow Veterans to better prepare for their own appeals by reviewing cases similar to their own.

Therefore, given that the VRAB is publishing only noteworthy VRAB decisions, and pending the posting of Federal Court decisions to the Board’s website, the VO considers this recommendation partially implemented.

## RECOMMENDATION 5:

“For the Minister of Veterans Affairs to mandate the Bureau of Pensions Advocates to represent applicants on judicial review of decisions of the Veterans Review and Appeal Board in the Federal Court.”

**Not implemented** - In the Minister’s response (found in Annex B) he stated, “Resources are best utilized in ensuring adequate capacity, processes and legal representation in the first five levels of appeal available to Veterans, before an appeal to the Federal Court. This ensures that Veterans get the right decisions at the earliest possible time. A review of this recommendation will commence in 2015.” While the VO agrees that adequate resourcing during the first five levels of appeal is important, it is also important that Veterans be supported in appeals to the Federal Court, as this can be a long and costly process. In light of the fact that the Minister has committed to a review of this recommendation, the VO considers this recommendation to have been accepted in principle but not yet implemented. It is, however, acknowledged that a legislative change may be required to amend the BPA’s mandate.

## RECOMMENDATION 6:

“For the Veterans Review and Appeal Board and the Bureau of Pensions Advocates to review their processes and service standards for the priority treatment of cases returned by the Federal Courts for rehearing.”

**Fully implemented** - The VRAB committed in its response to the VO VRAB Report to, “give priority status to cases returned by the Federal Court for rehearing [and] to improve processes and communications with representatives to deliver priority treatment.”<sup>14</sup>

In the VO VRAB Report, the VO determined that “the average lapse of time between a judgment of the Federal Court and subsequent Board decision was 260 days”<sup>15</sup> or 37 weeks.

On June 1, 2012, VRAB implemented a new process involving: (1) a new case coordinator who monitors these cases, and (2) the implementation of standards to hear the applicant’s cases within 90 days of the Federal Court order. The *Progress Update on Action Plan* reported that “In the new process, the Board’s goal is to schedule a hearing for the applicant within 90 days of the Federal Court decision.”<sup>16</sup>

The VO welcomes VRAB’s implementation of the new processes and the established standards, and thus concludes that the recommendation is fully implemented. However, the OVO is unable to report on the effectiveness of these changes, as the Federal Court did not return any decisions to VRAB for re-hearing during the identified timeframe. The OVO will monitor and report on VRAB’s progress if and when the process is triggered.

## RECOMMENDATION 7

“For the Minister of Veterans Affairs to put forward the necessary legislative and regulatory amendments to allow Veterans to be compensated retroactively to date of application under the *Pension Act* and the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*.”

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<sup>14</sup> Veterans Review and Appeal Board, 2012. *Veterans Review and Appeal Board response to report from Office of Veterans Ombudsman*. Source: <http://www.vrab-tacra.gc.ca/Documents/OVO-BOV-2010-2011-eng.cfm>

<sup>15</sup> Office of the Veterans Ombudsman, 2012. *Veterans’ Right to Fair Adjudication*. Source: <http://ombudsman-veterans.gc.ca/eng/reports/reports-reviews/vrab-tacra-03-2012> Pg. 15.

<sup>16</sup> Veterans Review and Appeal Board, 2012. *Progress Update on Action Plan Response to Veterans Ombudsman Report*. Source: <http://www.vrab-tacra.gc.ca/Documents/Response-Reponse-eng.cfm>

**Not implemented** – In the Minister’s response (Annex B), he noted that the intent of the recommendation was to improve turnaround time for disability benefits decisions. While the VO welcomes the increased efficiencies in the disability benefit process, the Minister did not address the commentary on retroactivity in the VO VRAB Report, which stated that, “There are no retroactivity provisions under the New Veterans Charter; applicants receive a disability award at the rate in effect when the decision is made and they are not reimbursed for treatment expenses incurred while their application is being processed.”<sup>17</sup>

It is important to reiterate that the intent of the recommendation was to ensure that the payment of treatment benefits granted under the New Veterans Charter should be retroactive to the date of the original application, as granted under the *Pension Act*.

Given that there is no evidence of legislative change or a recommendation for such change, the VO considers the recommendation not implemented.

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<sup>17</sup> Office of the Veterans Ombudsman, 2012. *Veterans’ Right to Fair Adjudication*. Source: <http://ombudsman-veterans.gc.ca/eng/reports/reports-reviews/vrab-tacra-03-2012> Pg. 18.

## CONCLUSION

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In evaluating the implementation of the recommendations made in the VO VRAB Report, it is clear that VRAB has made significant progress in fully or partially implementing all four recommendations related to VRAB. The VO will continue to monitor the effect of the newly implemented procedures and initiatives to ensure fairness to Veterans in the adjudication of their claims.

Additionally, the VO would like to renew his call for the Minister of Veterans Affairs to take further action on the three recommendations set out in the VO VRAB Report. It is recommended that priority be given to the implementation of recommendation 7. Such a change would ensure that Veterans, under the New Veterans Charter, who successfully appealed a decision would be provided with treatment benefits retroactively to the date of their original application. This would also ensure that all Veterans, including the most severely ill and injured, are being treated according to the principles of procedural fairness.

## ANNEX A - JUDICIALLY REVIEWED VETERANS REVIEW AND APPEAL BOARD DECISIONS

	1	2	3	4
<b>Case name &amp; citation</b>	Richard James Phelan v. Attorney General of Canada [2014] FC 56	Anne Cole v. Attorney General of Canada [2014] FC 310	Fred Hawryluk v. Attorney General of Canada [2014] FC 305	Pierre Beaudoin v. Attorney General of Canada [2014] FC 536
<b>Court</b>	 Federal Court	 Federal Court	 Federal Court	 Federal Court
<b>Judgement date</b>	2014/01/17	2014/03/31	2014/03/31	2014/06/04
<b>Decision</b>	 Dismissed	 Dismissed	 Dismissed	 Dismissed
<b>Representation</b>	Lawyer (pro bono)	Lawyer	Self-represented	Lawyer

## ANNEX B – VO VRAB REPORT RESPONSE LETTER FROM THE MINISTER OF VETERANS AFFAIRS



DEC 10 2014

Guy Parent  
Veterans Ombudsman  
360 Albert Street, Suite 1560  
Ottawa, ON K1R 7 X7

Dear Mr. Parent:

I am writing to provide you with an update on three of the recommendations in the March 2013, report *Veterans' Right to Fair Adjudication: Analysis of Federal Courts Decisions Pertaining to the Veterans Review and Appeal Board*.

- Recommendation 4: That the Minister of Veterans Affairs ensure that the Veterans Review and Appeal Board is sufficiently resourced so that the Board may publish all of its decisions on its website and all Federal Court judgements pertaining to Board decisions.
- Recommendation 5: For the Minister of Veterans Affairs to mandate the Bureau of Pensions Advocates to represent applicants on judicial review of decisions of the Veterans Review and Appeal Board in the Federal Court.
- Recommendation 7: For the Minister of Veterans Affairs to put forward the necessary legislative and regulatory amendments to allow Veterans to be compensated retroactively to date of application under the *Pension Act* and the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*.

**Regarding Recommendation 4**, I support the spirit of this recommendation and would like to highlight the steady progress achieved by the Board to make its decisions more accessible to the public since your report was released. In May 2012, the Board began publishing noteworthy decisions on its website and on CanLII, a well-known online legal resource, for the benefit of Veterans and their legal representatives. This includes interest decisions, which deal with the most common medical conditions heard by the Board and demonstrate how the law is applied in individual cases; leading and persuasive decisions, which identify a reasoned analysis, approach, or set of principles that will tend to be applied by the Board when determining certain issues; and interpretation decisions, which clarify issues of interpretation of legislation, policy or procedure. To date, the Board has published over 100 of its most important and instructive decisions, and continues to publish new ones and to explore other ways to improve on its current approach.

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For example, the Chair of the Board has advised me that it will soon begin publishing on its website links to relevant Federal Court judgments as well as Board decisions from cases it has reheard at the Court's request. This initiative will give interested parties an appreciation of the Court's role in decision making, as well as how the Board follows the Court's direction. It will also respond to a recommendation made by the Standing Committee on Veterans Affairs in a December 2012 report for the Board to publish decisions relating to Federal Court judgements. In that report, the Committee also expressed its firm belief that translating and de-personalizing all VRAB decisions for online posting would "cost too much for little in return".

The Board will also continue to provide Veterans and their representatives with depersonalized copies of Board decisions related to a particular medical condition, upon request, to assist them in the preparation of a case.

On a related note, the Board has also achieved concrete results in writing better decisions that: logically and accurately present information; address evidence and arguments; and express the reasons for the conclusion clearly and plainly. This includes a plain language explanation of Section 39 of the *Veterans Review and Appeal Board Act* commonly referred to as the benefit of the doubt. These efforts were supported through informal feedback sessions—coordinated by the Royal Canadian Legion—where military members and Veterans confirmed that the Board's decisions were clearer and easier to read.

**Regarding Recommendation 5,** Resources are best utilized in ensuring adequate capacity, processes and legal representation in the first five levels of appeal available to Veterans, before an appeal to the Federal Court. This ensures that Veterans get the right decisions at the earliest possible time. A review of this recommendation will commence in 2015.

**Regarding Recommendation 7,** as you know, Veterans Affairs Canada currently has the authority to pay disability pensions for three years prior to the date of application, in the case of a favourable decision on appeal, and an additional two years if the delay is the result of an administrative error by the Department. The amount of the Disability Award is determined based on the date of decision, which is to the benefit of the Veteran; making a determination based on date of application would in many cases mean that the Veteran would receive less, not more.

My Department understands that the intent of the Recommendation is to improve turn-around times for Veterans. The Department is committed to meeting this goal and continues to make improvements to service delivery turnaround times for disability benefit decisions. Some examples of these improvements over the past year are:

- In 2013-2014, 83% of all disability benefit first applications were processed within the 16 weeks published service standard.

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- For hearing loss/tinnitus applications, 95% were processed within 16 weeks; 90% were processed within 12 weeks.
- In August 2014, the Department implemented a national business process to expedite disability benefits applications from individuals who may be “at risk” as a result of life-threatening physical or mental health issues; unmet health needs, or financial distress.
- In October 2014, the Department released a new streamlined disability benefits application package, making it faster and easier for applicants to complete.
- As part of the Department's outreach to Veterans, before an unfavourable disability benefit decision is rendered, adjudicators call the applicant to summarize the evidence being considered, explain any gaps in evidence that have been identified, and provide them with an opportunity to submit new evidence.

I am also pleased at progress made by the Veterans Review and Appeal Board to improve turnaround-times:

- Last year, the Board established and began to track a new service commitment of 16 weeks between the moment a hearing is scheduled and the decision. It met this commitment in 97% of Review and 98% of Appeal cases.
- As part of its effort to rehear cases returned by the Federal Court more quickly, the Board implemented a new priority treatment process with the goal of scheduling new hearings within 90 days of the Federal Court Order. The Board has had excellent results in this area, resulting in cases being scheduled at a significantly earlier date than in the past.
- The Board has also continued to report strong results against its service standard of issuing a decision within six weeks of the hearing—84% at Review and 85% at Appeal.

In addition, as part of the Government Response to the House of Commons Standing Committee on Veterans Affairs I recently announced that the Government will take immediate action to implement the following new initiatives which will ensure that medically released Veterans receive decisions and supports prior to their release. Specifically, I announced that the Government of Canada will:

- Continue to ensure CAF personnel are not medically released until they are in a stable medical condition.

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- Enhance transition services prior to release for all CAF personnel who are medically released, including providing assistance with VAC application processes and registering for My VAC Account; providing a copy of My VAC Book tailored to the member's situation; and ensuring a case manager or a client service agent is assigned.
- Ensure rehabilitation professionals are in place to provide service post-release.

For the future, Veterans Affairs Canada is exploring a new evidence-informed decision model to support faster decisions by simplifying and streamlining adjudication processes for certain disability claims and allowing adjudicators with expertise to focus on the more complex claims.

As well the Department is fully engaged in working with its network of partners to modernize the disability benefits process. Partnerships with National Defence / Canadian Armed Forces, Library and Archives Canada and Public Works and Government Services Canada are part of an "enterprise approach" to service delivery that focuses on digitized, electronic platforms to process Service Health Records. VAC and its partners/stakeholders are engaged at all operational levels to ensure that relevant information related to disability benefits delays outside of VAC's control are shared in a timely manner and that all possible measures are taken to resolve the delays.

Other redesign initiatives which will reduce turnaround times for decisions include:

- More online, self-serve options making it easier for Veterans to apply for disability benefits, track the status of their application, communicate with the Department, and find information on benefits and services;
- More front-end counselling for Veterans who are applying for benefits;
- The digitization of service health records; and
- Centralized mail.

I hope you will find this information useful as you review progress made in response to your report, and I look forward to working with you as we continue to improve the delivery of services and benefits to our Veterans.

Sincerely



Julian Fantino, PC, MP