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## LEGISLATIVE SUMMARY



***Bill C-55:***  
***An Act to amend the Canadian Forces***  
***Members and Veterans Re-establishment***  
***and Compensation Act and the Pension Act***

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## ***Legislative Summary of Bill C-55***

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*Ce document est également publié en français.*

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Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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# LEGISLATIVE SUMMARY OF BILL C-55: AN ACT TO AMEND THE CANADIAN FORCES MEMBERS AND VETERANS RE-ESTABLISHMENT AND COMPENSATION ACT AND THE PENSION ACT

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## 1 BACKGROUND

On 17 November 2010, the Honourable Jean-Pierre Blackburn, Minister of Veterans Affairs, introduced Bill C-55, An Act to amend the Canadian Forces Members and Veterans Re-Establishment and Compensation Act and the Pension Act, in the House of Commons. **The bill received Royal Assent on 24 March 2011.**

The *Canadian Forces Members and Veterans Re-Establishment and Compensation Act* (CFMVRCA), better known as the “New Veterans Charter,” was assented to on 13 May 2005 and came into force on 1 April 2006. It defines the compensation system for veterans in the event of injury, disability or death and provides vocational and physical rehabilitation services to veterans and their families. It replaces the previous system, which was governed by the *Pension Act*, the first version of which dates back to 1919. The primary objective of the CFMVRCA is to promote veterans’ social and vocational re-establishment. The nature of the services provided, the value of certain allowances, and details on eligibility conditions are set out in the *Canadian Forces Members and Veterans Re-Establishment and Compensation Regulations*.

The CFMVRCA consists of four parts:

- Part 1 deals with job placement services.
- Part 2 sets out the rehabilitation services, vocational assistance and financial benefits that are available to members and veterans.
- Part 3 deals with payments in relation to disability, death and detention.
- Part 4, under the heading “General,” sets out various provisions relating to group insurance plans and other administrative issues.

Bill C-55 amends Parts 1 to 4 of the CFMVRCA, as well as Part IV of the *Pension Act*, which provides for the payment of allowances to veterans who have been determined to suffer from an exceptional incapacity.

## 2 DESCRIPTION AND ANALYSIS

### 2.1 AMENDMENTS TO THE *CANADIAN FORCES MEMBERS AND VETERANS RE-ESTABLISHMENT AND COMPENSATION ACT*

#### 2.1.1 JOB PLACEMENT (PART 1, SECTIONS 3 TO 5 OF THE CFMVRCA)

All former members of the Canadian Forces and, upon their death, their spouses or common-law partners, are eligible for job placement services where such services are deemed necessary for re-establishment in civilian life.

Clause 2 of Bill C-55 changes the heading of Part 1 of the Act from “Job Placement” to “Career Transition Services” in order to more accurately reflect the types of services being offered to veterans. Clauses 3 to 5, 7, 15, 17(1) and 17(2) change the term “job placement” or “job placement assistance” to “career transition” in various sections of the Act.

#### 2.1.2 REHABILITATION SERVICES, VOCATIONAL ASSISTANCE AND FINANCIAL BENEFITS (PART 2, SECTIONS 6 TO 41 OF THE CFMVRCA)

Part 2 of the CFMVRCA outlines the physical and psycho-social rehabilitation programs, vocational assistance and various financial benefits for which the following people are eligible: former members of the Canadian Forces whose health problems have resulted primarily from their involvement in military operations since the Korean War and former members of the Canadian Forces released on medical grounds, with the exception of members of the Reserve who were not in service when the health problems resulting in their release presented themselves.

Clause 6 of the bill clarifies that both rehabilitation services and vocational assistance are available to the spouse or common-law partner of a Canadian Forces member or a veteran upon the member’s or veteran’s death.

Currently, veterans – or their survivors – taking part in the program developed and implemented by the minister become eligible for the following financial benefits: an earnings loss benefit, a supplementary retirement benefit, an income support benefit and a permanent impairment allowance.

Bill C-55 extends eligibility for the permanent impairment allowance and adds a supplement in the event of total and permanent incapacitation.

##### 2.1.2.1 REHABILITATION SERVICES FOR INJURIES COMPENSATED UNDER THE *PENSION ACT*

Clause 8 changes the eligibility requirements for veterans who apply for a permanent impairment allowance as a result of one or more physical or mental health problems that are a “permanent and severe impairment.”<sup>1</sup> Currently, veterans who apply for a permanent impairment allowance must have had an application for rehabilitation services approved and received a disability award under Part 3 of the CFMVRCA.

If the rehabilitation services are needed in relation to a disability for which a pension is paid under the *Pension Act*, the veteran is not eligible under the CFMVRCA for the permanent impairment allowance. Clause 8 extends the eligibility for the permanent impairment allowance to those who have received a disability pension under the *Pension Act*.

Some veterans who are receiving a pension are also receiving an exceptional incapacity allowance payable under the *Pension Act*. Under clause 8, they are not eligible to be paid the permanent impairment allowance.

#### 2.1.2.2 INJURED VETERANS ALREADY RECEIVING THE MAXIMUM PENSION WHO ARE DIAGNOSED WITH A NEW CONDITION

Under the current rules, if a veteran has multiple injuries, an assessment is made and a percentage of disability is determined for each of them. If the percentages for each injury are added, and the total is higher than 100%, the veteran will be deemed to have a 100% disability and will never receive more than the maximum amount payable. If the veteran already receives the maximum monthly pension under the *Pension Act* for a deemed 100% disability, the same veteran cannot receive a disability award under the CFMVRCA if he or she suffers from a newly diagnosed service-related injury. That veteran therefore cannot receive the permanent impairment allowance, since receiving the disability award is a condition for receiving the permanent impairment allowance.

Clause 8 extends the eligibility for the permanent impairment allowance to veterans who would have received a disability award or disability pension but did not because their aggregate disability assessments for various injuries totalled more than the maximum amount payable.

#### 2.1.2.3 INJURY NOT STABLE

Before a percentage of disability can be assessed and the corresponding disability award paid, the disability must have become stable. In such a case, because a disability award has not yet been paid, the veteran is not eligible to receive the permanent impairment allowance.

Under clause 8, veterans who have not been paid a disability award because, in the opinion of the minister, the disability had not stabilized are also eligible for the permanent impairment allowance.

#### 2.1.2.4 INCREASE TO THE PERMANENT IMPAIRMENT ALLOWANCE

Clause 8(2) introduces a supplement to the permanent impairment allowance for those veterans who are determined by the minister to be “totally and permanently incapacitated.”<sup>2</sup> The supplemental amount is \$12,000 per year as set out in the amendment to Schedule 2 of the Act found in clause 19.

Clause 9 amends section 39 of the Act, governing the timeline by which the permanent impairment allowance is paid, to provide that any supplemental permanent impairment allowance payable will begin to be paid to a member or veteran at the same time as a permanent impairment allowance.

### 2.1.3 DISABILITY, DEATH AND DETENTION, AND CLOTHING ALLOWANCE (PART 3, SECTIONS 42 TO 65 OF THE CFMVRCA)

Part 3 defines the terms of a disability award, which, unlike the monthly life annuity payments provided for under the *Pension Act*, is a one-time lump-sum payment made in the event of an injury or disease related to or aggravated by service. This part also defines the terms of a death benefit, a clothing allowance and a detention benefit. Under section 85, only decisions made under Part 3 of the CFMVRCA are subject to review by or appeal to the Veterans Review and Appeal Board.

The purpose of the disability award is to compensate for the pain and suffering caused by an injury or disease related to or aggravated by service. It may be paid to active members or to veterans, and it is calculated on the basis of the degree of disability, rated from 0% to 100%, multiplied by the maximum allowable amount, which was set at \$250,000 in 2005 and subsequently indexed. The non-taxable maximum allowable amount for 2011 is \$285,319.47.

Under the current rules, a disability award can be received as a lump-sum payment only. Clause 13 of Bill C-55 adds section 52.1 to the Act, which allows a member or veteran to elect to receive a disability award as a lump-sum payment, as yearly payments, or as a combination of yearly payments and a lump-sum payment.

If yearly payments are chosen, the member or veteran selects the number of years over which payments are to be made, and interest is included as part of the yearly payment. If no election is made or if the extent of the disability for which an award is granted is assessed at less than 5% of total disability, the disability award is paid as a lump sum. A member or veteran can also choose to switch to a lump-sum payment after having originally chosen to receive yearly payments, but only after receiving one annual payment. If an additional disability award is to be paid to a member or a veteran who was already receiving a disability award, then the yearly payment amounts will be calculated by combining the amounts of both awards. Upon death, a member or a veteran who was receiving annual payments will be deemed to have made an election to receive a lump sum for the remaining amount. Lastly, clause 13 confirms that any yearly or lump-sum payments, or any combination of yearly and lump-sum payments, will be considered compensation under the CFMVRCA; this is consistent with the treatment of disability awards, which are already classified as compensation under the Act.

Several aspects related to the implementation of the new section 52.1 of the Act may be further articulated in the regulations, including the time to make an election, the manner in which an election is to be made, the interest calculations for yearly payments, the manner by which the minister will inform the member or veteran of the right to make an election, the manner by which the member or veteran can switch from annual payments to a lump sum, and the deemed election process for a lump-sum payment upon death.

The amendments made in clauses 10 and 11 are consequential to the proposals in clause 13, in that they allow for payments in whole or in part. Where the disability of a member or a veteran becomes more severe over time, the current rules provide that the member or veteran is eligible for an increased award only if the entire

disability award was paid. Clause 10 allows the minister to augment the amount of the disability award paid to the member or veteran to correspond with the increase in the extent of disability, whether the member or veteran was paid all or part of the disability award.

Also under clause 11, the disability of a member or a veteran will be assessed at the time of his or her death as 100% if the death occurred 30 days after the injury was incurred, whether all or part of a disability award had already been paid to the member or veteran.

Clause 12 amends the rights of survivors and children of members and veterans by excluding the right to choose a payment method for a disability award. With this exception, survivors and children are entitled to all the rights that the member or veteran would have had if they had lived.

Clause 14 amends the CFMVRCA to preclude the granting of a disability award to a member or a veteran for an injury or disease if, as a result of a pension application under the *Pension Act*, a refusal has already been rendered by the minister or the Canadian Pension Commission<sup>3</sup> in relation to the same injury or disease.

#### 2.1.4 GENERAL (PART 4, SECTIONS 66 TO 94 OF THE CFMVRCA)

Part 4 of the CFMVRCA sets out various provisions relating to group insurance plans and other administrative issues.

Amendments proposed in clause 16 prohibit the payment of interest on any compensation paid under the CFMVRCA, except for the interest paid under clause 13 when the member or veteran chooses to receive annual payments, as described above. A related measure is contained in clause 17(3), which amends the regulation-making provision of the CFMVRCA to make it consistent with clause 13.

Schedule 2 of the Act is amended by clause 18, which updates the sections of the CFMVRCA to which the schedule refers.

#### 2.2 AMENDMENT TO PART IV OF THE *PENSION ACT*

Clause 20 amends sections 72(1) and 72(2) of the *Pension Act*, altering the criteria by which an exceptional incapacity allowance is granted under that Act. Currently, any assessments or awards granted under the CFMVRCA are not considered when determining whether a member or veteran is eligible for an exceptional incapacity allowance (see discussion of clause 8 above).

Clause 20 provides that a member will be considered eligible for an exceptional incapacity allowance if he or she is suffering from an exceptional incapacity, is receiving a pension or a disability award for that disability, and if the total disability assessment under one or both of the Acts is equal to or greater than 98%. If a member is eligible for a permanent impairment allowance under the CFMVRCA, then that member is not eligible for an exceptional incapacity allowance. **This clause also states that those determining whether an incapacity is exceptional must take**

into consideration the extent of a disability for which a pension or a disability award has been granted.

## 2.3 REVIEW OF THE NEW PROVISIONS UNDER THE CFMVRCA

Clause 20.1 indicates that two years after the provisions of Bill C-55 come into force, a comprehensive review of these provisions must be undertaken by the appropriate House of Commons and Senate committees.

## 3 COMMENTARY

### 3.1 CHANGES TO THE PERMANENT IMPAIRMENT ALLOWANCE

The changes made to the permanent impairment allowance are based on the findings set out in the Veterans Affairs Canada report entitled *Evaluation of Disability Pensions and Awards*, which was published in August 2010. That report was in turn based on other reports, in particular the January 2009 report of the Special Needs Advisory Group entitled *The New Veterans Charter: What are its deficiencies for special needs veterans and their families?*

The first change to the permanent impairment allowance, made through clause 8 of the bill, is to expand the pool of eligible candidates to include seriously disabled veterans with “dual eligibility.” Those veterans receive both a pension and a disability award but are ineligible for the permanent impairment allowance if their rehabilitation needs are related to the condition for which they are receiving a pension. Those same clients are also ineligible for the exceptional incapacity allowance provided for by the *Pension Act*, even if the new condition for which they have received a disability award, combined with that for which they are receiving a pension, results in a “permanent and severe” impairment.

Veterans Affairs Canada estimates that, between April 2006 and December 2009, 203 severely disabled clients may have been “excluded from the PIA and EIA because the requirements of each program do not take into account the existence of the other program.”<sup>4</sup> With the adoption of Bill C-55, these individuals would become eligible, but it is impossible to determine how many of them would in fact receive the permanent impairment allowance. The decision to grant the permanent impairment allowance is still based on the definition of “permanent and severe impairment” set out in the regulations (section 40; see note 1 of this legislative summary), which the Special Needs Advisory Group considered too restrictive.<sup>5</sup> Based on these criteria, only 16 veterans have received the permanent impairment allowance since 2006.

The other change made to the permanent impairment allowance by clause 8(2) of the bill enables the minister to increase the allowance by \$1,000 a month where a veteran is “totally and permanently incapacitated.” Unlike the definition of “permanent and severe impairment,” which concerns the seriousness of a veteran’s physical or mental limitations, the definition of “total and permanent incapacitation” set out in the regulations (section 6; see note 2 of this legislative summary) refers to the vocational limitations caused by the impairment. To receive the increased permanent

impairment allowance, a veteran must therefore suffer from both a “permanent and severe impairment” and a “total and permanent incapacitation.” That said, of the 269 veterans who were deemed to be suffering from a total and permanent incapacitation between April 2006 and March 2009, three received the permanent impairment allowance.

### 3.2 CHANGES TO THE DISABILITY AWARD

The disability award is currently paid solely in the form of a lump-sum payment. As the maximum amount of the award is a substantial \$285,319.47, many veterans’ representatives have expressed concerns such as the following: “There are cases in which the payment of a large lump sum simply does not seem appropriate, such as, for example, where a person’s life is totally disrupted by the physical, psychological, family, social and vocational consequences of a disability.”<sup>6</sup>

The House of Commons Standing Committee on Veterans Affairs echoed those concerns and recommended that the government present “a plan with options for a new system of Disability Awards where the severity and nature of the disability, and the age and circumstance of the soldier or veteran, are taken into account on a case by case basis through a combination of lump sum payments, annuities and/or structured settlements.”<sup>7</sup>

The options presented in the bill are in direct response to that committee recommendation. The abiding concern, expressed by the former Veterans Ombudsman, is that there is a risk that, if faced with a choice between a lump-sum payment and instalments spread over a number of years, most veterans will choose the lump-sum payment.

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## NOTES

1. The phrase “permanent and severe impairment” is defined in Section 40 of the *Canadian Forces Members and Veterans Re-Establishment and Compensation Regulations* as:
  - (a) an amputation at or above the elbow or the knee;
  - (b) the amputation of more than one upper or lower limb at any level;
  - (c) a total and permanent loss of the use of a limb;
  - (d) a total and permanent loss of vision, hearing or speech;
  - (e) a severe and permanent psychiatric condition;
  - (f) a permanent requirement for the physical assistance of another person for most activities of daily living; or
  - (g) a permanent requirement for supervision.
2. Under Section 6 of the *Canadian Forces Members and Veterans Re-Establishment and Compensation Regulations*

“totally and permanently incapacitated” means, in relation to a veteran, that the veteran is incapacitated by a permanent physical or mental health problem that prevents the veteran from performing any occupation that would be considered to be suitable gainful employment.

3. Until 1995, the former Canadian Pension Commission enjoyed some of the powers that were transferred to the minister when the Veterans Review and Appeal Board was created.
4. Veterans Affairs Canada, [\*Evaluation of Disability Pensions and Awards\*](#), August 2010, p. 25.
5. Veterans Affairs Canada, Special Needs Advisory Group, *The New Veterans Charter: What are its deficiencies for special needs veterans and their families?*, January 2009, pp. 5-6.
6. House of Commons, Standing Committee on Veterans Affairs, [\*A Timely Tune-Up for the Living New Veterans Charter\*](#), 3<sup>rd</sup> Session, 40<sup>th</sup> Parliament, June 2010, pp. 37-38.
7. Ibid., Recommendation 15, p. 40.