

;

“Our Freedom’s Worth is Only As Much As We Are All Willing to Pay”

Mark Collie Country singer.

This effort is dedicated to the memory of Brian Dyck, First Gulf War Veteran and Ottawa City Police Service Officer, whose own effort to speak out about injustice in his last days left me the motivation to carry the torch and continue the fight. A true hero. God Speed Brian.

**Eric Rebiere (Former Cst. RCMP 37515)
Charter Member Canadian Veterans Advocacy**

SUMMARY OF COMPLAINT BY THE CANADIAN VETERANS ADVOCACY TO THE OFFICE OF THE VETERANS OMBUDSMAN

**BY ERIC REBIERE (FORMER CST. RCMP 37515)
CHARTER MEMBER CANADIAN VETERANS ADVOCACY**

I have been authorized by Mike Blais the President of the Canadian Veteran’s Advocacy to submit this complaint on behalf of all injured veterans, Military and RCMP, who have been unjustly denied legitimate disability claims and or have not been granted compensation to the level of disability supported by uncontradicted medical evidence/evidence by the Veterans Review and Appeal Board. .

I am providing the office of the Veteran’s Ombudsman clear evidence to show that from 1997 to 2011 that the Veteran’s Review and Appeal Board have and are not respecting the decisions/direction and Case Law provided to the Board by Federal Courts by way of Judicial Review as a result of the repeating erroneous decisions of the Veteran’s Review and Appeal Board that were quashed.

I have identified 81 out of 141 Judicial Reviews involving pension applications by injured veterans (Military and RCMP) from 1998 to 2011 from the Federal Court Web site, where the applicants were granted Judicial Reviews by the Federal Courts. The decisions of the Veterans Review and Appeal Board were quashed and sent back to the

VRAB Board with directions in regards to errors in law/jurisdiction that were made by the Board with an order to convene a newly constituted panel of the Board. Sixty Judicial Reviews were dismissed by the Federal Courts during this same time period.

These 81 granted Judicial Reviews as apposed to the 60 that were dismissed by the Federal Courts during the stated time period has cause for alarm. This high number speaks for itself as to the heavy handed V.R.A Board. To think those injured veterans had to spend money they could not afford in the first place and in desperation have to seek justice from a fair unbiased body called the Federal Courts of Canada that governs the V.R.A Board under the Federal Court Act. Why did this have to go this far for these injured veterans?

One particular case that went to the Federal Courts requesting a Judicial Review was that of a Military Veteran Steve Dornan (Court Number T-2047-09) who had been fighting for approx. 9 years with the VRAB Board for compensation for **“non-Hodgkin’s Lymphoma or an aggravation thereof arose out of or was directly connected with his Regular Force service and/or was incurred during or is attributable to his Special Duty service in Bosnia.”(1995 1996)**

This application for Judicial Review by Steve Dornan started on December 12, 2009. On March 2, 2010 Federal Court Justice The Honourable Justice Martineau filed an order on consent between Steve Dornan and the representative for the Attorney General of Canada to set aside the V.R.A. Boards appeal decision of November 10, 2009 that did not render a favourable decision to Steve Dornan and to send the appeal back to the VRAB for reconsideration **“by a differently constituted panel.”**

On February 17, 2011 Steve Dornan received the Veterans Review and Appeal Board decision stating **“the Board could not render a favourable decision. Please consult the enclosed document for a detailed explanation.”**

This is the amazing thing about the VRA Board, here they give Steve Dornan the Benefit of the doubt by simply stating so in their February 17, 2011 decision then cut him off at the knees by denying his claim i.e. “In the present case, the panel finds it reasonable to find the appellant was exposed to DU while serving as a weapons inspector in Bosnia.”

The VRA Board discounted the evidence of 7 doctors who stated that in all likely hood the cause of Steve Dornan’s **non-Hodgkin’s Lymphoma** in all probabilities was the cause of Steve Dornan’s exposure to DU while serving in Bosnia. Dr. Cathy Vakil made reference to information from the US military stating that

“DU is listed by name and accepted as an ionizing carcinogen in its medical conditions determined to be presumptive cause of non-Hodgkin Lymphoma in exposed veterans.”

5. Dr. Cathy Vakil, Family Physician, in her letter dated 11 January 2010 (EA-D5) reports that it is reasonable to state there is a causal relationship between exposure to ionizing radiation from DU and hematological disorders, including non-Hodgkin's lymphoma. She opines the Appellant's non-Hodgkin's lymphoma is highly likely due to his exposure to DU in Bosnia. Dr. Vakil provides references from the U.S. Department of Veterans Affairs, Office of Public Health and Environmental Hazards to support her opinion and states:

The US military, the country with the most experience with DU munitions, recognizes this cause and effect when dealing with its veterans and determining pension claims to the US Department of Veterans Affairs. DU is listed by name and accepted as an ionizing radioactive carcinogen in its medical conditions determined to be a presumptive cause of non-Hodgkin lymphoma in exposed veterans.

6. Dr. Reza J. Mehran, in his letter dated 27 January 2010 (EA-D2), references the Italian Mod Commission on the incidence of neoplasia among military personnel in Bosnia and Kosovo's finding that there is an increase in lymphoma among Italian soldiers deployed to Bosnia and Kosovo, and opines:

Admittedly, the exact cause of this increased risk is unknown. It is impossible to establish a causative association between an exposure in Bosnia and a

patient's lymphoma. While it is not completely proven in the scientific media, it can nevertheless be widely accepted that depleted uranium contains a cancer producing agent. . . .

Simply the consensus is that Depleted Uranium was present in Bosnia at the time Steve Dornan served there as a weapons inspector and that DU munitions undetonated and detonated would be present especially in munitions and arms dumps that were bombed by NATO. Logically speaking that would put Steve Dornan in a higher degree of potential exposure to DU. The point the VRAB would not accept is that depleted Uranium used in munitions is CANCEROUS and Steve Dornan has Cancer i.e. **non-Hodgkin's Lymphoma**.

The Italian Mod Commission stated clearly there is an increase of Lymphoma among Italian Soldiers deployed to Bosnia and Kosovo and that depleted Uranium contains a cancer producing agent. Is this not a casual link i.e. DU causes Cancer.

The Merck Manual of Diagnosis and Therapy and its use by the Veterans Review and Appeal Board raises some very interesting issues.

First the Merck Manual of Diagnosis that the Veterans Review and Appeal Board state **is the consensus on medical Conditions.** I ask the question in regards to Civilian or Military information? Are any of the Doctors contributing to the Merck Manual from the U.S. Military, Canadian Military or any other Military for that matter?

In Steve Dornan's case the Merck Manual as referred to by the VRAB who note from the MERCK manual about mine workers mining for uranium and the causes of long term exposure. Naturally occurring uranium and concentrated depleted uranium in armour piercing munitions donated and undetonated, concentrated in specific areas i.e. munitions dumps is a completely different thing.

There is a reference to Uranium which the information from the Merck Manual has been added to the index of information supporting the information I am presenting. No where in the Merck Manual does it mention exposure to DEPLETED URANIUM USED IN ARMOUR PIERCING MUNITIONS, PERIOD AND THE EFFECTS OF EXPOSURE to soldiers.

The next important observation I made was in the header of the Merck manual which is published in the US states that it **IS "FOR HEALTH CARE PROFESSIONALS" who understand the medical language contained there in.** I could not understand the majority of the medical terminology because I am not a Doctor.



Medical Evidence

The Merck Manual of Diagnosis and Therapy, 18th Edition, which the Board recognizes as representing the general medical consensus on medical conditions, reports that non-Hodgkin's lymphomas are a heterogeneous group of disorders involving malignant proliferation of lymphoid cells in lymphoreticular sites, including lymph nodes, the spleen, the liver, and the GI tract. Some risk factors are noted, including certain chemical exposures, but the cause is unknown.

The Merck Manual, 18th Edition, Section 11, Chapter 147: "An Overview of Cancer" indicates that ionizing radiation is carcinogenic. With reference to industrial exposure, it reports that uranium exposure by mine workers is linked to the development of lung cancer after a 15-20 year latency but is silent for a link between DU or any source of ionizing radiation and non-Hodgkin's lymphoma.

The only useful information I could observe was cited by the VRA Board themselves from the Merck Manual and I quote **"ionizing radiation is carcinogenic."** Depleted Uranium is classed as substance that emits ionizing radiation and again Steve Dornan has cancer in the form of non-Hodgkin Lymphoma. This is the causal connection that the Veterans Review and Appeal Board would not see in Steve Dornan's case and it is very obvious.

It is a fact that DU was present in Bosnia when Steve Dornan was there.

It is a fact that DU is an ionizing radioactive carcinogen.

It is a fact that Steve Dornan inspected munitions dumps where DU would be concentrated due to detonated munitions increasing his chances of exposure.

It is a fact that Steve Dornan has been diagnosed with non-Hodgkin Lymphoma a form of cancer.

It is a fact that the 7 qualified Doctors believed in all probabilities that Steve Dornan's cancer was the result of exposure to DU which is the only carcinogen noted in his evidence that he was ever exposed to.

It is a fact that the VRAB had access to Steve Dornan's medical and service file and the VRAB did not produce any conflicting evidence from these files to state Steve Dornan had ever been exposed to any other carcinogenic substance while serving with the Canadian Military.

The Veterans Review and Appeal Board who are to deal with the evidence presented to them had to search for an outside source for evidence in order to find conflicting evidence to deny Steve Dornan's claim.

I can personally state from my own dealings with the VRAB which is noted in their declined appeal decisions of a 2004 injury claim I had made stated that the internet sourced medical information I supplied to support my claim was considered an unreliable source and can not be accepted as credible and set aside because it came from the internet.

Well in Steve Dornan's arduous dealings with the VRAB over the 9 long years to learn that contradictory evidence came from the Merck Manual from the internet is hypocritical and unethical by their standards and was applied in my denied claim. Unbelievable. They can do it but I can't?

The cake on the icing is again from 13 Judicial Review decisions from Federal Court Judges that stated that the Veterans Review and Appeal Board are **not medically qualified** so I ask what is the Board doing referring to a publication meant for "HEALTH CARE PROFESSIONALS"?

THE 14 CASES I REFER TO UNDER ISSUE 10 WHICH IS TITLED

THE VETERANS REVIEW AND APPEAL BOARD DO NOT HAVE ANY MEDICAL EXPERTISE AND ARE NOT EXERCISING THE USE OF SECTION 38 OF THE VRAB ACT IN REGARDS TO CONSULTING QUALIFIED MEDICAL DOCTORS ON MEDICAL ISSUES.

Macdonald v. Canada (Attorney General of Canada) 2003 FC 1263 Date: October 30, 2003

Léonelli v. Canada (Attorney General) 2003 FC 1374 Date: Nov. 21, 2003

Theriault v. Canada (Attorney General) 2004 FC 978 Date: July 12, 2004

Boucher v. Canada (Attorney General) 2004 FC 616 Date: April 26, 2004

Ladouceur v. Canada (Attorney General) 2006 FC 1438 Date: November 28, 2006

Thériault v. Canada (Attorney General) 2006 FC 1070 Date: September 8, 2006

MacDonald v. Canada (Attorney General) 2007 FC 809 Date: August 1, 2007

Lenzen v. Canada (Attorney General) 2008 FC 520 Date: April 22, 2008

Zielke v. Canada (Attorney General) 2009 FC 1183 Date:
November 18, 2009

Ladouceur v. Canada (Attorney General) 2010 FC 1148 Date:
November 16, 2010

Gilbert v. Canada (Attorney General) 2010 FC 1300

Date: December 17, 2010

Armstrong v. Canada (Attorney General) 2010 FC 91 Date:
January 27, 2010

Deschênes v. Canada (Attorney General) 2011 FC 449 Date:
April 15, 2011

(2) Section 38 of the Act which allows the tribunal to seek medical advice on any medical matter, suggests the tribunal has no particular medical expertise. See paragraph 40 of Justice Nadon's decision and following paragraphs in which he cites several decisions of the Trial Division supporting this view and in particular, paragraph 42 where he states the very existence of section 38 suggests the Board does not have an inherent jurisdiction over medical matters and does not have any particular medical expertise that would enable it to state views without supporting evidence.

"François Lemieux"

J U D G E

OTTAWA, ONTARIO

OCTOBER 30, 2003

As for the discounting of the Medical evidence the Veterans Review and Appeal Board made in the Dornan case does not follow the direction of the Federal Courts and I quote from The Honourable Mr. Justice Beaudry in the following case;

Deschênes v. Canada (Attorney General) 2011 FC 449 Date: April 15, 2011

“[13] The respondent argues that the appeal panel was completely justified in consulting external sources, meaning the Merck Manuel Home Edition and the Australian Statements of Principles, in order to contradict and set aside the medical report by the applicant’s specialist.

[14] The Court cannot support this reasoning. The respondent is entirely correct when he argues that the appeal panel may consult sources other than those in the record. However, with respect, it cannot use this evidence to contradict a medical report by a specialist as it did in this case, without giving the applicant the opportunity to make additional submissions or, if he so desired, to supplement the medical evidence he had already submitted.

[15] The above-mentioned external sources consulted by the appeal panel i.e. The online Merck was this provided to the applicant before the decisions of May 27, 2009, January 5, 2010 and February 7, 2011. The Veterans Review and Appeal Board referred to medical source in this case the online Merck Reference was made to them previously, but to then use them to state that Dr. Hallé's report is not credible seems unreasonable to me.

[18] The Court is not claiming that Dr. Hallé's report cannot be contradicted, but that, to do so, more was required than merely referring to an external source and finding that the most obvious cause for the applicant's condition was not the one determined by Dr. Hallé. The respondent could have, if so desired, obtained expertise to the contrary pursuant to section 38 of the *Veterans Review and Appeal Board Act*."

The Honourable Mr. Justice Beaudry

Ottawa, Ontario, April 15, 2011

Steve Dornan should have stuck to his guns and gone ahead with the Judicial Review. Would the Federal courts would have been very critical of the VRAB adjudication in his case?

The Question here is how many claims similar to Steve Dornan's are Before the Board and if there are and possibly will be a significant number, and if there is, is the Government's present police of large budget cuts to Veterans Affairs a motive to deny Steve Dornan Claim because of the less amount of money available for disability claims?

Now if the VRAB had consulted a qualified Medical Doctor under the authority of Section 38 (1) of the VRAB Act and not relied solely on the online Merck Manual as a main reference would that have made a more level playing field for Steve Dornan ? If the VRAB had used Section 38(1) during the VRAB appeal process would that have saved Steve Dornan and his wife a lot of legal costs, frustration and needless mental anguish?

These are the words in the form of a summery that Steve Dornan had sent to me at my request, as well as documents from his dealings with the VRAB which are listed in the index. Mr Dornan's summery is as follows;

**Submission by Steve Dornan as requested by Eric Rebiere
from the Canadian Veterans Advocacy**

I initially applied in 2003 for Cancer as related to my exposure in Bosnia as a weapons Inspector, I was denied on July 6, 2004 on the following basis;

"In view of the above, there is an absence of medical evidence to provide a relationship between factors associated with your deployments to Bosnia or your Royal Canadian Air Force service and, the development of your claimed condition. Regrettably, the Department concludes that your Malignant Non-Hodgkin's Lymphoma is not attributable to your Special Duty service (SDA-Bosnia) and did not arise out of your Regular Force service."

This was appealed to review hearing with the addition of new medical evidence

Medical Examination Records dated 16 November 1993 and 1 September 1996 and attached medical attendance records from 10 February 2000 up to and including 2 October 2002 The determination by the VRAB on 21 November 2006 was as follows

"In light of all the evidence, there is documented exposure in the record to asbestos and non-confirmed exposure to PCB's, jet fuel and other *so-called* carcinogens. However, the problem facing the Applicant with respect to his claim of pension entitlement for non-Hodgkin's lymphoma, is that the Panel is being asked to award pension entitlement for a medical condition that medically and scientifically speaking, the cause of which remains unknown. There are several theories that certain viruses (e.g. Epstein-Barr virus) and exposure to chemicals (e.g. pesticides and fertilizers) can cause non-Hodgkin's lymphoma, but to this point in time, none of these theories have been proven. Consequently, without military medical evidence of direct exposure to specific agents during service and expert scientific evidence to link those agents to the onset and development of the disease process, the Panel is left in the position of being unable to rule in favour of the Applicant's claim."

The Review board raised the burden of proof beyond the level required in the Pension Act and required "**military medical evidence** of direct exposure to specific agents during service **and expert scientific evidence to link those agents** to the onset and development of the disease process" It further went on to utilize a publication NOT presented

as evidence, The Merck Manual, and utilize its opinions and quotations vice that of treating physicians and medical evidence provided.

“According to The Merck Manual, Seventeenth Edition, lymphomas are a heterogeneous group of neoplasms- arising in the reticuloendothelial and lymphatic systems. The major types are Hodgkin's disease and non-Hodgkin's lymphoma. An uncommon type is mycosis fungoides. The cause is unknown (emphasis added).”

Based on these errors, an appeal to VRAB was initiated and we began to seek out and locate experts to and meet this higher burden of proof established at the review hearing at our cost

On 24 September 2009 we went before VRAB in Ottawa, with the following evidence to meet the requirements laid out by the review of 21 Nov 2006;

EA-D1: A medical opinion from Dr. James Ruddy, dated 21 April 20

EA-D2: A letter from Dr. Baverstock dated 15 June 2009.

EA-D3: Copy of Presentation to the Defense Committee of the Belgian House of Representatives (20 Nov 06), by Dr. Baverstock.

EA-D4: Letter from Director of Intelligence, dated 28 June 1996.

EA-D5: Chronological Summary of scientific studies on effects of exposure to Depleted Uranium. (This document contains over 3500 pages of supporting peer reviewed scientific and medical findings clearly indicating a link to DU exposure and non-Hodgkin Lymphoma)

EA-D6: Photographic evidence presented by Mr. Dornan physically at the sites and in the equipment contaminated by DU as determined by the UN DU inspection teams.

EA-D7: NATO Map of Depleted Uranium Engagement Points produced for UNEP DU inspection teams 2001.

EA-D8: Letter from Mr. Dornan providing evidence on lack of Protective Equipment dated 23 July 2009.

EA-D9: Final report by the Italian MOD Commission dated 23 July, 2302.

EA-D10: Special Report: A Review of Human Carcinogens dated August 2009 EA-D11: Staff Duties for Land Operations dated 1 August 2008.

EA-D12: Clinical Diagnosis / Dr. Louis Fernandez, Department of Medicine/Dalhousie University dated 31 August 2009.

EA-D13: The United Nations Disarmament Yearbook.

EA-D14: Post-Conflict Environmental Assessment- Depleted Uranium in Kosovo

In addition the adjudicator at the review hearing only cited the first line of the Merck manual and not the entire section "According to the Merck manual, "the cause of NHL is unknown" though risk factors for NHL include "certain chemical exposures."

However, other excerpts from Section 21 of the Merck Manual (Injuries Poisoning) are more conclusive: Contamination is contact with and retention of radioactive material, usually as a dust or liquid. External contamination is on skin or clothing! from which it can fall or be rubbed off, contaminating other people and objects, Radioactive material also can be absorbed through the lungs, GI tract, or breaks in the skin (internal contamination). Absorbed material is transported to various sites in the body (e.g., bone marrow), where it continues to release radiation until it is removed or decays. Internal contamination is more difficult to remove. **Ionizing radiation is also carcinogenic.**

Again denied by VRAB on November 27, 2009 despite the fact that board stated in my decision that I met the burden of proof required by the Pension act for a pension award based on the evidence presented, I was still denied.

"The Board in their findings confirms the following: "The Panel acknowledges the Service Officers argument that there is evidence that associates human health hazards with exposure to depleted uranium radiation. The Panel notes there is evidence that the Appellant served in areas where depleted uranium emissions may have been used. The Panel acknowledges the Appellant's belief that exposure to depleted Uranium may have contributed to the development of his claimed condition of non-Hodgkin's Lymphoma."

This ruling was so rife with errors it was an abomination, every lawyer who revived this finding agreed that this must be appealed to Federal Court. The President of the VRAB panels experience and education culminated as a High School Gym teacher, which may explain the blatant errors in the decision.

These Grounds for Reconsideration of VRAB Decision Number 10001446704, dated 24 Sept 2009, 59 pages (attached) have been prepared by the appellant detailing Errors of Fact, Errors of Proceedings' and Errors of Law. This summary will highlight some of the errors observed in the ruling.
Error of Proceedings

In the attached document "Grounds for Reconsideration of VRAB Decision Number 100001446704" The Board "was unable to find any credible medical evidence that would specifically link the claimed condition of malignant non Hodgkin's Lymphoma to any military service factors". It is clear from the Boards findings that The Board did not consider ALL of the evidence presented contrary to the Rules of Evidence, Section 39 of the Veterans Review and Appeal Board Act. In that it failed to adequately review exhibit EA-D5, which was not referenced in the boards finding. This exhibit contains a synopsis of 74 documents totalling 3655 pages of credible, peer reviewed, scientific and medical evidence in my favour and supporting my claim for a disability pension. This document, the largest and most persuasive for the Appellant, whose contents were not, mentioned once in the Board's findings. This one exhibit is the basis for 80% of my credible medical evidence and it was not considered although its contents rebut almost every assertion by the Board against the Appellant in the decision. Contrary to what is required, the Board failed to provide reasons why the scientific evidence contained in Exhibit (EA-D5) was found not to be credible. When this evidence clearly shows a casual risk of DU exposure to cancer, particularly Lymphomas, and that the "clear indication in the evidence" sighted by the Board, regarding hair and urine testing has subsequently been determined by a multitude of expert medical and scientific bodies to be ineffective and junk science. EA-D5, which formed the bulk of Medical and Scientific Evidence supporting the case, was completely ignored in the discussion and findings of the board contrary to Article 39 of The Pension Act.

Error of Law

The panel failed to include Article 21(3) (g) of The Pension Act in the Applicable Statutes it considered for this case, despite its unequivocal clear application in this claim.

The Board in their findings confirms the following: "The Panel acknowledges the Service Officers argument that there is evidence that associates human health hazards with exposure to depleted uranium radiation. The Panel notes there is evidence that the Appellant served in areas where depleted uranium emissions may have been used. The Panel acknowledges the Appellant's belief that exposure to depleted Uranium may have contributed to the development of his claimed condition of non-Hodgkin's Lymphoma."

Therefore on this basis alone, the Panel has admitted that the Appellant has satisfied the burden of proof and

presumption supporting his case, in accordance with Article 21(3) (g) of the Pension Act "the performance by the member of any duties that exposed the member to an environmental hazard that might reasonably have caused the disease or injury or the aggravation thereof."

However the Panel erred in not applying this determination in the favour of the Appellant in the ruling IAW The Pension Act Article 21(3)(g) and failed to follow the Entitlement Eligibility Guidelines, Veterans Review and Appeal Board Regulations SOR/96-675.(3)1 and 2.

If we accept the Boards assertions that NHL is caused by a virus, and whereas

1. The board has accepted; the evidence that the member received DU radiological and toxicological exposure,
2. There is clear, credible, scientific evidence that being exposed to ionizing radiation, toxic chemicals and or depleted uranium is a risk factor thus aggravating a condition of the member who was in an SDA performing his duties within the CF.

Then Article 21(1) (A) and 21(3) (g) of the Pension Act were not considered by the board. "where a member of the forces suffers disability resulting from an injury or disease or an aggravation thereof that was attributable to or was incurred during such military service, a pension shall, on application, be awarded to or in respect of the member in accordance with the rates for basic and additional pension set out in Schedule I" NHL is an incurable terminal cancer and the fact that DU exposure occurred, a full five-fifths disability represents the extent to which the injury or disease was aggravated by service.

Error of Fact

The Board stated "An Italian study submitted as EA-D9 indicates that there was a statistically significant excess observed in Hodgkin's Lymphoma cases, but not in Non-Hodgkin's Lymphoma cases. The study concludes that there was insufficient evidence to establish that Italian soldiers were exposed to depleted uranium contamination. The study indicates that it is not possible to identify a cause of the Hodgkin's Lymphoma in relation to exposure to depleted uranium;" However the Board failed to state the result of the evidence in that a €30m veterans' DU compensation package was approved by Italian Cabinet on December 18, 2008 The commission also stated "that the burden of proof should be inverted; concluding that proof that the service personnel had been deployed in areas where

DU had been used was sufficient evidence to support compensation when they later got ill."

Contrary to the Boards statement; "The Appellant's statement indicates that he was a weapons instructor deployed to Bosnia in 1995 and 1996." Nowhere in my statement was I a Weapons Instructor, I served as a NATO WEAPONS INSPECTOR. There is a huge difference between the two jobs. One puts you walking around the country teaching, the other puts you inside a burnt out tank contaminated with DU oxide.

Contrary to the Boards statement; "The Service Officer submitted that one-fifth pension entitlement is warranted for the claimed condition of Malignant Non-Hodgkin's Lymphoma in consideration of the following:" This statement is a fabrication; in the Submission Basis of Request dated 24 Sept 09 it clearly states on the first line "This written submission on behalf of Mr. Dornan follows. We seek to secure a full entitlement for condition of Malignant Non Hodgkin's Lymphoma." At no time anywhere in our submission did the Service Officer write, speak or seek a one-fifth pension entitlement. It is clear that the Board did not provide the appellant with a careful and diligent analysis or understanding of even the most basic issues raised in the submission.

At our cost we had to engage the law firm of McInnis Cooper to represent us before Federal Court to overturn this VRAB decision. The Crown Attorney representing the Government of Canada and Veterans Affairs reviewed the decision by VRAB in preparing the case against us and saw that the VRAB decision was indefensible and clearly wrong. The VRAB failed to follow even the most basic tenants of The Pension Act and refused to present a case before a Federal Court Justice, and instead offered an agreement with Federal Court Justice Martineau that the VRAB decision be quashed, and the VRAB must follow the Pension Act, including section 21(3) (g) in adjudicating my case. So despite everyone who read this VRAB decision and recognized that it was incorrect, it costs us thousands of dollars. It had to be resubmitted for a correction for a clerical error by the Crown attorney at no cost to us

A new VRAB panel was ordered convened in Charlottetown, and we had to seek out a BPA Appeal Lawyer there, as ours legal representative was in Halifax, and we could not afford to have him represent us in another province. Both our BPA lawyer and civilian lawyer agreed to work together as they believed we have been so wronged by VRAB. We traveled to Charlottetown at our expense to be present for our hearing.

We were introduced to the VRAB board and to "their legal representation" The VRAB brought in a lawyer to attend our hearing and sat in the desk adjacent to our advocate. Whenever in the history of jurisprudence has a judge or body of judges had legal representation in a hearing where they are the adjudicator. Fairness before the VRAB, or even the appearance of fairness for an impartial collegial hearing ended at that point. The VRAB then went on to state that they could not agree on the Federal Courts ruling directing them to hear our case, despite having our file for months it was not until we were present that they openly question the ruling by Justice Martineau. They further sought to hear our case, and then determine in private whether or not portions of our case or in its entirety would be dismissed, omitted or not determined by the VRAB contrary to the Federal Court ruling with the only recourse for us would be to take them back to Court again. We were advised vehemently against this blatantly unfair VRAB tactic by our BPA Lawyer as we could not argue a case on a level playing field. VRAB then stated that we would have to go back to Federal Court to have THEIR questions answered at our expense and promptly adjourned. VRAB the delayed for 30 days before proving our lawyer "their questions" for the Federal Court It consisted of one question "Does the VRAB have to rule on the entire Pension Act or just a portion of it?"

At our cost our civilian lawyer reviewed their "question" with the Crown Attorney (both agreed it was unbelievable and that the Justice decision was very clear and unambiguous). They approached Justice Martineau and within two weeks a new "dumbed down decision" was issued to VRAB. My case has now been before the Federal Court three times taking up valuable time money and effort and all who looked at the VRAB decisions agree it should never have been there in the first place.

VRAB despite adjuring the case at our expense and after being informed that the Federal Court issued clarification and that BPA and council for the plaintive was available immediately to recommence the hearing, refused to hear the case for six months.

The case was reheard in Charlottetown at which additional Expert evidence was presented by t no fewer and two scientists who are the leading experts in DU contamination and Cancer, including the Nobel prize winner in science for this subject, and five Specialist Doctors including the Canadian Forces Deputy Atlantic Regional Surgeon General and the Professor of Medicine Oncology Department

Dalhousie University all of which examined and treated or wrote expert opinions on my individual behalf. As well as previous decision awarding a full VAC pension to a Canadian Forces Veteran in 2006 for "DU exposure" whom had substantially less direct evidence.

Incredulously this VRAB panel determined on their own without consulting medical experts as is required by previous Federal Court Decisions and admonishments, and the intent of the Pension Act determined that two scientists and five doctors' expert medical opinions are "not credible".

The VRAB did precisely what it was unequivocally ordered not to do in our case by the Federal Court. The VAC Ombudsman became involved and The Ontario Trial Lawyers Association agreed to take this pro bono as they were so outraged at VRAB behaviour. We also went public at this point with CBC, print media and a sit in by my wife at the VAC Parliamentary secretary's office. Within a week the Minister of Veterans Affairs had permission from the Head of VRAB who on our request enacted section 85 of the Pension Act. And turned it over to "VAC legal in Ottawa to review" a week later we had a decision in our favour, backdated the maximum of 5 years. VAC blamed a delay in my diagnosis by the Canadian Forces, and went out of their way to make no mention of DU, VAC or VRAB behaviour towards us or towards the assessing credibility of medical professionals; they did state "the previous VRAB decision is overturned".

These are the email exchanges Steve Dornan and I had.

[hide details](#) 3:50 PM (1 minute ago)

On October 13, 2011 I sent the following self explanatory email to Steve Dornan;

--- Eric Rebiere <rebiere.eric@gmail.com> wrote:

> ----- Forwarded message -----

> From: Eric Rebiere
<rebiere.eric@gmail.com>

> Date: Thu, Oct 13, 2011 at 12:40 PM

> Subject: Re: Update Federal Court Case re ignored Judicial Reviews

> To: Rosanne and Steven Dornan

<dornan.adpro@ns.sympatico.ca>

>
>> Steve this is very important. Did at
anytime during your dealings with the
> VRAB appeals/Judicial Reviews did any of
the Boards use Section 38(1) of the
> VRAB Act i.e.
>
> The Board may obtain independent
medical advice for the purposes **of any
proceeding** under
this Act and may require an applicant or
appellant to undergo any medical
examination that the Board may direct.
- Show quoted text -

The reply from Steve Dornan on
the same date reads as follows;

from **Rosanne and Steven**
Dornandornan.adpro@ns.sympatico.ca
to Eric Rebiere
<rebiere.eric@gmail.com>

date Thu, Oct 13, 2011 at 3:50 PM
subject Re: Very important question for
Steve
mailed-ns.sympatico.ca
by
Important mainly because of your
interaction with messages in the
conversation.

No VRAB never ever used section 38(1) with any of my appeals or reviews they
never asked for a medical opinion, advice, or sent me to see any VAC
recommended doctor as they could have under 38(1). VRAB overruled and
declared Scientists, Specialists including CF Doctors not credible on THEIR
OWN.

Steve

Again with the authority under the legislation of the VRAB Act, why did the VRAB not
seek out a qualified medical opinion under Sec. 38(1) during the appeal
process, preventing Steve and Rosanne Dornan from having to pay thousands of dollars
for lawyers for two Judicial Review applications when the VRAB could have sought their
own qualified medical opinion? Instead of doing this the VRAB simply on their own
accord dismiss qualified medical evidence submitted by 7 doctors which included
scientists, experts in the field of depleted uranium. Are the Dornan's entitled to their
unnecessary legal cost for two Judicial Reviews?

Within the declined VRAB decision in 2011 of Steve Dornan's claim, the Board ironically dismissed the scientist's evidence which in their opinion held no weight because they were not qualified medical doctors?

A big question comes to mind in regards to the Federal Court decisions stating that the VRAB are not qualified medically. The question is would it be fair to say they the VRAB Board are not qualified scientifically as experts in the study of depleted uranium and what qualifications do they have **scientifically** to dismiss this expert evidence?

Once the 81 favourable Judicial Reviews that I have isolated have been reviewed particularly the critical reasons and decisions by the federal Court Judges of the adjudication of the VRAB, I believe it will be apparent that Steve Dornan is another case wrongfully denied by the VRA Board.

The case of Brian Dyck the former First Gulf War veteran and Ottawa City Police officer falls into the same category as that of Steve Dornan. Brian Dyck was diagnosed with ALS with approx. one year to live and died two weeks after the first Veterans Ombudsman Colonel Pat Stogran's press conference in August 2010.

The Veterans Review and Appeal Board it appears fought hard to prevent Brian Dyck's claim of ALS to be accepted by them even with a US medical study confirming in all probabilities his ALS was caused by an anti Toxin injection he received during the First Gulf War. He had a year or so to live and I ask was the stonewalling Brian Dyck's appeals until his death a motive to prevent the ALS can of worms from being opened and prevent all the other veterans with ALS claims that have piled up over the years from being revisited and accepted by the VRAB.

It took the simple act of Prime Minister Steven Harper intervening and ordering the Minister of Veterans Affairs i.e. the Veterans Review and Appeal Board to accept Brian Dyck's claim. That can of worms was opened due to the embarrassment the Harper Government faced when Brian Dyck spoke at the first Veterans Ombudsman press conference in August 2010. Having a dying veteran with ALS push a rock up a hill for the last year of his life is uncontainable and despicable. The words of the first Veterans Ombudsman pretty well spumes it up and I quote;

“Without substantive and enduring cultural changes to the system that mistreats our veterans, however, to any promise of improvement are as shallow as Brian Dyck's final breaths” Colonel Pat Stogran, 26 October 2010.

Colonel (Retired) Stogran provided me with a Treatise on the Benefit of the Doubt clause in the VRAB Act and these Judicial Reviews certainly supports what he has written. He saw it first and he is absolutely right in the conclusions made and the public statements from his inquire.

Steve Dornan falls into this category that Brian Dyck was in, with another example being the numerous claimants who were exposed to Agent Orange while serving with the Canadian Military in CFB Gagetown in the 1960s.

Does it appear that the Veteran's Review and Appeal Board have been stonewalling Steve Dornan's claim for nearly 9 exhaustive years to not open the **non-Hodgkin's Lymphoma due to inhalation of depleted uranium can of worms?**

Depleted Uranium was used in all sorts of munitions during the war in Bosnia, Kosovo and during the two Gulf wars. The question is how many claims for this disability are or have been before the Veterans Review and Appeal Board which were denied? In an act of complete desperation and frustration, Steve Dornan's wife Rosanne Dornan conducted a sit in protest in the office of the Local Conservative Minister of Parliament for approx 4 weeks as a result of the 2nd favourable judicial review and subsequent Reconsideration hearing by the VRAB being denied again!

Presently the media report that there is an injured Canadian Military Veteran named Pascal Lacoste who was diagnosed with Depleted Uranium poisoning as a result of service in Bosnia who is staging a hunger Strike in front of the office of the Minister of Veterans Affairs in desperation due to the VRAB denying claim of this injured soldier. I do not know how long Pascal Lacoste has been dealing with the VRAB in regards to this depleted uranium poisoning claim but I suspect for a long time. Again I ask how many more injured Veterans with DU poisoning like Steve Dornan and Pascal Lacoste are out there? Have any of them been accepted by the VRAB?

I do believe Steve Dornan had proven his case to the VRAB. The very pointed criticisms of the VRAB adjudication contained in these 81 granted Judicial Reviews by the Federal Court Judges speak for themselves.

Since 199 to 2011 the Federal Courts have been dealing with Judicial Review applications and as a result you will notice the abundance of case law that has been compiled since 1997 even earlier. Case law is an evolutionary process that is used at all levels of the Canadian Courts. This is no different in VRAB related Judicial Reviews adjudicated by the Federal Court Judges. The case law which is these Judicial Review decisions either granted or dismissed play a big part in future Judicial Reviews that the Federal Court Judges use to support or dismiss a case before them. I was employed with the Royal Canadian Mounted Police for 26 years, 24 of which I was involved in criminal investigations. During my time with the RCMP I got to know and had to keep up with "Case Law" i.e. in some cases precedent setting decisions that would decide how the police community would conduct investigations. One case I recall was the *Ascoff* decision which says that an accused trial must be set within a reasonable time or the case is dismissed. All police officers had to adhere to this case law and do what the Federal Courts ruled. No argument.

As I had mentioned the Federal Court Judges dealing with Judicial Review applications make their own case law and refer to past case(s) when making a decision. There is a big

concern here after reading the repetitive erroneous mistakes of law by the VRAB cited by the Federal Court Judges from 1997 to 2011.

One big example is 30 Judicial Reviews where the VRAB in their decisions did not accept evidence from qualified medical doctors and failed to provide their reason why which is contrary to Section 7 of the VRAB Regulations that clearly states the VRAB must do so. Section 7 of the VRAB Regulations state that the VRAB Board must provide reasons. 30 examples of the VRAB not providing decisions from 1997 to 2011 I would say is a huge concern. Now this is 30 examples listed in Issue 2, so I ask how many more examples of denied VRAB Appeals and Reconsideration hearings also fail to provide reasons?

The problem with the VRAB Act unlike the Federal Courts, the Board does not provide their decisions to anyone except the applicant. Who or what body is reviewing the decisions made by the Veterans Review and Appeal Board to make sure the Board is adhering to the direction/case law from the Federal Courts?. Is there some form of quality control and if there is someone responsible for making sure the VRAB members are made current to the Federal Court Case Law/decisions so as to not make the same errors in law and Jurisdiction again he or she is not doing their Job. It is apparent in the 30 examples granted Judicial Reviews criticizing the Veterans Review and Appeal Board for not providing reasons for not accepting evidence such as medical reports by qualified doctors as an example needs to be addressed.

That is why Section 7 of the VRAB Regulations is not being respected by the VRAB in general. A Judicial Review decision where this is mentioned is;

Ladouceur v. Canada (Attorney General) 2006 FC 1438

Date: November 28, 2006

If the Veterans Review and Appeal Board want to play judge within their “Quasi Judicial” Board function that is affecting the lives of a lot of injured veterans and their families, they need to consistently respect the case law/direction provided by the Federal Courts. The Federal Court Judge in this case **The Honourable Madam Justice Mactavish** stated the following in her decision to the VRAB and I quote;

“[22] The need for adjudicative bodies to provide “reasoned reasons” has been recognized by the Supreme Court of Canada in cases such as *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 and *R. v. Sheppard*, [2002] 1 S.C.R. 869, 2002 SCC 26. **While the decision under review in this case is not of the same significance to Mr. Ladouceur that a criminal or immigration decision would have been, it was nonetheless important to him, and he should not be left in any doubt as to how the Board arrived at its conclusion.**

[23] Moreover, section 7 of the Veterans Review and Appeal Board Regulations, SOR/87-601 specifically imposes a duty on the Board to give reasons for its decisions

There is a Supreme Court decision which is the last word in the land and the VRAB appears to not respect even the Supreme Court. There is simply no oversight to make sure the Veterans Review and Appeal Board are doing their jobs properly and in accordance with the law. Again I repeat 30 criticisms since 1997 to 2011. The Chairman of the Veterans Review and Appeal Board has to answer and explain why these mistakes continue to happen for the needless suffering injured veterans and their families have and will go through if the VRAB Act is not changed and their decisions reviewed by a qualified body such as the Federal Courts or by persons with qualified experience with the Courts.

I have written an analysis of the VRAB Act and how it is governed by the Federal Court Act. In short once the injured veteran has been denied by the VRAB he or she is given the option to obtain legal council at his or her own expense and within 30 days file for a Judicial Review with the Federal Courts.

The thing that is most obvious here and a big disadvantage to the injured veteran, is that the Veterans Review and Appeal Board know injured veterans except for a handful each year can not afford to hire a lawyer to file for a Judicial Review. The VRAB have this to their advantage which is why there are only approx. 141 Judicial Reviews since 1997. There are possibly more. Thank god for these 81 injured veterans that fought on because their efforts are not in vain and has provided the proof needed to identify the systemic problems with the Veterans Review and Appeal Board that need to be investigated by the Office of the Veteran's Ombudsman.

I spoke to a Toronto Lawyer recently who deals with Judicial Reviews and learned that once the Federal Court has provided a favorable decision to the injured veteran, the Federal Courts and the Veteran's lawyer have done their jobs and never hear what the outcome of the VRAB reconsideration hearing is. Only the Veteran receives the reply from the VRAB like Steve Dornan. In several examples an injured Veteran has had to pay for a second Judicial Review because the VRAB did not respect the decision of the first Judicial Review. Talk about an injured veteran and their families really being forced to push a rock up a hill. This never ends.

The really big question here is if there has been only a total of 141 Judicial Reviews, how many thousands of injured veterans out there Military and RCMP who could not afford the cost of a lawyer to apply for Judicial Review and had the same questionable treatment by the VRAB ? I shudder to think but I believe it's in the thousands.

Another example of a professional body stepping up and providing help Pro Bono is the **Ontario Trial Lawyers Association** which understands that Veterans are at a disadvantage financially when dealing with the Veterans Review and Appeal Board understand what injured veterans are up against. .

Section 3 of the VRAB Act states and I quote;

“Construction

3. The provisions of this Act and of any other Act of Parliament or of any regulations made under this or any other Act of Parliament conferring or imposing jurisdiction, powers, duties or functions on the Board shall be liberally construed and interpreted to the end that the recognized obligation of the people and Government of Canada to those who have served their country so well and to their dependants may be fulfilled.”

This means that the Veterans Review and Appeal Board are bound by law to respect the Veterans Review and Appeal Act, the Federal Court Act which governs countless Federal Boards and Commissions, the Pension Act and most of all the Charter of Rights and Freedoms. Section 15 of the Charter of Rights and Freedoms states and I quote;

Equality Rights

15. (1) Every individual is equal before the and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

***(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.*(5)**

By ignoring the decisions/direction and case law of the Federal Courts, is it fair to take the opinion that under Section 15 of the Charter of Rights and Freedoms that the Veterans Review and Appeal Board are denying injured Veterans the irrevocable right to have equal protection and benefit of the law i.e. the Federal courts decisions and direction.

The Charter of Rights was written in a way that any Canadian can understand it. That said the **really big question** that needs to be addressed i.e. is the Veterans Review and Appeal Board denying injured Veterans both Military and RCMP the right to the benefit of the Federal Courts by not accepting the Federal Courts decisions when a Judicial Review is granted and sent back to the VRAB for reconsideration which is denied by the VRAB and in some cases like Steve Dornan case twice? .

Within the 81 Judicial Reviews and decisions sent back to the VRAB for reconsideration, I have identified 14 Federal Court decisions from 1997 to 2011 where the Veterans Review and Appeal Board were reminded in the said decisions, to respect Sections 3 and 39 of the VRAB Act for what they were meant for and I quote;

Mackay v. Canada (Attorney General) Date: April 24, 1997

“Still always bear in mind the dictates of Section 3 and Section 39 of the *Veterans Review and Appeal Board Act.*”

"MAX M. TEITELBAUM"

J U D G E

OTTAWA April 24, 1997

Thériault v. Canada (Attorney General) 2006 FC 1070 Date:
September 8, 2006

[60]

The Board acted in violation of the provisions of sections 3 and 39 of the VRABA. It selectively approved the conclusions least favourable to Mr. Thériault; it questioned uncontradicted evidence and refused to recognize the medical opinions establishing that it was likely Mr. Thériault's ailment arose during his military service. Further, the Board did not obtain an independent medical opinion and relied on its self-proclaimed medical expertise.

[62] The Board stated that it was aware of its duty under sections 3 and 39 of the VRABA; however, it did not act in accordance with the requirements of its enabling legislation and this constitutes a reviewable error.

“Michel M.J. Shore” Judge

Issue number 16 titled THE VETERANS REVIEW AND APPEAL BOARD NOT RESPECTING SECTION 27.(1) AND 27.(2) OF THE VRAB ACT UNDER THE HEADING OF “Appeal Panel” and “Prohibition” respectively and the direction of the Federal Courts.

I had the pleasure to speak with Ike Teubert a former Cpl. in the RCMP who has had to go to the Federal Courts twice in regards to a serious back condition that involved surgery. In his two Judicial Reviews noted below, both Federal Court Judge Max M. Teitelbaum on September 18, 2000 and Federal Court Judge Dolores M. Hansen on June 4, 2002 heard Mr. Teubert's request for Judicial Reviews which were granted. As stated below both Judges ordered the Judicial Reviews to be sent back to the Veterans Review and Appeal Board to be heard before a newly constituted Veterans Appeal Board for reconsideration.

Teubert v. Canada (Attorney General) Date: September 18, 2000

“Max M. Teitelbaum”

J.F.C.C.

Ottawa, Ontario

September 18, 2000

Teubert v. Canada (Attorney General) 2002 FCT 634 Date:
June 4, 2002

"Dolores M. Hansen"

J.F.C.C.

Ottawa,

Ontario

June 4, 2002

In issue 16 Mr. Teubert sent me copies of his Entitlement Review dated November 9, 1998 at Red Deer Alberta VRAB file **5429840** in regards to a disability claim for

- Spinal Stenosis
- Lead Poisoning
- Hearing Loss

All three claims were denied. There were 3 Board members presiding at Mr. Teubert's Review that day in Red Deer Alberta in 1997. There was the Presiding member David B. Ells, Arthur L. Reil and the third was identified as (name vetted) as a result of Mr. Teubert asking his representative from the Bureau of Pensions Advocates Nancy Hobson who the third Board member was.

Mr. Teubert stated that Mr. (name vetted) had taken an active roll in the review. A tape recording of the proceedings was done. When Mr. Teubert received his official notification letter from the Veterans Review and Appeal Board dated November 9, 1998 stating that his three claims were denied. The VRAB letter only indicated two names i.e. presiding member, David B. Ells and Arthur L. Reil and no mention of (name vetted) that was there as indicated by Mr. Teubert's BPA lawyer Nancy Hobson.

Mr. Teubert found it odd that (name vetted) name was not included on the document considering he took a very active roll in the review by asking questions about Mr. Teubert's three issues.

At the beginning of the review (name vetted) asked Mr. Teubert what nationality he was and replied he was of German origin which Mr. Teubert found very odd and in particular a very irrelevant question to ask. (Name vetted) was described by Mr. Teubert as having an attitude of hostility towards him and wondered if the fact that he was German may have been the reason. He is not sure. Never the Less it is fair to say that (name vetted) was present and a part of the Review Hearing and in the determination of the results even though his name did not appear on the VRAB letter of decision. Mr. Teubert appealed and was again denied by the VRAB. Was it possible that (name vetted)

did not include his/her name on Mr. Teubert's Review Hearing results because he/she wanted to be involved in the Appeal/Reconsideration phase dealing with Mr. Teubert's Claim? A fair question to ask.

Mr. Teubert end up having to hire a lawyer and filed a request with the Federal Courts for a Judicial Review which took place on September 18, 2000 and the presiding Judge, the Honorable Justice Max M. Teitelbaum granted the application for Judicial Review. The subsequent Reconsideration hearing by the VRAB also denied Mr. Teubert his claim for compensation for the claim for the duty related injury to his back.

Mr. Teubert again hired a lawyer and filed for a second Judicial Review with the Federal Courts. On June 4 2002 Madam Justice Dolores M. Hansen granted Mr. Teubert's his second reconsideration hearing to be heard by the Veterans Review and Appeal Board. Judge Hansen made the follow order and I quote;

[37] "Accordingly, the application for judicial review is allowed and the matter is remitted for reconsideration by a differently constituted panel of the VRAB in accordance with these reasons. "

HANSEN J.

Ottawa, Ontario June 4, 2002

On October 16, 2003 Mr. Teubert was represented by Mr. Keliher from the Bureau of Pensions Advocates and was of the position that the present panel consisting of (name vetted)the Presiding member, (name vetted) and Mr. John Wigmore was not properly constituted and that (name vetted) and (name vetted) had lost Jurisdiction. Mr. Keliher did not elaborate to the reasons why (name vetted) and (name vetted) had lost Jurisdiction. Could it be that Mr. Keliher knew (name vetted) was part of Mr. Teubert's initial Review Hearing back in 1998?

The panel concluded the following;

The panel believes that it is a properly constituted panel of the Board and that it is capable of hearing, determining and dealing with the matter as required by the Act. Therefore the panel views itself as having the jurisdiction to continue with the matter. The matter will be rescheduled for the next available date on which all members of the current panel can be brought together for a hearing. At the hearing which will take place on that

On October 16, 2003 (name vetted)was the Presiding member of the panel when Mr. Charles Keliher from the Bureau of Pensions Advocates represented Mr. Teubert in regards to his claim for "Spinal Stenosis Operated". If (name vetted) was part of the initial Review Panel in 1998, Mr. Keliher was correct in stating that (name vetted)had

lost jurisdiction to hear Mr. Teubert's reconsideration case which resulted in his objection simply being set aside by (name vetted).

The Veterans Review and Appeal Board Act Section 27 (1) and 27(2) are very clear on the manner of forming of an appeal/ Reconsideration Board and are as follows;

Appeal panel

27. (1) An appeal shall be heard determined and dealt with by an appeal panel consisting of not fewer than **three members designated by the Chairperson.**

Prohibition

(2) A member of a review panel may not sit on an appeal panel that has been established to hear an appeal of a decision made by that review panel.

The Veterans Review and Appeal Board Regulations under Section 7 clearly state the following;

DECISIONS

7. Every decision of the Board shall

(a) state the issue on review, reconsideration or appeal, or the question of interpretation;

(b) state the reasons for the decision;

(c) state the names of the members who took part in the decision;

On May 5, 2004 the Reconsideration Hearing decision after two costly applications for Federal Court Judicial Review Mr. Teubert finally was granted his entitlement for his back condition. Mr. Teubert learned that (name vetted) was against the granting of Mr. Teubert's pension compensation despite that (name vetted) should not have been on this Reconsideration hearing for the previously stated reasons.

The on December 1, 2004 (name vetted) was again the Presiding member of the Panel to her Mr. Teubert's Reconsideration hearing initiated by Charles Keliher from the BPA.

If this is the case and if it were confirmed that (name vetted) was in fact part of the 3 person panel at Mr. Teubert's initial Review Hearing in Red Deer Alberta in 1998 would it be reasonable to assume that the direction of Madam Justice Hansen, Section 27(2) of the VRAB Act and Section 7 of the VRAB Regulations were not respected? (Name vetted) still sits on the Veterans Review and Appeal Board to date.. How many other cases like this have taken place with these similar circumstances ?

To think a seriously disabled RCMP veteran who had to spend thousands of dollars for two Judicial Reviews when a qualified medical opinion under Section 38(1) could have

been obtained by the VRAB Appeal Board earlier during the appeal phase could have sparing this injured veteran pain and money of seeking two Judicial Reviews. Again if this is the case is Mr. Teubert entitled to his legal costs being reimbursed to him?

In speaking to both Mr. Teubert and his wife, Mr. Teubert has gone through hell while dealing for years with the VRAB not to mention dealing with serious medical issues. Mr. Teubert a former Cpl. in the Royal Canadian Mounted Police and like many have spent years protecting society as an RCMP officer and selflessly sacrificing part of his health in doing so. Presently Mr. Teubert can barely walk and his spine is supported by titanium rods.

The Honourable Madam Justice Tremblay-Lamer stated in her decision

Lebrasseur v. Canada (Attorney General) 2010 FC 98 Date:
January 28, 2010 **Citation: 2010 FC 98**

Date: 20100128

Docket: T-944-09

[23] In my view, this interpretation of the terms “arose out of” is well-suited to the *Pension Act*. I note that Parliament, in its wisdom, has seen it fit to make clear the *Pension Act* “shall be liberally construed and interpreted to the end that the recognized obligation of the people and Government of Canada to provide compensation to those members of the forces who have been disabled ... as a result of ... service ... may be fulfilled.”

The Honourable Madam Justice Tremblay-Lamer

Ottawa, Ontario, January 28, 2010

I have been in contact with Mr. Ladouceur who has supplied me with a letter from his point of view in regards to Reconsideration hearing results.

The following is from the VRAB site in regards to the benefit of the doubt and how the VRAB understand how it is applied.



[Home](#)>[Information Sheets](#)> [Benefit of Doubt](#)

Benefit of Doubt

The panel members of the Board decide each case on its own merits, and in reaching a decision, they resolve doubt in favour of the applicant as required by section 39 of the [Veterans Review and Appeal Board Act](#) (Opens a New Window). That doubt, however, must be reasonable and must derive from a careful analysis of the evidence (i.e. documentary evidence, medical evidence).

To explain further, section 39 of the Act consists of three parts:

- The first requires that adjudicators draw from all the circumstances of the case and all the evidence presented to them every reasonable inference in favour of the applicant.
- The second requires that adjudicators accept any uncontradicted evidence presented by the applicant that they consider to be credible in the circumstances.
- The third requires that adjudicators resolve in favour of the applicant any doubt, in the weighing of evidence, as to whether the applicant has established a case.

The Federal Court of Appeal has stated that section 39 ensures that the evidence in support of an application is considered in the best light possible. However, section 39 does not relieve the applicant of the burden of proving, on a balance of probabilities, the facts required to establish entitlement to a pension or award. Nor does section 39 require the Board to accept all evidence presented by the applicant. The Board is not obliged to accept evidence presented by the applicant if the Board finds that evidence not to be credible, even if the evidence is not contradicted. In these cases, the Board may be obliged to explain why it finds evidence not to be credible.

Applying the Benefit of Doubt provision

The *Veterans Review and Appeal Board Act* requires the Board to give disability compensation applicants the benefit of doubt in the weighing of evidence in every case that comes before the Board.

The disability compensation appeal process is designed to give applicants every chance to establish that their disability is related to military service. That being said, it still remains the applicants' (and their representatives') responsibility to provide sufficient credible evidence to support their claim and establish their case.

While the legislation requires that every applicant be given the benefit of doubt, that does not mean that every case will succeed or that any submission by an applicant must automatically be accepted by the Board. The evidence must be credible and must be reasonable.

Even if an applicant firmly believes his or her disability is related to military service, he or she must present credible evidence of the existence of a permanent disability and of the required relationship to the applicant's service. For claims involving peace time service, it is not sufficient that a disease or injury has occurred during the period of service. There must be credible evidence to establish that the condition was causally related to the service, as required by the legislation.

Federal Court decisions

A number of rulings by the Federal Court have provided the Board direction regarding the benefit of doubt provisions (sections 3 and 39 of the *Veterans Review and Appeal Board Act*):

In the case of *Schut v. Attorney General of Canada* (2003), the Court stated that "The Applicant argues that all he needed to do in this case was to raise a doubt . . . If such a doubt can be raised, he contends, then s. 39 of the *Veterans Review and Appeal Board Act* dictates that a finding must be made in the Applicant's favour. But the jurisprudence suggests that s.s. 3 and 39 of the *Veterans Review and Appeal Board Act* do not relieve the Applicant of the burden of establishing, on a balance of possibilities and with the evidence considered in the best light possible, that the disability is service-related."

In the case of *Tonner v. Canada* (1995), the Court stated that "My reading of section 3 and subsection 10(5) not lead me to interpret the sections so as to read that whatever submission is made by a veteran, that submission must automatically be accepted by the members of the VRAB. The evidence must be credible and must be reasonable. . . ."

In the case of *Irving v. The Minister of Pensions* (1944), the Court stated that "The doubt must of course be a reasonable doubt and not a strained or fanciful acceptance of remote possibilities."

In the case of *King v. Attorney General of Canada* (2001), the Court stated that "Section 39 provides that the VRAB must accept all uncontradicted evidence, but this does not mean it must accept all evidence. If the VRA of the opinion that the evidence is not credible, it can reject it."

In the case of *Elliot v. Canada (Attorney General)* (2003), the Court stated that "If the direction to draw ever reasonable inference is to have meaning, it must apply in cases where an inference would not be drawn on a balance of probabilities. A reasonable inference is therefore one that is not necessarily probable but must nonetheless be more than a mere possibility."

Notes

This is not a legal document. For precise, legal information, please consult the *Veterans Review and Appeal B Act* and its related regulations on the Board's Web site www.vrab-tacra.gc.ca or phone 1-800-450-8006 toll f

Date Modified: 2011-09-28

In reading the following that is contained in the VRAB web site in regards to the Benefit of the Doubt under Section 39 of the VRAB Act.

A 20 year old soldier just back from Afghanistan injured with severe PTSD, whose claim has been denied is faced with the next option of appealing the Boards Review Decision. As a former member of the Royal Canadian Mounted Police officer, I am familiar with Federal court Acts and have had to relate to them during my activities as a criminal investigator/intelligence officer during my 24 years of active service.

In the case of this young soldier who had just been diagnosed with sever PTSD suffering from depression, anxiety just starting to get treatment goes to the VRAB site to know more about this VRAB Board that just decline his or her disability claim and reads the following;

The Board is not obliged to accept evidence presented by the applicant if the Board finds that evidence not to be credible, even if the evidence is not contradicted. In these cases, the Board may be obliged to explain why it finds evidence not to be credible.

So the soldier reads on after getting the understanding that the Veterans Review and Appeal Board has the power to reject non contradicted evidence that the Board deems not credible and to top it off **the Board MAYBE obliged to explain the reasons** why this non contradicted evidence was seen as not credible and therefore dismissed.

Ok the young injured soldier now looks at the bottom of the page of the VRAB Benefit of the Doubt page and reads segments of Federal Court Decisions probably for the first time in his or her life. The one case that stuck out to me was *King V. Attorney General of Canada* (2001). The injured young soldier who is very experienced in marksmanship,

military tactics, weapons handling etc. reads the Federal Court Decisions which as I stated very new to the individual.

The young soldier reads the following in the King v. Attorney General of Canada which ironically resulted in the Judicial Review Application being granted and the VRAB decision quashed and sent back to the VRAB for Reconsideration due to errors in law and Jurisdiction. The young injured soldier will obviously get the impression that the VRAB Board can does not have to accept all evidence and can reject uncontradicted evidence and that they the VRAB Board deem NOT CREDIBLE. The young soldier will get the impression the VRAB have a lot of power.

In the case of King v. Attorney General of Canada (2001), the Court stated that “Section 39 provides that the VRAB must accept all uncontradicted evidence, but this does not mean it must accept all evidence. If the VRAB is of the opinion that the evidence is not credible, it can reject it.”

At the bottom of the page reads as follows adding confusion stating that this is not a legal document and the young soldier should read the Veterans Review and Appeal Board Act and its Regulations on the VRAB website and if there are any questions call this toll free number. This young injured soldier then thinks about all of this and how can he or she not get the impression that the VRAB Board has a lot of power over evidence and having been denied once what chance will he or she have continuing to fight the claim?

Notes

This is not a legal document. For precise, legal information, please consult the Veterans Review and Appeal Board Act and its related regulations on the Board's Web site www.vrab-tacra.gc.ca or phone 1-800-450-8006 toll free.

Well these excerpts from the VRAB Benefit of the Doubt page is meant to unfairly discourage injured soldiers not failure with Federal Court Acts not to mention legal decisions made by the Federal Courts from continuing with appeal and having PTSD will add to the discouragement in a big way. The VRAB will argue that these young soldiers have the Bureau of Pensions Advocates to advise them. The point here is that if these young soldiers are discouraged by reading the stated VRAB publication and don't bother to consult the BPA to appeal and just give up.

I have identified 31 Federal Court Judicial Reviews that were granted in favor of the applicant criticizing the Veterans Review and Appeal Board for NOT ACCEPTING MEDICAL EVIDENCE WITHOUT PROVIDING REASONS and are listed in the index under Issue 2. I will quote from the Federal Court case decision that took place way back in 1997;

Mackay v. Canada (Attorney General) Date: April 24, 1997

CONCLUSION

The decision of the VRAB dated June 21, 1996 is set aside. The proceeding is remitted to the VRAB to be decided on a basis not inconsistent with these reasons for judgment. Specifically, the VRAB should accept Dr. Murdoch's evidence and give the applicant the benefit of every reasonable inference on the basis of this evidence if it finds the evidence to be credible. However, if the VRAB is not prepared to accept the evidence as credible, it should provide reasons for its refusal and conclusion of non-credibility, and still always bear in mind the dictates of Section 3 and Section 39 of the *Veterans Review and Appeal Board Act*. Furthermore, the applicant should be given an opportunity to request an oral hearing and make oral submissions, if he so desires.

"MAX M. TEITELBAUM" J U D G E, OTTAWA April 24, 1997

The VRAB Benefit of the Doubt excerpt on their web page that states that "The Board is not obliged to accept evidence presented by the applicant if the Board finds that evidence not to be credible, even if the evidence is not contradicted. In these cases, the Board may be obliged to explain why it finds evidence not to be credible." is nothing but untrue.

It has been the position of the Federal Courts that the VRAB **will provide reasons** for not accepting evidence it deems not credible . I have in fact 31 examples of similar Federal Court Ruling from 1997 to 2011. I have not idea where the Board has the option to "Maybe be obliged to explain its reasons unless ordered by the Federal Courts? Unbelievable.

Further to this Section 7 of the VRAB Regulations published in 1996 state very specifically the following

DECISIONS

7. Every decision of the Board shall

(a) state the issue on review, reconsideration or appeal, or the question of interpretation;

(b) state the reasons for the decision;

(c) **state the names of the members who took part in the decision;**

(d) include the signature of at least one of the members who took part in the decision;

If one reads further in the Decision Federal Court Judge Marc Nadon dated May 29, 2001, Judge Nadon

[39] Pursuant to section 39 of the *Veterans Review and Appeal Board Act*, the VRAB must draw from the evidence presented to it every reasonable inference in favor

of the applicant and accept any uncontradicted evidence presented to it by the applicant that it considers to be credible in the circumstances. Section 39 provides that the VRAB must accept all uncontradicted evidence, but this does not mean it must accept all evidence. If the VRAB is of the opinion that the evidence is not credible, it can reject it, as stated by Cullen J. in *MacDonald, supra*, at paragraph 22:

It is settled law that a tribunal does not have to make an explicit written finding on each element which leads to its ultimate conclusion; indeed, there is a presumption that the tribunal has dealt with all of the documents which were placed before it: *Henderson v. Canada (Attorney General)* (1998), 144 F.T.R. 71 (T.D.). However, this is tempered, or qualified, by section 39 of the *Veterans Review and Appeal Board Act*, which requires that when new and credible evidence is presented during a reconsideration proceeding, the Board has a duty to consider and weigh the evidence, drawing every reasonable inference in the applicant's favor. This does not mean that the Board must automatically accept whatever submission is made by a veteran; rather, the evidence must be accepted if it is credible and reasonable, and uncontradicted.

[40] It is clear that the VRAB can consider and weigh the evidence submitted and assign to that evidence the weight it considers appropriate. However, the evaluation of the evidence must always be done in conformity with sections 3 and 39 of the *Veterans Review and Appeal Board Act*, which means that the VRAB must accept the evidence submitted unless it makes a determination with respect to the lack of credibility of the evidence or unless the evidence is contradicted by other evidence submitted. In *Wood v. Canada (Attorney General)*, [2001] F.C.J. No. 52 (T.D.), MacKay J. stated the following with respect to evidence before the VRAB and the consequences of rejecting evidence contrary to section 39, at paragraph 28:

The Board may reject the applicant's evidence when it has before it contradictory medical evidence. However, while there may be an absence of evidence in the form of definitive medical documentation about the injury claimed, where there is no contradictory evidence and **the Board does not accept the applicant's evidence without explanation of that, it commits an error that goes to jurisdiction [...]**. A decision of the Board that errs in the exercise of its jurisdiction, is unreasonable and warrants intervention by the Court. The standard of patent unreasonableness, in my opinion, is not apt if the error concerns the exercise of the Board's jurisdiction.

Is this an effort for the VRAB to discourage legally inexperienced soldiers suffering an injury to simply give up because the VRAB gives the perception of having a lot of power and the young injured soldier thinks well they have rejected my application already once or I deserve more but I will probably loose. I give up?

Is the VRAB themselves being reasonable in quoting just part of a Federal Court decision that it implies they have the power to reject evidence that it deems not credible without adding the well documented fact in numerous Federal Court decisions that the Veterans Review and Appeal Board **have to provide REASONS** for not accepting evidence?

Simply is this irresponsible for the VRAB to post part of the truth and not all of it? Is this contrary to being fair and transparent and forces soldiers to find out the rest of the story themselves if they have the will and energy to do so?

Does the VRAB website need to be addressed in regards to what message its sending to these young injured legally inexperienced soldiers. The question here is how many have just given up because of this VRAB Benefit of the Doubt information?

Is it important that these young legally inexperienced injured soldiers to simply know where they stand when dealing with something entirely new them i.e. dealing with the Veterans Review and Appeal Board?

Another important question that needs to be asked in general, is their an element of "Willful Blindness" on the part of the VRAB? It is defined by the following;

Wilful Blindness

Contrived Ignorance: Willful Blindness

While a failure to inquire may be evidence of recklessness or criminal negligence, as for example, where a failure to inquire is a marked departure from the conduct expected of a reasonable person, wilful blindness is not simply a failure to inquire but "deliberate ignorance."

A court can properly find willful blindness only where it can almost be said that the defendant actually knew. He suspected the fact; he realized its probability; but he refrained from obtaining the final confirmation because he wanted in the event to be able to deny knowledge. This and this alone, is willful blindness. It requires in effect a finding that the defendant intended to cheat the administration of justice. Any wider definition would make the doctrine of willful blindness indistinguishable from the civil doctrine of *negligence* in not obtaining knowledge. [Italics added.]

The question of Willful Blindness on the part of the VRAB needs to be asked in light of the stated Judicial Reviews and the repeated errors the VRAB are making in Law and Jurisdiction as demonstrated by the Federal Courts Judicial Reviews.

If the main expenditure for Veterans Affairs Canada is disability awards to injured veterans and Mr. Harper's government has indicated within this last year through leaked VAC documents the intention to cut VAC's budget by forty million dollars a year, is it reasonable to conclude that the Veterans Review and Appeal Board has to deny legitimate claims of legitimately injured Military and RCMP veterans in order to stay within what's left of the budget? The disability claims continue to grow and the VAC budget to deal with injured veterans of the Afghan war and other Special Duty Areas continue to shrink. Simply Cause and effect that is not to hard to see.

A recent news article from the Globe and Mail which is listed in the index states that the Harper Government is decreasing the Veterans Affairs Budget by 5 times more than the previously stated Forty Million dollars.

Is it a fair question to ask that the Harper Government is saying one thing and doing the opposite i.e. considering the large budget cuts to Veteran's Affairs keeping in mind the main expenditure VAC is disability payments to injured Military and RCMP veterans.

THE GLOBE AND MAIL 

Veterans Affairs faces more than \$226-million in cuts

Murray Brewster

Ottawa— The Canadian Press

Published Friday, Oct. 14, 2011 5:53PM EDT

Last updated Friday, Oct. 14, 2011 5:58PM EDT

What I find amazing is that Prime Minister Harper signed the Veterans Bill of Rights in 1996 which a copy is attached to this complaint. The Veteran is stated in the Veteran's Bill of Rights in the following;

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 UPHOLD.



The Right Honourable Stephen Harper, P.C., M.P.
Prime Minister of Canada

Le très honorable Stephen Harper, C.P., député
Premier ministre du Canada

On n 4 April 2007 The Honourable Mr. Justice Harrington heard the request for Judicial Review from ANNIE MacKENZIE the surviving spouse of MELVIN MacKENZIE a veteran that had sacrificed for Canada. This is a truly sad story (one two that are included in the 81 Judicial Reviews) of how a deceased veterans spouse was treated by the Veterans Review and Appeal Board and the following excerpt from the Federal Court Judge says it all;

THE DECISION UNDER REVIEW

[36] What was before the Board was Mrs. MacKenzie's appeal from the refusal of the Assessment Review Panel in June 2004 to give retroactive effect to the increased disability finding. There was no cross-appeal on the Review Panel's decision to reassess at 50 per cent, up from 35 per cent.

[37] In its decision of 23 December 2004, the one under judicial review here, the Board refused to disturb the Review Panel's decision. In fact it was of the view that there had been no evidence to justify the increase to 50 per cent. It said:

This Board, upon carefully reviewing the 2 June 2004 decision of the Assessment Review Panel agrees with the Advocate that the Panel had absolutely no new evidence before it upon which to award the increase to 50% from 35%.

In fact, the Board finds the Panel to have been exceedingly generous in that award and can only assume that it was based primarily on a determination to ensure Mrs. MacKenzie was eligible for a full widow's pension. Certainly there is no evidence of any other rationale. Therefore, the Board finds that the Panel has heavily relied on the provisions of Section 3 of the *Veterans Review and Appeal Board Act* in making this award.

In keeping with the spirit of that generosity and to ensure no financial penalty is imposed upon Mrs. MacKenzie, the Board will make no adjustment to the 50% assessment level. However, as the award appears to have been made only as a result of the widow's request for an increase and on no other probative or medical evidence, the date of application for that increase is the proper relevant date for retroactivity.

Providing every possible benefit of the slightest reasonable doubt to Mrs. MacKenzie, the Board affirms the Review Panel's decision of 2 June 2004.

[38] This paternalism; this smugness does not sit well. It is small wonder that Mrs. MacKenzie thinks she has been treated as a beggar!

56] Unfortunately, there is no such provision in the *Pension Act*. **While it may be said that the contributors to the Canada Pension Plan have paid money for their benefits, members of the Canadian Forces and their families have paid with their lives, their blood, and their sacrifices.**

[57] While the *Pension Act* is silent, section 34 of the *Veterans Review and Appeal Board Act* contemplates compassionate awards, although the amount of such an award may be limited in amount. **Furthermore, on 4 April 2007, the Prime Minister, in speaking to scores of former soldiers, said his government was delivering on an election promise to ensure veterans get the respect they deserve from Ottawa. An ombudsman's office was created, with a bill of rights, which will apparently allow Veterans Affairs to ensure each veteran is treated with the "fairness, dignity and respect to which he or she is entitled."**

[58] Melvin and Annie always did the right thing by us. When shall we do the right thing by them?

The Honourable Mr. Justice Harrington , Ottawa, Ontario, May 3, 2007

What did the Honourable Mr. Justice Harrington mean by “**which will apparently** “allow Veterans Affairs to ensure each veteran is treated with the” “fairness, dignity and respect to which he or she is entitled.” It sounds like lets wait and see.

Conclusion

These are just a number of examples of the 16 issues I have identified in the stated Judicial Reviews that I have referred to in this complaint. Without the existence of these Judicial Reviews these issues would have never been identified and would have remained unknown like the countless injured veterans all across this country alive and dead who may have been wronged by the Veterans Review and Appeal Board and not privileged to the debt owed to them for their sacrifice by the people and the Government of Canada in the name of defending this country both here and abroad.

Is the Veterans Review and Appeal Board dysfunctional, does it really operate at arms length as they claim considering it is public knowledge that all the appointments are political Patronage appointments. How can an individual rewarded by a government in power be provided a job on the VRAB with an excellent salary and benefits, stay at arms length from the appreciative government that gave them the Job in the first place?

Is this a conflict of interest that needs to be addressed? Should their be properly qualified judiciary conducting these VRAB Review, appeals and Reconsiderations? Are injured veterans being provided an even playing field by the VRAB?

What these Federal Court Judicial Reviews indicate is that there is no consistency by the VRAB who continue to make the same legal and jurisdictional errors over and over again (1997 to 2011) to the detriment of those injured Military and RCMP service personnel that the Government has asked to fight and support the efforts in the War in Afghanistan and other Special Duty Areas not to mention protecting Canadian society here in Canada as well.

I do not pretend to be a lawyer or a judge but a professional investigator with 24 years of investigative experience with the Royal Canadian Mounted Police. What I have done here is compiled information in the form of 81 Federal Court Judicial Reviews critical of the adjudication of the VRAB, analyzed them and from the Judge’s own words in their decisions, identified 16 issues that on behalf of all injured veterans, Military and RCMP need to be looked at.

These issues and possibly more that I missed, need to be addressed by the office of the Veterans Ombudsman in order to evaluate if this 81 Judicial Reviews are the tip of the iceberg and are just a number of examples of a more wide spread problem to the

detriment of injured veterans and their families who never had the luxury of a granted Judicial Review by the Federal Courts.

The intention here is not to ask the Veterans Ombudsman's office to interfere with the VRAB decisions but to see this information in regards to systemic problems within the Veterans Review and Appeal Board and how they operate. Other questions needed to be address is how the VRAB a "Quasi Judicial Board " consisting of persons from all walks of life are educated in Judicial practices, Federal Court Acts , Federal Court decisions and the Case Law that is a result of these decisions. How frequently are the VRAB Board members are updated with new case Law and information so as to be consistent? Who is responsible for this educational requirement and is it in fact consistent?

I understand that the Veterans Ombudsman's office has hired a law firm to look into the Veterans Review and Appeal Board and I do hope that this analysis will be of assistance to them.

The people of Canada and the Canadian Government have an obligation to those asked to go to war, to serve in Special Duty Areas and to take care of those that return injured. This is **a moral obligation** between the People of Canada, the Government of Canada with all injured veterans that seems to be eroding at the hands of the Harper Government.

As indicated I am submitting this complaint about the VRAB by the Canadian Veterans Advocacy on behalf of injured Military and RCMP veterans who believe they have been unfairly denied disability claims.

Replies or requests for further information by the Veterans Ombudsman can be directed to me and the President of the Canadian Veterans Advocacy Mike Blais. Our Contact information is as follows;

Eric Rebiere (Former Cst. RCMP 37515)
Charter Member Canadian Veterans Advocacy
613-352-8765
196 Somerset Drive
P.O Box 17
Bath, On.

Michael L Blais CD
Founder/President, Canadian Veterans Advocacy
6618 Harper Drive, Niagara Falls, On, CA.
L2E 7K6 // 905-357-3306

This is a message to all injured Veterans from the Canadian Military and the RCMP who have not gone to the Federal Courts for a Judicial Review but feel they have been unfairly denied a legitimate injury claim. These 81 granted Judicial Reviews from 1997 to 2011 are just the tip of the iceberg.

This is your opportunity to make a comparison to see if your denied claim was unfairly dealt with. You must be the judge of that conclusion.

Three issues that I have identified you need to be mindful of.

One involves the VRAB not using Section 38(1) of the VRAB Act which states

Medical opinion

38. (1) The Board may obtain independent medical advice for the purposes of any proceeding under this Act and may require an applicant or appellant to undergo any medical examination that the Board may direct.

If they did not use this section and disregarded medical evidence without providing qualified medical reasons and particularly not using Section 38(1) early in the appeal process there is an issue especially if they dismissed qualified medical evidence without reasons. Stating the Board feels that a medical report from a qualified doctor lacks credibility does not constitute a reason.

It is in the VRAB legislation that the VRAB have the power to do this and why not use this section early in the game preventing unnecessary future appeals if it can satisfy a medically related issue submitted by the injured Veteran again preventing unnecessary future appeals.

The second and third issues involves Section 7 of the VRAB Regulations which state;

DECISIONS

7. Every decision of the Board shall

(a) state the issue on review, reconsideration or appeal, or the question of interpretation;

(b) state the reasons for the decision;

(c) state the names of the members who took part in the decision;

(d) include the signature of at least one of the members who took part in the decision;

If the VRAB denies your injury claim and disregards qualified medical evidence from qualified medical doctors without stating qualified medical reasons why this medical evidence was refused is contrary to Section 7(b) of the VRAB Regulations and is an issue. A number of Federal Court decisions with respect to Judicial Reviews state that the VRAB must state their reasons for dismissing evidence.

If their were Board members on a Review or an appeal panel that did not list their name on a decision they were involved with this is contrary to Section 7(c) where all board members involved must state their names on the decision.

The third issue is to check to make sure a board member that sat on your VRAB Review panel has not sat on your VRAB Appeal panel because this is contrary to Section 27(2) of the VRAB Act which states;

**Prohibition
Appeal panel**

27. (1) An appeal shall be heard determined and dealt with by an appeal panel consisting of not fewer than three members designated by the Chairperson.

(2) A member of a review panel may not sit on an appeal panel that has been established to hear an appeal of a decision made by that review panel.

You must look at all your VRAB decisions starting with who sat on the review panel and cross reference the names of the VRAB Board members that have been on your appeal panels. If this is the case and a Board member sat on both who should not have, you have an issue.

There is one case mentioned in this complaint to the Veterans Ombudsman's Office where this allegedly took place i.e. not only did a VRAB panel member not put their name on the decision but sat on both review and appeal panels of the same injured veteran. This is alleged and is of course subject to confirmation by the Office of the Veterans Ombudsman's office.

In regards to the other issues mentioned go over them, and then go over your denied VRAB decisions starting at day one and see if any of them apply to you.

To go over the decisions mentioned go to the Federal Court web site at

http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/fc_cf_en/Index

If the link does not work just Google - Federal Courts.

Choose “Decisions” and once they enter Veterans Review and Appeal Board into the box stating “**containing these words**”. Make sure the box Federal Court is checked. You will have 215 Federal court decisions of which the 81 decisions I found were located.

Now press down on the Control key and then the F key and a search box will come up.

Cut and paste the surname listed in the case you are searching in the search box. The search function will go to the case name and pay attention to the year because some vets have been to the Federal Courts for Judicial Review more than once.

Click on the case name and the Judicial Review will come up. The first part states what the applicant is claiming then the following is the applicant and respondent arguments.

You can go over this but most importantly go to the end of the Federal Court decision and read the **analysis and conclusion of the Judge** which will end in the judgment stating the VRAB decision is set aside or quashed and will be sent back to the VRAB for Reconsideration. The judge will state and is the case in all these 81 Judicial Reviews that the VRAB are to convene a new board constituted with **new members** of the Board. This is a Judges order which the VRAB has to comply with and is one of the issues.

If you have identified issues from the decisions of the Federal Court Judges that apply to your Review Hearing and subsequent denied Appeal by the VRAB you can make an online complaint to the Office of the Veterans Ombudsman. If you feel you have been wronged by the VRAB which is a determination you must make, make the complaint.

Now that we have these 81 Judicial Review to work with **it is important in this next phase to reach out to all injured Vets who have been denied legitimate claims by the VRAB and submit a complaint to the Veterans Ombudsman.**

This is more ammunition for the Ombudsman’s office which will provide them the bigger picture of how the VRAB have dealt with thousands of denied claims and provide statistics of the inconsistencies of the how the VRAB adjudicate injured Veterans Claims. All you need to do is Google the office of the Veterans Ombudsman and follow the instructions on how to submit a complaint.

Most importantly for those injured vets that are bilingual reach out to our French Canadian injured Vets and let them know about this. The Decisions on the Federal Court site are also in French. We can not forget our French Canadian injured Vets so if anyone out there can help with this. There are two cases involving spouses of deceased injured vets one who had to spend money on a Judicial Review two times. If you know surviving spouses of deceased injured vets who feel they have been wronged by the VRAB let them know as well.

I apologize to our French Canadian injured vets for not being able to have this transcribed in French. I have brought up the issue with Mike Blais the President of the Canadian Veterans Advocacy in regards to doing this.

Remember the motto;

IT'S TIME TO PUSH BACK!

Eric Rebiere (Former Cst. RCMP 37515)

Charter Member Canadian Veterans Advocacy

ISSUE 1)

The Veterans Review and Appeal Board disregarded evidence and formed contrary Opinion not based on the evidence in the record.

[King v. Canada \(Veterans Review and Appeal Board\)](#) Date: November 7, 1997

[Ewing c. Canada \(Veterans Review and Appeal Board\)](#) Date: October 15, 1997

[Wood v. Canada \(Attorney General\)](#) Date: January 19, 2001

[Nelson v. Canada \(Attorney General\)](#) 2006 FC 225

Date: March 15, 2006

[MacDonald v. Canada \(Attorney General\)](#) 2007 FC 809 Date: August 1, 2007

[Dunn v. Canada \(Attorney General\)](#) 2007 FC 492 Date: May 4, 2007

[MacDonald v. Canada \(Attorney General\)](#) 2008 FC 796 Date: June 24, 2008

[McLean v. Canada \(Attorney General\)](#) 2009 FC 626 Date: June 10, 2009

[Ladouceur v. Canada \(Attorney General\)](#) 2010 FC 1148 Date: November 16, 2010

ISSUE 2)

THE VETERANS REVIEW AND APPEAL BOARD DID NOT ACCEPT EVIDENCE FROM QUALIFIED MEDICAL DOCTORS AND DID NOT PROVIDE REASON WHY THIS WAS DONE.

[Mackay v. Canada \(Attorney General\)](#) Date: April 24, 1997

[Teubert v. Canada \(Attorney General\)](#) Date: September 18, 2000

[Schott v. Canada \(Attorney General\)](#) Date: January 25, 2001

[Rivard v. Canada \(Attorney General\)](#) 2001 FCT 704 Date: June 26, 2001

[Macdonald v. Canada \(Attorney General\)](#) 2001 FCT 678

[Bradley v. Canada \(Attorney General\)](#) 2001 FCT 793 Date: July 13, 2001

[Teubert v. Canada \(Attorney General\)](#) 2002 FCT 634 Date: June 4, 2002

[Saumure v. Canada \(Attorney General\)](#) 2002 FCT 998 Date: September 23, 2002

[Kozak v. Canada \(Attorney General\)](#) 2002 FCT 169 Date: February 14, 2002

[Léonelli v. Canada \(Attorney General\)](#) 2003 FC 1374 Date: November 21, 2003

[Martel v. Canada \(Attorney General\)](#) 2004 FC 1287 Date: September 21, 2004

[John Doe v. Canada \(Attorney General\)](#) 2004 FC 451 Date: March 26, 2004

[De Quoy v. Canada \(Attorney General\)](#) 2004 FC 654 Date: May 4, 2004

[Boucher v. Canada \(Attorney General\)](#) 2004 FC 616 Date: April 26, 2004

[Comeau v. Canada \(Attorney General\)](#) 2004 FC 1091 Date: August 9, 2004

[Powell v. Canada \(Attorney General\)](#) 2005 FC 433 Date: March 31, 2005

[Youden v. Canada \(Attorney General\)](#) 2005 FC 1696 Date: December 15, 2005

[Ladouceur v. Canada \(Attorney General\)](#) 2006 FC 1438 Date: November 28, 2006

[Gannon v. Canada \(Attorney General\)](#) 2006 FC 600 Date: May 15, 2006

[Cormier v. Canada \(Attorney General\)](#) 2006 FC 118 Date: February 2, 2006

[Bremner v. Canada \(Attorney General\)](#) 2006 FC 96 Date: January 30, 2006

[Acreman v. Canada \(Attorney General\)](#) 2010 FC 1331 Date: December 23, 2010

[McLean v. Canada \(Attorney General\)](#) 2011 FC 453 Date: April 13, 2011

[Thériault v. Canada \(Attorney General\)](#) 2006 FC 1070 Date: September 8, 2006

[Zielke v. Canada \(Attorney General\)](#) 2009 FC 1183 Date: November 18, 2009

[Patterson v. Canada \(Attorney General\)](#) 2009 FC 801 Date: August 5, 2009

[Boisvert v. Canada \(Attorney General\)](#) 2009 FC 735 Date: July 20, 2009

[Johnston v. Canada \(Attorney General\)](#) 2010 FC 348 Date: March 30, 2010

[Gilbert v. Canada \(Attorney General\)](#) 2010 FC 1300 Date: December 17, 2010

[McLean v. Canada \(Attorney General\)](#) 2011 FC 453 Date: April 13, 2011

ISSUE 3)

THE FEDERAL COURT DECISIONS REMIND THE VETERANS REVIEW AND APPEAL BOARD TO ALWAYS BEAR IN MIND THE DICTATES OF SECTION 3 AND SECTION 39 OF THE VRAB ACT.

[Mackay v. Canada \(Attorney General\)](#) Date: April 24, 1997

[Ewing c. Canada \(Veterans Review and Appeal Board\)](#) Date: October 15, 1997

[King v. Canada \(Veterans Review and Appeal Board\)](#) Date: November 7, 1997

[Trainor v. Canada \(Attorney General\)](#) Date: April 18, 2000

[Cundell v. Canada \(Attorney General\)](#) Date: January 13, 2000

[Bradley v. Canada \(Attorney General\)](#) Date: January 27, 1999

[Cundell v. Canada \(Attorney General\)](#) Date: January 13, 2000

[Stuber v. Canada \(Attorney General\)](#) 2003 FCT 768 Date: June 20, 2003

[Thériault v. Canada \(Attorney General\)](#) 2006 FC 1070 Date: September 8, 2006

[Dugré v. Canada \(Attorney General\)](#) 2008 FC 682 Date: May 28, 2008

[Murray v. Canada \(Attorney General\)](#) 2009 FC 884 Date: September 9, 2009

[Gillis v. Canada \(Attorney General\)](#) 2009 FC 504 Date: May 20, 2009

[Acreman v. Canada \(Attorney General\)](#) 2010 FC 1331 Date: December 23, 2010

[Brychka v. Canada \(Attorney General\)](#) Date: February 2, 1998

[Wood v. Canada \(Attorney General\)](#) Date: January 19, 2001

[Yates v. Canada \(Attorney General\)](#) 2002 FCT 111 Date: January 29, 2002

[Matusiak v. Canada \(Attorney General\)](#) 2005 FC 198 Date: February 9, 2005

[MacDonald v. Canada \(Attorney General\)](#) 2008 FC 796 Date: June 24, 2008

[Dugré v. Canada \(Attorney General\)](#) 2008 FC 682 Date: May 28, 2008

[Lebrasseur v. Canada \(Attorney General\)](#) 2010 FC 98 Date: January 28, 2010

ISSUE 4)

THE VETERANS REVIEW AND APPEAL BOARD FAILED TO DEAL EXPRESSLY IN THE RECORD EVIDENCE FOUND BY THE BOARD TO BE NOT CREDIBLE FROM WHICH A FAVOURABLE INFERENCE COULD BE MADE TO THE APPLICANT.

[Brychka v. Canada \(Attorney General\)](#) Date: February 2, 1998

[Wood v. Canada \(Attorney General\)](#) Date: January 19, 2001

[Yates v. Canada \(Attorney General\)](#) 2002 FCT 111 Date: January 29, 2002

[Matusiak v. Canada \(Attorney General\)](#) 2005 FC 198 Date: February 9, 2005

[MacDonald v. Canada \(Attorney General\)](#) 2008 FC 796 Date: June 24, 2008

[Dugré v. Canada \(Attorney General\)](#) 2008 FC 682 Date: May 28, 2008

[Lebrasseur v. Canada \(Attorney General\)](#) 2010 FC 98 Date: January 28, 2010

ISSUE 5

THE VETERANS REVIEW AND APPEAL BOARD ARE NOT RESPECTING THE DIRECTION OF BEING CONSISTANT IN WHAT THE VRAB ACT WAS INTENDED.

“Consistency is clearly desirable as it enhances equality before the law and reduces arbitrariness.” Howard I. Wetston Judge 1999

[Matchee v. Canada \(Attorney General\)](#) Date: January 5, 1999

ISSUE 6)

THE VETERANS REVIEW AND APPEAL BOARD ARE NOT ACCEPTING FAVOURABLE EVIDENCE IN THE RECORD AND NEW EVIDENCE THAT IS ALSO FAVOURABLE TO THE APPLICANT.

[Macdonald v. Canada \(Attorney General\)](#) Date: March 11, 1999

[Metcalf v. Canada](#) Date: January 6, 1999

[Teubert v. Canada \(Attorney General\)](#) Date: September 18, 2000

[Doe v. Canada \(Attorney General\)](#) 2002 FCT 106 Date: January 28, 2002

[Boucher v. Canada \(Attorney General\)](#) 2004 FC 616 Date: April 26, 2004

[Matusiak v. Canada \(Attorney General\)](#) 2006 FC 646 Date: May 29, 2006

[Thériault v. Canada \(Attorney General\)](#) 2006 FC 1070 Date: September 8, 2006

[Reed v. Canada \(Attorney General\)](#) 2007 FC 1237 Date: November 23, 2007

[Murphy v. Canada \(Attorney General\)](#) 2007 FC 905 Date: September 12, 2007

[Lenzen v. Canada \(Attorney General\)](#) 2008 FC 520 Date: April 22, 2008

[McLean v. Canada \(Attorney General\)](#) 2009 FC 626 Date: June 10, 2009

[Cossette v. Canada \(Attorney General\)](#) 2011 FC 416 Date: April 14, 2011

[Chaytor v. Canada \(Attorney General\)](#) 2011 FC 501 Date: April 29, 2011

ISSUE 7)

APPLICANT HAD TO UNNECESSARILY APPLY FOR A SECOND JUDICIAL REVIEW AS A RESULT IN SOME CASE EXAMPLES OF THE VRAB BOARD NOT FOLLOWING THE DIRECTION OF THE JUDGE IN THE FIRST JUDICIAL REVIEW.

[King v. Canada \(Attorney General\)](#) Date: February 11, 2000

[John Doe v. Canada \(Attorney General\)](#) 2004 FC 451 Date: March 26, 2004

[Matusiak v. Canada \(Attorney General\)](#) 2006 FC 646 Date: May 29, 2006

[MacDonald v. Canada \(Attorney General\)](#) 2007 FC 809 Date: August 1, 2007

[Zielke v. Canada \(Attorney General\)](#) 2009 FC 1183 Date: November 18, 2009

ISSUE 8)

THE VETERANS REVIEW AND APPEAL BOARD HAVE BEEN NOTED BY THE FEDERAL COURT JUDGES i.e. IN THEIR DECISIONS THAT THE BOARD IS DEMANDING THE MOST STRINGENT BURDON OF PROOF CONTRARY TO SECTION 39 OF THE VRAB ACT.

[Smith v. Canada \(Attorney General\)](#) 2001 FCT 857 Date: August 7, 2001

[Cundell v. Canada \(Attorney General\)](#) Date: January 13, 2000

[Trainor v. Canada \(Attorney General\)](#) 2002 FCT 117 Date: January 30, 2002

[Saumure v. Canada \(Attorney General\)](#) 2002 FCT 998 Date: September 23, 2002

ISSUE 9)

THE VETERANS REVIEW AND APPEAL BOARD HAVE BEEN TAKING A SUPERFICIAL APPROACH TO THE ASSESSMENT OF EVIDENCE AND PROVIDE A LACK OF REASONS AS TO WHY THE BOARD DISCOUNTS EVIDENCE.

[Desloges v. Canada \(Attorney General\)](#) 2001 FCT 506 Date: May 18, 2001

[Whitehead v. Canada \(Attorney General\)](#) 2003 FCT 75 Date: January 24, 2003

[Ladouceur v. Canada \(Attorney General\)](#) 2006 FC 1438 Date: November 28, 2006

[Grant v. Canada \(Veterans Review and Appeal Board\)](#) 2006 FC 1456
Date: November 30, 2006

[Gannon v. Canada \(Attorney General\)](#) 2006 FC 600 Date: May 15, 2006

[Bremner v. Canada \(Attorney General\)](#) 2006 FC 96 Date: January 30, 2006

ISSUE 10

THE VETERANS REVIEW AND APPEAL BOARD DO NOT HAVE ANY MEDICAL EXPETISE AND ARE NOT EXERCISING THE USE OF SECTION 38 OF THE VRAB ACT IN REGARDS TO CONSULTING QUALIFIED MEDICAL DOCTORS ON MEDICAL ISSUES.

[Macdonald v. Canada \(Attorney General of Canada\)](#) 2003 FC 1263 Date: October 30, 2003

[Léonelli v. Canada \(Attorney General\)](#) 2003 FC 1374 Date: November 21, 2003

[Therriault v. Canada \(Attorney General\)](#) 2004 FC 978 Date: July 12, 2004

[Boucher v. Canada \(Attorney General\)](#) 2004 FC 616 Date: April 26, 2004

[Ladouceur v. Canada \(Attorney General\)](#) 2006 FC 1438 Date: November 28, 2006

[Thériault v. Canada \(Attorney General\)](#) 2006 FC 1070 Date: September 8, 2006

[MacDonald v. Canada \(Attorney General\)](#) 2007 FC 809 Date: August 1, 2007

[Lenzen v. Canada \(Attorney General\)](#) 2008 FC 520 Date: April 22, 2008

[Zielke v. Canada \(Attorney General\)](#) 2009 FC 1183 Date: November 18, 2009

[Ladouceur v. Canada \(Attorney General\)](#) 2010 FC 1148 Date: November 16, 2010

[Gilbert v. Canada \(Attorney General\)](#) 2010 FC 1300 Date: December 17, 2010

[Armstrong v. Canada \(Attorney General\)](#) 2010 FC 91 Date: January 27, 2010

ISSUE 11)

THE VETERANS REVIEW AND APPEAL BOARD DENYING APPLICANTS THE OPPORTUNITY TO PERSONALLY PRESENT ARGUMENTS BEFORE THE BOARD I.E SECTION 3 VRAB REGUATIONS.

[Gagné v. Canada \(Attorney General\)](#) 2002 FCT 711 Date: June 25, 2002

[Lenzen v. Canada \(Attorney General\)](#) 2008 FC 520 Date: April 22, 2008

ISSUE 12)

THE VETERANS REVIEW AND APPEAL BOARD FAILED TO MAKE THE CASUAL CONNECTION BETWEEN INJURY/DEATH WITH SERVICE WHILE ON DUTY.

[Frye v. Canada \(Attorney General\)](#) 2004 FC 986 Date: July 14, 2004

[Teubert v. Canada \(Attorney General\)](#) Date: September 18, 2000

[Teubert v. Canada \(Attorney General\)](#) 2002 FCT 634 Date: June 4, 2002

[Saumure v. Canada \(Attorney General\)](#) 2002 FCT 998 Date: September 23, 2002

[Comeau v. Canada \(Attorney General\)](#) 2004 FC 1091 Date: August 9, 2004

[Powell v. Canada \(Attorney General\)](#) 2005 FC 433 Date: March 31, 2005

[Reed v. Canada \(Attorney General\)](#) 2007 FC 1237 Date: November 23, 2007

[Murphy v. Canada \(Attorney General\)](#) 2007 FC 905 Date: September 12, 2007

[Wannamaker v. Canada \(Attorney General\)](#) 2006 FC 400 Date: March 30, 2006

[Thériault v. Canada \(Attorney General\)](#) 2006 FC 1070 Date: September 8, 2006

[Lenzen v. Canada \(Attorney General\)](#) 2008 FC 520 Date: April 22, 2008

[Murray v. Canada \(Attorney General\)](#) 2009 FC 884 Date: September 9, 2009

[Armstrong v. Canada \(Attorney General\)](#) 2010 FC 91 Date: January 27, 2010

[Bradley v. Canada \(Attorney General\)](#) 2011 FC 309 Date: March 15, 2011

ISSUE 13)

THE VETERANS REVIEW AND APPEAL BOARD WILFULLY TRYING TO REDUCE INJURED VETERANS PENSION ENTITLEMENTS.

[Matusiak v. Canada \(Attorney General\)](#) 2006 FC 646 Date: May 29, 2006

[Ladouceur v. Canada \(Attorney General\)](#) 2006 FC 1438 Date: November 28, 2006

ISSUE 14)

THE VETERANS REVIEW AND APPEAL BOARD IS PRESUMED TO HAVE CONSIDERED ALL MATERIAL EVIDENCE BEFORE IT.

[Whitehead v. Canada \(Attorney General\)](#) 2003 FCT 75 Date: January 24, 2003

[Murphy v. Canada \(Attorney General\)](#) 2007 FC 905 Date: September 12, 2007

[MacDonald v. Canada \(Attorney General\)](#) 2008 FC 796 Date: June 24, 2008

ISSUE 15)

THE VETERANS REVIEW AND APPEAL BOARD PLAYING HARD BALL WITH THE SURVIVING SPOUSES OF DECEASED INJURED VETERANS.

[MacKenzie v. Canada \(Attorney General\)](#) 2007 FC 481 Date: May Date: May 3, 2007

[Arial v. Canada \(Attorney General\)](#) 2010 FC 184 Date: February 19, 2010

[Arial v. Canada \(Attorney General\)](#) 2011 FC 848 Date: July 8, 2011

ISSUE 16)

THE VETERANS REVIEW AND APPEAL BOARD NOT RESPECTING SECTION 27.(1) AND 27.(2) OF THE VRAB ACT UNDER THE HEADING OF “Appeal Panel” “Prohibition” respectively and the direction of the Federal Courts.

[Teubert v. Canada \(Attorney General\)](#) Date: September 18, 2000

[Teubert v. Canada \(Attorney General\)](#) 2002 FCT 634 Date: June 4, 2002

I can also confirm that the analysis I had done on the Federal Judicial Reviews was welcomed by the yet to be announced law firm hired by the OVO to investigate the VRAB. I have been informed that this analysis confirms the findings of the this contracted law firm's investigation that will be reflected in the formal report to be published in the near future . This is the message I received this date from the OVO;

" The reference to the Ombudsman Office is actually the Public Defender of Rights Ombudsman, not the OVO. The timing is coincidental. As for the constitutional suit, this is separate from our investigation which you have supported with the documents you have sent us and we have received. FYI, I have copied those to a common drive so that they could be used by our legal advisor.

With respect to our investigation, once the review of the material we have received from the legal contractor is complete I believe you will be pleased with the similarities of our findings."

In conclusion, the Minister of Veterans Affairs is being challenged on two fronts, The Veterans Charter which does not involve the RCMP because as we all know the RCMP is still under the Pension Act. The investigation of the VRAB Judicial Reviews by the OVO through the stated contracted law firm is supplemented by the Canadian Veterans Advocacy's complaint on behalf of all injured Veterans, Both Military and RCMP.