

FDA's Brian Bradley Case Study and Process Review of the Veterans Review and Appeal Board



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Visit our website for a complete report of FDA Process Review of the VRAB and the Brian Bradley Case Study: www.democracychange.org

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EXECUTIVE SUMMARY

Building off Veterans Ombudsman reports and other reports which support systematic change to the federal government process involving injured and/or disabled veterans, the Foundation for Democratic Advancement (FDA) examines closely the federal government veteran processes. Through that examination, the FDA uncovers several deficiencies which compromise the federal government's service to injured and/or disabled veterans and ultimately its obligation to Canadians in the Canadian Forces and Royal Mounted Police who put their lives at risk to protect this country. In particular, the FDA documents a system of patronage appointments, mismanagement of the Veterans Review and Appeal Board (VRAB), and a veterans review and appeal process defined significantly by unreasonable interpretation and application of relevant Acts of Parliament. Using its expertise in democracy and government, the FDA believes that these deficiencies stem from a failure of Canadian democracy and shortcomings in the Canadian federal electoral system. The FDA uncovers evidence that elected officials including the Prime Minister are putting their self-interests above the interests of injured and/or disabled veterans and Canadians as a whole. The Brian Bradley case study, an ongoing egregious seventeen year legal struggle in which Brian battles for just care for his spinal cord injury, shows that the deficiencies with the VRAB and failings of the federal government have gone on far too long. The FDA recommends a number of reforms, including the elimination of the VRAB and delegation of its responsibilities and duties to the Federal Court, implementation of a non-partisan federal government appointment system, and correction of biases and unfairness in the federal electoral system to help ensure that representatives who represent the broad public good are elected.

"If liberty and equality, as is thought by some, are chiefly to be found in democracy, they will be best attained when all persons alike share in government to the utmost."

- Aristotle

RECOMMENDATIONS

Recommendation 1

It is recommended that Brian Bradley and thousands of other injured and/or disabled veterans be given a fair hearing process that upholds the Acts of Parliament on veterans who are injured while serving this country. The FDA does not believe this process is possible under the current VRAB protocols and practices.

Corrective Action to be Taken

Fundamentally this action is a political issue.

Elected officials should honour their obligation to all veterans who are injured while serving this country.

Canadian people should demand change to the veterans system, and the electorate should bear in mind this issue when it contemplates a vote for a particular political candidate or party.

Recommendation 2

It is recommended that the Veterans Review and Appeal Board (VRAB) be scrapped.

Corrective Action to be Taken

The Federal Court, through a Veterans Court, takes on the duties and responsibilities of the VRAB. Legislation involving the liberal hearing standards of sections 3 and 39 of the *Veterans Review and Appeal Board Act* would still apply.

Although the Veterans Court may be a more time consuming and costly option, veterans would be much more likely to have access to a fair, independent, and non-partisan hearing process. The FDA believes that this practice reflects Canada's obligation to veterans who are injured while serving this country.

In addition, to lessen the costs of the Veterans Court, a medical/legal review board comprised of veterans would be set up to deal fairly with applicants rejected by Veterans Affairs Canada (Veterans of Canada, 2013). Further, applicants who receive unsuccessful decisions from the medical/legal review board would have the option for an appeal hearing by the board, and then if necessary, an opportunity for a judicial review by the Veterans Court.

Recommendation 3

It is recommended that the federal government's system of partisan appointments be replaced by a system of non-partisan appointments.

Corrective Action to be Taken

The Canadian Parliament creates independent citizen committees and relevant professional committees. These committees would be empowered to shortlist candidates for all appointments to federal government positions. Based on the shortlist, the Canadian Parliament through majority rule would determine the appointments.

Recommendation 4

It is recommended that the federal electoral system undergo reform to eliminate legislative bias and unfairness to some political candidates and parties, and inherent systematic deficiencies such as the first-past-the-post system.

Corrective Actions to be Taken

1. Presently, the barrier for party registration in Canada is minimal. The law requires political parties to have at least 250 party members and \$1,000 per registered candidate in order to register.

The FDA recommends a barrier to entry based on a two-tiered system:

Parties with at least 0.5 percent popular support (Garvey, 2013, 0.5 Percent Rule).

Parties with at least 0.1 percent popular support.

The FDA believes that a two-tiered system is necessary to distinguish parties with low popular support from receiving the same benefits as parties with high popular support.

Parties that do not meet the 0.1 percent popular support threshold can register as political parties; however, they must function without the benefits associated with meeting this threshold. This provision would enhance electoral competition and protect the integrity of the system while still maintain a barrier to entry.

2. The FDA believes that a proportional representation voting system should replace the first-past-the-post system. It is a more effective system to capture the will of the majority by allowing more votes, and therefore more people, to determine election outcomes. It also works to prevent a minority party from garnering a majority of the Canadian Parliament.
3. Canada should increase the campaign period from 36 days to 60 days to allow new and smaller parties reasonable opportunity to share their platforms and candidate backgrounds.

4. Public subsidies should be accessible and available equally to all registered parties that meet the 0.5 percent popular support threshold. A common pool of public funds would provide funding for these subsidies, distributed equally to qualified registered candidates and parties. Private contributions would be restricted to citizen, corporate, and union contributions to the common pool of electoral money (Garvey, 2013).

Parties with popular support between 0.1 and 0.499 percent of the corresponding total electorate population whether in the form of votes or membership ought to receive public subsidies from a common pool of public funds which can be added to through private contributions. The total of these funds would reflect the percentage difference in popular support from the average popular support of the parties that meet the 0.5 percent.

5. Both free and purchasable minutes for broadcast time should be available equally to all registered parties that meet the 0.1 percent popular support threshold or greater.
6. Broadcasting law and private codes of conduct should require media outlets to present broad and balanced coverage of all registered parties that meet the 0.5 percent of popular support threshold during the election period.

The law should require networks that broadcast national debates to include the leaders of all registered parties with regional or national platforms and at least 0.1 percent popular support. The amount of debate time allocated to each leader should reflect the amount of their popular support relative to the popular support for all other parties.

7. The law should not allow third-party expenditures unless the caps on these expenditures are reflective of 10 percent of Canada's per capita disposable income. Canada's current caps on third-party expenditures favour wealthy individuals and corporations and trade unions.
8. Equal access to and reasonable cost of media advertisement should be available to all registered parties regardless of popular support level.

Recommendation 5

It is recommended that the Canadian Parliament undergo procedural reform to ensure that the votes of Members of Parliament more closely reflect the voice of the people as expressed by their votes in elections.

Corrective Action to be Taken

The percentage of vote received, rather than the vote itself from Members of Parliament, should guide the parliamentary process. A minimum 50 percent of popular support (of actual voters) needs to be established. The level of electoral support any Member of Parliament received should determine the value of his or her vote. This provision will ensure that any bills or decisions that pass in Parliament truly represent the majority of the Canadian electorate.

For example, there are 308 seats in the Canadian Parliament:

- a) Seat #1 received 40 percent of the total voter turnout for her electoral district. Her vote value in Parliament would be 0.80. (40 out of 50 percent).
- b) Seat #2 received 60 percent of the total voter turnout for his electoral district. His vote value in Parliament would be 1.2. (60 out of 50 percent).

INTRODUCTION

The primary purpose of this report is to identify the cause and effect of the harm being inflicted upon injured and/or disabled veterans and their families, and to recommend reform measures to prevent this injustice from recurring.

Building off Veterans Ombudsman reports and other reports supporting systematic change to the government processes involving injured and/or disabled veterans, the FDA examines closely the Veterans Review and Appeal Board (VRAB) itself and its context in the federal government. The FDA uncovers a government system defined by partisanship, unaccountability and weak credibility. The FDA believes that this system is a disservice to injured and/or disabled veterans and their families, and Canadians as a whole. In addition, the FDA believes that the system falls significantly short of fulfilling the obligation of Canadians to veterans who are injured while serving this country. The obligation is rooted in the idea that because members of the Canadian military and Royal Mounted Police are asked unconditionally to put themselves in dangerous and life-threatening situations, there should be unconditional care of those members who are injured and/or disabled. Consequently due to the political failure to fulfill this obligation and FDA research and analysis, the FDA concludes that the federal government requires a significant overhaul of its culture, customs, and procedures.

The FDA case study of veteran Brian Bradley provides an ongoing and real-life example of a disabled veteran who has suffered the shortcomings of the federal government. Brian's story involving seventeen years of legal struggle in which Brian successfully self-represented himself in the Federal Court on several occasions, should be an alarm to all Canadians that the inadequacies and incompetence of the federal government towards injured and/or disabled veterans has gone on far too long.

Brian Bradley, a Canadian military veteran with 3 military tours and various service appointments, deserves the respect and support of Canadians in his struggle for justice and veteran benefits, as do many other veterans. After reading and reflecting upon this report, the FDA asks you to please consider supporting this cause, whether through donations or pro bono legal services, for Brian and many other injured and/or disabled Canadian veterans who are fighting for dignity, respect, and a reasonable quality of life. Please contact the FDA at info@demcracychange.org if you are interested in helping Brian and other Canadian veterans.

Through the FDA's outreach program, in which the FDA invites and encourages public input on government process issues, Brian approached the FDA about his struggles with the VRAB and federal government. As part of its mission of creating greater government accountability and transparency and with an opportunity to support Canadian military veterans who have been injured and/or disabled, the FDA agreed to this research project (with no financial cost to Brian).

BRIAN BRADLEY CASE STUDY

Introduction

The purpose of the Brian Bradley Case Study is to examine a current and real-life example of a disabled veteran who has been denied disability benefits by the VRAB. As drawn from statistics from the Veterans Ombudsman Report, Improving the New Veterans Charter (2013), 517,854 (or 87.14 percent) of Canadian Forces veterans receive no care from Veterans Affairs Canada. Potentially thousands of these veterans, like Brian Bradley, are injured and/or disabled. Every one of these injured and/or disabled veterans have their own unique story. On October 8, 2013, at a VRAB appeal hearing, the FDA had an opportunity to listen to some of them. This Case Study, no different from the reality of many veterans, highlights the urgency of the situation for injured and/or disabled veterans and the prompt need for systematic reform of federal government processes.

Background on Brian Bradley

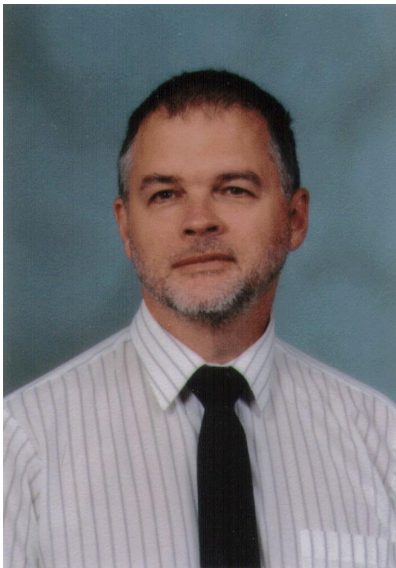


Photo of Brian Bradley taken 10 years ago. Today Brian is a reduced reflection of himself as presented in this photograph.

During Brian's service in the Canadian Forces, he participated in three military tours (during peacetime). On July 4, 1990, while aboard the *HMCS Qu'Appelle*, Brian fell, resulting in a substantial back injury. Three medical professionals examined Brian and attest that his spinal cord injuries are attributable to his fall aboard *HMCS Qu'Appelle*. On March 22, 1996, Brian first applied to the VRAB for a Canadian forces disability pension. It is important to note that the gradual worsening of his spinal cord injury, the passage of the *Veterans Review and Appeal Board Act* in 1995, and the Canadian military culture for soldiers to obey and not complain, contributed to the time lapse between the day of the injury to Brian's application for pension. The VRAB, after various appeal hearings, has decided against Brian's disability pension application. What follows is the background on Brian's legal struggle with the VRAB and the details and explanation of the VRAB decision to reject the application.

In 1966, Brian completed his army reserve basic training and in 1989, completed army reserve officer training. Shortly after, he began nearly five years of service in the Canadian Navy training as a Combat Systems Engineer (CSE, or 044A Canadian military classification number). The years of service in the Canadian Navy training included basic officer training in Chilliwack, British Columbia, second-language training in St.Jean-sur-Richelieu, Quebec, one year of training in Esquimalt, British Columbia, and three years of service in Halifax, Nova Scotia (Bradley, 2013).

Brian participated in three Canadian Forces tours:

1. 1966 As a soldier in training in the Canadian army reserve (militia)
2. 1987-1988 As an officer in the Canadian army reserve (militia) (peacetime)
3. 1989-1993 As an officer in training in the Canadian navy

Currently, Brian uses a walking cane and relies on charitable transportation services for disabled persons. According to the prognoses of Brian's medical professionals, with normal progression of his spinal cord injuries, eventually Brian will be confined to a wheelchair.

Chronology of Events Pertaining to Brian Bradley (Bradley, 2013)

While training on board the *HMSC Qu'Appelle*, Brian suffered a fall on board the warship and damaged his spinal cord at three levels. The injury occurred while the *HMSC Qu'Appelle* was away from her home port in Esquimalt, British Columbia; ergo, the military confined Brian to his rack and provided him with painkillers. When he arrived in Esquimalt, an ambulance rushed him to the base hospital where he spent nearly two months. According to Canadian Forces medical records, the Canadian military did not treat Brian's real injuries. Due to the worsening of his back injuries and inadequate disability compensation from Veterans Affairs Canada, Brian ended his military career after 5 years of service in the Canadian Forces.

Upon release from the Canadian Navy in 1993, a civilian general practitioner in Lower Sackville, Nova Scotia assessed Brian and identified a C5/C6 radiculopathy (upper spinal cord condition). The practitioner referred Brian to a diagnostic specialist, orthopedic surgeon and internal medicine specialist. All three physicians identified three levels of spinal cord injuries (C5/C6; T11/T12; L2/L3), and concluded that these injuries likely resulted from the Brian's accident aboard the *HMCS Qu'Appelle*.

- On March 22, 1996, Brian applied to the Veterans Review and Appeal Board for disability pension. In that same year, the VRAB ruled against his application on three separate occasions (February 4, 1997 VRAB decide against Applicant's claim; appealed; May 8, 1997 VRAB decide against Applicant's claim; appealed; December 3, 1997 VRAB decide against Applicant's claim) forcing Brian to appeal the decisions in the Trials Division of the Federal Court.
- On January 27, 1999, the Trial Division of the Federal Court ruled that the matter of Brian's disability pension be referred back to a differently-constituted panel of the VRAB. (Fed. Ct. Case: T-157-98).
- On May 18, 1999, an allegedly differently-constituted VRAB panel ruled against Brian's claim for a disability pension.
- On November 25, 1999, an allegedly differently-constituted VRAB panel ruled against Brian's claim for a disability pension.
- In 2000, the next differently-constituted VRAB failed to provide a decision within the year. Brian was forced to file (based on the principle of justice) a Contempt of Court motion with the Trial Division of the Federal Court. The Honourable Justice Martineau did not find the VRAB in contempt, but he did award Brian's court costs and provided detailed procedure for him to obtain justice.

- In 2001, the VRAB denied Brian a disability pension and again, Brian took the VRAB to Trial Division of the Federal Court. The Trial Division judge ruled against Brian's case (T-67-03).
- On August 14, 2002, the VRAB hears "3rd Appeal" with pensioner advocate Mr. Murphy presenting Brian's case.
- On October 25, 2002, Brian submits an applicant's letter to the Federal Court regarding the VRAB's failure to act on a Federal Court Order.
- On November 21, 2002, the Honourable Justice Martineau orders the VRAB to make a decision regarding Brian's application.
- On December 16, 2002, the VRAB decides against Brian's application.
- On January 9, 2003, Brian again obtained a ruling from a Trial Division, which again ruled that the matter be referred back to a differently-constituted panel and awarded him court costs (Fed. Ct. Case: T-2137-99).
- On July 16, 2004, the Honourable Rouleau orders: "The application for judicial review is dismissed" (T-67-03).
- On July 28, 2004, Brian submits an application for a disability pension including a declaration that the VRAB and Veterans Affairs Minister have ignored medical evidence supporting Brian's application.
- On February 5, 2005, the VRAB decides against Brian's application.
- On October 28, 2005, the Honourable O'Keefe orders: "1. The matter is referred back to the Minister for a determination of the application for an award of pension benefits" (T-401-05).
- On November 28, 2005, Brian submits a motion of appeal of the VRAB decision (A-583-05).
- On January 6, 2006, medical professionals prepare an MRI spinal cord report on Brian.
- On March 6, 2006, the VRAB decides against Brian's application.
- On March 13, 2006, the Minister of Veterans Affairs makes the decision to stay out of the VRAB decision-making process, claiming no jurisdiction.
- On January 24, 2007, Prothonotary's Order (Roger R. Lafrenière).

- On April 11, 2007, the VRAB decides against Brian's application.
- On June 14, 2007, VRAB/Bradley letter which excuses the VRAB's delay in its decision.
- On June 29, 2007, the Honourable Shore provides direction regarding Brian's case.
- On July 24, 2007, Brian's appeals the VRAB decision (A-347-07).
- On April 17, 2008, the VRAB decides against Brian's application.
- On August 5, 2008, the VRAB decides against Brian's application for appeal.
- In 2011, Brian takes the VRAB to the Trial Division of the Federal Court (T-617-09). The judge, after judicial review of Brian's case, rules in favour of Brian, and refers the matter back to a differently-constituted VRAB board to hear Brian's case.
- In 2013, the Bureau of Pensioners' Advocates is in the process of reapplying to the VRAB to hear Brian's case.

During seventeen years of legal struggle against the VRAB, Brian says he has lost his home, his family, all of his possessions, and more than 95 percent of his RRSP savings. In addition, according to Brian, he failed to receive any meaningful assistance from his MPs and/or MLAs (Bradley, 2013). Brian believes the federal government has failed to uphold its legislated obligations regarding the *Pension Act* and *Veterans Review and Appeal Board Act*.

Brian's Legal Battle with the Veterans Review and Appeal Board (VRAB)

Key Sections of the *Veterans Review and Appeal Board Act* and *Pension Act* (Pertaining Brian Bradley)

The following sections from the *Veterans Review and Appeal Board Act* and *Pension Act* are essential to understand the merits of Brian's disability pension application, and why he believes the federal government has failed to honour legislation passed in the Canadian Parliament.

1. Section 3 (of the *Veterans Review and Appeal Board Act*, 1995)
 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 dependents may be fulfilled.

Section 3 establishes that persons who serve the country in the military deserve special care in the form of "recognized obligation of the people and Government of Canada. To this end or obligation to military persons, the VRAB's powers, duties or functions shall be liberally construed."

According to the VRAB and its interpretation of select Federal Court decisions relating to the *Veterans Review and Appeal Board Act*, Section 3 means, "those who serve this country in military are deserving of special care and attention when they are injured or killed." In addition, the VRAB takes the view that sections 3 and 39 are mere "urges" to take a liberal and purposive approach to veteran's claims and to make every reasonable inference in favour of the applicant. Further, the VRAB subjects these so-called "urges" to evidence that is admissible before the tribunal (Reading and understanding the Annotated VRAB Act, 2013).

2. Section 39 (of the *Veterans Review and Appeal Board Act*, 1995)

39. In all proceedings under this Act, the Board shall

- (a) draw from all the circumstances of the case and all the evidence presented to it every reasonable inference in favour of the applicant or appellant;
- (b) accept any uncontradicted evidence presented to it by the applicant or appellant that it considers to be credible in the circumstances; and
- (c) resolve in favour of the applicant or appellant any doubt, in the weighing of evidence, as to whether the applicant or appellant has established a case.

To summarize, the VRAB will view in every circumstance and evidence presented to it:

- 1. Every reasonable inference in favour of the applicant.
- 2. Accept uncontradicted evidence that it considers credible.
- 3. Resolve in favour of the applicant any doubt.

However, it is up to the VRAB if it views evidence as contradicted or not contradicted, and whether or not it considers such evidence as credible. In theory, the requirement for reasonable inference should prevent the VRAB from taking unreasonable views of the evidence presented. However, according to Mr. Sean Bruyey, retired Canadian Forces captain and 10-year veterans advocate, the VRAB does not adhere to the standard of reasonable inference but to beyond all reasonable doubt. This practice exceeds the standard of reasonable doubt of the Federal Court (*Broken Soldiers*, 2012).

According to the VRAB and its interpretation of select Federal Court decisions, the *Veterans Review and Appeal Board Act*, section 39 “does not negate the burden of proof imposed on the Applicant to prove their case.” However, the VRAB does not state what the standard of burden proof is (*Reading and understanding the Annotated VRAB Act*, 2013).

3. Section 21 (2)(a) (*Pension Act*, 1985)

PART III PENSIONS

Service in militia or reserve army and in peacetime

(2) In respect of military service rendered in the non-permanent active militia or in the reserve army during World War II and in respect of military service in peace time,

(a) where a member of the forces suffers disability resulting from an injury or disease or an aggravation thereof that arose out of or was directly connected with 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;

Section 21(2) establishes that disability pension applies to members of the Canadian Forces who serve during peacetime and in the non-permanent active militia and whose disability “arose out of or was directly connected to such military service.” According to the Honourable Phelan with reference to *Amos v. Insurance Corp. of British Columbia*, 1995 CanLII 66 (SCC), [1995] 3 S.C.R. 405, the Supreme Court interprets the standard “arose out of” in a broad sense and in a more liberal manner than “caused by” (T-157-98, 1999).

According to the VRAB and its interpretation of select Federal Court decisions, the *Veterans Review and Appeal Board Act*, section 21(2) applies to the *Veterans Review and Appeal Board Act* in the same sense of “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 military service” (Reading and understanding the Annotated VRAB Act, 2013).

Key Powers of the Veterans Review and Appeal Board

Overall Full and Binding Decision-making Power

- The VRAB has full and exclusive jurisdiction to hear, determine, and deal with every appeal made to it. In other words, the VRAB has near complete control over the its decisions, subject to federal court intervention on grounds of patently unreasonable decisions, in which case the Federal Court orders another hearing of an appeal rather than make a legal determination (Veterans Review and Appeal Board Act, section 26).

Appeal Decisions Full and Binding

- Majority decisions of the appeal panel is the decision of the VRAB, and it is full and binding (Veterans Review and Appeal Board Act, section 31). Veterans are subject to the decision of the VRAB with no other recourse for a decision. As mentioned, judicial reviews by the Federal Court only provide an opportunity for a re-hearing by the VRAB.

VRAB Members Judicial Power

- One VRAB member stated at an appeal board hearing on October 8, 2013, the VRAB members are “like judges”, and according to Mr. Sean Bruyey, veterans advocate, the VRAB members are at “arm’s length of the government” and for veterans the “VRAB is a one-way street” (Broken Soldiers, 2013).

Summary of Brian's Federal Court Decisions

1. T-617-09, *Bradley v. Canada (Attorney General)*, 2011 FC 309 (CanLII)

In this Federal Court judicial review of the VRAB decision against Brian, the Honourable Justice Phelan decides in Brian's favour, deducing that Brian's fall on *HMCS Qu'Appelle* arose from his military service. The VRAB argues that his fall did not arise from or connected to his military service. In the Judge's opinion, although Brian was off-duty at the time of the injury, he was aboard the military ship and fell while taking a shower, which is "critical in confined spaces of ships." In addition, he thinks the VRAB gave no consideration to the restrictions and obligations of ship board life (whether on or off duty), and that Brian was subject to Standing Orders and military discipline, therefore could not come and go as he pleased. Further, the Judge points out that the *Veterans Review and Appeal Board Act* allows disability pension from injuries "arising from service," (rather than from specific military duty) which the VRAB never addresses in its decision against Brian. Furthermore, Judge Phelan supports his decision with reference to the Wannamaker decision, in which being off duty is immaterial to the fact that an injury occurred while on a military site. Judge Phelan points out that the VRAB's concerns that Brian may have been intoxicated were "speculative" and were not consistent with the facts surrounding Brian's fall. The Judge quashes the VRAB appeal decision against Brian, and concludes that there is evidence that would allow a reasonably instructed Appeal Board to grant Brian's application.

2. T-401-05, *Bradley v. Canada (Attorney General)*, 2005 FC 1470 (CanLII)

This legal case centers on whether or not the Minister of Veterans Affairs has jurisdiction to hear the matter pertaining to Brian. The Minister of Veterans Affairs argues that she does not have jurisdiction regarding this incident, however, the Honourable O'Keefe rules that the Minister does have jurisdiction to resolve Brian's applications. He refers Brian's matter to the Minister for a determination of the application for a disability award. However, Judge O'Keefe does not order a mandamus that would compel the Minister to resolve the matter of Brian's application immediately.

3. T-67-03, Bradley v. Canada (Attorney General), 2004 FC 996 (CanLII)

This judicial review by the Honourable Rouleau revolves around section 39 of the *Veterans Review and Appeal Board Act*. He argues that the Federal Court should not question the decision of the VRAB unless the decisions are “patently unreasonable.” The VRAB cited section 39 (b), whereby it has the authority to determine what evidence is credible. Although Brian has a detailed and lengthy collection of medical evidence from several professionals, Judge Rouleau did not question VRAB’s decision that the information was not credible. Consequently, the Judge rules against Brian and accepts the VRAB’s decision that Brian’s medical evidence was not credible. This judicial review decision ignores section 39 (a) and (b), in which the VRAB must “draw from all the circumstances of the case and all the evidence presented to it every reasonable inference in favour of the applicant or appellant;” and “resolve in favour of the applicant or appellant any doubt, in the weighing of evidence, as to whether the applicant or appellant has established a case.” In this hearing, medical evidence and any doubt connected to it (such as evidence submitted by Dr. Coady, Dr. Killeen, and Dr. Reardon) was not resolved in his favour.

4. T-2137-99, Bradley v. Canada (Attorney General), 2003 FC 12 (CanLII)

This Federal Court case deals with a legal claim by Brian that the VRAB acted in contempt for a 3-month delay in rendering a decision and 13-month delay in rehearing Brian’s case. The Honourable Martineau orders that VRAB render its decision, but dismisses Brian’s motion of contempt. However, the Judge allows Brian recourse through judicial review without prejudice and awards Brian court costs.

5. T-2137-99, Bradley v. Canada (Attorney General), 2001 FC 793 (CanLII)

This Federal Court judicial review examines the VRAB view that Brian's injury did not arise out of military service and the Brian's medical evidence lacks credibility. The VRAB decisions cite Section 39 (b) of *Veterans Review and Appeal Board Act*, and section 21 (2) (a) of the *Pension Act*. The Honourable MacKay states that the VRAB took an unreasonable view of paragraph 21 (2) (a) and applied the section in a narrow and isolated way. The VRAB argues that showering is a common, mundane activity, and therefore, Brian's injury did not arise out of military service. Judge MacKay disagrees and states that when examining any event one must consider the context. Brian was aboard the *HMCS Qu'Appelle* on a training mission away from the ship's home port and there was no other place to shower. Judge MacKay also states that the VRAB's position that the medical evidence from Dr. Coady is not credible violates section 39 (a) and (b) of the *Veterans Review and Appeal Board Act*. The Board must draw reasonable inference from every circumstance of the case and all evidence presented by the applicant and accept reasonably any uncontradicted evidence presented to it by the applicant. Judge MacKay dismisses the VRAB decision against Brian, and ordered a rehearing with a differently-constituted panel of the Board, and awards Brian court costs.

6. T-157-98, Bradley v. Canada (Attorney General), 1999 FC 7476 (CanLII)

In this Federal Court judicial review, the VRAB argues that Brian's injury did not arise from military service and argues that Brian was on off-duty when he was injured. The Honourable Blais disagrees with this position, pointing out that Brian was in training when the injury occurred. He states that the VRAB did not consider section 21 of the *Pension Act*, evidence in accordance with section 2 of the *Pension Act*, and sections 3 and 39 of the *Veterans Review and Appeal Board Act*. Judge Blais dismisses the VRAB decision, orders a rehearing with a differently-constituted panel of the Board, and awards Brian court costs.

FDA Analysis of the Brian Bradley Case Study

Based on the VRAB select Federal Court decision excerpts and its inconsistent and flawed decisions against Brian's application (see the Summary of the Brian's Federal Court Decisions), it is clear that this quasi-judicial Board has failed to reasonably apply the *Pension Act* and *Veterans Review and Appeal Board Act*. Instead, the Board used its quasi-judicial authority to deny Brian his disability pension. The 2011 Federal Court decision (T-617-09) shows comprehensively and reasonably that Brian's injuries arose from military service. Many can agree that the Board demonstrated a disregard for law and reason. Unfortunately, for Brian, the Federal Court rendered the same decision in 2001 (T-2137-99).

The FDA believes that the Members of Parliament who created these Acts in 1995 did an injustice to Brian and all other veterans denied disability pensions. The law allows the VRAB, a group of largely partisan appointees with minimal requirements for membership, to make important decisions about Canadian veterans in both the Canadian Forces and Royal Mounted Police. To save money and time, federal politicians opted for an informal, inconsistent, and biased system of justice, instead of allowing the competent, independent, and experienced members of the Federal Court to determine the status of veterans' applications. This erroneous act of the Canadian political establishment has done considerable harm to Canadian veterans; however, the rhetoric of many politicians point out an "obligation" to Canadians in the military who are injured while serving.

Brian and other veterans with disability applications are at the mercy of the VRAB, regardless of the Federal Court's judicial review decisions. Canadian federal politicians have given the VRAB "full and binding" decision-making power. Many veterans are involved in an endless legal struggle where the VRAB to the Federal Court bounce them back and forth ad infinitum. They feel betrayed by their politicians and the government system that states an obligation to care for injured veterans.

Why Canadians Should Care About Disabled Veterans Such As Brian Bradley

Brian is a Canadian Forces veteran. As soon as Brian put on the Canadian Forces uniform, he pledged his life to protect this country. For that commitment alone and regardless of the time of his military service, Brian deserves the respect of Canadians, and the commitment of Canadians to take care of him if he injures himself while serving this country. This obligation to injured Canadian veterans is the intent of the *Pension Act* and *Veterans Review and Appeal Board Act*, but in practice, the obligation is not fulfilled for thousands of injured and/or disabled veterans.

As Brian stated, Canadians should be concerned that if Canadian veterans are being mistreated and dishonoured, how are Canadians not in the Canadian Forces and Royal Mounted Police being treated by the federal government and its system of partisan appointments?

SOURCE OF INJURED AND/OR DISABLED VETERANS' STRUGGLE

Disability Pension/Award Process for Veterans

1. Veterans Can Apply to Veterans Affairs Canada for Disability Pension/Award

Veterans Affairs Canada reviews applications for disability pensions/awards (Frequently Asked Questions, 2013).

2. Veterans Unsuccessful at Veterans Affairs can Access a Review Hearing

If unsuccessful, applicants can apply and participate in a VRAB trial hearing (Frequently Asked Questions, 2013).

3. Veterans Unsuccessful in Review Hearing can Access Appeal Hearing

Applicants can appeal review panel decisions to the VRAB (Veterans Review and Appeal Board Act, section 25).

4. Veterans Unsuccessful in Appeal Hearing can Apply to the Federal Court for Judicial Review

Applicants can apply for a federal court judicial review of decisions, which may result in another appeal hearing with a differently-constituted appeal committee (Frequently Asked Questions, 2013).

VRAB Hearings Open to Public

VRAB hearings are open to the public except where the applicant requests a closed hearing and the VRAB thinks the closed hearing is not contrary to public interest (Veterans Review and Appeal Board Act, section 36(2)).

Nature of Review and Appeal Hearings

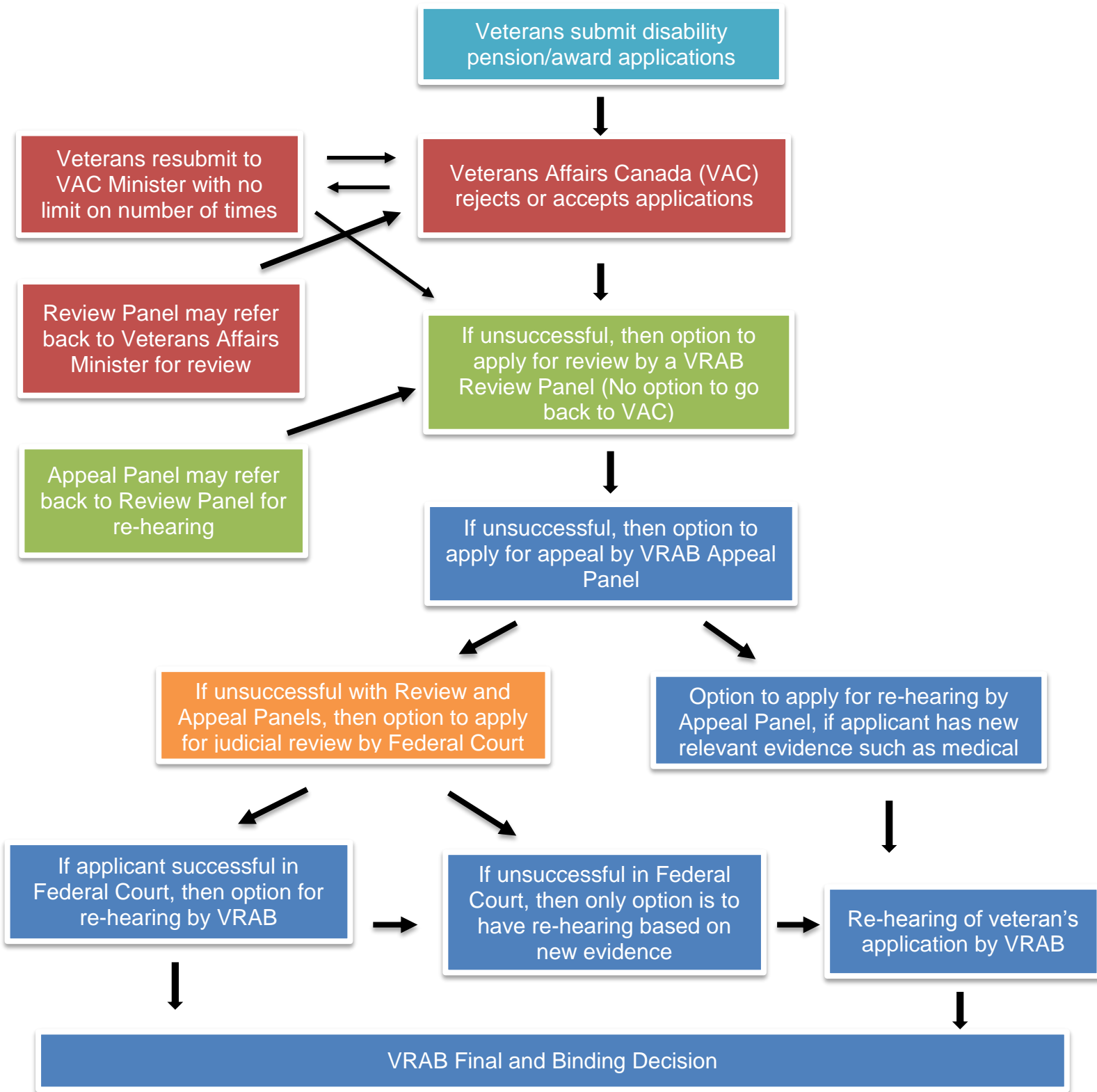
Review Hearings are held in-person or by video conference, and Appeal Hearings are conducted primarily at the VRAB's Head Office and via video conference (Expectations and Challenges of Board Members, 2013)

Veterans Rights

Canadian veterans have a right to respect, dignity, fairness, and courtesy by Veterans Affairs (Veterans Bill of Rights, 2013).

Canadian veterans have the right to make a complaint and the matter reviewed if they feel that any of their rights have not been upheld (Veterans Bill of Rights, 2013).

Flowchart 1: Disability/Award Application Process for Veterans



Veterans Review and Appeal Board

1. Background

Founded 1995; Review and Appeal Board on Veteran Disability Pension/Award Decisions

The *Veterans Review and Appeal Board Act* established the Veterans Review and Appeal Board (VRAB) in 1995. The VRAB is a quasi-judicial board whose primary role is to examine and determine action regarding the reviews and appeals of disability pension/award applications by veterans, Canadian Forces, Royal Canadian Mounted Police Members, and certain civilians and/or their dependents. Reviews and appeals are made under the following Acts: *Pension Act*, the *Canadian Forces Members and Veterans Re-establishment and Compensation Act* and other acts of Parliament. In addition, the VRAB decides on the final appeals of War Veterans Allowance cases under the *War Veterans Allowance Act* (Frequently Asked Questions on the Selection Process for Members of the Veterans Review and Appeal Board, 2013).

VRAB Limited Arm's Length of Federal Government

The VRAB is independent of Veterans Affairs Canada, but Veterans Affairs Canada and the federal government have a direct connection to the appointment of VRAB members, therefore, independence is limited.

VRAB Full and Binding Authority to Decide Reviews and Appeals

The VRAB has full and exclusive jurisdiction to hear, determine, and deal with all appeals made to Board. In other words, the VRAB has near complete control over decision-making, subject to federal court intervention on grounds of unreasonable verdicts (*Veterans Review and Appeal Board Act*, section 26). VRAB members are like “judges” as stated by one member at the October 8, 2013 VRAB Appeal Hearings in Calgary, Alberta (Garvey, 2013).

VRAB Determines Which Veteran Questions are Given Hearing and Decided Upon

The VRAB may refuse to hear any case and decide which questions it deems trivial, frivolous or vexatious. The Minister, Chief Pensions Advocate, any veterans' organization or interested person may request a hearing and decision on the interpretation of the *Pension Act* (*Veterans Review and Appeal Board Act*, Section 37(1), 37(3)).

Limits of VRAB Power

Members of the VRAB have powers, duties, and functions as per Acts of Parliament and the orders of the Governor in Council (Veterans Review and Appeal Board Act, section 16).

The VRAB has full and exclusive jurisdiction to hear, determine and deal with all applications for review made to the Board under the *Pension Act*. This jurisdiction limits the oversight of the federal court of the Board to deferential standard based on patently unreasonable decision that erred on law (Veterans Review and Appeal Board Act, section 18).

VRAB May Seek Independent Medical Advice and Require Medical Examination

The VRAB may seek independent medical advice and may require an applicant to undergo a medical examination (Veterans Review and Appeal Board Act, Section 38(1)).

2. VRAB Review Panel

At Least Two-person Review Panel

A review panel must consist of at least two VRAB members or, with the consent of the applicant, one member appointed by the VRAB chairperson (Veterans Review and Appeal Board Act, Section 2).

Majority Rule and Power to Change VRAB Decisions

The majority of members on the review panel determine VRAB decisions. A review panel may confirm a decision, or amend or rescind a decision made in error with respect to any fact or interpretation of law (Veterans Review and Appeal Board Act, Section 23).

Power to Change Decisions by Veterans Affairs Minister

VRAB review panels have the authority to affirm, vary, or reverse decisions under review by the Minister, refer back to the Minister, and refer any matter not dealt with back to the Minister for review (Veterans Review and Appeal Board Act, Section 21).

3. VRAB Appeal Panel

Appeal Panel at least Three VRAB Members; Separation of Review and Appeal Panels

An appeal panel shall be comprised of no fewer than three VRAB members designated by the Chairperson. Members of the review panel cannot sit on the corresponding appeal panel (Veterans Review and Appeal Board Act, section 27).

Appeal Panel has Authority Change Review Panel Decisions

An appeal panel has the authority to affirm, vary, or reverse a decision being appealed, refer the decision or any matter not dealt with back to review panel for reconsideration, re-hearing, or reinvestigation (Veterans Review and Appeal Board Act, sections 29, 32).

Questions of Act Interpretation Determined by VRAB

The appeal panel can take questions of interpretation of relevant measures of the relevant *Acts* to the VRAB (Veterans Review and Appeal Board Act, section 30).

The VRAB may confirm, amend, or rescind a decision made in error with respect to fact or interpretation of law (Veterans Review and Appeal Board Act, Section 34(7)).

Decisions by Majority Rule

A majority decision by the appeal panel is the decision of the VRAB and is binding (Veterans Review and Appeal Board Act, section 31).

4. Compassion Awards

Compassionate Award Last Opportunity for Disability Award

Persons denied a disability award that has exhausted all procedures for review and appeal may apply to the VRAB for a compassionate award (Veterans Review and Appeal Board Act, section 34(1)).

Exclusive to Specially Meritorious Cases

The VRAB grants compassionate awards for cases that are especially meritorious (Veterans Review and Appeal Board Act, section 34(3)).

Appeal Panel Determines Amount of Compassionate Award

The sum of the compassionate award is at the discretion of the panel, but may not exceed a disability award under the *Pension Act*. The Minister may vary the amount subject to the applicant's dependent condition (Veterans Review and Appeal Board Act, section 34(4)).

Compassionate Awards Rare

According to a Pensioner Advocate, who chose to be anonymous, VRAB compassionate awards are rarely awarded (Garvey, 2013, September 25).

VRAB Provides No Statistics on Compassionate Awards

The VRAB statistical information on its website has no statistics on compassionate awards. For example, see VRAB Statistics for 2012-13, 2013.

The FDA waiting for statistical information from the VRAB (FDA email sent on October 20, 2013 and with acknowledgement of receipt).

5. Structure of the VRAB

VRAB Chair

The Chair of the VRAB, which is also its Chief Executive Officer, is responsible for the implementation of the selection process of VRAB Members. Candidates' qualifications are assessed against criteria that reflect the knowledge, skills and abilities to perform VRAB member roles. The selection process includes public advertisement, initial screening, written test, interview, and reference checks (Selection Process for Veterans Review and Appeal Board Members, 2013).

VRAB Screening Committee of VRAB Members

The VRAB Screening Committee is comprised of retired professionals with background relevant to the VRAB, Deputy Chair of the VRAB, and a human resources expert (Selection Process for Veterans Review and Appeal Board Members, 2013).

VRAB Interview Committee of VRAB Members

The Interview Committee includes a retired senior executive, a retired professional with background relevant to VRAB, Chairman of the VRAB, and a human resources expert (Selection Process for Veterans Review and Appeal Board Members, 2013).

Appointment of Members of the VRAB Screening and Interview Committees

Members of the Screening Committee and Interview Committee are selected in consultation with the Minister of Veterans Affairs. The Minister is also consulted on any changes to the committees. Committee members are required to affirm their impartiality during the member selection process (Selection Process for Veterans Review and Appeal Board Members, 2013). This process allows for partisan appointments.

Once the selection process is complete, the Chair of VRAB will provide a pool of candidates to the Minister of Veterans Affairs. The Minister selects candidates that meet the Chair's recommendations on VRAB's operational, gender, diversity, geographic, and linguistic needs. The Minister recommends these candidates for appointment to the Governor in Council (Selection Process for Veterans Review and Appeal Board Members, 2013).

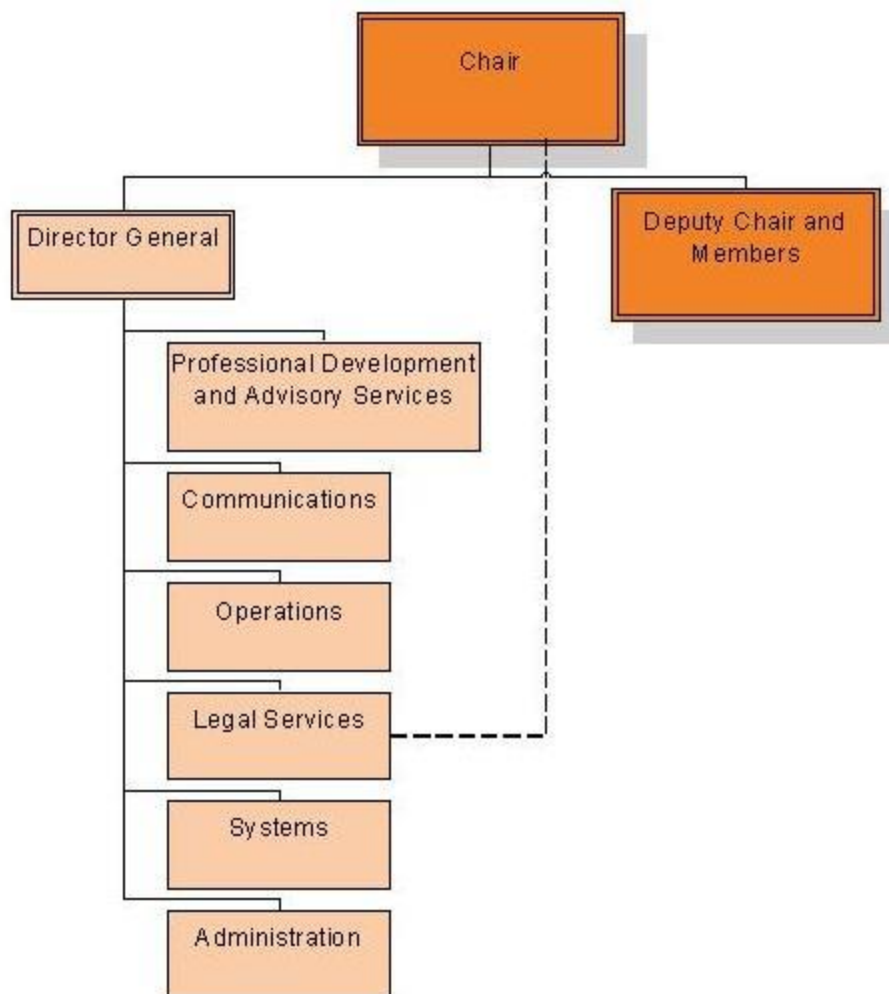
These processes allow for partisan appointments and reduce the independence of the VRAB by giving Veterans Affairs Canada significant say on who become VRAB members (FDA analysis).

VRAB Members

The VRAB Act limits permanent VRAB members to 29 persons including the Chair and Deputy Chair. Temporary members are appointed according to need (Selection Process for Veterans Review and Appeal Board Members, 2013).

Permanent members, including the Chair and Deputy Chair, are appointed for a term not exceeding 10 years and are eligible for reappointment. Initial terms range from one to five years. Temporary members are appointed for maximum two-year term and are eligible for reappointment for one additional term (Selection Process for Veterans Review and Appeal Board Members, 2013).

Flowchart 2: VRAB Organizational Structure (Organizational Structure, 2013).

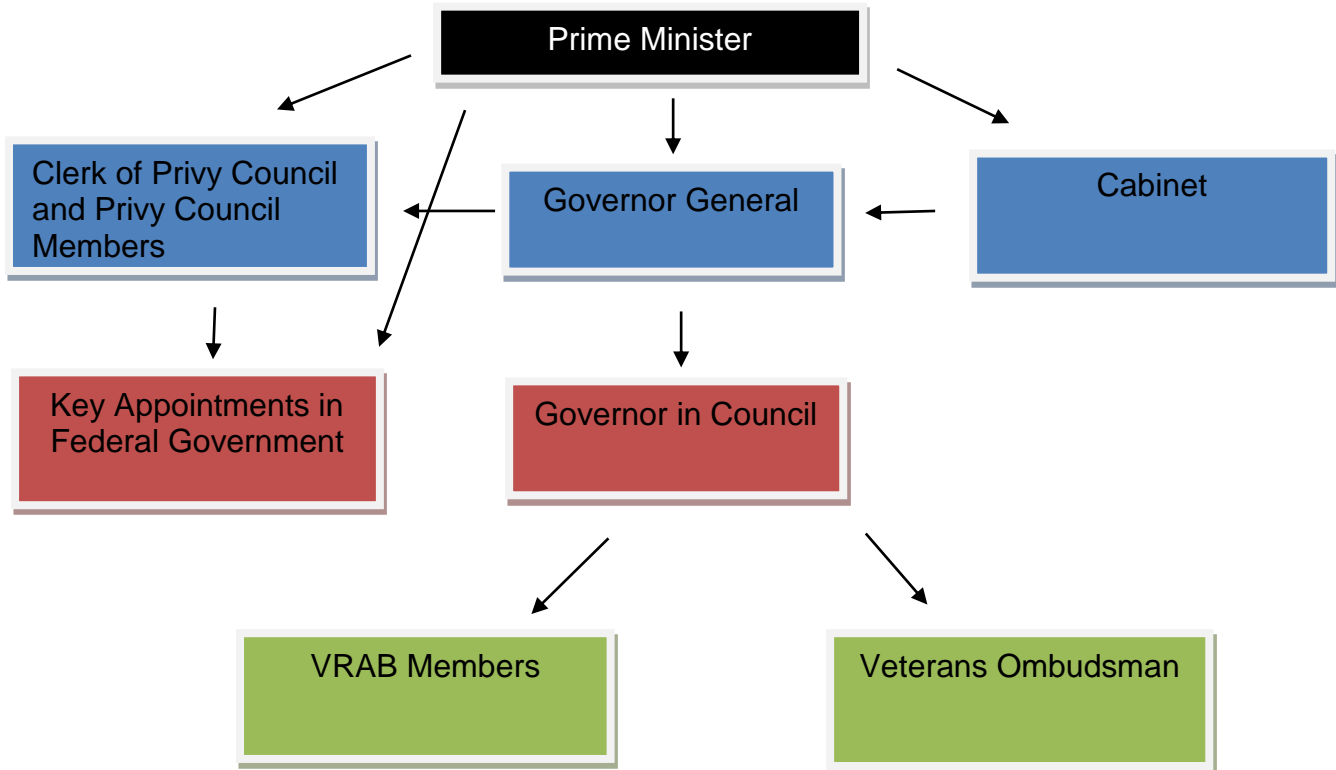


VRAB Bureaucracy

As shown in Flowchart 2, the VRAB bureaucracy is formed by a number of departmental sections such as the Director General, Professional Development and Advisory Services, Communications, and Operations. It is unclear to what degree the VRAB bureaucracy influences the VRAB Chair, Deputy Chair and members. Regardless, the VRAB Chair, Deputy Chair, and members are accountable for their decisions which affect veterans, just as the Prime Minister is accountable to veterans for the partisan VRAB appointments. Elected officials are elected to represent the interests of Canadians, not themselves, bureaucrats, or the party they are from.

VRAB IN THE FEDERAL GOVERNMENT

Flowchart 3 of Federal Government Appointments Pertaining to the VRAB (Arrows indicate basic path of appointments)



(Foundation for Democratic Advancement, 2013)

Appointment of VRAB Members

Governor in Council makes all VRAB Appointments

The Governor in Council appoints members of the Veterans Review and Appeal Board (VRAB), including the chairperson and deputy chair. The *Judicial Review and Appeal Board Act* do not specify how it appoints members (Veterans Review and Appeal Board Act, sections 4, 8).

10 Year and 2 Year Terms for VRAB Members

Members of the VRAB are appointed for 10 years and may be reappointed. Temporary members are appointed for a 2-year term, and can be appointed for one additional term. Permanent and temporary members are on the board subject to good behaviour and performance of duties on a full-time basis. Members cannot be involved in other occupations that present a conflict of interest with being a member (Veterans Review and Appeal Board Act, sections 4, 5, 6, 9).

Advertisement of VRAB Vacancies

Canadian French and English newspapers sometimes advertise available positions on the VRAB board. The VRAB's website and Governor-in-Council website always advertise these positions. In addition, persons can call the VRAB and request an application (Frequently Asked Questions on the Selection Process for Members of the Veterans Review and Appeal Board, 2013).

Informal Expectations to Become a VRAB Member

The VRAB requires members with diverse backgrounds including medical/ health professions, legal, policing, social services, business and military backgrounds, and requires some members to be bilingual (Frequently Asked Questions on the Selection Process for Members of the Veterans Review and Appeal Board, 2013). Based on the FDA research, the VRAB has no formal employment requirements for VRAB members.

VRAB Member Appointment Requirements and Salaries

VRAB members work full-time and are required to adjudicate review and appeal applications made to the VRAB under the *Pension Act*, the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, and other related Acts of Parliament. Members decide cases, ensure the related statutes are properly, and write clear decisions within specified timeframes. VRAB members receive annual salaries ranging from \$105,900 to \$124,500 (Frequently Asked Questions on the Selection Process for Members of the Veterans Review and Appeal Board, 2013).

***VRAB members conduct hearings and make decisions on review and appeal applications of disability compensation decisions of the Veterans Affairs Canada.** Members must be able to interpret and apply the *Pension Act*, the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, the *Veterans Review and Appeal Board Act* (Expectations and Challenges of Board Members, 2013).

VRAB decisions must withstand judicial review by the Federal Court (Expectations and Challenges of Board Members, 2013). However, the Federal Court can only quash an appeal decision and refer it back to a differently-constituted appeal panel.

VRAB Members Conduct

VRAB members must comply with the VRAB Members Professional Code of Conduct, *Conflict of Interest Act*, Ethical and Political Activity Guidelines for Public Office Holders, and *Lobbying Act* (Expectations and Challenges of Board Members, 2013).

Veterans Ombudsman

Veterans Ombudsman are appointed to a five-year term (Veterans Ombudsman, Guy Parent, Chief Warrant Officer, (ret'd), 2013).

The Governor in Council Veterans appoints the Ombudsman subject to approval of the Prime Minister. The Prime Minister indirectly appoints the Governor in Council. In addition, the Minister of Veterans Affairs, appointed by the Prime Minister, makes a recommendation for the Veterans Ombudsman position to the Prime Minister (Guay, 2013). Selection is contingent on the Prime Minister's approval and recommendation for the position, which is non-binding and comes from someone they appointed, therefore, the Prime Minister is directly involved in appointing the Veterans Ombudsman.

Appointment of Governor in Council

Cabinet Directs Governor General's Governor in Council Appointments

On advice from the Queen's Privy Council for Canada (or the Cabinet), the Governor General makes Governor in Council appointments. The appointments include heads of government agencies, CEOs of Crown corporations, and members of quasi-judicial tribunals like the VRAB (Governor in Council Appointment Process Overview, 2013).

Ministers within their jurisdiction manage all Governor in Council appointments and make recommendations for appointments (Governor in Council Appointment Process Overview, 2013).

Prime Minister Appoints Governor General

The Prime Minister appoints the Governor General (through whom the Prime Minister technically exercises most of his/her powers) (History, 2013).

Prime Minister Appoints the Cabinet

The Prime Minister appoints all members of the Cabinet and can remove members of the Cabinet (Guide to the Canadian House of Commons, 2011).

Term of a Governor in Council

The term of a Governor in Council appointment can be a specific or indeterminate term, and the tenure can be during good behaviour or during pleasure. The Governor in Council may remove the latter specification and the former can be removed with cause (Governor in Council Appointment Process Overview, 2013).

Undisclosed Salaries of Governor in Council Appointments

*Remuneration of Governor in Council appointments are not disclosed (Governor in Council Appointment Process Overview, 2013).

Salary of the appointees, living/travel expense allowances, pension plans and arrangements etc. to the Governor in Council are not released to the public (Governor in Council Appointments Procedures Guide, 2008).

Vague Selection Process of Governor in Council Appointments

The selection process of Governor in Council appointments are vague, merely stating that rigorous processes are used for key and high profile appointments such as CEO of Crown corporations, and streamlined selection process for other appointments (Governor in Council Appointment Process Overview, 2013).

Identification of Governor in Council Candidates

Various means such as the GIC Appointment website, executive firms, and newspapers determine the selection process for candidates, including an outline of qualifications required and a qualified pool of candidates (Governor in Council Appointment Process Overview, 2013).

Privy Council Office and Prime Minister's Office Coordinate Key Appointments

The Privy Council Office and Senior Personnel Secretariat coordinate the selection process of key appointments for the Prime Minister's Office. The selection process for all other appointments is through the Ministers and their offices and supported by their departments (Governor in Council Appointment Process Overview, 2013).

Governor in Council Requirements

Governor in Council appointees must comply with the *Conflict of Interest Act*, Ethical Guidelines and Statutory Standards of Conduct, and Guidelines for the Political Activities of Public Office Holders (Governor in Council Appointment Process Overview, 2013).

Officials Sponsoring a Governor in Council must Consult Prime Minister's Office

Officials from the sponsoring Minister's Office of Governor in Council appointment must consult with the Director of Appointments in the Prime Minister's Office prior to transmitting a recommendation for appointment to the Governor in Council (Governor in Council Appointments Procedures Guide, 2008).

Sponsoring Department must have Letter of Transmittal Signed by the Deputy Minister

Sponsoring Department's recommendations to the Governor in Council must include a letter of transmittal to the Assistant Clerk of the Privy Council, and be signed by the responsible Deputy Minister or delegated Director General (Governor in Council Appointments Procedures Guide, 2008).

Privy Council Office (PCO)

Appointment

The Prime Minister appoints the Clerk of the Privy Council (the most senior non-elected federal government position) and the Secretariat to the Cabinet (Clerk of the Privy Council, 2013).

The Governor General, on advice of the Prime Minister, appoints Privy Council members (Constitution Act, Section 11, 1867).

The Privy Council Office has not yet provided information to the FDA (via an email request sent on October 22, 2013 and with acknowledgement of receipt) for information on who appoints and/or selects the Privy Council Secretariats.

PCO Supports Prime Minister and Cabinet

The Privy Council Office provides public service support to the Prime Minister and Cabinet, implements the vision of the Government, and responds to issues facing the government and country (About PCO, 2013).

The Privy Council Office provides policy advice and information to the Prime Minister and Cabinet, including advice and information from the Public Service, consultation and collaboration with international and domestic sources, and information of Canadian priorities (About PCO, 2013).

The Privy Council Office, Secretary to the Cabinet roles include management of Cabinet's decision-making system, coordination of departmental policy proposals to Cabinet with policy analysis, advancing the Government's agenda across federal departments and agencies and with external stakeholders, advice on government structure and organization, and administrative services to the Prime Minister's Office (About PCO, 2013).

The Privy Council Office responsibilities include: managing appointments for senior positions in the federal government and Crown Corporations and agencies, drafting and submitting an annual report on to the Prime Minister on the state of Public Service, ensuring the Public Service has the capacity to meet emerging challenges and changing government responsibilities, and setting policy on human resources issues and public service renewal (About PCO, 2013).

PCO Claims Nonpartisanship despite its Members the Result of Partisan Appointments

The Privy Council Office claims to be non-partisan despite the partisan appointment by the Prime Minister and its stated role of implementation of the government's vision (About PCO, 2013).

The Privy Council Office Mission Statement is as follows: "To serve Canada and Canadians by providing the best non-partisan advice and support to the Prime Minister and Cabinet" (Mission of the Privy Council, 2013).

INNER WORKINGS OF THE VRAB

Evidence of Partisan Appointments to the VRAB

According to the Liberal Party of Canada, from 2008 to 2010, the current federal government has made nine partisan appointments to the VRAB. These appointments are as follows (Stephen Harper's Patronage Frenzy, 2010):

Conservative Government Partisan Appointments to VRAB (2008 – 2010)	Evidence of Partisanship
John Larlee (Chair)	Donated \$1,600 to Conservative Party
Brian O'Kurley	Former PC MP for Elk Island, Alberta (1988-1993)
Dorothy O'Keefe	Former staff to Conservative MP Norm Doyle; donated \$400 to Conservative Party
Richard Woodfield	Conservative activist in Ontario (<i>Toronto Star</i> , March 10, 2007)
Brent Taylor	2006 New Brunswick PC candidate
Angela Vautour	2004 Conservative candidate in Beausejour; former Beausejour PC MP (1999-2000)
Joanne Cowan-McGuigan	Donated \$550 to Conservative Party
Thomas Jarmyn (Not on current VRAB members list)	Donated \$1,250 to Conservative Party
Malcolm Stockton (Not current VRAB members list)	Donated \$800 to Conservative Party

From 2010 to 2013, there have been six new appointments to the VRAB including the Deputy Chair (Biographies, 2013). If these appointments are consistent with the nature of previous appointments, then at least 13 members (including the Chair and Deputy Chair) (or 59 percent) of the current 22 member VRAB are inherently partisan appointments of the current government. Further, the remaining members may be inherent partisan appointments from previous governments. Moreover, from 2006 to August 2012, the current federal government has made 1,135 inherent partisan appointments, and 82 non-inherent partisan appointments (Akin, 2012).

These inherent partisan appointments to the VRAB are inconsistent with the federal government's obligation to Canadian veterans, by putting partisanship before the interests of veterans and Canadians as a whole. If veterans were first, then the federal government would be appointing the most qualified persons to the VRAB, and/or create a non-partisan appointment process.

As it stands, the self-interest of the ruling party comes before the interests of veterans and Canadians as a whole.

A partisan appointment process defines the VRAB as a whole:

- The Prime Minister (a partisan person viz., leader of a political party; political parties by definition are partisan) appoints the Governor General.
- The Prime Minister appoints the Cabinet.
- The Cabinet directs the Governor General on Governor in Council appointments.
- The Prime Minister appoints the Clerk of the Privy Council Office and Secretariat to the Cabinet. The Privy Council and Prime Minister oversee all key federal government appointments.
- The Prime Minister indirectly appoints the Veterans Ombudsman through the Governor in Council who must attain approval of the Prime Minister.
- The Governor in Council appoints VRAB members including Chair and Deputy Chair positions.

VRAB Performance Indicators and Targets

Introduction

The FDA examines the 2009 to 2014 VRAB performance indicators and targets for an independent and fair appeal processes. Independent and fair processes are integral to the VRAB credibility and ability to serve injured and/or disabled veterans. From 2009 to 2014 the FDA uncovers evidence of consistent VRAB mismanagement through unsound and unreliable performance indicators and targets.

Table 1: Strategic Outcome (2009-2010 Report on Plans and Priorities, 2013)

Strategic Outcome #3: Fair and effective resolution of disability pension, disability award, and War Veterans Allowance appeals from Canada's war veterans, eligible Canadian Forces Veterans and current members, RCMP clients, qualified civilians and their families		
Performance Indicators	Targets	Date to Achieve Targets
Percentage of client concerns that are responded to effectively	80% of complaints are responded to within 60 days	March

FDA Analysis

The VRAB performance indicator does not necessarily facilitate a fair and effective resolution of disability pension. A commitment to respond to 80 percent of complaints within 60 does not guarantee the response to or outcome for veterans is fair.

Table 2: Strategic Outcome (2010-2011 Report on Plans and Priorities, 2013)

Program delivery (VRAB)	Ongoing	<p>Strategic Outcome: Fair and effective resolution of disability pension, disability award, and War Veterans Allowance appeals from Canada's war veterans, Canadian Forces members and veterans, Royal Canadian Mounted Police clients, qualified civilians and their families</p> <p>Program Activity: Veterans Review and Appeal Board redress process for disability pensions and awards</p>	<p>Why is this a priority? It ensures applicants have an avenue of redress by an independent tribunal for disability compensation and War Veterans Allowance claims.</p> <p>Plans for meeting the priority</p> <ul style="list-style-type: none"> • Continue to provide maximum opportunities for applicants' claims to be heard at the earliest opportunity. • Focus on internal processes to meet post-hearing commitment to issue decisions within 6 weeks of hearing.
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FDA Analysis

The VRAB performance indicators do not necessarily facilitate a fair and effective resolution of disability pension. For example, a commitment to hear applications at the earliest opportunity or to issue a decision within six weeks of a hearing does not guarantee the outcome is fair.

Note, the 2010-2011 and 2011-2012 performance indicators are the same.

Table 3: Strategic Outcome (2011-2012 Report on Plans and Priorities, 2013)

Operational Priority:	Type	Strategic Outcome
Program Delivery	Ongoing	Fair and effective resolution of disability pension, disability award, and War Veterans Allowance appeals
Why is this a priority? It ensures that applicants have an avenue of redress by an independent tribunal for disability compensation and War Veterans Allowance applications.		
Plans for meeting the priority <ul style="list-style-type: none">• Continue to provide maximum opportunities for applicants to have their applications heard at the earliest opportunity.• Focus on internal processes to meet post-hearing commitment to issue decisions within six weeks of hearing.		

FDA Analysis

The VRAB performance indicators do not necessarily facilitate a fair and effective resolution of disability pension. For example, a commitment to hear applications at the earliest opportunity or to issue a decision within six weeks of a hearing does not guarantee the outcome is fair.

Table 4: Strategic Outcome (2012-2013 Report on Plans and Priorities, 2013)

Program Activity Expected Results	Performance Indicators	Targets
Applicants are provided with a fair appeal process.	Percentage of cases that meet criteria for fair proceedings and quality decisions.	Target is "Meet Expectations" on a scale currently being developed
	Percentage of decisions issued within the published service standard.	80%

FDA Analysis

It is unclear which cases meet the criteria for a fair proceeding and quality decisions or why not every decision meets the published service standard (rather than 80%). As shown in the 2013-2014 Report on Plans and Priorities, the scale based on percentage of appeal decision overturned by judicial review is an unreasonable means to determine the percentage of fair and equality VRAB decisions.

Table 5: Strategic Outcome (2013-2014 Report on Plans and Priorities, 2013)

Strategic Outcome: An independent and fair appeal process for disability pension, award and allowance decisions made by Veterans Affairs Canada.	
Performance Indicators	Targets
Percentage of Board decisions overturned by the Federal Court	Less than 2% of Board decisions are overturned by the Federal Court

FDA Analysis

The above chart lists only one performance indicator. In the last five years, judicial review overturned only an average of 1.16 percent of the finalized second-level unfavourable VRAB appeal decisions and 0.47 percent of finalized first-level unfavourable VRAB review decisions. This data demonstrates that the Federal Court overturns no more than 2 percent of Board decisions. Interestingly, of the VRAB decisions taken to judicial review, the Federal Court returns 54.28 percent to the VRAB for a rehearing.

Table 6: Summary of VRAB Program Performance Indicators and Targets from 2009-2010 to 2013-2014

Year	Performance Indicators	Targets	Evidence of Fairness of VRAB Decisions
2009-2010	Respond effectively to Applicant complaints	80% of complaints are responded to within 60 days	Indicator and target do not prove fairness of VRAB decisions
2010-2011	Maximize opportunities for applicants to be heard in the earliest amount of time	Issues decision within 6-weeks of hearings	Indicator and target do not prove fairness of VRAB decisions
2011-2012	Maximize opportunities for applicants to be heard in the earliest amount of time	Issues decision within 6-weeks of hearings	Indicator and target do not prove fairness of VRAB decisions
2012-2013	Percentage of decisions that meet fair proceedings and quality decisions; percentage of decisions that meet a published service standard.	No criteria provided for determining fair proceedings and quality decisions; 80% of decisions must meet published service standard.	Indicators and target do not prove fairness of VRAB decisions
2013-2014	Percentage of VRAB decisions overturned by Federal Court	Less than 2% of VRAB decisions overturned by the Federal Court.	Indicator and target do not prove fairness of VRAB decisions (See Table above for details)

FDA Analysis of the VRAB Program Performance Indicators and Targets

From 2009 to 2013/2014, the VRAB has made gradual changes to its performance indicators and targets to facilitate fair VRAB decisions. However, none provides or guarantees a direct and clear indicator of fair decisions or outcomes. Therefore, the VRAB performance indicators and targets are not a constructive or useful means to determine the level of fairness in VRAB decisions.

Table 7: FDA Recommended VRAB Performance Indicators and Targets

FDA Performance Indicators of the VRAB	Actuality	FDA Proposed Targets
Percentage of VRAB decisions (in judicial review) which are overturned by the Federal Court	54.28%	Lower the percentage to generate a better performance
Number of VRAB Second Level Appeals (2009 to 2013)	1,089	Lower the number to generate a better performance
Percentage of Favourable Appeal Decisions In Relation to Unfavourable Review Decisions (2009 to 2013)	65.89%	Lower the percentage to generate a better performance

Statistics on the VRAB

Complaints

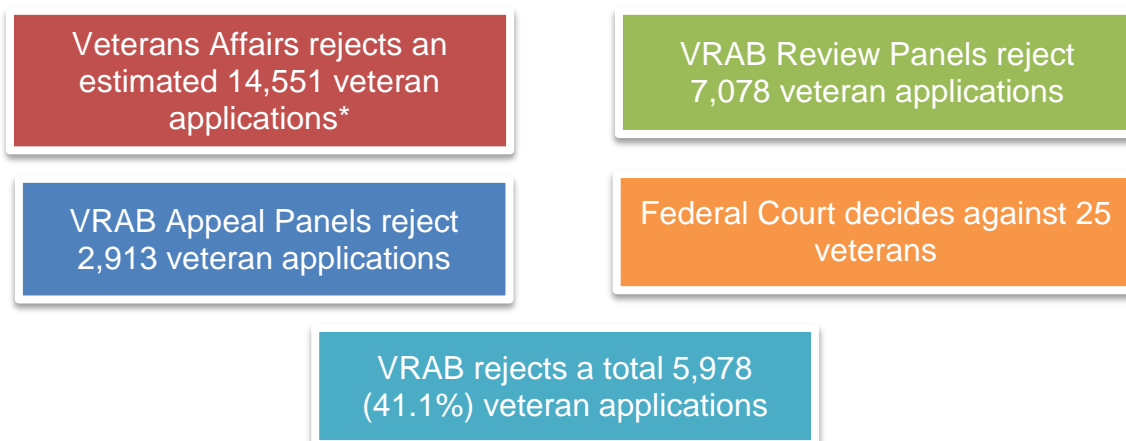
Of the 1,547 cases filed with the Veterans Ombudsman Office in 2011/2012, 137 applicants filed complaints about their case against the Review Board and Appeal Board. 74 percent of the 1,547 cases are new cases (2011-2012 Annual Report, 2012).

Table 8: VRAB Statistics from 2009 to 2013

VRAB Statistical Categories	2012-2013	2011-2012	2010-2011	2009-2010	Average from 2009-2010 to 2012-2013
Finalized VRAB Review Decisions (first level of address)	3,236	3,636	3,539	4,140	3,638
Percentage of Favourable Review Decisions	51%	50%	50%	54%	51.25%
Finalized Appeal Decisions (second level of address)	928	1,072	974	1,380	1,089
Percentage of Favourable Appeal Decisions	34%	29%	33%	35%	32.75%
Number of Judicial Review Requests	16	14	13	19	15.5
Number of Judicial Review Decisions Which Do Not Uphold VRAB Decision (and from applications made in previous years)	4 out of 10 (40%)	7 out of 14 (50%)	9 out of 13 (69.2%)	11 out of 19 (57.9%)	54.28%
Number of Veterans Who Receive Unfavourable Decision through VRAB	1,270 (39.3%)	1,507 (41.5%)	1,448 (40.9%)	1,753 (42.3%)	1495 (41%)
Total Number of Veterans from 2009 to 2013 Who Received Unfavourable Decisions	5,978 (41.1%)*				

* The 41.1 percent of veterans who received unfavourable decisions from VRAB does not include veterans who received unfavourable decisions from Veterans Affairs Canada and who did not apply for a review of the decisions.

Summary of 2009-2013 Statistics on VAC and VRAB



* Based on number of first level VRAB decisions from 2009 to 2013. These rejections do not include veterans who were rejected by VAC and did not apply to VRAB, and that some of the first level decisions were from applications prior to 2009.

Table 9: (Improving the New Veterans Charter, 2013; Parent, 2013)

Canadian Forces Veterans Who Are Clients of Veterans Affairs Canada	Level of Disability of Veteran Canadian Forces Clients	Percentage of disability award and pension
76,446 (out of 594,300 Canadian Forces Veterans)	76% (32% or less of Canadian Forces veteran clients)	33% disability award
	19% (33%-77% of Canadian Forces veteran clients)	47% disability pension
	5% (78% of greater of Canadian Forces veteran clients)	17% disability pension and award
		3% no disability pension or award

According to the Veterans Ombudsman Office, 48,333 or 63.2% of veterans who are Veteran Affairs clients are in receipt of a disability pension (Guay, 2013). Veterans Affairs care for 12.86% of Canadian Forces veterans (FDA extrapolation from Improving the New Veterans Charter, 2013).

Table 10: (Improving the New Veterans Charter, 2013; Parent, 2013)

Total Canadian Forces Veteran Clients Totally and Permanently Incapacitated	No Allowance or Canadian Forces Pension After Age 65 (does not include Veterans with No Allowance and/or Pension)	Salary
1,428 (out of 76,446)	28% (400 out of 1,428)	65% under \$5,000 (928 out of 1,428)

According to the Veterans Ombudsman Office, 1,139 or 79.67% of totally and permanently incapacitated veterans are in receipt of a disability pension. 289 or 20.33% of totally and permanently incapacitated veterans are not receiving a disability pension. These figures do not include permanent partial incapacitated veterans (Guay, 2013).

Table 11: (Improving the New Veterans Charter, 2013; Parent, 2013)

Total Canadian Forces Veteran Clients Totally and Permanently Incapacitated	Percentage Receiving / Not Receiving Permanent Impairment Allowance and Supplement	Percentage Receiving / Not Receiving Canadian Forces Pension	Percentage Receiving / Not Receiving Attendance Allowance	Percentage Receiving / Not Receiving Exceptional Incapacity Allowance
1,428 (out of 76,446)	47% (677 receiving)	29.5% (421 receiving)	10.4% (149 receiving)	3.6% (52 receiving)
	53% (761 not receiving)	70.5% (1,007 not receiving)	37.3% (533 not receiving)	6.8% (97 not receiving)

Percentage Receiving / Not Receiving Exceptional Incapacity Allowance	Percentage Receiving / Not Receiving Either an Allowance or Pension
3.6% (52 receiving)	71.6% (1,022 receiving)
6.8% (97 not receiving)	28.4% (406 not receiving)

Key Statistical Information on the VRAB and Canadian Veterans

- From 2009 to 2013, 5,978 or 41.1% of veterans did not receive a favourable decision from the VRAB. This figure does not include veterans who received

unfavourable decisions from Veterans Affairs Canada and who did not apply for a review of the decision. Brian Bradley falls into this statistic.

- As of 2013, 5, 251 or 3% of Canadian Forces veterans who are either injured or disabled and clients of Veterans Affairs have no disability pension or award.
- The FDA found no statistical information from Veterans Affairs Canada on injured veterans and/or disabled veterans who are not Veterans Affairs clients. Brian Bradley falls into this statistic of not being a client. (To be a Veterans Affairs client, veterans must be receiving some kind of service and/or payment/award/allowance from Veterans Affairs, or be on a waiting list for service or a payment of some kind) (Garvey, 2013, November 4).
- There are an estimated 594,300 Canadian Forces veterans. 76,446 of these veterans are clients of Veterans Affairs Canada (Improving the New Veterans Charter, 2013). There are an estimated 517,854 Canadian Forces veterans who are not clients of Veterans Affairs Canada. That means there are potentially thousands of injured and/or disabled Canadian Forces veterans like Brian Bradley who are not clients of Veterans Affairs Canada.
- As an example, the Australian government is caring proportionally for almost double more of its veterans as compared to the Canadian government. 223,181 (or 60.12 percent) Australian veterans cared for out of 371,000 total veteran population. 210,076 (or 30.2 percent) of Canadian veterans cared for out of 695,700 total veteran population) (Annual Reports 2012-2013, 2013; Improving the New Veterans Charter, 2013).
- At the end of the 2012 fiscal year, the U.S. government is caring for 12,680,474 (or 53.94 percent) of its 23,507,061 veterans, and in contrast to the Canadian government which is caring for 30.2 percent of its veterans (Annual Benefits Report, 2012).
- 11.2 percent of UK veterans receive disability pension/award compared to 10.65 percent of CDN veterans. Note, the UK government also funds Service Charities and Veterans Welfare Services (Location of Armed Forces Pension And Compensation Recipients, 2012; Improving the New Veterans Charter, 2013; Garvey, 2013 November 7).
- As of 2013, 406 or 28.4% of Canadian Forces veterans who are completely and permanently incapacitated and clients of Veterans Affairs are not receiving a disability pension or allowance.

FDA ANALYSIS OF THE VRAB

The FDA has identified a number of issues with the VRAB that undermines its credibility.

Partisan appointments of not only VRAB members, but also the Chair and likely the Deputy Chair, and the Governor in Council who oversees the VRAB characterize the organization. These partisan appointments are inconsistent with the federal government's legislative declaration that Canadians are obligated to veterans for service to the country. This practice likely does not appoint the most qualified and objective persons to the VRAB, thereby reducing the quality of VRAB service to veterans. This issue is particularly disconcerting given the VRAB deals exclusively with disability pensions and awards that veterans are highly dependent on for subsistence and quality of life. Moreover, the partisan nature of the VRAB weakens its independent position from Veterans Affairs Canada. A neutral committee should determine the appointment of VRAB members and officials rather than the federal government or other partisan body affiliated with Veterans Affairs.

The VRAB performance indicators and targets for an independent and fair appeal process do not provide or guarantees a direct and clear indicator of just decisions or outcomes. This provides some evidence that the VRAB is mismanaged, which certainly affects VRAB service to injured and/or disabled veterans.

Between 2009 and 2013, the statistics reveal thousands of injured and/or disabled veterans that receive unfavourable decisions from the VRAB (5,978). In that same period, the Federal Court overturned 54.28 percent of VRAB decisions which underwent judicial review. It is important to note that the financial cost, time commitment and Canadian military culture likely discourages many veterans from pursuing judicial review even though they may have grounds to do so.

BRIAN BRADLEY SAGA EXPLAINED

Brian is one of many veterans that received an unfavourable decision(s) from the VRAB, despite three out of four judicial reviews by the Federal Court that ruled in his favour. Thousands of veterans do not benefit from military benefits or the stated Canadian obligation to assist injured and/or disabled veterans that served the country. Officials perpetuate the inadequate and partisan VRAB system created by federal politicians in 1995 to this day. The government designed VRAB to have final and binding say, leaving Brian on the losing end of an endless legal struggle despite favourable Federal Court decisions. The VRAB, a partisan organization with direct ties to Veterans Affairs Canada, has skirted its obligation to veterans. Although the FDA lacks direct evidence, it assumes that the VRAB has internal financial limitations on the number of disability pension /award applications it can grant favourable decisions to. Rather than honour Canada's obligation to its injured and/or disabled veterans, the VRAB has turned the other way in thousands of cases. Rather than update the *Veterans Review and Appeal Board Act*, Canadian federal politicians have also turned the other way, refusing to transform the rhetoric of the relevant Acts of Parliament into practice for Canada's veterans.

BRIAN BRADLEY A CANADIAN HERO

Brian's struggle is unique, as illustrated by the fact that only an average of 0.42 percent of veterans from 2009 to 2013 who received an unfavourable VRAB appeal decision takes the decision to the Federal Court for judicial review. Brian's perseverance for what he perceives as his rightful disability pension according to the legislation has helped a number of veterans by establishing legal precedence in the Federal Court for how to interpret the *Veterans Review and Appeal Board Act*, *Pension Act*, and other Acts. In addition, Brian's determination has helped to expose the VRAB's partisanship and inadequacies, and the hypocrisy of federal politicians who declare an obligation to injured and/or disabled veterans but do not fulfill that declaration in practice.

The FDA believes Brian is a Canadian hero in the sense that during a time of personal struggle lasting seventeen years and at significant financial and personal sacrifice, he has helped to advance the interests of veterans and Canadians by exposing the inadequacy and disregard of the VRAB and the federal government regarding thousands of injured and/or disabled veterans. Brian continues to serve this country.

Equally important, Brian has helped to expose severe deficiencies in the federal government itself. These deficiencies are comprised of the self-interest approach of elected officials including the Prime Minister as characterized by the system of patronage appointments and gross mismanagement of federal government departments and institutions such as the VRAB. The FDA believes the government's system of patronage appointments is doing a disservice to veterans and Canadians as a whole because potentially, the most qualified and experienced persons are not getting into the government public service positions. Additionally, the independence of government institutions like the VRAB and Veterans Ombudsman Office are compromised by partisan appointments. For example, the former Veterans Ombudsman, Colonial Pat Stogran, had his reappointment not renewed by the Prime Minister. Colonial Stogran was outspoken about the shortcomings of the VRAB and Veterans Affairs Canada towards injured and/or disabled veterans (Sullivan, 2012).

Further, using its expertise in international and Canadian democracy and government, the FDA believes Brian has helped expose underlying issues that are threatening Canadian democracy. The FDA has been exposed to democratic decline in various countries in which elected officials usurp the sovereign political authority of the people, while at the same time rhetorically promote democracy. For example, the United States is dominated by two federal political parties which combat each other, but at the same time work together for their bipartisan benefit, and at the expense of other federal parties and ultimately the American people. The 2012 FDA report on the American Federal Electoral System shows a system significantly biased to the two major political parties. Canada has very similar democratic issues in which Canadian federal politicians through a political establishment of three major parties have a biased and

unfair grip on federal politics. Although these parties are combative, they all represent the political status quo. This status quo or lock on Canadian federal political power is undermining Canadian democracy. The 2013 FDA Report on the Canadian Federal Electoral System shows a system characterized by a series of legislative bias to these major parties.

The electoral system is critical, because it is the principle means for political power, barring undemocratic systems of government. If the electoral system is deficient and unfair, like in Canada and the United States, then it will produce election outcomes that are inconsistent with the voice of the people. This reality in-of-itself undermines democracy. As evidenced by the VRAB and its context in the federal government, Canadian federal elected officials through their patronage system, mismanagement and other issues are acting contrary to the broad public good. This raises the question as to how these people are getting into power in the first place. Unfortunately, in Canada at the federal level of government, the elected officials with control of the Parliament determine the election laws. So Canadians face significant obstacles to reclaim their democracy.

Brian Bradley has provided a way forward for Canadians: resiliency and perseverance against systems of government and conduct of politicians he did not sacrifice his life for. If all Canadians follow Brian's heroic example of standing up for this country from internal decline, then the future of this country would be in good stead.

CONCLUSION

In the FDA's view, the partisanship, inadequacies, and mismanagement of the VRAB disregard the needs and rights of injured and/or disabled Canadian veterans such as Brian. The relevant Acts of Parliament clearly outlines the privileges, rights and expectations on this issue. The reality is much different. This inconsistency and breach of trust and honour has caused significant harm, both financially and emotionally, to thousands of veterans and their families. It is a disgrace to this country. Canadian veterans who are injured and/or disabled during military service, in whatever capacity and in peacetime or wartime, deserve much better.

The grievances of thousands of injured and/or disabled veterans belies deeper issues in Canadian federal democracy, which threatens the lives of all Canadians. A democracy is only as strong as to how engaged and active its people are. Canada's future is at risk from a political establishment characterized by self-interest and which has an authoritarian grip on political power. This political power should rest absolutely in the people's hand during elections and between elections. Through the example of Brian Bradley, Canadians must reclaim their rightful power or face tyranny.

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