Veterans Review and
Appeal Board Canada

Tribunal des anciens combattants
(révision et appel) Canada

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VRAB I-4

VETERANS REVIEW AND APPEAL BOARD

INTERPRETATION DECISION

HEARING DATE: 19 November 2025

DECISION RELEASED: **23 March 2026**

Re: In the matter of an interpretation of the *Veterans Well-being Act* and related *Regulations* in respect of Additional Pain and Suffering Compensation

PANEL MEMBERS: Christopher J. McNeil
C.E. Robinson
Richard J.D. Thibault
J.C. Barriault
Isabelle Chartier

APPEARING: Lisa Laird, Bureau of Pension Advocates
Vincent Lambert, Bureau of Pension Advocates
Jeffery S. Macdonald, Attorney General of Canada

QUESTIONS: The Bureau of Pension Advocates and the Attorney General of Canada agreed to present the following three questions at the hearing:

1) Does the Minister have legal authority under the *Veteran's Well-being Act* and *Regulations* to create binding statutory instructions for assessing Additional Pain and Suffering Compensation (APSC)?
2) Are the instructions reflected in Chapter 25 of the Table of Disabilities (ToD) 2006 consistent with the object and purpose of the APSC award and the *Veterans Well-being Act*?
3) How should the Minister and the Veterans Review and Appeal Board (VRAB) assess the extent of a Veteran's permanent and

severe impairment under the *Veterans Well-being Act* and *Regulations* when determining the grade level, given the requirement for credible and reliable evidence for assessments?

EVIDENCE:

EXHIBITS:

EX-CPA-1:	VAC 2006 Table of Disabilities, Chapter 25, December 2024 (six pages);
EX-CPA-2 :	Orders in Council - Search, 2 October 2025 - Bilingual (14 pages);
EX-CPA-3:	VAC Policy: Additional Pain and Suffering Compensation, 15 November 2024 (16 Pages);
EX-CPA-4:	WSIB Ontario List of Functional Impairments (six pages);
EX-CPA-5:	ICF Checklist, World Health Organization, September 2003 (15 pages);
EX-CPA-6:	Bundle of APSC Grade Determination Worksheets, Bilingual (10 pages);
EX-CPA-7:	*Canada Gazette,* Part II, Vol. 153, No. 18 (extracts), with Regulatory Impact Statement, Bilingual (13 pages); and
EX-CPA-8:	VAC Policy: Disability Benefits in Respect of Peacetime Military Service - The Compensation Principle, 27 September 2024 (10 pages).

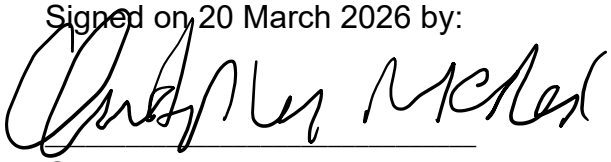
THE INTERPRETATION PANEL DECIDES:

The Interpretation Decision Panel (the Interpretation Panel) finds that Chapter 25 of the Table of 2006 Disabilities is *ultra vires* the authority of the Minister of Veterans Affairs Canada (VAC).

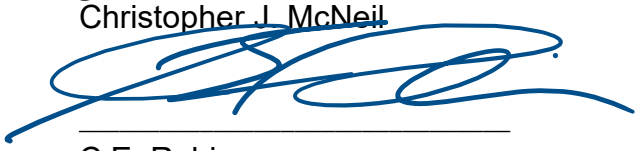
Given that Chapter 25 is *ultra vires*, the Interpretation Panel finds that the second question is moot.

The Interpretation Panel finds that it does not have jurisdiction over the third question.

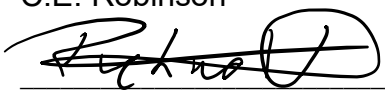
Signed on 20 March 2026 by:



Christopher J. McNeil



C.E. Robinson



Richard J.D. Thibault

J.C. Barriault

Isabelle Chartier

Authority to Issue Interpretation Decision

The authority of the Veterans Review and Appeal Board (the Board) to issue an Interpretation Decision stems from Section 37 of the *Veterans Review and Appeal Board Act* which reads:

> **37 (1)** The Minister, the Chief Pensions Advocate, any veterans' organization incorporated by or under an Act of Parliament or any interested person may refer to the Board for a hearing and decision on any question of interpretation relating to this Act, to the *Pension Act*, to Part 3 of the *Veterans Well-being Act*, to any other Act of Parliament pursuant to which an appeal may be taken to the Board or to any regulations made under any such Act.
>
> **(2)** Before making a decision on a question referred to it, the Board shall notify the prescribed persons or organizations and give them an opportunity to present argument on the question.
>
> **(3)** The Board may refuse to hear and decide any question referred to it under this section that it considers to be trivial, frivolous or vexatious.

The Chief Pensions Advocate (CPA) first submitted questions for an Interpretation Decision regarding Canadian Armed Forces (CAF) members. At the request of the VRAB Chair, CPA consulted with the Attorney General of Canada to identify an agreed set of questions.

The Board and its Empowering Legislation

In accordance with the *Veterans Review and Appeal Board Act*, the Board has full and exclusive jurisdiction to hear, determine and deal with all applications for review and appeal that may be made to the Board under the *Pension Act*, and the *Veterans Well-being Act - Part 3.*

Process

In accordance with subsection 37(2) of the *Veterans Review and Appeal Board Act*, invitations to participate and make written submissions were extended to organizations which are listed in Appendix A, in accordance with the *Prescribed Persons and Organizations Regulations*.

> **Prescription**
>
> **2** The following persons and organizations are prescribed for the purposes of sections 30 and 37 of the *Veterans Review and Appeal Board Act*:
>
> **(a)** the Army, Navy and Air Force Veterans in Canada;
>
> **(b)** the Bureau of Pensions Advocates;
>
> **(c)** the Merchant Navy Coalition for Equality;
>
> **(d)** the Minister of Veterans Affairs;
>
> **(e)** the National Council of Veteran Associations in Canada; and
>
> **(f)** the Royal Canadian Legion.

The Attorney General of Canada (AGC), The Army, Navy and Air Force Veterans in Canada (ANAVETS), and the Chief Pensions Advocate, as represented by the Bureau of Pensions Advocates (BPA), indicated that they would make written submissions. The AGC and BPA also indicated that they would also make oral presentations. Written submissions were received, along with numerous exhibits. The written submissions can be found in Appendix B.

The Interpretation Panel reviewed all submissions and carefully considered the presentations made during the hearing. In making this decision, the Interpretation Panel was mindful of the statutory obligations upon it as set out in Section 3 of the *Veterans Review and Appeal Board Act* and in Section 2.1 of the *Veterans Well-being Act*. These provisions call for a broad and liberal construction and interpretation of the provisions of these statutes in recognition of what veterans have done for their country.

INTRODUCTION

BPA and AGC presented the following three questions at the hearing:

1) Does the Minister have legal authority under the *Veteran's Well-being Act* and *Regulations* to create binding statutory instructions for assessing APSC?
2) Are the instructions reflected in Chapter 25 of the 2006 ToD consistent with the object and purpose of the APSC award and the *Veterans Well-being Act*?
3) How should the Minister and VRAB assess the extent of a Veteran's permanent and severe impairment under the *Veterans Well-being Act* and *Regulations* when determining the grade level, given the requirement for credible and reliable evidence for assessments?

At the hearing, BPA and AGC agreed on the following principles applicable in this case:

- The modern principle of statutory interpretation applies. The Board should choose the interpretation that best ensures that the objectives of the enactments are met.
- The legislation must be interpreted liberally.
- The exercise of delegated authority must be consistent with the specific provisions of the legislation and with its overriding purpose.
- The policy merits of Chapter 25 are not at issue in a *vires* review. The Board need not determine whether it is "necessary, wise, or effective in practice."
- Pursuant to subsection 49(1), the 2006 ToD is a valid piece of subordinate legislation for the purpose of completing disability assessments.
- The Minister of Veterans Affairs Canada may issue non-binding guidelines for the better administration of the *Veterans Well-being Act* provided the guidelines respect the limits of the Minister's statutory authority and are consistent with the specific provisions and the objectives of the legislation.
- APSC assessments must be informed by the purpose of APSC as set out in the Regulatory Impact Analysis Statement (RIA).
- APSC assessments must be based on any relevant factor.
- The evidentiary principles in the *Veterans Well-being Act*, s. 43, and *Veterans Review and Appeal Board Act*, s. 39, must be respected in all cases.[1]

[1]BPA Supplementary Written Submissions, p.1.

At the beginning of the hearing, the Chair confirmed that the general validity of the ToD is not at issue. Rather, the issue raised by Question 1 is whether the Minister has the authority to adopt binding statutory instructions for assessing APSC, specifically Chapter 25 of the ToD.

The remaining two questions before the Interpretation Panel will be addressed as initially formulated by the parties.

ANALYSIS AND REASONS

Question 1: Does the Minister have the authority to adopt binding statutory instructions for assessing APSC, specifically Chapter 25 of the ToD?

Positions of the Parties

BPA

In a nutshell, BPA argues that in light of subsections 49(1), 56.6(4), 63(c) and 94(a.1) of the *Veterans Well-being Act*, it is the Governor in Council (GIC), not the Minister, that holds the authority to create binding regulatory criteria governing APSC such as Chapter 25 of the ToD.

AGC

In a nutshell, AGC argues that subsection 49(1) of the *Veterans Well-being Act* authorizes the creation of Chapter 25 of the ToD on the basis that APSC is merely an extension on a continuum of benefits for disabilities set out under the Pain and Suffering Compensation (PSC)[2]. As such, Chapter 25 is within the statutory authority of the Minister, the Minister's discretion in administering the *Veterans Well-being Act*, and principles of administrative law.

ANAVETS

In their written submissions, ANAVETS refers the Interpretation Panel to the submissions of BPA and essentially argues that Chapter 25's narrow criteria is incompatible with the *Veterans Well-being Act* and Section 54 of the *Veterans Well-being Regulations* which considers "any relevant factor" in the assessment of APSC.

Framework of Analysis

[2] Sections 45 to 56.5 of the *Veterans Well-being Act*.

In answering Question 1, the Interpretation Panel must understand the nature and scope of the Minister's authority within the legislative scheme of the *Veterans Well-being Act* and related statutory instruments. This will involve consideration of:

- The Test of *Vires* Subordinate Legislation
- Purpose of the *Veterans Well-being Act*
- Purpose of PSC
- Purpose of APSC
    - Legislative Provisions
    - Origin
    - Extrinsic evidence informing purpose
- Minister's Authority with respect to APSC

The Test of *Vires* Subordinate Legislation

According to the Supreme Court of Canada (SCC) in the *Auer*[3] decision, the standard of review that presumptively applies when reviewing the *vires* subordinate legislation is the reasonableness standard as set out in *Vavilov*[4] unless the "legislature has indicated that it intends a different standard to apply or where the rule of law requires that the correctness standard be applied[5]".

No exception to the presumption of reasonableness review applies in the present case. The legislature has not indicated that the Minister's decision to establish Chapter 25 of the ToD must be reviewed on a standard other than reasonableness, nor does the rule of law require that the correctness standard be applied to a *vires* review of Chapter 25 of the ToD. Accordingly, the Interpretation Panel finds that the presumptive standard of reasonableness applies in the present case.

In the *Auer* decision, the SCC also determined that the following four factors from their earlier decision in *Katz Group Canada Inc*.[6] continue to inform a reasonable review[7]:

> (1) subordinate legislation must be consistent both with specific provisions of the enabling statute and with its overriding purpose or object;
>
> (2) subordinate legislation benefits from a presumption of validity;

[3] *Auer v. Auer*, 2024 SCC 36 [Auer].
[4] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653.
[5] *Auer*, paragraph 24.
[6] *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care*), 2013 SCC 64.
[7] *Auer*, paragraph 3.

(3) the challenged subordinate legislation and the enabling statute should be interpreted using a broad and purposive approach to statutory interpretation; and

(4) a *vires* review does not involve assessing the policy merits of the subordinate legislation to determine whether it is necessary, wise, or effective in practice.

The SCC also determined that "for subordinate legislation to be found *ultra vires* on the basis that it is inconsistent with the purpose of the enabling statute, it no longer needs to be "irrelevant", "extraneous" or "completely unrelated" to that statutory purpose[8]".

As instructed by *Auer*, the Interpretation Panel will now conduct a *vires* review of Chapter 25 of the ToD, keeping in mind the following SCC's guidance:

> In conducting a *vires* review, a court does not undertake a *de novo* analysis to determine the correct interpretation of the enabling statute and then ask whether, on that interpretation, the delegate had the authority to enact the subordinate legislation. Rather, the court ensures that the delegate's exercise of authority falls within a reasonable interpretation of the enabling statute, having regard to the relevant constraints[9].

In this case, the Panel has analyzed the different factors mentioned above in a different order:

- Not an assessment of policy merits;
- Presumption of validity;
- A broad and purposive approach; and
- Consistent with both specific provisions of the enabling statute and its overriding purpose or object

(1) A vires review does not involve assessing the policy merits of the subordinate legislation to determine whether it is necessary, wise, or effective in practice

The SCC in *Auer* has cautioned that reviewing bodies must be careful not to assess the policy merits of the subordinate legislation but only review its legality or validity. As stated in *Auer*, at para. 33:

> …Finally, a *vires* review does not involve assessing the policy merits of the subordinate legislation to determine whether it is "necessary, wise, or

[8] *Auer*, paragraph 4.
[9] *Auer*, paragraph 65.

> effective in practice". Courts are to review only the legality or validity of subordinate legislation (*West Fraser Mills*, at para. 59, per Côté J., dissenting, but not on this point; *La Rose v. Canada*, 2023 FCA 241, 488 D.L.R. (4th) 340, at para. 26; see also Mancini, at p. 276).

(2) Subordinate legislation benefits from a presumption of validity

In *Auer*[10], the SCC affirmed its position in *Katz Group Canada Inc.*, that the presumption of validity has two aspects: (1) the burden is on challengers to demonstrate the invalidity of subordinate legislation; and (2) where possible, subordinate legislation should be construed in a manner that renders it *intra vires*; i.e. "if the reasonable standard applies, to overcome the presumption of validity, challengers must demonstrate that the subordinate legislation does not fall within a reasonable interpretation of the delegate's statutory authority".

For the reasons outlined below, the Interpretation Panel finds that this presumption has been rebutted as it is not reasonable to interpret Section 49 of the *Veterans Well-being Act* as granting the Minister the authority to create binding instructions for APSC assessments.

(3) The challenged subordinate legislation and the enabling statute should be interpreted using a broad and purposive approach to statutory interpretation

In relation to the principles of statutory interpretation, the SCC has consistently held that:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.[11]

In the recent case of *Pepa v. Canada (Citizenship & Immigration)*, 2025, SCC 21, the majority of the Court reiterated these principles at para. 87:

> The usual principles of statutory interpretation apply when an administrative decision maker interprets a provision (*Vavilov*, at para. 120). It is well established that a statutory interpretation analysis must be guided by the modern approach: ". . . the words of an Act are to be read in their entire context and in their grammatical and ordinary sense

[10] *Auer*, paras. 37, 38, 39.
[11] (*Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27, at para. 21, quoting E. A. Driedger, *The Construction of Statutes* (2nd ed. 1983), at p. 87).

> harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (*Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27, at para. 21, quoting E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87; see also *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26; *Vavilov*, at para. 117).

In relation to the grammatical and ordinary meaning, *Pepa,* at paragraph 89, specifies:

> The ordinary meaning is "the natural meaning which appears when the provision is simply read through as a whole" (*Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Assn.*, 1993 CanLII 31 (SCC), [1993] 3 S.C.R. 724, at p. 735).

Similarly, *Piekut v. Canada (National Revenue)*, 2025 SCC 13, at paragraph 45, instructs:

> As a result, "plain meaning alone is not determinative and a statutory interpretation analysis is incomplete without considering the context, purpose and relevant legal norms" (*Alex*, at para. 31; see also *La Presse*, at para. 23; *Vavilov*, at para. 118). At the same time, "just as the text must be considered in light of the context and object, the object of a statute and that of a provision must be considered with close attention always being paid to the text of the statute, which remains the anchor of the interpretative exercise" (*Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43, at para. 24).

In addition to the grammatical and ordinary meaning principles of statutory interpretation, as the present case relates to the interpretation of the *Veterans Well-being Act*, a Federal statute, the Interpretation Panel is reminded of the SCC's teachings in *Piekut v. Canada (National Revenue)*, 2025 SCC 13, with regards to the interpretation of both the English and French versions of a piece of legislation, as outlined at paragraphs 46, 52, and 53:

> [46] Section 12 of the *Interpretation Act*, R.S.C. 1985, c. I-21, supports the modern principle when interpreting federal legislation, by directing that "[e]very enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects" (see *Bell ExpressVu*, at para. 26).
>
> …
>
> [52] In interpreting s. 178(1)(g), **a court must, of course, consider both official language versions of the provision. This is because the**

> **French and English language versions of federal legislation are equally authoritative** (*Constitution Act, 1867*, s. 133; *Charter*, s. 18(1); *Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.), s. 13; M. Bastarache et al., *The Law of Bilingual Interpretation* (2008), at pp. 16-32). **Courts have a duty to read both official language versions of federal legislation to determine whether they have the same meaning and, if they do not, to determine which version should prevail** (Sullivan, at § 5.02[5]; P.-A. Côté and M. Devinat, *Interprétation des lois* (5th ed. 2021), at para. 1125). As has been noted, "Canadians read only one version of the law at their peril" (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 38, citing Bastarache et al., at p. 32). [Emphasis Added]
>
> [53]Consequently, the interpretation of a bilingual enactment must begin with a search for the shared meaning between the two official language versions (*R. v. Daoust*, 2004 SCC 6, [2004] 1 S.C.R. 217, at para. 26, citing *R. v. Mac*, 2002 SCC 24, [2002] 1 S.C.R. 856, at para. 5). The shared meaning is generally preferred unless other indicators of legislative intent suggest that the shared meaning is inappropriate (*Doré v. Verdun (City)*, 1997 CanLII 315 (SCC), [1997] 2 S.C.R. 862, at para. 25; *Khosa*, at paras. 38-40).
>
> [Emphasis added]

(4) Subordinate legislation must be consistent both with specific provisions of the enabling statute and with its overriding purpose or object

As stated in *Aue*r:

> Reviewing the *vires* of subordinate legislation is fundamentally an exercise of statutory interpretation to ensure that the delegate has acted within the scope of their lawful authority under the enabling statute.
>
> Accordingly, the governing statutory scheme, other applicable statutory or common law and the principles of statutory interpretation are particularly relevant constraints when reviewing the *vires* of subordinate legislation.[12]

In relation to the governing statutory scheme, the SCC stated the following in *Auer at paragraphs 61 and 62*[13]*:*

> "Because administrative decision makers receive their powers by statute, the governing statutory scheme is likely to be the most salient aspect of

[12] *Auer,* paras. 59 and 60.
[13] *Auer.*

> the legal context relevant to a particular decision" (*Vavilov*, at paras. 108-9; Mancini, at p. 275).
>
> The language chosen by the legislature in an enabling statute describes the limits and contours of a delegate's authority (*Vavilov*, at para. 110). The legislature may use precise and narrow language to delineate the power in detail, thereby tightly constraining the delegate's authority. Alternatively, the legislature may use broad, open-ended or highly qualitative language, thereby conferring broad authority on the delegate (*ibid*.; see also Keyes (2021), at pp. 195-96). Statutory delegates must respect the legislature's choice in this regard. They "must ultimately comply 'with the rationale and purview'" of their enabling statutory scheme in accordance with its text, context and purpose (*Vavilov*, at para. 108, citing *Catalyst Paper*, at paras. 15 and 25-28, and *Green*, at para. 44).

Purpose of the *Veterans Well-being Act*

According to its preamble, the *Veterans Well-being Act* is an "Act to provide services, assistance and compensation to or in respect of Canadian Forces members and veterans and to make amendments to certain Acts".

Section 2.1 of the *Veterans Well-being Act* specifically sets out the purpose of the legislation:

> **2.1** The purpose of this Act is to recognize and fulfil the obligation of the people and Government of Canada to show just and due appreciation to members and veterans for their service to Canada. This obligation includes providing services, assistance and compensation to members and veterans who have been injured or have died as a result of military service and extends to their spouses or common-law partners or survivors and orphans. This Act shall be liberally interpreted so that the recognized obligation may be fulfilled.

The Minister's position is that the *Veterans Well-being Act*'s purpose is essentially to provide an appropriate level of benefits to those who serve and Veterans in recognition of their service to Canada.

The *Veterans Well-being Act* compensates for disabilities related to service. Both PSC and APSC provide compensation for disabilities. The Minister submitted that APSC is merely an extension on a continuum of benefits for disabilities which is set out under the PSC; and as such, Section 49 authorizes the Minister to adopt binding statutory instructions for assessing all forms of disability. Further, the authority in Section 49 extends to the assessment of a "permanent and severe impairment" under subsection

56.6(4) of the Act, because a “permanent and severe impairment” is a severe form of disability. In short, the Minister’s position is that the legal authority for Chapter 25 of the ToD is found in the PSC provisions of the Act.

The Interpretation Panel notes, however, that there are a wide range of benefits for Veterans in addition to PSC such as career transition services, education and training benefits, and rehabilitation services, critical injury benefits, death benefits and clothing allowance which are broader than compensating for disabilities. Therefore, the Interpretation Panel finds that the specific benefit of PSC must be considered to determine its own specific purpose.

In this case, in light of the position of the Minister, the Interpretation Panel will now look at PSC and its purpose in order to understand if and how it relates to APSC.

Purpose of Pain and Suffering Compensation

Sections 2.1, 42, 43, 44, and 45 to 56.5 of the *Veterans Well-being Act* and Sections 47, 48, 49 to 53.4, 62, 63.1 of the *Veterans Well-being Regulations* set out the authorities for granting and administering PSC. These provisions address disabilities arising from service related injuries or diseases, aggravated by service, or consequential to other service-related injuries or diseases. The PSC provisions also address fraction entitlement, loss of paired organs or limbs, and determining the extent of entitlement. The main concept of PSC is illustrated in Sections 45 and 46:

> **Pain and Suffering Compensation**
>
> **Eligibility**
>
> **45 (1)** The Minister may, on application, pay pain and suffering compensation to a member or a veteran who establishes that they are suffering from a disability resulting from
>
> > **(a)** a service-related injury or disease; or
> >
> > **(b)** a non-service-related injury or disease that was aggravated by service.
>
> **Compensable fraction**
>
> **(2)** Pain and suffering compensation may be paid under paragraph (1)(b) only in respect of that fraction of a disability, measured in fifths, that represents the extent to which the injury or disease was aggravated by service.
>
> **Consequential injury or disease**

> **46 (1)** For the purposes of subsection 45(1), an injury or a disease is deemed to be a service-related injury or disease if the injury or disease is, in whole or in part, a consequence of
>
> **(a)** a service-related injury or disease;
>
> **(b)** a non-service-related injury or disease that was aggravated by service;
>
> **(c)** an injury or a disease that is itself a consequence of an injury or a disease described in paragraph (a) or (b); or
>
> **(d)** an injury or a disease that is a consequence of an injury or a disease described in paragraph (c).
>
> **Compensable fraction**
>
> **(2)** If a disability results from an injury or a disease that is deemed to be a service-related injury or disease, pain and suffering compensation may be paid under subsection 45(1) only in respect of that fraction of the disability, measured in fifths, that represents the extent to which that injury or disease is a consequence of another injury or disease that is, or is deemed to be, a service-related injury or disease.

The Interpretation Panel notes that the focus of PSC is addressing disability compensation. According to subsection 2(1) of the *Veterans Well-being Act*, the term "disability" means "the loss or lessening of the power to will and to do any normal mental or physical act. (*invalidité*)".

The Interpretation Panel notes that throughout the *Veterans Well-being Act* provisions for PSC, the term disability is used exclusively. There is no reference to permanent and severe impairment.

According to VAC's Pain and Suffering Compensation Policy[14] dated 1 April 2019, its intent is:

> to recognize and compensate for the non-economic effects of service-related disability, including pain and suffering, physical and/or psychological loss, functional impairment and impact on the member's or Veteran's overall quality of life and the impact on the lives of the member's or Veteran's family (i.e. surviving spouse or common-law partner and dependent children).

[14] Pain and Suffering Compensation | Veterans Affairs Canada, retrieved 27 November 2025.

Section 49(1) of the *Veterans Well-being Act* specifically gives the Minister the power to develop instructions and a table of disabilities to determine the extent of the assessment for disabilities and reads as follows:

> **How extent of disability assessed**
>
> **49 (1)** The assessment of the extent of a disability shall be based on the instructions and a table of disabilities to be made by the Minister for the guidance of persons making those assessments.

The current ToD created by the Minister under subsection 49(1) specifically refers to "the degree of medical impairment caused by an entitled disability". Chapter 1 of the ToD states:

> **1.1 Authority and Administration**
>
> The Table of Disabilities is the instrument used by Veterans Affairs Canada to assess the degree of medical impairment caused by an entitled disability. The Table of Disabilities has been revised using the concept of medical impairment based on a per condition methodology. The relative importance of that body part/body system has been a consideration in the development of criteria to assess the medical impairment resulting from the entitled disability. The Disability Assessment will be established based on the medical impairment rating, in conjunction with quality of life indicators which assess the impact of the medical impairment on the individual's lifestyle.
>
> **(I) - Authority**
>
> This publication is issued under the authority of the Minister of Veterans Affairs Canada in compliance with subsection 35(2) of the *Pension Act* R.S.C. 1985, c. P-6 and subsection 49(1) of the *Veterans Well-being Act*, …

As mentioned before, the general validity of this ToD is not at issue. However, because neither APSC nor its specific terminology are mentioned in the PSC provisions, the Interpretation Panel must determine if the Minister has the authority to adopt Chapter 25 of the ToD pursuant to Section 49 of the *Veterans Well-being Act*.

<u>Purpose of Additional Pain and Suffering Compensation</u>

The APSC was introduced on 1 April 2019 under the *Veterans Well-being Act* as part of the Pension for Life Initiative. The introduction of APSC was part of the legislative

measure contained in Bill C-74 which implemented certain provisions of the Budget tabled in Parliament on 27 February 2018, and other related measures.[15]

VAC's submissions refer to the purpose of APSC as follows :

> The purpose of APSC is to compensate the most severely impaired Veterans, akin to how the former Permanent Impairment Allowance/Career Impact Allowance worked under the prior regime.
>
> …
>
> The APSC is an extraordinary benefit that provides additional recognition and compensation of the additional non-economic losses created by severe and permanent disability. If a Veteran is in receipt of a VAC disability benefit and is experiencing a barrier to life after service, they may apply for the APSC if they have a permanent and severe impairment. If eligible, an assessment will assign one of three grade levels on the basis of the extent and severity of the permanent and severe impairment.

Legislative provisions for APSC

The authorities for granting and administering APSC are set out in the *Veterans Well-being Act* (ss 56.6 – 56.8, 63 (c), and 94 (a.1) as well as in the *Veterans Well-being Regulations* (ss 1.1, 54-54..5). The most relevant provisions in this case are set out below:

Veterans Well-being Act

> **Additional Pain and Suffering Compensation**
>
> **Eligibility**
>
> **56.6 (1)** The Minister may, on application, pay additional pain and suffering compensation to a veteran who suffers from one or more disabilities that are creating a permanent and severe impairment and a barrier to re-establishment in civilian life if the veteran, in respect of each of those disabilities, has been granted a disability award or pain and suffering compensation or a disability pension under the *Pension Act*.
>
> …
>
> **Assessment of extent of impairment**
>
> **(4)** The Minister shall assess the extent of the veteran's permanent and severe impairment.

[15] Legislative Summary for Bill C-74.

…

63 The Governor in Council may make regulations

…

(**c**) respecting what constitutes a permanent and severe impairment, the manner of determining whether a veteran has a permanent and severe impairment and the extent of the permanent and severe impairment.

…

94 The Governor in Council may make regulations

…

(a.1) respecting what constitutes a barrier to re-establishment in civilian life.

Veterans Well-being Regulations

1.1 For the purposes of Parts 2 and 3 of the Act, ***barrier to re-establishment in civilian life*** means the presence of a disability or a temporary or permanent physical or mental health problem that limits or prevents an individual's reasonable performance in civilian life of their roles in the workplace, home or community.

…

Additional Pain and Suffering Compensation

54 For the purposes of section 56.6 of the Act, a permanent and severe impairment is

(a) an amputation at or above the elbow or the knee;

(b) the amputation of more than one upper or lower limb at any level;

(c) a total and permanent loss of the use of a limb;

(d) a total and permanent loss of vision, hearing or speech;

(e) a severe and permanent psychiatric condition;

(f) a severe and permanent limitation in mobility or self-care; or

(g) a permanent requirement for supervision.

54.1 For the purposes of subsection 56.6(4) of the Act, the assessment of the extent of the veteran's permanent and severe impairment shall be based on any relevant factor, including

(a) the need for institutional care;

(b) the need for supervision and assistance;

(c) the degree of the loss of use of a limb;

(d) the frequency of the symptoms; and

(e) the degree of psychiatric impairment.

Origins of APSC and Legislative history

APSC was introduced on 1 April 2019 under the *Veterans Well-being Act* as part of the Pension for Life Initiative in Bill C-74 which implemented certain provisions of the Budget tabled in Parliament on 27 February 2018, and other related measures.[16]

However, some distinct elements of this benefit were present in earlier versions of the legislation. The Interpretation Panel finds this history useful in situating the APSC in its current context.

In 2006, the predecessor of the *Veterans Well-being Act*, the *Canadian Forces Members and Veterans Re-establishment and Compensation Act* (*CFMVRCA)* came into force. The *CFMVRCA* included a range of benefits for Members and Veterans. Part 2 of the *CFMVRCA* included Rehabilitation Services, Earnings Loss Benefit, Supplementary Retirement Benefit, Income Support Benefit, and a Permanent Impairment Allowance (PIA). The Interpretation Panel takes note that in the 2006 *CFMVRCA*, the PIA referenced the phrase “permanent and severe impairment”, which is now unique to the APSC provision in the *Veterans Well-being Act*. The PIA was provided under Part 2 of the *CFMVRCA* and provided:

> **38 (1)** The Minister may, on application, pay a permanent impairment allowance to a veteran who has one or more physical or mental health problems that are creating a permanent and severe impairment if the veteran has, in respect of each of those health problems,
>
> **(a)** had an application for rehabilitation services approved under this Part; and
>
> **(b)** received a disability award under Part 3.

Section 41(g) of the *CFMVRCA* specifically retained to the Governor in Council the power to make regulations regarding this allowance:

> **41** The Governor in Council may make regulations
>
> …

[16] Legislative Summary for Bill C-74.

> **(g)** respecting, for the purposes of section 38, what constitutes a permanent and severe impairment, the manner of determining whether a veteran has a permanent and severe impairment and the extent of the permanent and severe impairment.

Under the 2006 *CFMVRCA,* Part 3 provided for Disability Awards (starting at Section 45), Death Benefit, Clothing Allowance, Regulations, and Detention Benefit. With respect to Section 45, the language of the provision spoke specifically of a disability award. In 2006, there was no reference to "Pain and Suffering Compensation" or "Additional Pain and Suffering Compensation" in Part 3 of the *CFMVRCA*. The Interpretation Panel notes that the PIA (Part 2, starting at Section 38) and Disability Awards (Part 3, starting at Section 45), were in completely different Parts of the *CFMVRCA*, used different vocabulary and were characterized as different types of benefits (allowance *versus* award).

Over the years, the *CFMVRCA* was amended. However, the reference to Disability Awards in Section 45 continued until significant amendments were made to the entire legislated scheme in 2018 under the re-named *Veterans Well-being Act.*

In 2018, Section 38 was given a new title, with slightly different eligibility criteria, but still dealing with "permanent and severe impairment":

> Career Impaction Allowance
>
> **38 (1)** The Minister may, on application, pay a career impact allowance to a veteran who has one or more physical or mental health problems that are creating a permanent and severe impairment if the veteran, in respect of each of those health problems,
>
> **(a)** has had an application for rehabilitation services approved under this Part; and
>
> **(b)** has received a disability award under Part 3 or a pension for disability under the ***Pension Act***, or would have received such an award or pension but has not because
>
> > **(i)** the aggregate of all of the veteran's disability assessments and deemed disability assessments exceeds 100%, or
> >
> > **(ii)** the disability award is not yet payable in accordance with section 53.

Despite the change in title of the benefit in Section 38 from PIA to CIA, the terminology for the Disability Awards in Part 3, Sections 45 and 46 were not changed in 2018.[17]

[17] https://laws-lois.justice.gc.ca/eng/acts/C-16.8/20180401/P1TT3xt3.html retrieved 24 November 2025.

Additional significant amendments were made the following year in the 2019 introduction of the Pension for Life Initiative. The 2019 amendments included the repeal of the CIA provision in Section 38, renaming the Disability Awards starting at Section 45 under the new heading “Pain and Suffering Compensation”, and the creation of a new provision under a new heading “Additional Pain and Suffering Compensation” (APSC). Of note, APSC focuses on permanent and severe impairment starting at Section 56.6. Unlike PIA and CIA, APSC is located in Part 3 of the Act; therefore, decisions regarding APSC are subject to review by VRAB.[18]

Extrinsic evidence informing purpose analysis

In trying to determine the purpose of APSC, the Interpretation Panel took note of the guidance provided by the SCC in *Auer*:

> [57] A court must be mindful of its proper role when reviewing the *vires* of subordinate legislation, especially when it relies on the record, other sources or the context to ascertain the delegate’s reasoning process. Mancini explains:
>
> > Importantly courts must organize these various sources properly to preserve the focus on the limiting statutory language. Again, the reasonableness review should not focus on the content of the inputs into the process or the policy merits of those inputs. Rather, courts must key these sources to the analysis of whether the subordinate instrument is consistent with the enabling statute’s text, context, and purpose. **For example, Regulatory Impact Analysis Statements can inform a court as to the link between an enabling statute’s purpose and a regulatory aim, much like Hansard evidence.** These analyses can help show how the effects of a regulation which, at first blush appear unreasonable, are enabled by the primary legislation. [p. 279][19]
>
> [Emphasis added]

Based on the SCC’s direction, the Interpretation Panel considered the Regulatory Impact Analysis Statement (RIAS) published in the Canada Gazette to explain the intent of the 2019 amendments to the *Veterans Well-being Act*.

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[18] The Interpretation Panel notes that Parts 1 and 2 of the *Veterans Well-being Act* are not subject to review by the Board. Pursuant to Section 84-85, only decisions under Part 3 can be reviewed by the Board or this Interpretation Panel. Therefore, neither PIA, nor the CIA could be reviewed by the Board. However, as both PSC and APSC are in Part 3, both of these benefits may be reviewed by the Board.

[19] *Auer*, para. 57.

With respect to ASPC, the RIAS indicates that on 1 April 2019, the amendments in the *Veterans Well-being Act* and the *Veterans Well-being Regulations* included several changes to the benefits available to Veterans. Of particular note was the creation of the Pension for Life benefit package to constitute "…a combination of benefits that provide recognition, income support, and a better overall support and stability for the disabled CAF members and veterans and their families as they transition to post-service life".[20]

The RIAS also indicates that, as part of the Pension for Life, APSC was presented as a monthly non-taxable benefit. The RIAS explains:

> … The purpose of the APSC is to recognize and compensate veterans for the non-economic loss associated with the extent to which service-related permanent and severe impairments cause barriers to reestablishment. This compensation is over and above any amount received under the PSC, as veterans with permanent and severe impairments may face extra challenges as they re-establish in post-service life. The APSC will ensure they receive additional compensation as a result.[21]

The RIAS also explains how APSC was introduced as a replacement to the former Career Impact Allowance (CIA):

> Veterans in receipt of a CIA for service-related permanent and severe impairments on March 31, 2019, will automatically receive the APSC; their grade level will be protected and they will be paid the corresponding APSC amount.[22]

When the Pension for Life provisions were debated in Parliament, APSC was described as a "tax-free monthly benefit recognizing the non-economic impact of severe and permanent service-related impairment that create barriers to re-establishment in civilian life".[23]

In addition to the RIAS, the Interpretation Panel considered Parliamentary debate and entries in the *Canada Gazette*. During the debate on 15 February 2018, Mrs. Sherry Romanado (then Parliamentary Secretary to the Minister of Veterans Affairs and Associate Minister of National Defence) stated, in part:

> The Pension for life is based on three pillars. The first is a monthly tax-free payment for life up to a maximum of $1,150 per month to recognize pain and suffering. Veterans experiencing severe barriers to returning to civilian

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[20] Regulatory Impact Analysis Statement, Canada Gazette Part II, Vol. 152, No. 18, SOR/DORS/2018-177**,** pp.3191-3192. [RIAS].
[21] RIAS, Canada Gazette Part II, Vol. 152, No. 18, p. 3209.
[22] RIAS, Canada Gazette Part II, Vol. 152, No. 18, p. 3194.
[23] Government Bill (House of Commons) C-74 (42-1) – First Reading – Budget Implementation Act, 2018, No.1 – Parliament of Canada.

> life could be eligible for the second pillar, which is the additional pain and suffering compensation, to a maximum of $1,500 a month, tax free, for life. This equals $2,650, tax free, for life. The third pillar is income replacement, where we streamlined economic benefits, to make them more accessible, into a monthly payment of 90% of a veteran's pre-release salary.[24]

In the *Canada Gazette*, Part II, volume 152, NUMBER 18 (SOR/2018-177) the following was indicated:

> Title: Regulations Amending Certain Regulations (Department of Veterans Affairs)
>
> Registration Date: August 23, 2018
>
> Purpose: Implements Pension for Life changes, including APSC. Defines key terms such as 'barrier to re-establishment in civilian life' and sets eligibility/application requirements.
>
> Relevant Definition: "Barrier to re-establishment in civilian life means the presence of a disability or a temporary or permanent physical or mental health problem that limits or prevents an individual's reasonable performance in civilian life of their roles in the workplace, home or community".

The Interpretation Panel also took note of VAC's policy on APSC dated 15 November 2024, which indicates that its purpose is " to recognize and compensate Veterans for the non-economic loss associated with service-related permanent and severe impairments that cause barriers to re-establishment".

Chapter 25 is *ultra vires* the Minister's authority

Applying the principles of statutory interpretation, and in light of the above, the Interpretation Panel finds that Section 49 of the *Veterans Well-being Act* does not provide the authority to the Minister to create Chapter 25 of the ToD, i.e. binding statutory instructions for assessing APSC for the following reasons.

APSC is a complete scheme with a different purpose and its own legislative provisions, distinct from PSC. When compared, it is clear that the purpose of PSC is different from the purpose of APSC. Whereas the focus of PSC provisions is on compensating all disability (regardless of the severity of the disability), the APSC provisions do not focus simply on disability. Instead, APSC is an additional pension for life to compensate Veterans for "permanent and severe impairment" that has resulted in a "barrier to re-establishment in civilian life".

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[24] Debates (Hansard) No. 265 - February 15, 2018 (42-1) - House of Commons of Canada, time of debate 10:40.

As noted earlier, the purpose of PSC as set out in the Policy dated 1 April 2019 is “to recognize and compensate for the non-economic effects of service-related disability, including pain and suffering, physical and/or psychological loss, functional impairment and impact on the member’s or Veteran’s overall quality of life and the impact on the lives of the member’s or Veteran’s family (i.e. surviving spouse or common-law partner and dependent children)”. On the other hand, the purpose of the APSC, as set out in in the Policy dated 15 November 2024, is “to recognize and compensate Veterans for the non-economic loss associated with service-related permanent and severe impairments that cause barriers to re-establishment”. APSC is a personal benefit that is intended only for Veterans (who have been released from the CAF) and is paid only during the Veteran’s lifetime.

AGC argues that Disability and Permanent and Severe Impairment are inextricably linked to each other and that every enumerated form of Permanent and Severe Impairment at Section 54 of the *Veterans Well-being Regulations* is a form of Disability.

While the Interpretation Panel recognizes that there is a link between Disability and Permanent and Severe Impairment set out in Section 56.6 of the *Veterans Well-being Act* as a veteran must, *inter alia*, suffer “from one or more disabilities that are creating a permanent and severe impairment” in order to be eligible for APSC, the term “permanent and severe impairment” is not synonymous with disability. The Interpretation Panel notes that while “barrier to re-establishment in civilian life” is a consideration in Part 2 of the *Veterans Well-being Act* with respect to rehabilitation benefits, the term “permanent and severe impairment”, as defined at Section 1.1 of the *Veterans Well-being Regulations,* is unique and specific to the APSC benefit under the *Veterans Well-being Act*.

The *Interpretation Act* indicates that definitions or rules of interpretation in an enactment apply to all the provisions of the enactment, including the provisions that contain those definitions or rules of interpretation.[25] The *Interpretation Act* also indicates that when ”... an enactment confers power to make regulations, expressions used in the regulations have the same respective meanings as in the enactment conferring the power”.[26] Read together, these *Interpretation Act* provisions further reinforce the Panel’s understanding that Parliament did not intend for the term ”disability” within the *Veterans Well-being Act* to mean or extend in a way which would encompass the concept of “permanent and severe impairment”.

Guided by the teaching of the SCC in *Piekut* outlined earlier in relation to interpreting a Federal Statute, the Interpretation Panel reviewed the French version of the following provisions of the *Veterans Well-being Act* (*Loi sur le bien-être des vétérans*) and of the *Veterans Well-being Regulations* (*Règlement sur le bien-être des vétérans*), which

[25] *Interpretation Act*, RSC 1985, c I-21, Section 15(1).
[26] *Interpretation Act*, RSC 1985, c I-21, Section 16.

reinforces its view that the APSC and PSC regimes were intended to be, and are in fact, separate and distinct.

Section 2 of the French version of the *Veterans Well-being Act*, under "*Définitions et interprétation*" defines "*invalidité*" as:

« invalidité *La perte ou l'amoindrissement de la faculté de vouloir et de faire normalement des actes d'ordre physique ou mental*. (*disability*); »

The French version of subsection 49(1) of the *Veterans Well-being Act* regarding "assessment of the extent of a disability" is housed under the "*Indemnité pour douleur et souffrance*" subdivision within Part 3. It indicates that it is in fact the extent of "*degré d'invalidité*" which shall be assessed by the table of disabilities ("*table des invalidités*"). It does not refer to the concept of "permanent and severe impairment" (or, in French, "*déficience grave et permanente*":

> ***49 (1)*** *Les estimations du degré d'**invalidité** s'effectuent conformément aux instructions du ministre et sont basées sur la **table des invalidités** qu'il établit pour aider quiconque les effectue.* [Emphasis added]

The English and French versions of subsection 56.6(1) are both housed under a new subdivision within Part 3 of the *Veterans Well-being Act*, i.e., "Additional Pain and Suffering Compensation" or, in French, "*Indemnité supplémentaire pour douleur et souffrance*", and both refer to the same concept: that of "permanent and severe impairment and a barrier to re-establishment in civilian life" or, in French, "*déficience grave et permanente et entravant sa réinsertion dans la vie civile*":

> ***56.6 (1)*** *Le ministre peut, sur demande, verser une indemnité supplémentaire pour douleur et souffrance au vétéran qui souffre d'une ou de plusieurs invalidités lui occasionnant une **déficience grave et permanente** et entravant sa **réinsertion dans la vie civile**, si, à l'égard de chacune des invalidités, une indemnité d'invalidité, une indemnité pour douleur et souffrance ou une pension pour invalidité prévue par la Loi sur pensions a été accordée au vétéran.* [Emphasis added]

The French version of subsection 54 of the *Veterans Well-being Regulations* outlines what amounts to "*déficience grave et permanente*" (in English, "permanent and severe impairment") while subsection 54.1 indicates what a relevant factor may be in assessing the extent of "*déficience grave et permanente*" (again in English, "permanent and severe impairment"):

> ***54*** *Pour l'application de l'article 56.6 de la Loi, **constitue** une **déficience grave et permanente** :*
>
> > ***a)*** *l'amputation d'un membre au niveau ou au-dessus du coude ou du genou;*

b) *l'amputation de plus d'un membre inférieur ou supérieur à quelque niveau que ce soit;*

c) *la perte d'usage complète et permanente d'un membre;*

d) *la perte complète et permanente de la vision, de l'ouïe ou de la parole;*

e) *tout trouble psychiatrique grave et permanent;*

f) *toute limitation grave et permanente de la mobilité ou de la capacité de prendre soin de soi-même;*

g) *le besoin permanent de supervision.*

54.1 *Pour l'application du paragraphe 56.6(4) de la Loi, l'évaluation de l'importance de la* ***déficience grave et permanente*** *du vétéran est fondée sur tout* ***facteur pertinent, notamment*** *:*

a) *les besoins de soins institutionnels;*

b) *les besoins d'aide ou de supervision;*

c) *l'étendue de la perte d'usage d'un membre;*

d) *la fréquence des symptômes;*

e) *l'étendue des troubles psychiatriques.*

[Emphasis added]

Finally, the French version of subsection 1.1 of the *Veterans Well-being Regulations* indicates that the definition of "*entrave à la réinsertion dans la vie civile*" (i.e., "barrier to re-establishment in civilian life") applies to Part 2 and Part 3 (which includes the APSC provisions) of the *Veterans Well-being Regulations.*

In summary, a comparison of the wording and definitions used in the English and French versions of the *Veterans Well-being Act* and *Veterans Well-being Regulations* further supports the Interpretation Panel's position that the APSC provisions create a self-contained scheme that is distinct and separate from that of the PSC; both official languages versions support this conclusion.

The Interpretation Panel notes that key provisions for APSC differ from the provisions for PSC with respect to eligibility, assessment, amount, when payable and duration. These are discussed below.

- Eligibility (56.6 (1)-(3)),
- Assessment and reassessment (56.6 (4), (7) and 63(c)),
- Amount (56.6 (5)),

- When payable (56.6 (6), (8)),
- Duration (56.6(9)),
- Power to require medical examination or assessment (56.7), and
- Power to suspend or cancel (56.8).

Eligibility

Pursuant to subsection 56.6(1) of the *Veterans Well-being Act*, the Interpretation Panel notes that while having a PSC award is one of the criteria for eligibility, it is not sufficient for APSC entitlement. The provision clearly requires a "permanent and severe impairment and a barrier to re-establishment in civilian life". The APSC language is distinct from the language of the PSC. Referring to the RIAS, the Interpretation Panel finds that the purpose of the APSC was to provide a subset of veterans (those with a permanent and severe impairment) with a lifelong pension. This was a new benefit that previously did not exist in the *CFMVRCA*, or even in the 2018 version of the *Veterans Well-being Act*.

Assessment and Reassessment

With respect to APSC, subsection 56.6(4) of the *Veterans Well-being Act* empowers the Minister to perform the assessment and provides that the GIC may make regulations as to the manner of determining the extent of the permanent and severe impairment. The Interpretation Panel finds that these are two distinct responsibilities. While the Minister is to perform APSC assessments, the Minister was not granted the authority to make regulations or create a table.

While Section 49 of the *Veterans Well-being Act* empowers the Minister to create instructions and a table for the assessment of disabilities under the PSC section of the *Veterans Well-being Act*, there is no such language empowering the Minister to create instructions or a table for APSC, or for what constitutes permanent and severe impairment. This creates a clear demarcation between the PSC and APSC provisions and is in keeping with Section 94 (a.1) of the *Veterans Well-being Act* which also specifically empowered the GIC (not the Minister) to make regulations respecting what constitutes a barrier to re-establishment in civilian life, another very important aspect of APSC.

Stated differently, the contention that subsection 49(1) applies to subsection 56.6(4) is undermined by Sections 63(c) and 94(a.1) which specifically do not give the Minister the power to create similar instructions or table.

> **63** The Governor in Council may make regulations
>
> …

> **(c)** respecting what constitutes a permanent and severe impairment, the manner of determining whether a veteran has a permanent and severe impairment and the extent of the permanent and severe impairment.
>
> **…**
>
> **94** The Governor in Council may make regulations
>
> …
>
> **(a.1)** respecting what constitutes a barrier to re-establishment in civilian life.

The Interpretation Panel notes that the GIC exercised its authority relevant to APSC issues in the *Veterans Well-being Act* in enacting regulations 1.1, and 54-54.5.

The Minister's submission made several references to the doctrine of necessary implication. This principle of statutory interpretation holds that Parliament may implicitly confer powers or obligations that are not expressly stated in the legislation where such powers or obligations are essential to giving effect to the legislative purpose. In short, the doctrine may be used where there is a gap in the legislation which prevents it from taking effect.

This doctrine is to be invoked only where Parliament did not expressly confer powers[27]. The Interpretation Panel finds that in this case, for the reasons outlined above, Parliament clearly conferred powers to the Minister with respect to PSC assessment but expressly did not do so with respect to APSC. It retained regulatory power to the GIC. Therefore, there is no gap for the doctrine to address. Indeed, to invoke the doctrine in the circumstances of the APSC provisions would be to take powers from the GIC that had specifically been withheld from the Minister. The Panel finds it does not have the jurisdiction to do so.

As stated by the SCC in *Vavilov*, decision-makers cannot rewrite or supplement the law where it appears that Parliament has deliberately chosen not to address a particular matter :

> Because administrative decision makers receive their powers by statute, the governing statutory scheme is likely to be the most salient aspect of the legal context relevant to a particular decision. That administrative decision makers play a role, along with courts, in elaborating the precise content of the administrative schemes they administer should not be taken to mean that administrative decision makers are permitted to disregard or rewrite the law as enacted by Parliament and the provincial legislatures.

[27] ATCO Gas and Pipelines Ltd. *v.* Alberta (Energy and Utilities Board), [2006] 1 S.C.R. 140, 2006 SCC 4 para 73.

> Thus, for example, while an administrative body may have considerable discretion in making a particular decision, that decision must ultimately comply "with the rationale and purview of the statutory scheme under which it is adopted": *Catalyst*, at paras. 15 and 25-28; see also *Green*, at para. 44. As Rand J. noted in *Roncarelli v. Duplessis*, 1959 CanLII 50 (SCC), [1959] S.C.R. 121, at p. 140, "there is no such thing as absolute and untrammelled 'discretion'", and any exercise of discretion must accord with the purposes for which it was given: see also *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine*, at para. 7; *Montréal (City) v. Montreal Port Authority*, 2010 SCC 14, [2010] 1 S.C.R. 427, at paras. 32-33; *Nor-Man Regional Health Authority*, at para. 6. Likewise, a decision must comport with any more specific constraints imposed by the governing legislative scheme, such as the statutory definitions, principles or formulas that prescribe the exercise of a discretion: see *Montréal (City)*, at paras. 33 and 40-41; *Canada (Attorney General) v. Almon Equipment Limited*, 2010 FCA 193, [2011] 4 F.C.R. 203, at paras. 38-40[28].

Amount

The amounts of PSC and APSC benefits are different. The amount of APSC is explained at 56.6(5); it is determined by referring to Schedule 4 of the *Veterans Well-being Act*. By contrast, the PSC amount is determined by referring to Schedule 3 of the *Veterans Well-being Act*. Furthermore, the veteran may opt to receive the PSC as a lump sum or as an annuity. The veteran does not have this option for the APSC, which is paid as a monthly benefit.

When Payable

The provisions for when PSC and APSC are payable are distinctly different. According to Section 56.6(6), the APSC is payable on the later of :

- the first day of the month in which the application for APSC is made,
- the day that is one year before the first day of the month in which the veteran is determined to be entitled to APSC, and
- the first day of the month on which the veteran is released from military service.

The Interpretation Panel notes that this is a narrower window of retroactive effect in comparison to the PSC. According to Section 51(1), PSC is payable on the later of

- the first day of the month in which the application for PSC is made, and

[28] *Vavilov*, paragraph 108.

- the day that is three years before the first day of the month in which the PSC is granted.

Duration & Survivor Rights

The Interpretation Panel notes that while both PSC and APSC benefits end with the death of the Veteran, Section 54-56 of the *Veterans Well-being Act* outlines there are survivor rights for the PSC; there are no survivor rights for the APSC.

As illustrated above, important components such as eligibility, assessment, amounts payable, as well as duration and survivor rights, clearly differentiate the respective PSC and APSC regimes.

In light of the above, and guided by the principles of statutory interpretation dictated by the Supreme Court of Canada, the Interpretation Panel finds that Section 49(1) does not apply to APSC. Therefore, the Minister does not have the authority to adopt binding statutory instructions for assessing APSC, specifically Chapter 25 of the ToD. Chapter 25 of the ToD is, therefore, *ultra vires,* the Minister's statutory authority.

Question 2: Are the instructions reflected in Table 25 consistent with the object and purpose of the APSC award and the *Veterans Well-being Act*?

Having determined that Chapter 25 is *ultra vires* the Minister's authority and addressing the issue of the object and purpose of the APSC award in Question 1, the Interpretation Panel finds this matter to be moot.

Question 3: How should the Minister and VRAB assess the extent of a Veteran's permanent and severe impairment under the *Veterans Well-being Act* and *Regulations* when determining the grade level, given the requirement for credible and reliable evidence for assessments?

For the reasons set out below, the Interpretation Panel finds that it does not have the jurisdiction to hear this question since it raises an issue related to the internal departmental workings of how the Minister fulfills its statutory obligations which is outside of the scope of Section 37(1) of the *Veterans Review and Appeal Board Act*.

The jurisdiction of this Interpretation Panel flows from Section 37(1) of the *Veterans Review and Appeal Board Act* which states:

> **37 (1)** The Minister, the Chief Pensions Advocate, any veterans' organization incorporated by or under an Act of Parliament or any interested person may refer to the Board for a hearing and decision on

> any question of interpretation relating to this Act, to the *Pension Act*, to Part 3 of the *Veterans Well-being Act*, to any other Act of Parliament pursuant to which an appeal may be taken to the Board or to any regulations made under any such Act.

Question 3 is not a request to interpret a provision of either the *Veterans Review and Appeal Board Act,* the *Pension Act*, or Part 3 of the *Veterans Well-being Act*, but rather to discuss how to operationalize the assessment of APSC grades based on the legislation and regulation provided. The fundamental nature of Question 3 is asking this Panel to offer commentary or instruction for the Minister and VRAB on the nature and extent of evidence necessary to address the criteria set out in the legislated scheme. This is not a question within the jurisdiction of Section 37(1) of the *Veterans Review and Appeal Board Act* to proffer such advice to the Minister.

The Interpretation Panel also finds it inappropriate, and outside its jurisdiction, to offer instructions, commentary or *obiter dicta* regarding how other VRAB Panels are to assess the extent of a veteran's permanent and severe impairment for APSC claims. Because the circumstances of Veterans are highly individualized, unique, and specific, VRAB Panels must consider each case on its own merits, applying the relevant legislation and regulation including, but not limited, to those provisions already noted above.

VRAB Panels have a long history of exercising decision-making power within the bounds of its statutory and regulatory framework. Furthermore, for a variety of matters that come before the Board, Panels have been able to fulfill their adjudicative responsibilities without more detailed direction or guidance. Indeed, the Federal Courts have recognized the capacity of VRAB to interpret legislation and discern findings from evidence. [29]

Assessment of evidence relating to the factors identified in Regulation 54.1 is primarily an exercise of findings of fact; an exercise with which VRAB is very familiar. The Federal Court has acknowledged the unique and specific fact situations that create "grey zones" in which VRAB Panels must frequently work. In *Nicol v. Canada (Attorney General)*[30], the Federal Court observed:

> [29] Each case obviously turns on its own facts, and a number of factors can be considered to determine whether there is a sufficient causal connection between the injuries and the military service. In *Fournier*, Justice Mosley identified the following factors as relevant to that inquiry:

[29] See for example Cole v. Canada, 2015 FCA 119 (CanLII), [2016] 1 FCR 173, <https://canlii.ca/t/gk8zz>, retrieved on 2025-11-20, at para. 99.
[30] Nicol v. Canada (Attorney General), 2015 FC 785 (CanLII), <https://canlii.ca/t/gjxl1>, retrieved on 2025-11-20.

> [35] It is clear from the jurisprudence that factors such as the location where the accident occurred, the nature of the activity being carried on by the applicant at the time, the degree of control exercised by the military over the applicant when the accident occurred and whether she was on duty at the time are all relevant to the determination that the Board must make that the injury arose out of or was connected to the applicant's military service. However, it is also clear from the cases that no one factor is determinative**.**

The Federal Court in *Nicol* went on to conclude that:

> [36] The facts of this case fall into a grey zone, with some supporting the Applicant's claim while others do not. At the end of the day, a line has to be drawn as to whether a particular situation meets the causal connection required to establish entitlement to a pension. As much as I sympathize with the plight of the Applicant and her deceased husband resulting from the most unfortunate car accident that took place on July 1, 1954, and even if I might have been inclined to come to a different conclusion from that of the VRAB had I been in its position, I am unable to conclude that its conclusion was unreasonable.

In consideration of the foregoing, the Interpretation Panel finds that it does not have jurisdiction to hear question 3, nor that it is necessary or appropriate to offer comments on what evidence is required or how VRAB Panels are to assess permanent and severe impairment, beyond confirming that it is to be done in compliance with the statutory and regulatory provisions relevant to the matter before each Panel.

Nevertheless, the Interpretation Panel would like to reiterate what the parties have themselves agreed on, which is that the Minister may issue non-binding guidelines for the better administration of the *Veterans Well-being Act* provided the guidelines respect the limits of the Minister's statutory authority and are consistent with the specific provisions and the objectives of the legislation.

CONCLUSION

The Interpretation Panel finds that Chapter 25 of the Table of 2006 Disabilities is *ultra vires* the authority of the Minister of Veterans Affairs Canada. Given that Chapter 25 is *ultra vires*, the Interpretation Panel finds that the second question is moot. The Interpretation Panel also finds that it does not have jurisdiction over the third question.