



Administrative tribunals and equity: Military sexual assault survivors at the Veterans Review and Appeal Board

New research by **Maya Eichler** finds that Veterans Review and Appeal Board (VRAB) decisions on disability entitlement claims related to military sexual assault have until recently had significantly lower favourability rates than average.

CONTEXT

Administrative tribunals have a wide array of functions, including adjudicating between the state and individuals or members of specific occupational groups. Decisions made by administrative tribunals can have significant – often life-altering – impacts, such as granting entitlement to benefits and services. To ensure that administrative tribunals are effective tools of administrative justice, it is imperative that they function in *equitable* ways.

This article focuses on VRAB, an administrative tribunal that functions as a body of redress for veterans seeking service-related disability benefits through Veterans Affairs Canada. The public administration of veterans' benefits in Canada is undergoing a distinct period of change as gendered military experiences such as sexual violence are beginning to be acknowledged. This article seeks to understand the role of administrative tribunals such as VRAB in this evolving history.

OVERVIEW

The less favourable outcomes experienced by survivors of military sexual assault reflect broader cultural biases towards survivors of sexual assault that exist across military and civilian contexts. Treating sexual assault survivors like any other users of administrative tribunals is not sufficient to achieve equitable outcomes in administrative justice. Equity needs to become an explicit objective in the work of administrative tribunals, while external scrutiny is likely necessary to ensure it is achieved.

KEY FINDINGS

- An analysis of VRAB decisions from FY 2009-2010 to FY 2019-2020 reveals that in 89 of the 122 relevant decisions, VRAB denied entitlement or an increase in entitlement for a claim related to military sexual assault.
- Three main factors have contributed to these unfavourable VRAB decisions: Board members' understanding of (1) the credibility of evidence, (2) the causal relationship between military service and the disability, and (3) the impact of cumulative trauma.

- In the eleven-year set of VRAB decisions reviewed, male survivors faced significantly lower favourability rates than female survivors in decisions both by the Review Board (21 per cent for men and 33 per cent for women) and the Appeal Board (15 per cent for men and 29 per cent for women). Both groups faced significant barriers to favourable outcomes, but barriers appear to be higher for men, perhaps as a result of gender-specific reactions to sexual assault and gender-specific stigma.
- The findings indicate a shift, beginning in late 2018, in the way VRAB handles cases related to military sexual assault. By then, Veterans Affairs Canada had begun to make changes in its adjudication of military sexual assault-related claims, and VRAB was beginning to follow suit. Although the context for these changes included the #metoo movement and growing evidence and awareness of military sexual misconduct in Canada, ultimately it was the Heyder-Beattie class action lawsuit (the final settlement agreement took place in 2019) that increased the pace and scope of official policy changes at Veterans Affairs Canada, which in turn led to official changes in VRAB's approach.

QUESTIONS AND IMPLICATIONS

This article tells the story of how the Canadian state has imagined its veterans, and what it has taken to challenge the powerful male- and combat-centric cultural construct of the veteran – namely, concerted advocacy and a class action lawsuit. While in the past VRAB reinforced the exclusion of military sexual assault survivors from the community of military members and veterans deserving of benefits, it now plays a role in expanding the definition of who is a deserving veteran and modelling how the state ought to treat survivors of sexual assault.

Recent improvements in how VRAB handles sexual assault-related disability claims have so far not translated into more favourable outcomes for male survivors. These findings highlight the importance of examining layers of inequity in administrative tribunal decisions as they pertain to historically marginalized subpopulations.

AUTHOR

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FOR MORE INFORMATION

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ABOUT CCLISAR

The Canadian Centre for Legal Innovation in Sexual Assault Response (CCLISAR) is a non-profit, non-partisan organization working to realize law's potential to respond to sexualized violence. www.cclisar.ca