

A Treatise on Benefit of the Doubt

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Beyond Reasonable Doubt is the measure of truthfulness in Criminal Law that is as close to certainty as can be reasonably expected.
Balance of Probability is a lesser standard of truthfulness in Civil Tort that suggests a claim is “probably true”.
Benefit of the Doubt is a measure of the logic that suggests the claim of a Veterans claim is plausible, or reasonable to believe.

References

- A. Woods Committee Report 1968
- B. Pensions Act
- C. VRAB Act
- D. War Veterans Allowance Act
- E. Canadian Forces Members and Veterans Re-Establishment and Compensation Act.

1. Background. Veterans Affairs Canada and the Veterans Review and Appeals Board have adopted a standard of proof that is cheating Veterans. Their formal interpretations of the Benefit of the Doubt represent a huge departure from the intent of the legislation. They describe the Balance of Probabilities expected in civil courts, although they avoid using those exact words. However, there is documentary evidence that clearly states VRABs expects Veterans to prove their case on the Balance of Probabilities. It is reasonable to infer that VAC’s burden of proof is at least that of the Board and also unfair because the Board claims to overturn 60% of the claims they receive from the Department,.

2. Aim. The aim of this paper is to offer a very simple interpretation of the Benefit of the Doubt that more accurately reflects the intent of the legislation and will cause Veterans to be treated more fairly when applying for disability awards.

3. Legislation. Two mechanisms of current Veterans legislation are knowingly being interpreted in a fashion that is denying Veterans and their families of the benefits they deserve.

a. The “Social Contract” Veteran legislation traditionally includes a paragraph reflecting the acceptance of an obligation to be generous towards the Veterans of Canada, which is sometimes referred to as the “Social Contract”. The so-called Social Contract is found in both the *Pensions Act* and the *VRAB Act*, as well the *War Veterans Allowance Act*. The wording is similar in the three pieces of legislation, but identical in intent. Interestingly, the Government of today has stepped away from recognizing any obligation to be generous towards the Veterans of Canada by excluding the Social Contract from the *Canadian Forces Members and Veterans Re-Establishment and Compensation Act*, the

so-called New Veterans Charter. An example of this so-called Social Contract, s. 4 of the *VRAB Act* states:

“The provisions of this Act and 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 the Government of Canada to those who have served their country so well and to their Dependants may be fulfilled.”

b. Benefit of the Doubt. The Benefit of the Doubt (BOD) standard, a concept that describes the burden of proof that Veterans' applications must satisfy, is found in both the *Pensions Act* and the *VRAB Act*, as well the *War Veterans Allowance Act*, *Canadian Forces Members and Veterans Re-Establishment and Compensation Act*. The wording is all but identical in the four pieces of legislation, describing the consideration, weighing and admissibility of evidence. Specifically, s. 39 of the *VRAB Act* states:

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.

4. Intent. VAC's and VRAB's interpretation of Benefit of the Doubt violates the intent of the so-called Social Contract. Moreover, their interpretations also clearly violate the intent of the Benefit of the Doubt as it is discussed in the Woods Committee Report of 1968, a seminal document in the consideration of what constitutes the fair treatment of Veterans today. Chapter 8 of the Woods Committee Report goes to great length to discuss the Benefit of the Doubt. Indeed, it was the recommendations of that report that led directly to the wording of BOD as it is presented in the legislation today. The following considerations are articulated in that Report:

a. The original intent of this concept was to relieve the pensioner or applicant of the requirement to adduce conclusive proof. This was to ensure proper consideration in cases where documentary evidence was limited or not available. The policy in regard to rules of evidence should therefore be “generous”.

- b. When the evidence is considered and all reasonable inferences are made in favour of pensioners or applicants, there could very well be instances when applications will be allowed ***even though the preponderance of evidence is against them***. This is a very important consideration, and one that is very difficult for members of the legal profession to accept.
 - c. ***Proceedings are by way of enquiry and not trial, and hence there are not “two sides”***. It is wholly inappropriate to equate BOD to “beyond a reasonable doubt”, burden of proof in criminal courts, or the “balance of probabilities” applied in civil courts.
 - d. The weight of evidence should not be discounted because it has been arrived at by inference from secondary or indirect evidence.
 - e. The question of credibility should seldom arise, particularly with medical evidence given in a professional context.
5. **Reasonable Inference**. By definition, a reasonable inference is a measure of sound reason and logic, it is not a measure of truthfulness. In other words, ***a reasonable inference is a logical conclusion that may not necessarily be true!***
6. **Doubt**. Examples of sources of doubt include:
- a. Contradictory evidence.
 - b. Evidence leading to an alternative conclusion.
 - c. Missing evidence.
 - d. Evidence deemed not credible or unbelievable.
7. **Application**
- a. Interpreting the Benefit of the Doubt as the Balance of Probabilities is anything but liberal and goes against the very provisions of the so-called Social Contract. From the Woods Committee Report it is reasonable to infer that if errors are to be made in the adjudication of applications, they should be in favour of generosity towards Veterans or applicants rather than risk denying a worthy Veterans of entitlements.
 - b. In making ***every reasonable inference*** in favour of an Veteran or applicant, the evidence should suggest to the adjudicator that it is ***reasonable to believe*** that a disability is related to military service. The link does not have to be proven conclusively; it merely must be demonstrated that, to a reasonable person, ***the claim of a link is plausible***.

- c. In resolving ***any doubt*** in favour of the applicant or appellant any doubt.
- (1) Only contradictory evidence should be considered admissible. In the context of the Woods Committee, when contradictory evidence merely gives rise to doubt, the “benefit of said doubt” must be given to the Veteran or applicant.
 - (2) Contradictory evidence in the context of the Woods Committee is evidence that directly invalidates or negates a piece of evidence presented in support of a Veteran or applicant. The possibility of alternatives to such evidence merely gives rise to doubt, it does not constitute contradictory evidence.
 - (4) The Woods Committee Report argues that there should rarely be doubt as to the credibility of evidence, especially medical evidence given in a professional context. This notwithstanding, questionable credibility gives rise to doubt, ***which must be resolved in favour of an applicant or Veterans.*** When such doubt is not resolved in favour of a Veteran or applicant, a clear explanation must be rendered.
 - (3) Every effort should be made to make reasonable inferences from secondary or indirect evidence based on the circumstances of a claim to compensate for missing evidence. Such inferential evidence should be given full weight.

8. Example. A Veteran makes an application for a disability award for degenerative disk disease that is claimed to be a direct result of a vehicle accident that occurred ***in an operational theatre.***

- a. Supporting Evidence. Evidence in support of the Veterans claim includes:
- (1) X-rays indicating severer deterioration of several disks in lumbar area of the Veteran’s spine;
 - (2) A letter from the Veteran’s orthopaedic surgeon offering a supporting diagnosis and a professional opinion that an automobile accident could cause the type of disability the Veteran is suffering from;
 - (3) Unsolicited photographs of a destroyed automobile with a letter from a colleague in the theatre of operations describing in how the Veteran and passengers were lucky to have survived the crash;
 - (4) A letter from another colleague who met the Veteran in the operational theatre around the time of the accident and noted that the Veteran was suffering from extreme back pain.

b. Other Evidence. The Veteran's military personnel and medical files from the military contain reports throughout the Veteran's career related to back pain, including:

- (1) While serving, the Veteran reported injuring his back during unit sports;
- (2) While serving in the Airborne Regiment the member complained of a very stiff back after a parachute deployment and two week training exercise;
- (3) After being thrown from an armoured vehicle during a exercise training, the Veteran underwent physiotherapy for a stiff back;
- (4) During a route march with rucksacks the Veteran was struck by a vehicle and required pain killers for back pain;
- (5) On one occasion, the Veteran had to be excused from ceremonial parade duty due to back pain;
- (6) Following a period unarmed combat training the Veterans reported having a sore back.

c. Contradictory Evidence. Although there is plenty of evidence indicating alternative causes or contributing factors, there is no evidence that directly contradicts or invalidates the evidence listed in paragraph 8a.

d. Consideration

(1) Based on the evidence provided at paragraph 8a it is ***reasonable to believe*** that the Veteran incurred severe trauma to the spine from the accident in an operational theatre that led to the degenerative disk disease.

(2) Although the extensive evidence indicates that there is ***considerable reason to doubt*** that the vehicle accident in the theatre of operations alone was the cause of the Veterans disability, in accordance with sub-paragraph (c) of the legislation this doubt is to be resolved in favour of the Veteran.

e. Decision. In accordance with the provisions of the Benefit of the Doubt legislation, the adjudicator must find in favour of the Veterans claim. This example describes how the Woods Committee Report reasoned that under the benefit of the doubt favourable ruling despite a even though the preponderance of evidence is against the claim.