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**Chair**

**Mr. Greg Kerr**



## Standing Committee on Veterans Affairs

Monday, October 29, 2012

• (1530)

[English]

**The Chair (Mr. Greg Kerr (West Nova, CPC)):** Since the seats are filled and everybody's here, we can get started even if it is a minute early.

I remind everybody that we are continuing the study and review of the Veterans Review and Appeal Board. As agreed, we're pleased today to have the Veterans Ombudsman and staff with us. As well, in the second half we'll be hearing from the Veterans Review and Appeal Board, Chair Larlee and staff.

Rather than hold it up any further, I will say, Mr. Parent, it's always good to see you and I await with great anticipation having you educate us today. We look forward to that. Thank you for bringing in your staff.

Go ahead with your opening comments, please.

**Mr. Guy Parent (Veterans Ombudsman, Chief Warrant Officer (Retired), Office of the Veterans Ombudsman):** Thank you, Mr. Chair and committee members.

I will first introduce the people who are with me today: Gary Walbourne, director general of operations, as well as deputy ombudsman in my absence; and Diane Guilmet-Harris, our legal counsel at the office.

Thank you for inviting me to appear before you today to share my thoughts on the Veterans Review and Appeal Board.

[Translation]

Your review is very important given the critical role that the board plays in ensuring that veterans and other clients of Veterans Affairs Canada receive the benefits and services to which they are entitled.

[English]

In any given year Veterans Affairs Canada makes close to 40,000 decisions with appeal rights to the board. Given the number of decisions, and despite efforts to the contrary, errors can be made. Therefore, it's important to have an independent, specialized body that veterans and other clients of Veterans Affairs Canada can turn to when they are dissatisfied with the department's decisions. An efficient redress process is key to accessibility.

Parliament was of that view as well when it created the board in 1995, entrusting it with the power to change or overturn decisions made by Veterans Affairs Canada if it finds that the laws governing disability pensions and awards were not properly applied.

To fulfill, and I quote, “the recognized obligation of the people and Government of Canada to those who have served their country so well and to their dependants”, Parliament asked the board to adopt a liberal and generous interpretative approach when making decisions, and specifically directed the board to section 39 of the Veterans Review and Appeal Board Act to draw every reasonable inference in favour of applicants, to give them the benefit of the doubt when weighing the evidence, and to accept any credible, uncontradicted evidence.

More than 20,000 veterans and other applicants are better off as a result of decisions made by the board since its creation.

[Translation]

Yet, as impressive as the statistic is, there is mistrust of the board within the veterans' community and much concern as to whether or not the board is making decisions in compliance with its enabling legislation. I wanted to know if those concerns were founded, and that is why we carried out the analysis of Federal Court judgments pertaining to the board.

[English]

As you know, 140 board decisions were challenged in the Federal Court and 11 of those were appealed to the Federal Court of Appeal. In those cases the courts had to determine if the board made its decision in compliance with the Veterans Review and Appeal Board Act and in accordance with the principles of procedural fairness. Since the Federal Court provides an independent judicial assessment on the matter in which questions of law, fact and procedural fairness are handled in cases before them, it made sense to me to take a look at the court's judgment pertaining to the board.

Before I address the findings and recommendations of my report, let me take a moment to discuss the issue of statistics.

[Translation]

Since its creation in 1995, the board has made more than 119,000 decisions, of which 34,000 could have been subject to judicial review. To suggest that there is nothing to worry about because only 140 of those decisions have been challenged in the federal courts does a great disservice to veterans and serving members of the Canadian Forces and the RCMP.

There are many reasons that ill or injured veterans and serving members do not take their cases to the Federal Court including "appeal fatigue" and above all legal costs, which can vary from \$15,000 to \$50,000. So contrasting the number of Federal Court challenges with the overall number of decisions made by the board over the years is meaningless and misleading. What's important is what the Federal Court says about the cases it reviews.

In fact, I would argue that it is the misguided opinion that it is "only 140 decisions" and that "all else is fine" that explains why board decisions have been returned by the Federal Court for the same reasons over a long period of time. This means to me that neither the board nor the department takes the Federal Court judgments seriously enough.

• (1535)

[English]

Up until 2009-2010, the board used a percentage of Federal Court judgments that uphold VRAB decisions as a performance indicator of fairness in the redress process for disability benefits and was satisfied that fairness was assured if the court upheld 50% of its decisions. That is not acceptable. Furthermore, in its 2010-11 performance report, the board did not report against this indicator at all. Instead, it reported on how fast decisions were made.

I'm sure that you have heard the old adage that what gets measured, gets managed. While I encourage both the department and the board to find quicker ways to address the needs of ill and injured veterans and serving members, it should not be done to the detriment of the quality of decisions made.

To get back to my report findings and recommendations, the independent analysis performed by the law firm of Borden Ladner Gervais found that in 60% of the 140 board decisions reviewed by the Federal Court, the court ruled that the board erred in law or fact, or failed to observe principles of procedural fairness.

The five most common errors for which the Federal Court returned decisions to the board for review were: the failure to liberally construe the provisions of the Veterans Review and Appeal Board Act and the Pension Act; the failure to accept the credible uncontradicted evidence; the failure to accept credible new evidence; the failure to give the benefit of the doubt; and the failure to ensure procedural fairness by not providing sufficient reasons for decisions or not disclosing medical evidence considered by the board.

Based on those findings, I concluded that veterans' concerns are founded and that the status quo is not acceptable. Changes are needed. As you know, I made seven recommendations.

Three recommendations address the need for greater transparency and accountability, namely, improved reporting to Parliament, posting all Federal Court decisions on the board's website, and the provision of reasons for decisions that clearly demonstrate the board has met its obligations under its enabling legislation.

Two recommendations called for the establishment of a formal process to review each Federal Court judgment rendered in favour of the applicant for the purpose of remedial action to the way decisions are made, and for the priority treatment of cases sent back to the board for rehearing.

The last two recommendations call for the Bureau of Pensions Advocates to represent veterans before the Federal Court and for legislative changes to allow for benefit retroactivity to the date of initial application in cases where the board makes a favourable decision as the result of a successful challenge in the Federal Court.

The Veterans Review and Appeal Board has put in place a plan to address the first five recommendations, and thank Mr. Larlee for acting as quickly as he has. You may be interested to know that my office has just started a follow-up review to determine if the changes made by the board fully address the shortcomings that we have identified. The report will be released in the next year.

[Translation]

As for the last two recommendations, I am engaged with the minister. He has recently outlined his action plan to further reduce red tape, increase efficiency and provide clarity around decisions. If properly implemented, these actions could reduce timelines in process and reduce the need for veterans to seek relief in the Federal Court. A plan is only that until it is put into action, and I will be monitoring the situation to ensure that the actions taken are indeed addressing the intent of the recommendations.

[English]

For me, the matter is quite simple. As long as the Federal Court continues to return a majority of board decisions for errors of fact, law, or procedural fairness issues, I will continue to say that fairness in the redress process is not assured. My report looked at the end result: the board's decisions themselves. Your review of the board's processes and activities is timely and it should address the why questions. Why is the process not functioning as it was meant to? How should the board and the overall VRAB-VAC process be improved going forward?

I humbly suggest to you that there are six key areas that should be looked into: the board's structure; the selection process of board members; workload issues; process by which the board's and the department's decisions are made in accordance with Federal Court judgments on a go-forward basis; quality assurance and efficiency versus effectiveness equation; and very important, the board's operating culture.

In the end, however, it all comes down to culture, and I would like to explain why.

In 1967 the Committee to Survey the Organization and Work of the Canadian Pension Commission, better known as the Woods committee, in addition to providing recommendations for reform, documented the evolution of the administration of veterans' benefits. It showed that from the enactment of the Pension Act in 1919, the intention had always been to have some form of an appeal body for veterans.

Despite major reforms through the years, that goal had not been achieved. Despite that, in 1967, the Woods committee was still adamant that an independent appellate body was essential for maintaining the integrity of the disability process and ensuring that veterans have trust in the system.

[Translation]

The Woods committee went into much detail examining a number of issues that were major concerns not only for veterans, but also for the government. Concerns included staffing levels, the low percentage of appeals granted in favour of the applicant, the need for reasoned decisions, the unfair practice of not disclosing information to the applicant, and the failure of adjudicators to liberally construe the legislation in favour of the veteran.

• (1540)

[English]

In 1995 the Woods committee goal of an independent appellate body was finally achieved.

Here we are in 2012 once again discussing the effectiveness of the Veterans Review and Appeal Board in relation to the same issues of processing times, board composition, reasons for decisions, disclosure of information, and liberally construing legislation that has been debated since 1919.

History has shown that although structural change can alter the process to create efficiencies and increase effectiveness, cultural change is what is needed if we want to address the why questions and eliminate the root causes of many of our veterans' concerns.

The first step to cultural change is transparency. On the one hand, veterans need to have full disclosure of information that decision-makers are using to make their decisions, and they need clearly reasoned decisions that are understandable and make sense to them. On the other hand, decision-makers need to have all the information necessary to make decisions at the earliest point in the process.

The second step is quality control of the adjudication process. Measures need to be put in place so that the board and the department work together to improve the quality of the overall process rather than, as is too often the case now, having the effects of expedited processing at the beginning of the application process leading to an increase in the board's workload at the end of the process.

Yes, it's important to move things quickly, but it is much more important to get things right from the beginning. This goes to the issue of why so many decisions are varied at the department's review level and at the board's level. That's the question the department asked McInnes Cooper to address in 2007.

In reviewing the adjudication process, McInnes Cooper found that decisions were varied at the department's review level on the basis of additional evidence that was often in existence at the time of initial application, but was not included with the application. In the view of McInnes Cooper, "The adequacy of claims preparation at the initial application and first-level decision stage is driven by the fact that, whether by accident or design, there is greater focus on turnaround times and/or productivity."

As for the variance of departmental decisions at the board level, McInnes Cooper identified three contributing factors: personal testimony, spirited advocacy by a pension advocate, and new evidence.

The fact that decisions are varied in favour of applicants at each redress level is often given as evidence that the system is working, but it can also be a sign that there is a problem at the beginning of the process. I am convinced that if more time and assistance were provided to applicants to ensure that all needed information was available before moving forward to adjudication, the board's workload would be greatly reduced and it would be able to concentrate on complex cases.

Moving on to the third step, I would submit that future discussions on matters pertaining to the disability benefits process should look at the entire process, encompassing processes of both the department and the board.

With respect to the fourth step, the effect of not liberally construing the legislation is affecting not only the efficiency and effectiveness of the entire system, but it is adversely affecting the lives of too many of our veterans and their families.

If legislation pertaining to veterans was liberally construed at the front end of the decision-making process, as was the initial intent of legislators such as you, I believe we would not be seeing the problems that we see today at the back end of the process. Educating departmental adjudicators and board members on the meaning and application of the phrase "liberally construing" is critical, even more so given that military service and the documentation of such service often creates difficulties.

[Translation]

In the end, we should be aiming for a more streamlined and effective system that will meet the needs of ill and injured veterans and serving members.

[English]

As I stated earlier in my remarks, I firmly believe that the Veterans Review and Appeal Board has a critical role to play. Closing the board would do a great disservice to veterans and serving members of the Canadian Forces and the RCMP, but changes to the board are needed to restore the trust in the organization and ensure fairness in the redress process.

**The Chair:** Thank you very much, Mr. Parent.

We will now go to the committee, and Mr. Chicoine for the first five minutes, please.

[Translation]

**Mr. Sylvain Chicoine (Châteauguay—Saint-Constant, NDP):** Thank you, Mr. Chair.

Thank you for being with us today. It's always a pleasure to have you here.

I may share my time with Mr. Stoffer a bit later.

Mr. Parent, where do you stand on the board's action plan to implement your recommendations? Are you satisfied with it?

•(1545)

**Mr. Guy Parent:** As I mentioned earlier, a plan remains a plan until it is put into action. One of our recommendations was the publication of board decisions. The publication of noteworthy decisions is already under way. But transparency requires that all decisions be published.

Something else I mentioned is the fact that recommendations implemented by the board can also benefit the adjudication process, in many cases. Consequently, some of those decisions could educate the people who do the initial work in the adjudication process on how decisions are used. With that in mind, they could make sure that the documentation was complete and ready for adjudication.

**Mr. Sylvain Chicoine:** Thank you.

Your third recommendation has to do with the benefit of the doubt.

I read the action plan, and I'm having a hard time figuring out how the recommendations will strengthen the application of the benefit of the doubt. That was one of the flaws in the board's decisions.

Do you feel that the action plan does enough to address this shortcoming? Will the application of the benefit of the doubt improve under the action plan?

**Mr. Guy Parent:** Our recommendations targeted two areas. The first is the liberal interpretation of evidence. A section in the act states that the evidence must be construed liberally. At the court level and even during the adjudication process, application of the benefit of the doubt has always been a major topic of discussion.

I'll give you an example of liberal interpretation. Let's assume those involved in the adjudication process or the board members have uncontradicted evidence before them. In other words, there is no other evidence contradicting it. In such a case, those handling adjudication should interpret the act liberally because there is nothing to refute the piece of evidence before them.

It is also important to start from the premise that, in 90% of cases, the military or RCMP service affects the member and their family. It affects their well-being; it causes illness or injury. So if you're working from that premise and an injury is proven to be service-related, you should interpret the evidence liberally and render a favourable decision.

However, in situations where conflicting evidence exists, the benefit of the doubt must be applied. When you are confronted with two pieces of conflicting evidence and the decision rests on the benefit of the doubt, you must, under the act, render a decision in favour of the applicant.

I would ask my legal counsel to provide some clarification on the concept of the benefit of the doubt.

[*English*]

**Mrs. Diane Guilmet-Harris (Legal Counsel, Office of the Veterans Ombudsman):** I will respond in English because my response was prepared.

The concept of benefit of the doubt is enshrined in subsection 5(3) of the Pension Act, section 43 of the NVC, section 35 of the War

Veterans Allowance Act, as well as in section 39 of the Veterans Review and Appeal Board Act.

It's applied where it's not practical to determine an issue because the evidence for or against the issue is approximately equal in weight. The issue shall be resolved in favour of the person claiming the benefits. The doubt, however, must be reasonable and derived from a careful analysis of the evidence. The evidence would include witness statements, documents and reports, as well as medical information.

Every reasonable inference will be drawn and any reasonable doubt will be resolved in favour of the applicant. The decision, however, must still be in accordance with the real merits and the justice of the case. It should be applied when the facts of the case are so evenly balanced that a clear decision is impossible. The decision-maker has the obligation to allocate the appropriate weight to the relevant facts in the exercise of the judgment. Benefit of the doubt is not to be used as a substitute for evidence. It is to be applied when the facts of the case are so evenly balanced that a clear decision is impossible. It's a fifty-fifty and you render a decision in favour of the applicant.

•(1550)

**The Chair:** Thank you. That's very clear.

We'll now go to Ms. Adams.

**Ms. Eve Adams (Mississauga—Brampton South, CPC):** I'd like to thank the ombudsman for being with us today, and for all of his work with the benefits browser. It was wonderful to launch that with you.

Do you think that having information available on the benefits browser will be of benefit to our veterans in providing additional transparency in the programs and benefits available to our veterans?

**Mr. Guy Parent:** In fact, that was the intent. Again, we go back to transparency. The more people know about the programs and benefits—the eligibility criteria, how they access these programs and benefits—the easier it's going to be for everybody.

**Ms. Eve Adams:** This will help with the appeal process also.

**Mr. Guy Parent:** Of course, that extends to all the application processes, from initial adjudication all the way to Veterans Review and Appeal Board appeals.

**Ms. Eve Adams:** Thank you again for your wonderful work on that.

In your last report you had many comments about the Veterans Review and Appeal Board. Since that time, have you had an opportunity to follow the changes that have been made or announced to the board, and if so, what are your comments about those proposed changes?

**Mr. Guy Parent:** We are working with the board staff and with Mr. Larlee to solidify any improvement that has to do with our recommendations for our report. We're engaged with them. We will be putting out a full report. Any systemic review that we do is normally followed six months later with a follow-up report, which gives a report card on the plan that was given to us when the report was issued.

**Ms. Eve Adams:** As of today, though, could you provide some comments on the progress being made by VRAB?

**Mr. Guy Parent:** There has been an action plan, which we thank the Veterans Review and Appeal Board for putting forward in a very timely manner. It covers the recommendations that applied to them as a tribunal, as opposed to the ones that were to the minister. We are confident that they're moving in that area, but our report will say in detail whether we're satisfied with it or not.

**Ms. Eve Adams:** The NDP has called for the full eradication of VRAB. Do you think it would be helpful to eliminate the independent avenue of appeal available to veterans?

**Mr. Guy Parent:** The board is an important and critical aspect of the application process. There needs to be an independent organism. If you follow the history, there have never been any questions about whether the board was needed or not, but as with any other tribunal or any other organization, there is always room for improvement.

**Ms. Eve Adams:** If VRAB decisions are to be interpreted more liberally, as some witnesses have called for, does that help or hinder uniformity in decision-making at VRAB?

**Mr. Guy Parent:** You mean a liberal interpretation of the evidence in front of them?

**Ms. Eve Adams:** Yes, more liberally....

**Mr. Guy Parent:** By law the act demands that they liberally interpret the evidence in front of them. It's there; it's the law that guides their work, so I don't see that it would impair them. It should be the culture. The culture is a big aspect. People should assume from the start that military service will affect members and their families, and therefore any evidence on the application should be liberally interpreted. It should assist in their work.

**Ms. Eve Adams:** Just to be clear, then, we've heard that one of the challenges facing VRAB is that it's charged with consistently making decisions across the country. We wonder if that type of consistency actually limits board members' flexibility in making decisions in the best interests of veterans.

What are your thoughts on that?

**Mr. Guy Parent:** That has to do, maybe, with the culture and collegiality of the board itself. I met somebody on the road in one of my outreaches, a previous member of the board who said that what she missed was that people were never together, and there was no chance to develop an organizational culture. Because boards sit independently in different areas of the country, there is never an opportunity to share expertise, past experiences, and decisions. Obviously, it's a matter of culture.

The board structure and how the board uses its members are things that are very important, but we need to look at the process first. I think if the process is clearly defined and works well, from adjudication to review and appeal, then we can see the best way the board can work, which can be looked at later in the process.

•(1555)

**The Chair:** Thank you very much.

We'll go to Mr. Casey for five minutes, please.

**Mr. Sean Casey (Charlottetown, Lib.):** Thank you, Mr. Chairman.

Mr. Parent, thank you for your work in this matter. It's clearly something that cries out for attention. I think the fact that you've done such a thorough job in your report has set us on the right path.

I want to ask you about something that has happened since you wrote your report. The report is dated in March. Just last month there was a decision of the Federal Court in the Timothy Gilbert case. I expect you're familiar with it.

**Mr. Guy Parent:** I have the expert here.

**Mr. Sean Casey:** Between you and your expert you would know that Timothy Gilbert is a veteran who appealed to the Federal Court. The Federal Court accepted his appeal and sent it back to the Veterans Review and Appeal Board with directions. It had an unfavourable ruling. It went back to the Federal Court, and they sent it back again. It wasn't bad enough that the Federal Court told VRAB they got it wrong once, it was twice.

The court in the decision that was released just last month said that the second decision was unreasonable. The appeal panel misunderstood its role and failed to redetermine the matter in accordance with the directions provided by Justice Barnes. When Justice Barnes heard the first appeal, he sent it back to the appeal panel and told them to do one of two things: either resolve the uncertainty with regard to a medical report in favour of the veteran, or seek clarification as is contemplated under the act. The appeal panel did neither of these things, rendering the decision unreasonable.

I want to ask you about the Gilbert decision in view of the fact that this decision came out after you wrote your report.

I also want you to factor in some pretty disturbing evidence we heard from a former board member, Harold Leduc, on October 22. He said that a concern they have as well is they're guided by the Federal Court, but when they get Federal Court decisions, their senior legal adviser, or whoever is tasked to do this, will give any number of reasons why they don't agree with the decision that comes back saying they should defer to a new panel. He said that any decision that comes back that doesn't agree with their decision, they're basically given every reason why they shouldn't believe it.

I'm interested in your comments on the culture of the board considering what happened since you've written your report in the Gilbert case and the troubling evidence we've heard from Harold Leduc.

**Mr. Guy Parent:** I think we can start off with the Gilbert case. I'll let Diane address that aspect of it and then I'll talk about the board itself.

**Mr. Sean Casey:** Thank you.

**Mrs. Diane Guilmet-Harris:** Unfortunately, the Gilbert case is not an atypical case. If you go through our report, there are a number of clients mentioned in that report, but probably the most flagrant one would be Mr. Bradley who has gone to the Federal Court five times. He has won at the Federal Court and the matter has been returned to the board.

One of the issues is that it is the nature of judicial review. What the court does is it simply assesses whether or not the board has respected the principles under section 18 of the Federal Courts Act. Although they send strong directions to the board, the board is an independent tribunal and is tasked with assessing the evidence and rendering the decision that they choose to render based on the evidence before them.

It is certainly something, when you look within our report, that we've made comments on, and it is something that we will be looking at when we render our follow-up report.

• (1600)

**Mr. Sean Casey:** Thank you.

**Mr. Guy Parent:** I'll take that a point further. Certainly the Federal Court cannot force the tribunal to review or to change decisions or anything like that. I'm not a lawyer; I'm just a simple SAR tech, but I would think there needs to be some kind of respect in a common law society where the adjudicator is the first level and they make decisions, and then the board makes decisions. When I talk about transparency, that's what I mean. The adjudicator should pay attention to decisions of the board because they might affect his decisions in future. The same applies all the way up to the Federal Court and appeals court. We expect that this is what happens. There has to be some respect in the review process.

The other part of that is why we say that published decisions are important because they are a learning tool for everybody: for the other board members, for the veterans who are applying for decisions, and for the adjudicator who looks at the initial application.

Certainly when we do a follow-up report to a systemic review report, we'll look at everything that happened in between that was not contained in the report. That will be looked into at that point in time as well.

**The Chair:** Thank you very much. That does put us over time.

Now we'll go to Mr. Zimmer, for five minutes, please.

**Mr. Bob Zimmer (Prince George—Peace River, CPC):** Thank you, Mr. Chair.

Thanks to the witnesses for coming today, and also thanks to all the veterans who are in the room today and past and present members of the military. Thanks for your service.

To talk about your report, I'd like to refer to your first recommendation. That one stood out to me as a good recommendation. You referred to "remedial measures to attain the 100% target". That's an awesome target to have. We should aim for that for our veterans. Although tough to achieve, it is admirable, and we should strive for that.

I want you to go over those seven recommendations, especially for us people who are new members on the committee and for the

members in the room and for the public. Could you summarize those seven recommendations, please?

**Mr. Guy Parent:** Certainly. That's a good question.

I mentioned a bit of it in my opening address. Basically, in the first recommendation we said that as a measure of performance the board was using the percentage of decisions returned from the Federal Court. I agree with you that 100% is a target. Certainly we put these targets out there and they are almost impossible to reach, but the point on that one is that over the period of time in both cases that went to Federal Court they came back for the same reason. What was important there were the common denominators. We certainly would be looking in future to make sure that any decisions returned to the board eliminate some of those common denominators so they are not returned for the same reasons over a period of years, and so that there is a lesson learned from the court judgment so that the board in the future looks at these types of common factors. That was one of the important ones.

The second one had to do with the Bureau of Pensions Advocates and the board working together when a decision is returned from the Federal Court, to make sure if there are any changes that need to be made in the process, or in giving the Federal Court cases priority in reviewing, so that people who have been waiting for four or five years already don't again encounter a lengthy delay.

The third recommendation, which is based on the first report we published in the ombudsman's office, has to do with the reasons for decisions. There must be clear transparency. The individual who applied for benefits must know exactly what evidence was used by the board to arrive at the decision at which the board arrived. That is very important. In fact, we have an upcoming report that will be out in two months or so that has to do with the use of evidence by the department, so it will certainly address the heart of that recommendation.

The fourth one had to do with the publishing of the decisions. Again I go back to my point on cases of interest, that when they're defined by the board as cases of interest, they're not quite what we intended. We intended for transparency's sake that all decisions, as other tribunals do in Canada in a quasi-judicial tribunal, should be published for everybody to benefit.

The fifth recommendation had to do with the Bureau of Pensions Advocates representing clients in Federal Court. Again, this is because they have been representing clients from the department review to the veterans review process, to the veterans appeal process, and in many cases they brief pro bono lawyers as to the particulars of the case. There is a certain bond that is created between a pension advocate and a client, so that would be comfortable for the client as well.

The sixth recommendation had to do with service standards. We talked about that already.

The seventh recommendation had to do with retroactivity. In some cases retroactivity is applicable to the date of application, where in other cases it's applicable to the date of the decision. We think there is an unfairness issue there that needs to be looked at.

•(1605)

**Mr. Bob Zimmer:** Right. Thanks for your work on that too. We appreciate it.

Following up on Ms. Adams' question about what VRAB did in response to your recommendations, what changes do you know of that they've agreed to make based on your recommendations? Can you fill us in on that?

**Mr. Guy Parent:** That's a good question as well.

We know that decisions are now published. Some cases of interest are now being published on the Veterans Review and Appeal Board website, which is a start. That's heading in the right direction.

We know also that they're working with the Bureau of Pensions Advocates to review cases coming back from the Federal Court and monitoring cases so that they are given some priority.

That's about where it stands.

**The Chair:** Thank you very much, your time is up. If we can get Mr. Stoffer back, we'll give him a couple of minutes. The clock is running.

**Mr. Peter Stoffer (Sackville—Eastern Shore, NDP):** Thank you very much for coming, folks. There are a couple of things.

I want to be very clear on what our private member's bill says about the elimination of the VRAB. What it says quite clearly is we would eliminate it and replace it with peer-reviewed medical evidence in consultation with veterans and their organizations.

We would have a system in place where a person could get medical evidence. To protect the integrity of the system, to make sure they're not cheating it, they would have, similar to the CPP, another doctor verify the first doctor's medical evidence that indeed the person has a particular issue and that it may—it doesn't have to be, it may—be related to military or RCMP service. A benefit should flow from that, based on consultation with veterans and their organizations.

That is really what the bill says. I just wanted to put that on the record; I didn't want you to comment on that.

In your opening statement, sir, you said that more than 20,000 veterans and other applicants have been better off as a result of the decisions made by the board since its creation, yet the board has made 119,000 decisions. That would mean 99,000 people would have been rather ticked off at the board's decisions. If only 20,000 have been helped and 119,000 decisions have been made, you can make the reference that 99,000 people are not happy with the board's decisions.

I'd like you to comment on that. Having said that though, you're doing a study on the VRAB yourself, an internal one. Am I correct?

**Mr. Guy Parent:** We are following up on the report that we published. It will also be a public report.

**Mr. Peter Stoffer:** Very good.

With respect to the previous report you did and the report you're doing now that's being released in the new year, how many people and how much time have you placed on those studies or that inquiry?

**Mr. Guy Parent:** Most of the work on the first report was done by a private firm that was contracted by the office.

**Mr. Peter Stoffer:** How much time was spent?

**Mr. Guy Parent:** I will ask Diane to answer. She is working on the upcoming follow-up report, and she was involved in the publication of the first one, so she has those details.

**Mr. Peter Stoffer:** Basically, what I'm asking is, how much time did it take for the private firm to look into the VRAB and then for your follow-up? Is it eight months in total? Is it two years?

**Mrs. Diane Guilmet-Harris:** When I came into the job in April 2009, one of the first things I did to educate myself was to pull all of the Federal Court decisions with the VRAB. Because of the lack of information it was my best source in order to educate myself about how the VRAB worked.

When those decisions started coming through and I looked at them, I started seeing that there was a pattern of return and coming back and forth, so I raised the issue with the DG and with the ombudsman and told them that it might be worthwhile to do this study.

With two students, we pulled all of the Federal Court decisions. We married up the Federal Court decisions with the decisions from the VRAB when they came back so that we could study the rate of success. All of that information was given to Borden Ladner in September 2011. They spent maybe six to eight weeks with a team of four lawyers working on them. They came back to us within that period with a draft report. It was reviewed in the office. We tweaked things a bit in areas we were concerned about or where we felt there was further explanation required. It went through the full review process within the office, and it was published this year.

•(1610)

**Mr. Peter Stoffer:** My question quite clearly is how much time have you been studying various aspects of the VRAB, including the report that is coming out in a year? Has it been a total of two years? Has it been six months? Has it been eight months? I'm just trying to figure out how much time you have spent studying various aspects of the Veterans Review and Appeal Board.

**Mr. Gary Walbourne (Director General, Operations, Office of the Veterans Ombudsman):** On the first report we spent about eight months in total, including the contract work that was done off-site and our own staff work. On the second report, we figure it will take us about three months with about three full-time equivalents working on it full-time.

**Mr. Peter Stoffer:** It will take roughly 11 months, together.

**Mr. Gary Walbourne:** Yes.

**Mr. Peter Stoffer:** Thank you very much.

**The Chair:** Thank you, and we will go to Mr. Hayes for five minutes.

**Mr. Bryan Hayes (Sault Ste. Marie, CPC):** Mr. Parent, it's really nice to be in your company. You had a distinguished military career. I see you are a retired chief warrant officer. That's nice. My father is also a retired chief warrant officer, so I know we're well represented up there.

This is a really well-done report. The recommendations are extremely comprehensive. I'm a new member to the committee so I'm learning a lot. I've taken the opportunity to go through this report. I'm also pleased that the law firm Borden Ladner was involved. I had some experience with them in my time as a municipal councillor. They're a highly reputable law firm, so I expect they did very, very good work to assist you.

We heard from one witness who suggested that if VRAB decisions were tracked so that the public could see how board members were ruling, this would increase the favourability rate.

Would you agree with that?

**Mr. Guy Parent:** It's a good question. Again, I think what's important here is transparency. It's not about increasing favourability but about informing the board, other members, of previous decisions and how they were arrived at. Everything goes hand in hand. If we made recommendations as to how decisions should be published and how the evidence is used to arrive at a certain decision, this becomes a really important tool for everybody who is involved in the adjudication process, whether it's the applicant, the adjudicator, or members of the board. I don't know that it would increase the favourability rates, but it certainly would put people in a position to make better informed decisions.

**Mr. Bryan Hayes:** Is there anything negative that you think could come from the record of a board member's decision being made public?

**Mr. Guy Parent:** Not that we can see. Obviously, the cases are de-personalized—I guess that's the right word—so I can't see any, unless Diane has comments on that from a legal aspect.

**Mrs. Diane Guilmet-Harris:** From a legal perspective we need to balance the public interest to know about the cases with the privacy of the individuals, but the Privacy Commissioner has issued a series of guidelines to administrative tribunals in order to achieve that balance.

**Mr. Bryan Hayes:** Thank you.

In your opening comments today, sir, you commented on a couple of points, that decision-makers need to have all the information necessary to make decisions at the earliest point in the process. Again, you said that it's important to move things quickly, but it's more important to get things right from the beginning.

Can you elaborate on what point in the process people need information and what information you're finding is missing in the early part of the process that could actually be made better in terms of procedures?

**Mr. Guy Parent:** That's a good point.

I referred to a report in my opening address from McInnes Cooper. It actually reviewed the adjudication process from start to finish. It found three reasons for the high favourability rate at the first review from VRAB. It had to do with the personal presence of the

individual, but also with the fact that new evidence was brought about, and in some cases evidence that was already available at the adjudication but was not deemed important or relevant at the time and was not presented at the adjudication.

What we're saying here is that it might be worth—not the time, certainly, because time is of the essence in many cases—the effort to make sure that any evidence that is available at the adjudication process is actually presented there and then rather than during a later appeal process. I think that's an important aspect of it.

• (1615)

**Mr. Bryan Hayes:** Again, I'm new to the committee. I'm getting the sense that VRAB has a reputation problem. I expect that we agree on that to some extent, but that's the message we're getting from the veterans.

In your opinion, how should VRAB go about repairing its public persona?

**Mr. Guy Parent:** That's a good question. I go back to the same key words: transparency and culture

The fact is it shouldn't be a secret the way the board operates, the way board members are selected, the way decisions are made and if they're published. When everything is transparent, there are no assumptions, and I think people would feel more comfortable with the system.

With respect to the culture itself, people should not feel like they are in a court of law defending a criminal act that they may or may not have committed. They're there to testify about something that has affected their lives and their families. There needs to be a culture, an attitude from the board, of respect and dignity that people are not there to defend themselves, that they're there to tell the board that they served, they were injured, and therefore they should be eligible for some benefits.

It's transparency and culture. The more we know about the board, its membership, its process, the easier it's going to be for people to accept and trust the board. I think that's important.

[Translation]

**Mr. Bryan Hayes:** Thank you, Mr. Parent.

[English]

**The Chair:** Thank you.

Now we'll go to our guest panellist for five minutes. Mr. Weston, it's nice to have you here today.

**Mr. Rodney Weston (Saint John, CPC):** Thank you, Mr. Chair.

Thank you, Mr. Parent, for being here today with your colleagues. As the chair indicated, I'm not a regular member of the committee, but I do appreciate a lot of the issues surrounding the Veterans Review and Appeal Board. Not unlike other members of Parliament, I get a lot of inquiries from time to time with respect to decisions. I have a couple of questions for you today.

First, our government has launched several initiatives aimed at improving the decision-making process and the related appeals process for veterans. I understand that Veterans Affairs and the Veterans Review and Appeal Board are undertaking a plain language effort to make decision letters more clear to our veterans.

Do you believe this effort and a similar effort undertaken not only by our government but by the Veterans Review and Appeal Board to use this plain language decision-making process is a positive initiative for our veterans?

**Mr. Guy Parent:** That's a good question.

I'll start from why we did the Veterans Review and Appeal Board report, and why we did the first report, which had to do with the reasons for decisions. That actually covers the whole spectrum of adjudication from start to finish. As I said before, we'll be publishing a report on how people use the evidence and the process.

We can talk about board structure, about location, about a lot of different issues concerning the board, but the process is what's important.

The previous question from the member sitting next to you, that had to do with.... I'm losing my train of thought there.

The fact is that the information that should be there at the front should be looked at in its entirety rather than be put at the back, at the end of the process. All of these things are important. The process needs to be fluid and transparent. That's why we're working on that aspect of it.

**Mr. Rodney Weston:** Do you find that clarity is a big issue? That's what I'm asking about in terms of the plain language.

**Mr. Guy Parent:** It's a big issue. In a sense, it's the key issue. You cannot access any benefits or programs in Veterans Affairs Canada unless you go through this application process. Definitely it's the key issue.

That's why I said we decided to do that in the second year of my mandate. The first year we did reconstructing, but the second year we decided to take on the application process. It's a huge issue. If that could be cleaned up and improved, of course, it's something that will need continuous improvement, not just a little tweak here and there. It will need to be consistently looked at and improved.

• (1620)

**Mr. Rodney Weston:** You're saying that is a benefit, this initiative. It is a step in the right direction.

**Mr. Guy Parent:** Yes.

**Mr. Rodney Weston:** Okay, thank you.

I want to follow up on what Mr. Casey asked you. He asked you a question and referred to something since your report. He talked about a specific case. Have any other new issues come up since your report with respect to the Veterans Review and Appeal Board that you think should be addressed?

**Mrs. Diane Guilmet-Harris:** I am the lead with respect to the follow-up report. What we're specifically looking at is to determine the extent to which the department, the tribunal, as well as the minister have actioned the recommendations that we've put forward in our report.

It's restricted to the original recommendations. We are not going outside of that. We're going to be looking at departmental as well as VRAB administrative policies and practices. We're going to take a sampling of approximately 50 VRAB decisions that would have been issued from June until December so that the tribunal and also the department have a sufficient timeframe to start implementing some of the recommendations.

We also will be updating the Federal Court decisions to see whether or not we're still seeing the same issues coming up. We'll also be looking to see whether there's any legislative or regulatory amendments since the announcement that the minister has accepted our recommendations.

**Mr. Rodney Weston:** Thank you very much.

Thank you, Mr. Chair. I must say that it's a pleasure to be here on your committee today.

**The Chair:** Well, it's nice to have you here. Thank you very much.

That will end round one. We have time in round two for one four-minute question from each side.

We'll go to Ms. Mathyssen, please, for four minutes.

**Ms. Irene Mathyssen (London—Fanshawe, NDP):** Thank you very much, Mr. Chair.

Thank you very much, Monsieur Parent, for your report, for your diligence.

I would like to thank your staff as well, because we rely on the work that you do.

**A voice:** We most certainly do.

**Ms. Irene Mathyssen:** I have a couple of questions. I think they should be rather easy to answer.

You indicated in your report that you were concerned and you were critical of the fact that the VRAB set a target of 50% of its decisions being upheld by the Federal Court.

Would it not be much better, and would we not prefer, that the Federal Court's disagreement with a decision by the VRAB would be an exception rather than the rule?

**Mr. Guy Parent:** It's a good question.

I alluded to that earlier. What's important is not necessarily the numbers, but if cases are returned for the same reasons over a period of time, that means there are no mechanisms in place to recognize what are the weaknesses or the challenges of the board. For me and our team, what's important is the fact that these weaknesses at that end might even be present at the front end of the adjudication process.

Again, 100% is a target more than a standard, I would think. I know that in all our own performance reports we always put down 80% or 90%. I don't know of anybody who puts 100% and hopes to achieve that.

The important thing is why decisions are returned. We should eliminate these ones. I'll use as an example the recognition of medical evidence at its proper value. That should not return. It should be something that, over a period of time, when the decisions are sent back from the Federal Court, the Veterans Review and Appeal Board, the BPA, and the department should be looking at. They should be saying that they need to clean up that aspect of it. That would eliminate one common denominator.

**Ms. Irene Mathysen:** In your presentation, you alluded to the importance of the benefit of the doubt, to the humanity of that. In previous testimony, we've heard that when there is uncontradicted evidence, rather than applying that benefit of the doubt, members of the board—the adjudicators—are actually seeking other evidence and going out of their way to find something to create a contradiction.

What are your thoughts on that? What is your experience in that regard?

**Mr. Guy Parent:** Again, that's a good question. What's important here, again, is that there needs to be a presumptive judgment that anybody who serves in the Canadian Forces or the RCMP is subject to being hurt by their service; it's the type of work that they do, and that we do, because I was part of it at one time. You know there's going to be an impact on your wellness, and maybe on your health, and on your psychological health as well.

To start from that presumptive judgment that service hurts, then you're already in the right frame of mind and culture to actually look at the evidence in front of you and to say, "Okay, we know that the case in front of us starts there, that people are hurt by service". The benefit of the doubt, again, is hard to interpret. There is sometimes confusion between the liberal interpretation as is quoted in the act and the benefit of the doubt, but they're one and the same.

I think our legal counsel mentioned that in the benefit of the doubt aspect, you have evidence from both sides, balanced evidence, and then, according to the regulations, you should rule in favour of the applicant. That's not always the case.

• (1625)

**The Chair:** Thank you very much.

We'll now go to Mr. Lobb for four minutes, please.

**Mr. Ben Lobb (Huron—Bruce, CPC):** Thanks, Mr. Chair.

Mr. Parent, on CPP disability, I'm sure your organization is aware of this, but maybe you aren't. From what I've been able to determine, the hurdle to receive CPP disability is much less stringent than the actual burden for a veteran to receive a disability award. Is this something that you have looked at in your department?

**Mrs. Diane Guilmet-Harris:** The functioning of the CPP tribunal is somewhat different from that of the Veterans Review and Appeal Board. In that situation, there is a three member panel. There'll be a lawyer, a physician, and a community member on the panel. As well, individuals are not represented by counsel unless they pay for the representation themselves.

It's a more court-like setting, because the lawyers from the government are adjudicating the fact that the person is not entitled to the benefits. It's more similar to a court-like setting than the Veterans

Review and Appeal Board. As well, the standard in order to attain a benefit is that they have to be able to show the injury is severe and prolonged. Although some of the principles are similar, it's like comparing apples and oranges.

**Mr. Ben Lobb:** It may be comparing apples to oranges, but I think there's a lesson to be learned, or at least to be examined down the road, in regard to the fact that the requirement for documentation, in my opinion, and I could be wrong, is much less for the person applying for CPP disability than it is for a veteran in some cases.

Maybe down the road when you're doing your study you could take a look at it, or at least examine it, because there are a lot of similarities in the numbers of people receiving CPP versus veterans, and the actual dollars that are delivered are very similar.

My next—

**Mr. Guy Parent:** If I may add something, I did mention already that there will be upcoming reports that will fill the void between the Veterans Review and Appeal Board and the adjudication decision letter. Some of those reports have to do with process and with the rules of evidence. In those reports we will be looking at comparative studies with other processes, looking at that aspect of it.

**Mr. Ben Lobb:** Further to the point, the whole idea in delivering benefits to the veteran is the benefit of the doubt. It is not the same with CPP disability.

I don't want to mischaracterize any department, any person, or any thing, but the one thing I look at is the actual process, from adjudication to the Bureau of Pensions Advocates, maybe back to the adjudicator, maybe to VRAB.

All of us here, the first time we saw it wondered why the adjudicator wasn't taking more time to look at this instead of kicking it down the field for somebody else. In your opinion, where is the miscommunication here? Why are there these problems? Why do they have to get to you, and why can't they be solved internally?

**Mr. Guy Parent:** That's a very good question.

It goes back to not having an instrument to actually have some lessons learned from the process. There are no mechanisms in place. There haven't been, to date, mechanisms in place that review the decisions all the way down and back to adjudication, tracing back the cases that were returned from the Federal Court all the way through the tribunal, then the departmental review including the initial adjudication.

If that was the case, there's the likelihood that within that process, or that mechanism, some things would have been considered critical at the adjudication process that may not be considered critical now. That's what we said before. In some cases, it's worth the time and effort to ensure that the evidence available is presented at adjudication rather than adding it later on to a review or appeal process.

• (1630)

**The Chair:** Thank you very much. Time does fly.

I want to thank our witnesses very much for coming today. Mr. Parent and staff, you added some valuable information for our committee to review before we put our final report.

We're going to take a brief recess and invite the next round of witnesses.

• (1630)

(Pause)

• (1635)

**The Chair:** Okay, folks, we'll come back to order.

We're continuing this study of the Veterans Review and Appeal Board. Our final witnesses are the chair and reps from the board itself.

Mr. Larlee, it's good to have you back again.

**Mr. John D. Larlee (Chair, Veterans Review and Appeal Board):** Thank you, Mr. Chairman.

**The Chair:** I gather you're going to give us some opening comments before we proceed.

**Mr. John D. Larlee:** Yes, I have some opening comments.

I appreciate the opportunity to be here.

[Translation]

Good afternoon, Mr. Chair.

Accompanying me today are members of the senior management team. Karen Rowell is the director of Corporate Operations, and Kathleen Vent is the acting director of Legal Services.

I want to thank you for the opportunity to return before the committee to address the comments and concerns expressed by committee members and by witnesses over the past few weeks.

[English]

I think you will find that we are all working towards the same objectives. The board is honoured to serve a constituency of people who are unique and impressive in their selfless service to Canada. These veterans, members of the Canadian Forces and RCMP, and their families, deserve to be, and must always be, treated with dignity and respect when they come to the board. They have the right to fairness in the appeal process, to openness in decision-making, and to be heard by qualified and impartial adjudicators.

We all agree that our veterans' appeals must be considered with the compassion expressed in the board's legislation. I'm referring, notably, to sections 3 and 39.

Since our last appearance, you have heard from advocates and other interested parties. I followed the testimony and heard inaccuracies presented to this committee. I would like to correct the record by giving you additional context and clarification on the board's commitments to veterans.

My remarks will deal with three important topics: number one, procedural fairness; number two, transparency and impartiality; and, number three, the culture at the board.

Let me start with procedural fairness.

The board's process exists to ensure fairness in the disability benefits system for our veterans, members of the Canadian Forces and RCMP, and their families. Our objective is to give applicants who are dissatisfied with their departmental decisions further

opportunities for new and increased benefits for service-related injuries.

Our adjudicators are independent. They look at veterans' applications with fresh eyes and listen to their stories at non-adversarial hearings.

Our members usually ask questions at hearings to make sure they fully understand the veteran's circumstances. They consider, but are not bound by, the department's policies, and make decisions based on the evidence brought forward by the veteran. As our success rates clearly indicate, the board does change decisions to benefit veterans.

Fairness is our mission and we strive for it in everything we do.

Some serious questions have been raised at this committee about how we do our work, in particular with respect to the role of board staff, and the information used by members in decision-making. Let me put these to rest.

Board management and staff respect the independence of members as decision-makers. Their role is to support members in making clear and well-reasoned decisions for veterans. They do this by giving advice to members on the clarity and completeness of reasons and on issues of consistency in the interpretation of the legislation. It is nothing more than feedback intended to improve the quality of the decisions going to veterans.

I know you will agree that veterans deserve decisions that present information logically and accurately, that address evidence and arguments, and that express the reasons for the conclusion clearly and plainly.

Many of our members are lay people with different backgrounds who are based in locations across Canada. They deal with a high volume of cases involving complex matters. For these reasons, they welcome support from experienced staff in our legal and quality assurance roles. Members are free to consider their feedback and accept it, or not. In administrative law, it is quite simple: he or she who hears must decide.

• (1640)

Questions have also been raised about the role of favourability rates at the board. These are not individual rates, as board decisions are made by panels of two or three members. Rather, they are decision outcomes associated with panel members that were provided at the member's request. They are not used for performance feedback. They have never been used to influence board members to be more favourable or less favourable. They were used only as a tool to initiate a conversation about consistency in decision-making.

I hope you will agree that veterans deserve predictability in our decision-making, that similar cases should have similar outcomes. The board has established ongoing training and support structures, adjudicative guidelines, a professional code of conduct, and performance standards, all to fulfill our veterans' expectations that they will be treated fairly and respectfully throughout the appeal process. Together, these tools cultivate consistency while respecting the independence of decision-makers. This philosophy is helping us to attract new members with military, policing, and medical backgrounds, who want to serve veterans by contributing their expertise.

Transparency is the second area that I would like to touch on. You heard from Mr. James Ogilvy of the Council of Canadian Administrative Tribunals that transparency is ensured by a variety of things, including the publication of the results of all hearings. We agree.

It would cost approximately \$3.5 million for the board to translate and de-personalize upwards of 5,000 decisions each year for web posting in a timely fashion. This represents one-third of our budget, the bulk of which is spent on conducting hearings and issuing decisions for veterans and other applicants in locations across the country. The reality is that the board would not absorb this cost without compromising service to veterans.

While a third party like CanLII would publish our decisions for free, the obligation to comply with the Official Languages Act and the cost of translation would remain ours.

•(1645)

[*Translation*]

As you know, we now publish our noteworthy decisions on our website in an effort to enhance transparency. These decisions are informative in that they demonstrate how the board applies the act in individual cases. The full text of the board decision is posted, with certain pieces of personal information removed in order to respect the applicant's privacy. The decision is not otherwise altered or monitored, as has been implied during the committee's study.

[*English*]

I encourage you to visit our website and read some of these decisions. You will also find medical and legal resources used by members, which are posted in the interest of transparency.

We will continue to add information and look for more opportunities to talk about the appeal process with our stakeholders. Another way for tribunals to be open and transparent is to hold hearings in public. The board's hearings are public and we are happy to accommodate observers. We ask interested parties to contact us in advance, out of respect for veterans and the personal matters being discussed, as well as to make the logistical arrangements.

Once again, I would extend an invitation to committee members to observe a hearing. As you heard from Mr. Cal Small from the RCMP Veterans' Association, it would give you an appreciation of the informality of the process, the efforts of board members to understand the veterans' circumstances, and the complexities of the cases that come before us.

The third and final topic I'd like to address is the culture at the board. We are here to serve veterans, members of the Canadian Forces and RCMP, and their families. As in the past, board members are looking for the evidence that will allow them to award new or increased benefits for disabilities related to service. Our evidence requirements have not changed, but the nature of our cases certainly has.

As you heard from the Bureau of Pensions Advocates, applicants are counselled to request an internal or departmental review if they have relevant new evidence after receiving a first decision from the department. The success rates for first applications and departmental reviews are higher now than in the past. This means that veterans are getting good outcomes earlier in the process. As a result, fewer cases are coming to the board, and those that do are less straightforward and more complex than in the past.

Veterans in Canada have access to many levels of redress for their disability benefits decisions. Some see it as a struggle, but many others welcome these opportunities to bring forward new information at any time, and they benefit from these opportunities. Our decision outcomes reflect this, with favourable rulings for veterans in half of review decisions and a further one-third of appeal decisions.

While we understand the perception that the burden of proof is too high, the legislation requires veterans to establish a link between their disability and service. Ultimately, some applicants are unable to make this link. We've heard the message loud and clear that veterans want to know they are getting the benefit of the doubt as required by the board's legislation. We have an initiative under way to train members to more clearly explain how they have applied the benefit of the doubt in every case. As chairman, I will continue to emphasize to members and staff that they must always bear in mind the debt owed to veterans who have served our country so well.

In closing, I would like to recognize the work the Veterans Ombudsman is doing to help us achieve our goal of better serving veterans, members of the Canadian Forces, RCMP, and their families. The board embraced Mr. Parent's recent recommendations and will continue to make improvements to maintain trust and confidence in the appeal process.

•(1650)

[*Translation*]

I hope that your questions today will give us an opportunity to further clarify our commitment and the nature of the work we do at the board to serve veterans and their families.

[*English*]

**The Chair:** Thank you very much, Mr. Larlee.

We will start with Ms. Perreault for five minutes, please.

[*Translation*]

**Ms. Manon Perreault (Montcalm, NDP):** I am glad you are here today.

I would like to pick up on some points you raised.

You talked about fairness in the disability benefits system and the need for evidence, of course. Last week, Mr. Leduc appeared before the committee. He told us that the current process to establish a disability diagnosis was much longer than it was when he started working.

No doubt, there's a valid way to establish proof without additional requests for medical information.

He also told us that the policy on hearing loss had changed and that those individuals were subject to a different process.

Could you tell us more about that?

**Mr. John D. Larlee:** I will answer the second part of your question in English, as it is my mother tongue.

[English]

The hearing loss policy was changed by the department some years ago, and as a result, many cases that had already gone before the board were further reviewed. I would defer to my legal or corporate counsel who have been on the board longer than I have, but I believe it became a more liberal policy of the department, and as a result we felt that the cases that had already been determined should go back to the department for a first decision. Is that not correct?

**Ms. Kathleen Vent (Acting Director, Legal Services, Veterans Review and Appeal Board):** Yes. If I can speak to the hearing loss policy, there was a case called Nelson. It went up to the higher courts. Nelson was brought to court because it was felt that the hearing loss policy in place at the time was too stringent in that it set the bar very high for what was constituted a loss of hearing, and people felt that it was unfair. They felt that, according to the strict interpretation of what a disability is in the law, any lessening of hearing should constitute a loss, and therefore be something that's pensionable.

The bar was set higher in policy prior to the Nelson case. As a result of that case, the range of what's considered to be normal hearing has changed. Therefore, more people were actually able, after the Nelson decision and after the policy change in the department, to avail themselves of this process. A lot of cases at that time were sent back to the minister to be adjudicated under the new policy because they had all, of course, come forward to the board under the old policy. As this was new policy, it was something new which the department had not yet evaluated these applicants on, and these matters were sent back to be adjudicated at first level, because, of course, the board is an appellate body.

[Translation]

**Ms. Manon Perreault:** Very well.

Are there specific conditions only in hearing loss cases?

• (1655)

[English]

**Ms. Kathleen Vent:** Yes. In this case, we're strictly speaking of the hearing loss policy, and where the disability being claimed is a hearing loss.

[Translation]

**Ms. Manon Perreault:** Okay.

Could you answer my first question?

**Mr. John D. Larlee:** Yes, it had to do with the evidence received by the board.

[English]

With respect to the evidence required at hearings, it's a matter of the directives that we've received over the years from the Federal Court on instructions on what is required as far as their interpretation of the different levels of a requirement of proof is concerned.

Again, I have my legal counsel here who could talk about the burden proof.

**Mrs. Karen Rowell (Director, Corporate Operations, Veterans Review and Appeal Board):** I can probably add to that one.

I think, as you heard in previous testimony, there's a very small percentage of cases that come to the board. Of the 35,000 to 40,000 decisions that are rendered by the department that are appealed to the board, only 10% to 15% come on to VRAB. Those are the more difficult, complex cases where it may be more difficult to find or establish the evidence to make the link to military service.

As a result of that, what's happening in those cases is that they usually have the assistance of the BPA or a service officer of the Royal Canadian Legion. They assist the veteran in getting extra evidence that will better support their claim when it comes to the board. Often that will involve getting medical opinions, maybe expert medical opinions, corroborating statements from somebody who witnessed an accident during their service.

Those are important elements. Time is taken in the interest of the veterans coming forward with their best case to be able to get a favourable outcome, understanding that they had already received an unfavourable decision at the departmental level, and possibly even through a departmental review.

That time, I would suggest, may be in favour of the veteran, in that the veteran has been supported in trying to find additional evidence or proof to get a favourable outcome once the decision is taken by VRAB.

**The Chair:** Thank you very much. That's our time.

[Translation]

**Ms. Manon Perreault:** So you're saying that decisions aren't necessarily taking longer.

[English]

**The Chair:** Ms. Adams, you have five minutes, please.

**Ms. Eve Adams:** Madame Perreault, thank you for appearing before us again. It's been an interesting four weeks of testimony.

I would encourage you to continue to work on behalf of our veterans. Their service and their sacrifice to our nation demands nothing less than continuous improvement from every organization which serves them. It's very heartening to hear the humility with which you serve our veterans, and the fact that you are willing to continually improve to benefit and ensure that fairness is provided to our veterans.

We've heard a number of themes over the course of the last four weeks. One of the themes, almost universally, when the question was put to our witnesses, was that VRAB should continue, which is contrary to what the NDP has proposed, which is to eliminate the VRAB. Just about every witness has come forward to say that VRAB does provide very meaningful assistance to our veterans and that it should continue to exist.

We have heard a number of themes, and perhaps I could put some questions to you and you could comment on them. The first one, and you began to address it, was the request that we've received to post each and every one of your decisions on a website to ensure transparency. We've heard that there is an association or group out there that would provide the service completely free of charge.

Are you indicating that it would cost \$3.5 million to translate those decisions and to remove all identifiable information?

**Mr. John D. Larlee:** That's correct. My understanding is that CanLII is the company that has been mentioned as being available to place decisions on the web related to your committee free of charge, but CanLII does not take over the translation or any compliance that's required for de-personalization or the Official Languages Act. That's where the cost would come in.

**Ms. Eve Adams:** If you were to accept their services to transcribe all of your decisions, would it still be an additional \$3.5 million?

**Mr. John D. Larlee:** That's correct.

**Ms. Eve Adams:** Okay.

We've also heard that VRAB needs to track its performance in a way that veterans and members of Parliament and stakeholders can track and monitor your operations. The other item that we've heard is that your action plan is a very good start in addressing the recommendations of the ombudsman, but there are concerns that VRAB is not addressing all of the needs of all veterans.

Perhaps you could comment on these items and other items you think deserve your attention going forward.

**Mr. John D. Larlee:** Since the beginning of the year we've gone out to our stakeholders at different associations and done more outreach with them in having them understand our work, the process, the benefits of the legislation. All that information is on our website, including the publication of the decisions that we started in May that will assist in that approach of being more transparent and having the people understand what we're doing and to assist them. We have those initiatives that we started as well. Again, I would defer to Ms. Rowell with respect to what we've done with respect to the ombudsman's recommendations and where we are with the plan of action to address each recommendation. Actually, we're seeing benefits already within the board with these initiatives, in assisting the members and the staff in exactly what you stated at the beginning of your comments.

Everyone who comes to work at the Veterans Review and Appeal Board is there because they are dedicated and they want to do their part to assist veterans to obtain the benefits to which they are entitled. Anyway, I digress, and I'll ask Ms. Rowell to address the specific points of our plan.

● (1700)

**Mrs. Karen Rowell:** I'm happy to answer that question because I think we're making very good progress.

Let me first state that the board received very warmly the recommendations of the Veterans Ombudsman in terms of some ways in which we can improve our program. As mentioned by Mr. Larlee, we have already published a number of our noteworthy decisions on our website. Our plans are to continue to post those on a go-forward basis.

We've also added to our website a number of legal and medical resources, again so applicants know the tools that our board members are using to decide cases.

**Ms. Eve Adams:** Perhaps I might jump in there.

We've heard testimony from a witness where adjudicators were calling in medical experts, almost acting as an investigator. Could you comment on that? Do you think that happened? If it did happen, what basis is there in law for that type of action?

**Mrs. Karen Rowell:** I'm going to ask Kathleen to speak to that after I finish going through these points, if I may.

One of the other key initiatives that we have under way in response to the ombudsman's report is that we have put in place a team internally within the board to look at the format for our decisions, and to change the way in which our decisions are communicated to veterans so that they're set out in very clear and plain language. It's a key undertaking that we have implemented. We're in the transitional phase now of the commitment to ensure that all the board's decisions that are written by the end of this calendar year are written in plain language so that veterans very clearly understand the reasons for which the board has taken a decision.

We've also put in place improved procedures around cases that are returned from the Federal Court so that they're handled much more quickly. We have a case coordinator who has been assigned to manage those cases. We work very effectively with the Bureau of Pensions Advocates in terms of coming up with a new streamlined process so that cases get dealt with on a priority basis and move very quickly through the system.

We have also established a task force with the Bureau of Pensions Advocates and the Department of Veterans Affairs so that we can look at decisions returned by the Federal Court to examine any trends in those decisions, again, with the idea of what adjustments we might need to make or can make within our organization to improve service delivery.

In short, that's a number of the initiatives that are under way. There is more work to be done, but we're making good progress on a number of fronts.

**The Chair:** Thank you very much for that. We appreciate it.

Mr. Casey, for five minutes, please.

**Mr. Sean Casey:** Thank you, Mr. Chairman.

As you know, last week I gave notice of a motion that I now wish to put before the committee:

That, the Committee invite representatives from the Office of the Auditor General to discuss the troubling revelations about the treatment of veterans contained in Chapter 4 of the Fall 2012 Report of the Auditor General entitled—

**The Chair:** Mr. Casey, do you mind, we want to get the motion circulated first, please.

**Mr. Sean Casey:** Okay.

**The Chair:** Okay, thank you, Mr. Casey.

• (1705)

**Mr. Sean Casey:** The motion is before you. As you can see, it reads:

That, the Committee invite representatives from the Office of the Auditor General to discuss the troubling revelations about the treatment of veterans contained in Chapter 4 of the Fall 2012 Report of the Auditor General entitled: Transition of Ill and injured Military Personnel to Civilian Life and that this meeting occur before December 14, 2012.

Mr. Chairman, I did inform the witnesses that the only opportunity to present a motion in a public forum was to do it in front of witnesses, so they are aware that my intention was to do this and not to inconvenience them.

This motion is necessary, I would suggest, in part because of the good work of Mr. Parent. We have been studying the transformation agenda. The rationale for the transformation agenda is that the number of traditional veterans is lowering and therefore, the entire department needs to be rethought, reformatted, and downsized in order to address modern-day needs. That's been the rationale for the transformation agenda that we've been studying.

The ombudsman has rightly pointed out in his previous reports that the rationale has some problems because it doesn't take into account the complexity of modern-day veterans who are coming back. Indeed, the Auditor General is supportive of the view expressed by the ombudsman. At paragraph 4.64 of the report, the Auditor General points out:

Veterans Affairs forecasts did not take into account information about the increasing number of Canadian Forces members with mental health issues, such as post-traumatic stress disorder.

My point is there are a whole lot of reasons that this committee should be looking at the report, but none more important than that the entire underpinning of the transformation agenda, according to the AG, is flawed. I think this needs a full airing and it's the role of the committee to do that. The motion doesn't actually call for the AG. I doubt we'd get the AG, but if we had representatives from the department appear to speak to this report, I think it's incumbent upon us to do that.

**The Chair:** Thank you, Mr. Casey.

Mr. Hayes, first.

**Mr. Bryan Hayes:** I move that we go in camera, Mr. Chair.

**Mr. Sean Casey:** I would ask for a recorded vote. I think the public deserves to hear this.

**The Chair:** There is a motion, in order, to move in camera. It is non-debatable. We can record the vote, but the motion is non-debatable.

We're going to do a name call by the clerk, please.

(Motion agreed to: Yeas, 6; Nays, 5)

**The Chair:** The motion is carried.

I thank the witnesses for being here with us.

Since this meeting will go in camera, all those not associated with a member or who are not staff, I would please ask that they vacate the room, and our apologies for the process.

**Mr. John D. Larlee:** Are we excused for the day?

**The Chair:** I think that's quite likely.

**Mr. John D. Larlee:** We can wait outside if you want us to come back.

**The Chair:** If you wouldn't mind, Mr. Larlee, and we'll try to let you know. We tried.

**Mr. John D. Larlee:** The VRAB isn't that far away.

**The Chair:** I understand. We're going to visit some time.

I'd ask all those not affiliated with the committee to please leave.

We'll suspend for a moment while we go in camera.

*[Proceedings continue in camera]*

• (1705)

(Pause)

• (1720)

*[Public proceedings resume]*

**The Chair:** We appreciate your patience. Mr. Lobb wanted a chance to ask you some questions, so if you people are ready to go, we'll turn to Mr. Lobb, please.

**Mr. Ben Lobb:** There were others too, Chair.

Thanks for coming back. My first question is for Mr. Larlee.

Transparency is something you've talked about at length. With respect to the quote of \$3.5 million that you have been given to make sure the results are published on the web and fully translated, does your group participate in pre-budget submissions? Is this something you would submit to either the Minister of Finance or to Minister Blaney? Is it something that you would put forward?

**Mr. John D. Larlee:** Most definitely, if it came to that, that is the process we'd use, would it not be, Mrs. Rowell?

**Mrs. Karen Rowell:** I'm not overly familiar with the process, but normally to obtain additional funding we'd have to do some sort of Treasury Board submission and get it supported up through the line.

**Mr. Ben Lobb:** If this is the hindrance to the entire process, then I would encourage you or someone else who is an advocate to propose this as a budget submission.

There is a question I have, though, regarding the outcomes and the translation. I'm assuming that the results are now only published in the language that is spoken. If I were appealing, my result would be in English. If Mr. Casey wanted to see how my result played out, would he be able to see a redacted copy of my outcome?

**Mr. John D. Larlee:** No, the privacy aspect would enter into it, and unless he had your permission to access your case, he—

**Mr. Ben Lobb:** —a redacted case?

Then how is the whole idea of publishing every result to the web ever going to happen? If there are some hundreds of thousands of outcomes, how would you ever go about publishing them all to the web?

**Mr. John D. Larlee:** No, we're talking about, on an annual basis, the cases going forward.

**Mr. Ben Lobb:** That's fine. In the past there have been, let's say 5,000 cases. If you add up all the years it could be 85 or 100, so let's say it's 5,000. How would you ever go about publishing those to the web?

**Mr. John D. Larlee:** Do you mean the 5,000 that you're talking about?

**Mr. Ben Lobb:** Yes. You're saying that if it were my result, I would have to give the approval to put it on the Internet. Aren't these public results?

**Mr. John D. Larlee:** I guess I'm not following....

I'll ask Ms. Rowell to....

**Mr. Ben Lobb:** If I were a veteran I'd go to you and get a result from VRAB. It is a public hearing, isn't it?

• (1725)

**Mrs. Karen Rowell:** It's a public hearing, yes, but whenever we look at posting our decisions, what we would be doing is de-personalizing them. Again, with the two concepts of trying to maintain the open court principle and trying to ensure transparency and getting information out there, to achieve that goal we would redact it, as you mentioned, and would take out the personal information that was not related to the reasons.

The other step we have to take—

**Mr. Ben Lobb:** Would you need my permission to do that?

**Mrs. Karen Rowell:** No. We would take out all your personal information so that it's not evident that the decision is about your case.

**Mr. Ben Lobb:** My result is in English, isn't that right?

**Mrs. Karen Rowell:** We would translate it into the other official language.

**Mr. Ben Lobb:** Okay, this is where I'm not understanding. If it costs \$3.5 million to translate, and you're already doing it, where is....

**Mrs. Karen Rowell:** We're not already doing it. This is an additional step that we would have to take.

**Mr. Ben Lobb:** Okay, here is my next question. If Mr. Chicoine wanted to see my results because he had a friend who had a similar case, and he wanted them in French, what would happen?

**Mrs. Karen Rowell:** If we got a request like that, for a decision to be used in another case, it would have to be de-personalized.

**Mr. Ben Lobb:** Okay.

**Mrs. Karen Rowell:** Again, we're protecting veterans' personal—

**Mr. Ben Lobb:** The way I look at it is, if there are 5,000 cases a year, what would stop somebody from issuing 5,000 requests a year to see all the cases translated?

Do you see where I'm coming from?

**Mrs. Karen Rowell:** I understand.

**Mr. Ben Lobb:** You are obligated to publish them in both official languages.

**Mrs. Karen Rowell:** We are required to do so, yes.

**Mr. Ben Lobb:** Right. Therefore, I'm not sure why there's a hindrance. I'm not sure why that is such a stumbling block to the publication of these results.

**Mrs. Karen Rowell:** As Mr. Larlee mentioned, the challenge for us is the cost associated with it. It would amount to one-third of our budget.

**Mr. Ben Lobb:** What would happen if Mr. Chicoine asked for 3,500 results to be translated into French? Where would you get the money from?

**Mrs. Karen Rowell:** I don't know is the short answer. We wouldn't have the money today to do that.

**Mr. Ben Lobb:** But you're obligated under the language laws to do it.

**Mrs. Karen Rowell:** That's correct.

**Mr. Ben Lobb:** There you go.

**The Chair:** Okay, Mr. Lobb, I'm going to read the blues on this to make sure I understood what took place.

Thank you for that. You have left time for Mr. Stoffer to ask a question.

**Mr. Peter Stoffer:** Thank you, Mr. Chairman.

Thank you all for coming.

Mr. Larlee, I say this in fairness to you, I don't think it's probable that in two minutes you could reply to Mr. Leduc's testimony, that we had the other day and which you said earlier you had listened to.

He said on three separate occasions that the board management and staff “interfered with our independence as decision-makers”. He was told by James MacPhee, the deputy chair, “Remember, you don't have to award.” He said, “It's obvious that we're being intimidated.” He also said that the culture of interference is so obvious that board management, their legal and QA units also pressure members through memos to second-guess favourable decisions while typically sending unfavourable ones through without scrutiny.

The board is aware of a process redesign, he said. He indicated that unfortunately, it will provide an opportunity for greater interference because the cases will be analyzed and potentially determined by our legal and QA units before the hearings.

I don't think it's fair to suppose that you could possibly reply to all of that in a minute, and so I wonder whether it would be possible, at your convenience, for your board to send us a written reply to Mr. Leduc's testimony, because it was not favourable to the Veterans Review and Appeal Board in that regard.

I have another question and I'll provide an example. Ken Whitehead from Dartmouth has 3,660 hours of flight time on a Sea King as a navigator and 4,000 hours of flight vibration testing. He had former lieutenant-commander Dr. Heather MacKinnon, a flight surgeon for over 20 years, give him the medical analysis. I know you can't remark on a specific case, but the VRAB decision on that said first of all that he was a navigator on a ship. That was wrong. He was a navigator on helicopters. Second, they said that Dr. Heather MacKinnon's evidence was not credible enough. This was in August of this year.

Is it any wonder that people like me who represent veterans get so upset when we hear those deliberate or non-deliberate mistakes, which affect the life of a veteran? He's one of many whom we deal with on a regular basis.

I've done that testimony, and your board has the decision before you, so if it's at all possible, could you write to us to explain how a decision of that nature can be such a major mistake? Someone said he was a navigator on a ship, which we wasn't, and that the medical evidence of retired lieutenant-commander Dr. Heather MacKinnon, one of the finest people in the country, wasn't credible enough. How do you think she feels when she reads that?

Thank you.

**The Chair:** Mr. Larlee, he's given you the option to write back after you've thought about his very subtle questions. I'm sure you want a chance to reflect on them.

I would like to say before we break that on Wednesday we'll be doing instructions on the VRAB study. I should point out that our

analyst is ill and may be away for some time. Therefore, we're going to have with us, excited and ready to go, Mr. Martin Auger. He'll need the instructions put very carefully.

Wednesday's meeting will be spent basically dealing with that issue, plus some other budget business and so on.

Ms. Adams.

• (1730)

**Ms. Eve Adams:** Mr. Chair, we had some informal discussions earlier. Would it be appropriate to send a note or some token of appreciation on behalf of the committee to our hard-working researcher as he struggles with this illness?

**The Chair:** —or send him a bottle of something, or whatever.

**Ms. Eve Adams:** I thought more of flowers, but a bottle of orange juice?

**The Chair:** We're checking, yes. We appreciate that suggestion. We'll make note of it.

**Mr. Peter Stoffer:** Maybe a box of NeoCitran.

**The Chair:** Mr. Larlee and staff, I want to thank you very much for coming back to a rather shortened session.

If you could write back on the requests as you see fit, it would be appreciated.

If there's nothing else for the good of the committee, I want to thank the witnesses and I want to thank you all.

The meeting is adjourned.

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