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CANADA

RESTORING CONFIDENCE IN THE VETERANS REVIEW AND APPEAL BOARD

Report of the Standing Committee on Veterans Affairs

**Greg Kerr, M.P.
Chair**

DECEMBER 2012

41st PARLIAMENT, FIRST SESSION

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THE STANDING COMMITTEE ON VETERANS AFFAIRS

has the honour to present its

SEVENTH REPORT

Pursuant to its mandate under Standing Order 108(2) and the motion adopted by the Committee on Thursday, May 10, 2012, the Committee has undertaken a review of Veterans Review and Appeal Board (VRAB) activities and has agreed to report the following:

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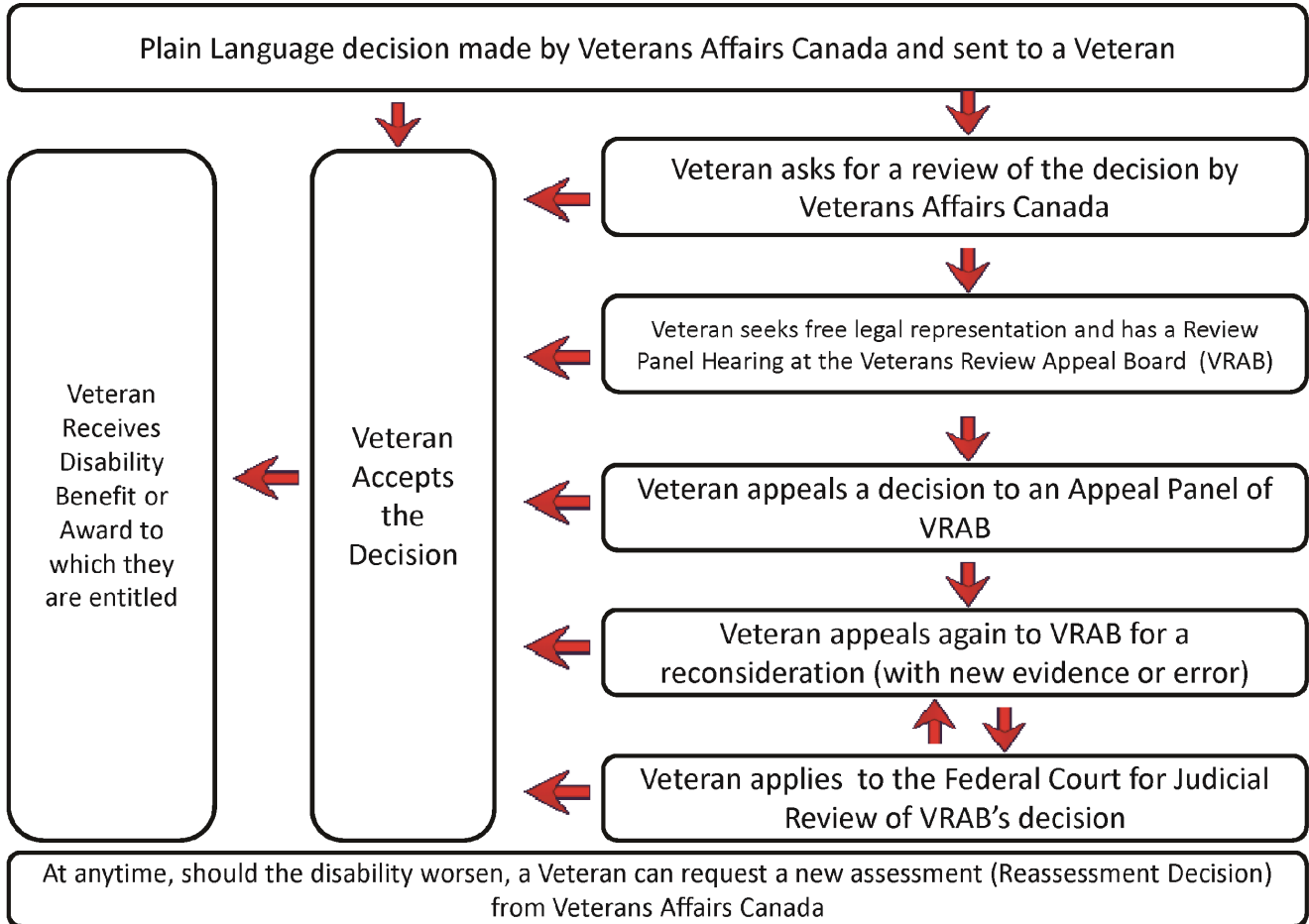
ORGANIZATIONS APPEARING BEFORE THE COMMITTEE DURING THE STUDY

<p>Veterans Affairs Canada (VAC)</p>	<p>VAC is a Government of Canada Department headed by the Minister of Veterans Affairs. Its mandate is set out in the <i>Department of Veterans Affairs Act</i>. The Act charges the Minister with responsibilities for "the care, treatment, or re-establishment in civil life of any person who served in the Canadian Forces or merchant navy or in the naval, army or air forces or merchant navies of Her Majesty, of any person who has otherwise engaged in pursuits relating to war, and of any other person designated ... and the care of the dependants or survivors of any person referred to." VAC provides programs and services to over 200,000 clients. In 2011-2012, VAC employed more than 3,500 people.</p>
<p>Bureau of Pension Advocates (Veterans Affairs Canada)</p>	<p>VAC's Bureau of Pensions Advocates (BPA) is mandated to provide free legal advice and support to veterans who wish to have a departmental decision reviewed or appealed. The BPA consists of 32 lawyers operating from district offices across Canada. It handles an average of 12,000 cases per year.</p>
<p>Office of the Veterans Ombudsman</p>	<p>The Office of the Veterans Ombudsman states on its web site that it "works to ensure that veterans, serving members of the Canadian Forces and the Royal Canadian Mounted Police (RCMP), and their families are treated respectfully, in accordance with the Veterans Bill of Rights, and receive the services and benefits that they require in a fair, timely and efficient manner. The Office provides information and referrals, and addresses complaints, emerging and systemic issues related to programs and services provided or administered by Veterans Affairs Canada. The office also addresses systemic issues related to the Veterans Review and Appeal Board." The Office of the Veterans Ombudsman has a staff of about 40 people.</p>
<p>Veterans Review and Appeal Board (VRAB)</p>	<p>VRAB is a quasi-judicial tribunal that operates independently of Veterans Affairs Canada (VAC). It provides veterans and other applicants with an independent avenue of appeal regarding disability decisions made by VAC. VRAB consists of 25 permanent board members and a staff of about 85 people.</p>
<p>Council of Canadian Administrative Tribunals (CCAT)</p>	<p>CCAT is a national non-profit organization dedicated to promoting excellence in administrative justice. It provides a forum for discussion, education, research, and policy development in the field of administrative justice. It has a 29-member Board of Directors which includes current VRAB Chair John Larlee. The CCAT's membership is made up principally of tribunal members, with current representation from approximately 80 tribunals across Canada. It also has as members senior tribunal staff (registrars, corporate secretaries, researchers and tribunal counsel), as well as external counsel.</p>
<p>Royal Canadian Mounted Police (RCMP) Veterans' Association</p>	<p>The RCMP Veterans' Association promotes the physical, social and economic welfare of former members of the RCMP and their families. The Association ensures, among other things, that retired members are aware of the services offered by VAC and how these services can be obtained.</p>

Royal Canadian Mounted Police (Staff Relations Representative Program)	<p>RCMP Staff Relations Representative Program is the official labour relations body for members of the RCMP. It represents members on matters that impact their welfare, including disability and survivor benefits. Currently, the organization has approximately 9,500 clients, of which 3,100 are still serving.</p>
Canadian Peacekeeping Veterans Association (CPVA)	<p>CPVA is a national, all veteran, not-for-profit organization that advocates on behalf of veterans and provides a forum of comradeship. The Association is open to all veterans. Current membership range from veterans of the Second World War and the Korean War to veterans of peacekeeping missions and the war in Afghanistan. It also includes RCMP and other police veterans.</p>
Canadian Association of Veterans in United Nations Peacekeeping (CAVUNP)	<p>According to its website, CAVUNP is “the largest association of peacekeeping veterans in Canada.” Its membership consists mostly of retired and serving Canadian military, RCMP and civilian veterans who have served on United Nations peacekeeping missions.</p>
Royal Canadian Legion	<p>The Royal Canadian Legion is the largest veterans’ organization in Canada with over 330,000 members. The Legion’s mission is to serve all veterans and serving Canadian Forces and RCMP members, and their families, and to promote Remembrance.</p>
Army, Navy and Air Force Veterans in Canada (ANAVETS)	<p>ANAVETS is a not-for-profit non-partisan veterans’ organization that promotes the rights and benefits of veterans across Canada. ANAVETS has approximately 15,000 members.</p>

Sources: organization websites, documents submitted to the committee, testimony, and departmental reports.

5+ LEVELS OF APPEAL FOR VETERAN'S DISABILITY DECISION



This chart is not an exhaustive list of all levels of appeal or redress available to a Veteran nor should it be construed as advice on the appropriateness of an appeal process/strategy

RESTORING CONFIDENCE IN THE VETERANS REVIEW AND APPEAL BOARD

Introduction

For more than 15 years, thousands of veterans and serving members of the Canadian Forces (CF) and the Royal Canadian Mounted Police (RCMP) suffering from illness or injuries related to their years of service have turned to the Veterans Review and Appeal Board (VRAB) to appeal disability benefit decisions made by Veterans Affairs Canada (VAC).

However, in recent years, veterans' organizations have expressed public criticism of VRAB activities. Some criticism was also raised by the Veterans Ombudsman in his report on VRAB entitled *Veterans' Right to Fair Adjudication*, which he submitted to the Minister of Veteran Affairs in March 2012.¹

Although VRAB has been implementing a number of measures to improve the way it operates and provides services — some of them in response to the Veterans Ombudsman's report — veterans, veterans' organizations and others have continued to voice concerns about the Board's activities.

The House of Commons Standing Committee on Veterans Affairs (referred hereinafter as the "Committee") decided to undertake a review of the Board's activities. In the course of this study, the Committee received testimony from a number of witnesses, including representatives of the Office of the Veterans Ombudsman, VAC, VRAB, and several veterans' organizations. The Committee would like to thank all the witnesses who contributed to this study. It is hoped that this report reflects, as faithfully as possible, the views they have expressed on VRAB activities.

The purpose of this report is to give the Government of Canada a pulse of what the veterans' community thinks about VRAB and to offer a few recommendations as to how to improve the Board and the services it provides to veterans and serving members of the CF and RCMP. The report is subdivided into six main sections. The first gives background information on the roles and responsibilities of VRAB. The second provides a brief explanation of how the review and appeal process for disability benefits functions. The final sections look at some of the issues of concern with VRAB identified by witnesses and offer suggestions as to possible ways of improving VRAB and its public image.

1 Office of the Veterans Ombudsman (OVO), [*Veterans' Right to Fair Adjudication: Analysis of Federal Courts Decisions Pertaining to the Veterans Review and Appeal Board*](#), March 2012, p. 5.

What is the Veterans Review and Appeal Board

VRAB is a quasi-judicial tribunal that operates independently of VAC.² It was established by Parliament in 1995 “to provide veterans ... with an independent avenue of appeal for disability decisions made by Veterans Affairs Canada.”³ VRAB has the following mandate:

The Veterans Review and Appeal Board has full and exclusive jurisdiction to hear, determine and deal with all applications for review and appeal that may be made to the Board under the *Pension Act*, *Canadian Forces Members and Veterans Re-Establishment and Compensation Act – Part 3*, the *War Veterans Allowance Act*, and other Acts of Parliament. All matters related to appeals under this legislation are authorized under the *Veterans Review and Appeal Board Act*. The Board also adjudicates duty-related pension applications under the authority of the *Royal Canadian Mounted Police Pension Continuation Act* and the *Royal Canadian Mounted Police Superannuation Act*.⁴

The Board’s mission is “to ensure fairness in Canada’s programs for disability pensions and awards and War Veterans Allowances by providing fair and timely appeals for traditional veterans, Canadian Forces members and veterans, Royal Canadian Mounted Police applicants, qualified civilians and their families.”⁵

VRAB offers two levels of redress to applicants. The first level of redress is the review hearing. If the applicants are dissatisfied with the results of the review hearing, they can then access the second level of redress, an appeal hearing.⁶ These will be explained in more detail later in the report.

VRAB is legislated to be composed of up to 29 permanent members appointed by the Governor in Council, including a Chairperson and a Deputy Chairperson.⁷ There are currently 25 permanent VRAB members. These individuals come from a wide range of professional backgrounds; they include members of the CF and, for the first time, a member of the RCMP, as well as former lawyers, health care professionals, private sector employees, federal and provincial public servants.⁸ The Governor in Council can also appoint temporary members “whenever, in the opinion of the Governor in Council, the

2 Veterans Review and Appeal Board (VRAB), [2012–13 Report on Plans and Priorities](#), p. 3.

3 VRAB, [Message from the Chair](#), modified November 8, 2012.

4 VRAB, [About the Board: Mandate](#).

5 VRAB, [About the Board: Mission](#).

6 VRAB, [Review and Appeal Hearings](#) and [The Veterans Review and Appeal Board: An Independent Tribunal — Review and Appeal Hearings](#), 2010, pp. 1–8.

7 [Veterans Review and Appeal Board Act](#), S.C. 1995, c.18, sections 4–8, pp. 2–3.

8 VRAB, [Chair and Members](#), modified November 7, 2012.

workload of the Board so requires.”⁹ However, no temporary members have been appointed since 2006.¹⁰

VRAB members hear applications for review and appeal relating to decisions on disability pensions, disability awards, and other allowances. They are supported in their functions by a VRAB staff of approximately 85 people.¹¹

VRAB members, both permanent and temporary, are appointed by the Governor in Council on recommendations made by the VRAB Chair. The selection process consists of a public advertisement, an initial screening, a written test, an interview and reference checks. According to VRAB, the Chair is “accountable for the implementation of the selection process to qualify VRAB’s decision-makers.” VRAB maintains that the selection process was developed “to be transparent, professional and based on competency to ensure that only highly qualified candidates will be considered for appointment.” Candidates are “assessed against criteria that reflect the degree of knowledge, skills and abilities required to effectively carry out the role of a Member of the VRAB.”¹² VRAB explains how the selection process functions as follows:

The Screening Committee will include a retired professional with background relevant to the work of the Board, the Chair or Deputy Chair of the VRAB, and a human resources expert. This committee will assess the application form and curriculum vitae of each candidate to determine who should proceed to a written assessment of specific skills and abilities. The written assessment results of each candidate will be reviewed by the same committee to determine whether the candidate should be considered further in the selection process. The Interview Committee will include a retired senior executive and a retired professional with backgrounds relevant to the work of the Board, as well as the Chair of the VRAB and a human resources expert. The Interview Committee will interview candidates identified by the Screening Committee to further assess the skills and abilities of each candidate. Members of both the Screening Committee and Interview Committee will be selected in consultation with the Minister of Veterans Affairs. The Minister will be consulted on any changes to the committees and it is anticipated that the membership will change over time to include representation from various locations in Canada. All members are required to affirm their impartiality in all aspects of the Member selection process. Once the assessments are complete, the Chair of the VRAB will provide a pool of candidates found qualified by the Interview Committee to the Minister of Veterans Affairs.¹³

The pool of candidates is expected to meet “VRAB operational requirements, gender, diversity, geographic needs and linguistic requirements.” VRAB notes that the Minister of Veterans Affairs is ultimately responsible for drawing candidates from the pool

9 [Veterans Review and Appeal Board Act](#), S.C. 1995, c.18, sections 4–8, pp. 2–3.

10 House of Commons, Sessional Paper No. 8555-411-9 – Veterans Review and Appeal Board, June 6, 2011, p. 2.

11 VRAB, [Organizational Structure](#) and [2012–13 Report on Plans and Priorities](#), pp. 5, 10.

12 VRAB, [Selection Process for Veterans Review and Appeal Board Members](#).

13 Ibid.

of candidates provided by VRAB and to recommend them to the Governor in Council for appointment as VRAB members.¹⁴

VRAB emphasizes on its web site that Board members are “not public servants” and that all of them “must meet pre-defined experience and education criteria and be assessed against competency-based selection criteria to ensure they have the skills and abilities to do the work of a member and to maintain the confidence of applicants in the appeal system.” VRAB maintains that “the Board’s membership ... strives to include a cross section of experience and education including medical, legal, military, police, public service and other life/work experiences.” It also notes on its web site that “all members receive specialized training on legislation, administrative law, the weighing of evidence, military issues, medical conditions, the conduct of hearings and decision writing.”¹⁵

According to the *Veterans Review and Appeal Board Act*, permanent Board members are “appointed for a term not exceeding ten years” and are “eligible to be reappointed.” Temporary Board members, on the other hand, are “appointed for a term not exceeding two years” and are “eligible to be reappointed for one additional term.”¹⁶

In all, 13 of the 25 VRAB members “work out of major cities and conduct review hearings.” The remaining 12 members “conduct appeal hearings at VRAB’s Head Office in Charlottetown,” Prince Edward Island.¹⁷ VRAB review hearings are usually done by two VRAB members and are conducted at about 30 locations across Canada. Appeal hearings, on the other hand, are conducted by three members. VRAB emphasizes that members conducting appeal hearings must not be involved in the review hearings.¹⁸

The role of VRAB members consists of “hearing, determining and dealing with all applications made to [VRAB] by veterans, Canadian Forces members, serving or released members of the Royal Canadian Mounted Police, and their families.” VRAB members have “the jurisdiction to affirm, vary or reverse the decision being reviewed or appealed.” According to VRAB, members are required to “make a full and fair examination of the information available prior to and at the hearings,” to “conduct hearings where they listen to testimony and arguments and weigh all the evidence,” to “interpret and apply the legislation based on the evidence presented,” and to “render written decision which give the reasons for their rulings.”¹⁹ VRAB further notes on its web site that, as part of their work, members:

- must, at all times, be impartial, objective and free of bias;

14 Ibid.

15 VRAB, [Role of Members](#).

16 [Veterans Review and Appeal Board Act](#), S.C. 1995, c.18, sections 5–6, p. 2.

17 VRAB, [Quick Facts](#).

18 VRAB, [Role of Members](#).

19 Ibid.

- prepare for hearings by reading the documented evidence;
- conduct review and appeal hearings in the official language of choice of the applicants;
- convene hearings in one of approximately 30 locations across Canada – in person, by videoconference or by teleconference;
- listen to the testimony of applicants who are permitted to give oral evidence at review hearings;
- consider new evidence submitted at the hearing;
- weigh all evidence to determine whether there is sufficient credible evidence to support the claim;
- interpret and apply the legislation based on the evidence presented;
- conduct a thoughtful analysis of all the available information in reaching a decision, considering both the favourable and unfavourable evidence (i.e., testimony, documentary evidence, medical evidence);
- deliberate the merits of the claim;
- make each decision based on the merits of the claim, bearing in mind the requirement to resolve any doubt (must be reasonable and must derive from a careful analysis of the documentary and medical evidence) in favour of the applicant;
- write clear reasons for decisions within specified and short time frames; and
- may, on occasion, request independent medical advice relating to a claimed condition.²⁰

An Overview of the Review and Appeal Process

Stage 1: Veterans Affairs Canada

When a veteran or serving member of the CF or RCMP believes that he or she has sustained a service-related disability, the person must first submit a formal application to VAC. The department has the authority under the *Pension Act* and the *New Veterans Charter* to provide disability benefits. According to Rick Christopher, Director of the Disability Programs and Income Support at VAC, the applicant must meet two criteria in order to receive a disability benefit: they must “suffer from a disability” and that disability

20 Ibid.

must “be related to their service.” As Mr. Christopher told the Committee, “evidence that an applicant meets these two criteria is often a combination of medical documentation, military service records, and testimonials from colleagues, commanding officers, or others.”²¹ VAC’s team of disability benefit officers provides direct support to applicants and helps ensure that his or her claim is as complete as possible, before it is submitted to the department. Applicants can also obtain assistance in completing their applications from the Royal Canadian Legion or other veterans’ organizations. Service Canada can also review application forms to ensure that they are completed appropriately.²²

Once an application is completed and submitted to VAC, it is assigned to one of the department’s 46 trained disability adjudicators, who assess the information to determine whether the individual is entitled to disability benefits. According to Mr. Christopher:

These decisions are based on the merits of the case and the weight of the evidence. However, in the absence of compelling evidence to the contrary, the benefit of the doubt always flows in favour of the applicant. The benefit of the doubt is applied when there is an equal amount of supporting and non-supporting evidence.

... Once entitlement is established, an assessment is made to determine the extent of the disability, based on the degree to which the condition impacts health and quality of life.

... Once the assessment is completed, a monthly or lump sum payment is processed. Decisions are communicated to veterans in writing.

... Both favourable and unfavourable decisions are communicated by letter. The letter outlines the reasons for decision, redress rights, possible next steps and the support available for exercising these rights.²³

VAC’s service standard calls for disability benefit applications to be processed within 16 weeks, 80% of the time. It stood at 83% in October 2012. VAC reported that in fiscal year 2011-2012, 73% of the more than 20,000 applications for disability benefits reviewed by VAC were assessed as favourable and payment schedules were initiated. Mr. Christopher emphasized to the Committee the fact that VAC is continuously trying to improve service delivery and how it communicates decisions to veterans.

As an example, VRAB has re-designed and reworded in plain language 15 of its “high-volume disability benefits letters” and has decommissioned about 250 letters “that are no longer being used or may be duplicated or a little more confusing.” The overall aim of the department is to make it as clear, simple and straightforward as possible for veterans to understand why they have or have not been awarded a disability benefit.

21 House of Commons, Standing Committee on Veterans Affairs, *Evidence*, 1st Session, 41st Parliament, October 1, 2012 (Rick Christopher, Director, Disability Programs and Income Support, Veterans Affairs Canada).

22 Ibid.

23 Ibid.

In cases where benefits are not approved, the letter indicates why the decision was made and the options available to that person.²⁴

There are two options available to applicants dissatisfied with a decision. They can either request a departmental review or they can proceed directly to VRAB. In the case of a departmental review, a new adjudicator is assigned to the case to ensure a fresh set of eyes and to avoid any form of bias. A departmental review can be triggered when an error in fact or law is found, or when new evidence is presented for consideration. According to VAC, the turnaround service standard for departmental reviews is 12 weeks, 80% of the time. In fiscal year 2011-2012, there were 2,213 departmental reviews conducted and 81% of them were completed within 12 weeks.²⁵

Applicants who are still dissatisfied with the results of the departmental review can then proceed to VRAB.

Leading up to the VRAB review and appeal process, applicants can access legal services from VAC's Bureau of Pensions Advocates. Canada is unique around the world in providing this type of free legal counsel to veterans.²⁶ This organization is mandated to provide free legal advice and support to veterans who wish to have a departmental decision on disability benefits or pensions reviewed or appealed. The Bureau of Pensions Advocates consists of 32 lawyers operating from 14 district offices across Canada. These lawyers assist applicants with the preparation of applications for review and appeal. They also represent applicants at VRAB hearings.²⁷ The Bureau of Pensions Advocates handles on average about 12,000 cases per year and represents about 95% to 98% of the people who appear before VRAB.²⁸

The rest of the applicants either chose to represent themselves, acquire private counsel, or seek representation from the Royal Canadian Legion. According to Andrea Siew, the Royal Canadian Legion's Service Bureau Director, the Royal Canadian Legion is the "only veteran service organization that assists veterans and their families with representation to the [Veterans Review and Appeal] Board." The Royal Canadian Legion has 22 service officers located across Canada who provide free representation at all levels of the VRAB process for veterans who are not satisfied with VAC decisions.²⁹

24 Ibid.

25 Ibid.

26 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 1, 2012 (Bernard Butler, Director General, Policy Division, Veterans Affairs Canada); [Evidence](#), 1st Session, 41st Parliament, October 22, 2012 (Anthony Saez, Executive Director and Chief Pensions Advocate, Bureau of Pensions Advocates, Veterans Affairs Canada).

27 Veterans Affairs Canada (VAC), "The Bureau of Pensions Advocates (BPA) – Presentation to the Standing Committee on Veterans Affairs," October 22, 2012.

28 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 22, 2012 (Anthony Saez).

29 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 15, 2012 (Andrea Siew, Director, Service Bureau, Royal Canadian Legion).

Stage 2: The Veterans Review and Appeal Board

The first level of redress offered by VRAB is the review hearing.

According to the *Veterans Review and Appeal Board Act*, VRAB has “full and exclusive jurisdiction to hear, determine and deal with all applications for review that may be made to the Board under the *Pension Act* or the *Canadian Forces Members and Veterans Re-Establishment and Compensation Act* [New Veterans Charter], and all matters related to those applications.” It can rule on a “decision concerning the amount of an award under the *Pension Act*” or “the amount of a disability award, death benefit, a clothing allowance or detention benefit under Part 3 of the *Canadian Forces Members and Veterans Re-Establishment and Compensation Act*.”³⁰

Generally speaking, if VAC does not approve a claim submitted by a veteran for a disability pension or award, or if it approves the claim but not to the veteran’s satisfaction, the veteran can request a review. John Larlee, Chair of VRAB, told the Committee that between 10% and 15% of the decisions made by VAC every year are appealed to VRAB.³¹

When VRAB receives an application for review, it immediately notifies the Minister of Veterans Affairs and retrieves a copy of the decision and all relevant records, including transcripts of the proceedings and all evidences submitted, from VAC. VRAB then notifies the applicant of its receipt of the material from VAC and the date on which the review will be heard.³²

In the review hearing, veterans may present their arguments in person or through a representative before a panel made up of two VRAB members. Veterans are generally represented at Board review hearings by lawyers of the Bureau of Pensions Advocates or by service officers of the Royal Canadian Legion, at no personal cost. Some of them also hire private lawyers to represent them at their own expense. VRAB review hearings are held at approximately 30 locations across Canada, but can also be conducted through teleconference and video conference. Review hearings are the only time in the review process when applicants have the opportunity to appear and testify in person before VRAB decision makers.³³ According to Mr. Larlee, the “review hearing is often a pivotal moment for veterans” for it is “their chance to finally appear before decision-makers and be heard.”³⁴

30 [Veterans Review and Appeal Board Act](#), S.C. 1995, c.18, sections 18–19, pp. 4–5.

31 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 1, 2012 (John Larlee, Chair, Veterans Review and Appeal Board).

32 [Veterans Review and Appeal Board Regulations](#), SOR/96-67, section 5, p. 2.

33 VRAB, [Review and Appeal Hearings](#) and [Veterans Review and Appeal Board Act](#), S.C. 1995, c.18, sections 20–24, pp. 5–6.

34 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 1, 2012 (John Larlee).

After the hearing, VRAB members meet to make a decision. The review panel can “affirm, vary or reverse” the decision under review; refer “any matter back” to Veterans Affairs Canada for reconsideration; or can refer “any matter not dealt with in the decision” back to Veterans Affairs Canada. In the absence of a majority decision, “the decision most favourable to the applicant” is normally selected by VRAB. A written decision is then sent to the applicant by mail. It should be noted that VRAB may reconsider its decision if an apparent error of fact or law has occurred.³⁵

The second level of redress offered by VRAB is the appeal hearing.

If the veteran is not satisfied with the decision from the review hearing, an appeal hearing can be requested. Unlike the review hearing, the veteran cannot testify in person and must either name a representative to make arguments for them or make a written submission. The appeal panel is made up of three VRAB members who were not involved in the review hearing. Appeal hearings are usually held in Charlottetown. Veterans may attend at their own expense, but may not participate. They can, however, submit written statements and new evidence. The appeal panel can “affirm, vary or reverse the decision being appealed,” “refer any matter back to the person or review panel that made the decision being appealed for reconsideration, re-hearing or further investigation,” or “refer any matter not dealt with in the decision back to that person or review panel for a decision.” Decisions of an appeal panel are final and binding, unless “they contain an error of fact or law, or new evidence comes to light at a later date.”³⁶

Since its creation in 1995, VRAB has made more than 119,000 decisions.³⁷ In 2011–2012, for example, VRAB finalized 3,636 review decisions and 1,072 appeal decisions. According to VRAB, the Board ruled favourably in 50% of the review decisions and 29% of the appeal decisions. According to the VRAB web site, the Board “has committed to issuing written decisions to applicants within six weeks of their hearing. In 2011-2012, 82% of review decisions and 86% of appeal decisions met this target.”³⁸

Stage 3: Further Procedures for Review and Appeal

In the event the VRAB review and appeal process is unsuccessful, veterans may take advantage of four other possibilities under the *Veterans Review and Appeal Board Act*.

A first possibility is a reconsideration of VRAB appeal panel decisions. According to section 32 of the *Veterans Review and Appeal Board Act*, a VRAB appeal panel can, “on its own motion, reconsider a decision made by it ... and may either confirm the decision or

35 [Veterans Review and Appeal Board Act](#), S.C. 1995, c.18, sections 20–24, pp. 5–6.

36 VRAB, [What Can I Do If I am Not Satisfied with an Appeal Decision?](#); [Veterans Review and Appeal Board Act](#), S.C. 1995, c.18, sections 25–33, pp. 6–8.

37 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 29, 2012 (Chief Warrant Officer (Retired) Guy Parent, Veterans Ombudsman).

38 VRAB, [Quick Facts](#).

amend or rescind the decision if it determines that an error was made with respect to any finding of fact or the interpretation of any law.” A VRAB appeal panel can also reconsider its decision “if the person making the application [i.e., the veteran] alleges that an error was made with respect to any finding of fact or the interpretation of any law or if new evidence is presented to the appeal panel.”³⁹

A second possibility is a judicial review by the Federal Court of Canada. If applicants have exhausted all their VRAB redress options and are still dissatisfied, they can request a judicial review by the Federal Court of Canada if they believe an error was made with respect to the interpretation of a law. A number of cases are heard each year by the Federal Court.⁴⁰ In 2011-2012, for example, a total of 22 applicants requested a judicial review by the Federal Court. The Federal Court issued 14 decisions that same year. Seven “upheld the Board’s decision while the other seven returned the application to the Board for a new hearing.”⁴¹ In all, 140 decisions (0.1% of the more than 119,000 VRAB decisions) have been reviewed by the Federal Court since the creation of VRAB in 1995 and 11 were subsequently appealed to the Federal Court of Appeal.⁴²

A third possibility is an appeal to the Tax Court of Canada. If the VRAB appeal panel’s decision concerns income or the source of income of the applicant or their spouse, an appeal can be made to the Tax Court of Canada, as per section 33 of the *Veterans Review and Appeal Board Act*.⁴³

A fourth possibility is an application for a compassionate award. In accordance with section 34 of the *Veterans Review and Appeal Board Act*, an applicant who has been “refused an award under the *Pension Act*, or a disability award, a death benefit, a clothing allowance or a detention benefit under Part 3 of the *Canadian Forces Members and Veterans Re-Establishment and Compensation Act*” can apply to the VRAB for a compassionate award if all procedures for review and appeal under the *Veterans Review and Appeal Board Act* have been exhausted. Applications for compassionate awards are normally “heard, determined and dealt with” by a VRAB panel of three members designated by the Chair. VRAB can “grant a compassionate award if it considers the case to be specially meritorious and the applicant is unqualified to receive an award under the *Pension Act*, or a disability award, a death benefit, a clothing allowance or a detention benefit under Part 3 of the *Canadian Forces Members and Veterans Re-Establishment and Compensation Act*.” In such cases, VRAB can fix a reasonable sum for the award, but it may not exceed the amount to which the applicant would have been entitled to if his or

39 [Veterans Review and Appeal Board Act](#), S.C. 1995, c.18, section 32, p. 7.

40 VRAB, [Judicial Review by the Federal Court](#).

41 VRAB, [Quick Facts](#).

42 OVO, [Veterans’ Right to Fair Adjudication: Analysis of Federal Courts Decisions Pertaining to the Veterans Review and Appeal Board](#), p. 12. For the complete list of the 151 judicial review decisions for which the Federal Court has provided VRAB with guidance, see *Chart of Judicially Reviewed Veterans Review and Appeal Board Decisions* in the Appendix, pp. 43–50.

43 [Veterans Review and Appeal Board Act](#), S.C. 1995, c.18, section 33, pp. 7–8.

her claim had been upheld under the *Pension Act* or the *Canadian Forces Members and Veterans Re-Establishment and Compensation Act*.⁴⁴

Issues of Concern

In his testimony, James Ogilvy, Executive Director of the Council of Canadian Administrative Tribunals (CCAT), told the Committee that “all administrative tribunals, adjudicators and staff affiliated with CCAT and operating in any Canadian jurisdiction” — including VRAB — must abide by the following CCAT Principles of Administrative Justice:

Administrative Justice:

- requires that Tribunals be independent in matters of governance and that adjudicators be independent in decision-making;
- requires that Tribunals, adjudicators and staff be impartial and free from improper influence and interference;
- requires that Tribunals, adjudicators and staff be without conflicts of interest and act in a manner which precludes any conflict of interest;
- requires that adjudicators and staff be qualified in their subject matter and administrative justice processes;
- requires that adjudicators and all participants treat each other with dignity, respect and courtesy;
- should ensure that the dispute resolution process is accessible, affordable, understandable and proportionate to the abilities and sensibilities of users;
- should be transparent and accountable;
- should apply the rules of natural justice;
- should be expeditious both in process and in rendering decisions, with reasons to be given where appropriate;
- should where possible, provide an opportunity for informal dispute resolution;

44 [Veterans Review and Appeal Board Act](#), S.C. 1995, c.18, section 34, pp. 8–9.

- should minimize any disadvantages to unrepresented parties;
- should provide consistency in procedure and adjudicative outcomes.⁴⁵

But while VRAB maintains that it abides by all of these principles, many veterans and veterans' organization hold a different view.⁴⁶ However, Ronald Griffis, National President of the Canadian Association of Veterans in United Nations Peacekeeping, gave important context that should be considered by the veterans' community:

There are thousands upon thousands of veterans who have had a good response and a good deal with the VRAB — thousands. Only they receive their benefit and they're happy with it, you never hear from them. Yes, there are thousands who have been successful.⁴⁷

That being said, in the Canadian Peacekeeping Veterans Association's view, veterans are not being treated with the "respect, dignity, fairness and courtesy" they are entitled to under the first article of the *Veterans Bill of Rights* when they are dealing with VRAB.⁴⁸ It finds it "difficult to believe that VRAB can properly serve our veterans when our veterans have little, if any, faith in the current VRAB structure, modus operandi, attitudes or ability to meet its legislated responsibilities."⁴⁹

Similar views on VRAB and its activities were expressed by representatives of other prominent veterans' organizations, including the Army, Navy and Air Force Veterans in Canada and the Royal Canadian Legion.

The Army, Navy and Air Force Veterans in Canada, in particular, told the Committee that its "position, shared by others, is that systemic and decision-making problems at this administrative tribunal are having negative emotional, physical, and financial impacts on veterans and their families." In its view, a number of things need to be reviewed and changed in order to improve VRAB and the services it provides veterans and serving members of the CF and the RCMP. This includes the way the Board currently operates, its processes and service standards, its level of transparency, its sharing of information with applicants, its application of the benefit of the doubt, the number of its

45 Council of Canadian Administrative Tribunals (CCAT), "Speaking Notes of James A. Ogilvy before Standing Committee on Veterans Affairs – Appendix: *Principles of Administrative Justice* (CCAT)," October 22, 2012; CCAT, [Principles of Administrative Justice](#), adopted in February 2009.

46 For examples of some of the concerns raised by veterans, see, among others, Canadian Peacekeeping Veterans Association (CPVA), "Canadian Peacekeeping Veterans Association (CPVA) Presentation to House of Commons Standing Committee on Veterans Affairs on the Veterans Review and Appeal Board (VRAB)," October 15, 2012.

47 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 15, 2012 (Ronald Griffis, National President, Canadian Association of Veterans in United Nations Peacekeeping).

48 Government of Canada, [Veterans Bill of Rights](#).

49 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 15, 2012 (Ray Kokkonen, National President, Canadian Peacekeeping Veterans Association).

decisions overturned at the Federal Court level, the length and cost of the review and appeal process for veterans, and veterans' representation on the Board.⁵⁰

The Royal Canadian Legion echoed the Army, Navy and Air Force Veterans in Canada on a number of issues of concern. Its representative spoke of the need to revisit and improve the composition and selection of Board members, the way the review and appeal process currently works, the number of VAC decisions that are revised by VRAB, the high burden of proof on veterans, how the benefit of the doubt is applied, the Board's level of transparency and how videoconferencing technology is being used at review hearings. According to the Royal Canadian Legion witness, "the Government has an obligation to ensure that veterans have access to a fair and transparent adjudication process."⁵¹

The Committee also heard from Harold Leduc, a reputable former VRAB member who has served his country with distinction. His record on the Board stands for itself, as he so aptly stated for the Committee where he noted he acted independently and stands behind each of the thousand decisions he has made. Mr. Leduc's testimony echoed the concerns expressed by the veterans' organizations. In his view, the way VRAB operates is "not providing the fair and impartial hearings that Parliament [wants] for our veterans." He spoke, among other things, of VRAB management and staff interference in Board members' decisions, of veterans and their advocates being disrespected at review hearings, of the whole review and appeal process being adversarial, of favourability rates impacting the impartiality of Board members, of the Board's independence being compromised by regular consultations with VAC for medical advice, and of disregard for Federal Court orders.⁵²

Chief Warrant Officer (Retired) Guy Parent, Veterans Ombudsman, also enumerated issues of concern with VRAB. He suggested to the Committee a number of key areas that should be reviewed for possible improvements, including, among other things, the Board's structure, the selection of Board members, issues related to workload, processes, quality assurance, and the operating culture of the Board. The most important, in his view, is the issue of culture: "In the end ... it all comes down to culture," he told the Committee. "Although structural changes can alter processes 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."⁵³

50 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 15, 2012 (Jerry Kovacs, Member, Army, Navy and Air Force Veterans in Canada).

51 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 15, 2012 (Andrea Siew).

52 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 22, 2012 (Harold Leduc, as an Individual).

53 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 29, 2012 (Guy Parent).

Yet, despite all the concerns with VRAB expressed by the witnesses who appeared before the Committee, none believed that the Board should be abolished. All were of the opinion that VRAB has an important role to play in supporting veterans and ensuring that they and their families receive the benefits they are entitled to for injuries sustained in the service of Canada. In the opinion of Andrea Siew, Director of the Service Bureau at the Royal Canadian Legion, VRAB plays a “critical role” as “an independent avenue of appeal for disability benefit decisions made by Veterans Affairs.” She emphasized to the Committee the “need for an independent administrative tribunal that the Veterans can turn to when they are dissatisfied with decisions.”⁵⁴

Jerry Kovacs of the Army, Navy and Air Force Veterans in Canada echoed such views: “We do not believe that VRAB should be abolished,” he told the Committee. “It is a higher quasi-judicial authority that, if it functions properly, and effectively, ensures that veterans receive a fair shake.”⁵⁵

That being said, many of the witnesses that appeared before the Committee — particularly those from veterans’ organizations — urged for significant changes to VRAB. They maintained that there are significant problems with the way the Board currently operates and that measures need to be implemented as soon as possible to improve its functioning and how it deals with veterans and serving members of the CF and the RCMP.

It should be noted however, that VRAB does not agree with all of the issues of concern raised by several of the witnesses who appeared before the Committee. On the last day of testimony for this study, VRAB Chair John Larlee, referred to “inaccuracies presented to this Committee” by previous witnesses and sought to provide “clarifications.” Mr. Larlee told the Committee, among other things, that VRAB continuously strives for fairness and impartiality in everything it does, that it treats all veterans, members of the CF and the RCMP, and their families with dignity and respect when they come to the Board, that Board management and staff respect the independence of Board members as decision makers, that favourability rates have never been used to influence Board members to be more favourable or less favourable, that all evidence used in hearings is shared with applicants and their representatives, that the Board does not regularly consult with VAC for medical advice, that the Board does not disregard Federal Court orders, and that there is no culture of denial at the Board.⁵⁶

Mr. Larlee also spoke to the Committee about initiatives underway to improve VRAB and its services and assured the Committee that his organization “will continue to make improvements to maintain trust and confidence in the appeal process.”⁵⁷

54 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 15, 2012 (Andrea Siew).

55 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 15, 2012 (Jerry Kovacs).

56 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 29, 2012 (John Larlee, Chair, Veterans Review and Appeal Board).

57 Ibid.

The Committee applauds VRAB for moving forward with measures to improve its services and the way it operates. This is certainly a step in the right direction. However, evidence received during this study suggests that more can and needs to be done to improve the Board's operation and restore veterans' confidence in VRAB.

The Committee recognizes that there are conflicting views amongst the veterans' community in regard to VRAB and how it serves veterans. On one hand we heard that thousands of veterans do have a good experience with VRAB and their stories are not made public, yet on the other hand, we heard stories of a lack of trust in VRAB. It is ultimately clear that VRAB's public image plays an important role in veterans having faith in it as an independent avenue of appeal. Whether the silent majority is, as some have suggested, largely content with VRAB or whether veterans have lost trust in VRAB, it is clear that VRAB's public image has been damaged and needs to be restored.

The Committee agrees with all witnesses that there is a need for an independent tribunal like VRAB, but that its structure and its way of doing business should be reviewed and improved. The following sections look at some specific areas of concern that the Committee feels should be addressed in the near future.

Veterans' Right to Fairness in the Adjudication Process

One of the main issues of concern raised by witnesses appearing before the Committee pertained to the issue of fairness. According to James Ogilvie of CCAT, fairness is an important aspect of any tribunal. As he explained, individuals appearing before a tribunal have the "right to be heard by an impartial decision maker."⁵⁸ Tribunals have a responsibility to be objective and ethical in the manner in which they treat people appearing before them. According to Mr. Ogilvie:

The relations between an appellant and a tribunal need to be treated with respect. Respect is mutual, of course, or reciprocal, as it should be. Leading up to the hearing, it's helpful to have a tribunal that provides information on the way its procedures work. During a hearing, the process must be seen as fair and balanced ... It's inappropriate for members of a tribunal to take sides and start arguing with witnesses or counsel. The distance should be maintained, and that's something that we would say would be applied to any tribunal.⁵⁹

VRAB assured the Committee that it treats all veterans and serving members of the CF and RCMP with utmost fairness. According to John Larlee:

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 clearly have the right to fairness in the appeal process, to openness in decision making, and to be heard by qualified and impartial adjudicators.

58 House of Commons, Standing Committee on Veterans Affairs, *Evidence*, 1st Session, 41st Parliament, October 22, 2012 (James Ogilvy, Executive Director, Council of Canadian Administrative Tribunals).

59 Ibid.

... 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 ... Fairness is our mission and we strive for it in everything we do.⁶⁰

However, some witnesses maintain that the VRAB process is not always fair. One issue raised pertains to favourability rates. Harold Leduc, for example, spoke of the existence of favourability rates at VRAB which, in his view, are affecting the impartiality of VRAB members as decisions makers.⁶¹ VRAB maintains that favourability rates are used only as tools “to initiate a conversation about consistency in decision making” and “have never been used to influence Board members to be more favourable or less favourable.” Regardless of who is right or wrong, the Committee firmly believes that favourability rates should not influence VRAB decisions. It thus recommends:

Recommendation 1

That the Veterans Review and Appeal Board review its processes as to ensure the independence of Board members and their decision-making.

The Committee holds the view that evidence-based decisions are the best way to ensure that VRAB is making decisions consistent with the guidelines governing quasi-judicial tribunals to ensure fairness for all veterans. However, many witnesses raised concerns with the burden of proof on veterans. Many believe that it is too onerous on veterans and that it can be unfair. The Royal Canadian Legion, for example, told the Committee that the burden of proof on veterans is too high and restrictive.

The application process is not complex, but it is not as simple as saying that I was injured during my service. It's an evidence-based system that requires proof that the injury or disability arose out of, or was directly connected to, service, and the onus is on the veteran to show how that the injury or disability is related to their service and the performance of their duties.

The burden of proof is very high. There may be an incomplete diagnosis or an incorrect diagnosis. Medical information such as X-ray reports, CT scans, pulmonary function tests, physical fitness tests, your unit employment record, accident reports, boards of inquiry, witness statements, etc., are all required, especially in complex cases that go before the board.

... This is not a passport application package in which an error or a piece of missed information simply results in the package being returned. An unfavourable or incomplete decision creates a negative atmosphere and an untrusting environment. The approach or culture that ‘if you are injured, we will look after you’ seems to have disappeared. The burden of proof is too high.⁶²

60 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 29, 2012 (John Larlee).

61 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 22, 2012 (Harold Leduc, as an Individual).

62 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 15, 2012 (Andrea Siew).

According to Harold Leduc, the burden of proof on veterans did not used to be that onerous.

When I first joined the board [in 2005], we only needed a doctor's letter that said the person had a certain diagnosis ... That establishes a disability under the *Pension Act*. All we did from that was hold a hearing, look at the documentation, and find whether we could make a link to service. When we couldn't, sometimes we'd weigh the evidence that was before us and we'd assess whether it was credible or not ... Veterans have a higher burden now than they did before, and I don't know why, because the rules haven't changed. They absolutely have not changed. It's the people and the steps.⁶³

VRAB, however, is not of the opinion that the burden of proof is too high. "While we understand the perception that the burden of proof is too high," John Larlee told the Committee, "the legislation requires veterans to establish a link between their disability and service."⁶⁴

While the Committee recognizes the need for veterans to provide evidence to substantiate their cases, which in turn ensures consistency in VRAB's decision making, witness testimony suggests that the burden of proof on veterans may have become too high. The Committee believes that veterans should expect uniformity in the evidentiary procedures that apply to VRAB hearings and is concerned at the potential consequences if, in fact, the evidentiary requirements are too onerous. With this in mind, the Committee recommends:

Recommendation 2

That the Veterans Review and Appeal Board review the evidence requirements to ensure that they are consistent with the practices of the quasi-judicial tribunal industry standards.

One of the ongoing problems with existing VRAB standards of proof — according to the Royal Canadian Legion — is that many veterans don't understand why they have to provide concrete evidence of their injuries in order to obtain their disability benefits or even how VRAB comes to a specific decision.

I think there might be a lot of misinformation out there about the Board. The evidence requirements are so stringent ... You have to provide all of the evidence and you have to have the specialists' reports to confirm that you have that injury.

... I ask for statements from veterans. Was there a board of inquiry? Where is the ... report of injuries? Do you have your unit employment record? There's a lot of evidence required. The veteran just says, "But I was injured." Yes, but we need to do the evidence. There's a thought process that says, "That's a lot of evidence that's required; why do I need all that? I'm a veteran; the government, the country, should be looking after me." That's where that perception comes from. We need to get past that.

63 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 22, 2012 (Harold Leduc).

64 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 29, 2012 (John Larlee).

... We always tell the veteran to make sure we have the best possible evidence. We don't take a case before the Board without all of the available evidence.⁶⁵

According to witnesses, there seems to be a misconception of the evidence requirement. As the Committee was told on several occasions, injured veterans often don't really understand the need to provide evidence for their illness or injuries, and this, in turn, is prompting dissatisfaction and a negative image of the Board. VAC and VRAB need to be more proactive in explaining to the veterans' community what they do and why veterans need to provide evidence of their injuries in order to obtain benefits. As Jerry Kovacs of the Army, Navy and Air Force Veterans in Canada told the Committee, veterans "must know how to prepare their cases, what documents are required, and how others are treated in similar situations."⁶⁶ One of the VRAB witnesses that appeared before the Committee concurred: "I think there are issues with evidence, especially first instance. Anything that can be done by all of the organizations to help the veterans get better evidence at first instance would be assistive."⁶⁷ The Committee believes that more extensive VAC and VRAB outreach initiatives, particularly at the first stages of the process, would be helpful in helping veterans understand the type of evidence they need to provide throughout the process. It therefore recommends:

Recommendation 3

That VAC and VRAB continue to be proactive in employing outreach initiatives aimed at reaching out to the veteran community to explain what is required in terms of evidence when appealing departmental decisions pertaining to disability benefits.

Another issue of concern raised by witnesses, and which is linked to the burden of proof, pertains to how the benefit of the doubt is applied by VRAB members. According to the Royal Canadian Legion, the "most misunderstood" part of the process has to do with VRAB's interpretation and application of Section 39 of the *Veterans Review and Appeal Board Act*, the so-called "benefit of the doubt" clause.⁶⁸ Section 39 requires that the Board, in weighing the evidence, look at it in the best light possible and resolve doubt so that it benefits the applicant. Section 39 states:

In all proceedings under this Act, the Board shall:

(a) draw from all the circumstances of the case and all the evidence presented to it every reasonable inference in favour of the applicant or appellant;

65 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 15, 2012 (Andrea Siew).

66 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 15, 2012 (Jerry Kovacs).

67 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 1, 2012 (Kathleen Vent, Acting Director, Legal Services, Veterans Review and Appeal Board).

68 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 15, 2012 (Andrea Siew).

(b) accept any uncontradicted evidence presented to it by the applicant or appellant that it considers to be credible in the circumstances;

(c) resolve in favour of the applicant or appellant any doubt, in the weighing of evidence, as to whether the applicant or appellant has established a case.⁶⁹

However, Andrea Siew of the Royal Canadian Legion and several other witnesses raised issues with the way the benefit of the doubt clause was being interpreted and applied by VRAB members. According to Ms. Siew:

Section 39 of the *VRAB Act* regarding rules of evidence granted very liberal rules; however, over time this has become a very legal interpretation. The spirit of the legislation has evolved to a workers' compensation insurance approach rather than a social safety net approach.

... What are the evidence requirements? What is meant by 'every reasonable inference in favour of the applicant'?

... Who determines what credible evidence is? The Board's own adjudicative guidelines describe in detail the requirement for medical evidence to be considered. It's very instructive and restrictive. Not only is the burden of proof on the veteran, but the evidence requirements are so complex and so restrictive that many veterans can't obtain the type of evidence that is required. They don't have access to the medical professionals and specialists or can't afford to obtain the necessary reports and, therefore, will decline to proceed to appeal when advised of the evidence requirements.⁷⁰

Ray Kokkonen, National President of the Canadian Peacekeeping Veterans Association, shared similar views. "I think ... that the benefit of the doubt is being applied incorrectly. It's much too strict and gives no benefit of the doubt to the veteran in very many cases."⁷¹ Similarly, Ronald Griffis, National President of the Canadian Association of Veterans in United Nations Peacekeeping argued:

The current process creates anger, distrust, frustration, and all of that is completely avoidable ... We are asking for fairness in the form of a fair and transparent process ... It is suggested that on a regular basis, the hearing officers fail to apply the doctrine of giving the benefit of the doubt to the veteran. In failing to apply the benefit of the doubt to the veteran, the hearing officer suggests that various notes from medical practitioners, as well as verbal statements from the applicant, are not sufficient to satisfy the board, and therefore they conclude that a case has not been made out ... For the board to state that they do not find the evidence credible in the circumstances is just plain not fair.⁷²

69 [Veterans Review and Appeal Board Act](#), S.C. 1995, c.18, section 39, p. 10.

70 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 15, 2012 (Andrea Siew).

71 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 15, 2012 (Ray Kokkonen).

72 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 15, 2012 (Ronald Griffis, National President, Canadian Association of Veterans in United Nations Peacekeeping).

While it is understood that decisions made by tribunals should be evidence based, James Ogilvie of CCAT did emphasize to the Committee that “tribunals can have a somewhat more relaxed view of the evidence presented to them than the courts have.” As he explained:

It doesn't mean that any old thing that's said in a witness' statement is acceptable, but the tribunal members have the opportunity to weigh what they hear and determine whether it is reasonable and likely to be true, and apply the idea of benefit of the doubt to that evidence, and give the appellant the benefit of the doubt for the evidence provided. It's not loose, but it is somewhat less stringent than it is in civil and criminal courts.⁷³

Several witnesses were of the opinion that the “benefit of the doubt” clause needs to be reviewed. “It's very difficult to understand,” said Andrea Siew of the Royal Canadian Legion, “and it needs to be simplified ... If there's one thing that needs to be done, it is to make how the benefit of the doubt clause is to be applied very clear.”⁷⁴

The Committee believes that one of the possible reasons why VRAB lost the trust and respect of some veterans pertains to the fact that some veterans feel that they are not getting the benefit of the doubt with regard to the evidence they present to the Board. The Committee is encouraged by the fact that VRAB has an initiative underway to train its members to more clearly explain how they apply the benefit of the doubt in every case, but feels that more needs to be done. The Committee believes that the way the benefit of the doubt is interpreted by VRAB members should be reviewed as to ensure that its application is simpler and clearer, as well as consistent. It therefore recommends:

Recommendation 4

That the Veterans Review and Appeal Board, moving forward, will interpret and apply Section 39 of the *Veterans Review and Appeal Board Act* (the benefit of the doubt clause) as it was intended and clearly explain how this was done in all of its decisions and to the stakeholder community.

The Veterans Ombudsman estimates that VRAB reviews between 10% and 15% of the decisions made by VAC every year and modifies about half of them.⁷⁵ In 2011–2012, for example, VRAB finalized 3,636 review decisions and 1,072 appeal decisions. It ruled favourably in 50% of the review decisions and in 29% of the appeal decisions.⁷⁶ The variance of departmental decisions at the VRAB level is of concern to the Veterans Ombudsman. In his view, it “suggests ... that there is a need for the Department to determine why so many decisions are varied at the Board level and to consider ways to

73 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 22, 2012 (James Ogilvy).

74 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 15, 2012 (Andrea Siew).

75 OVO, [Veterans' Right to Fair Adjudication: Analysis of Federal Courts Decisions Pertaining to the Veterans Review and Appeal Board](#), p. 11.

76 VRAB, [Quick Facts](#).

improve decision making at the Department's first adjudication and review levels."⁷⁷ As the Veterans Ombudsman told the Committee:

This goes to the issue of why so many decisions are varied at the Department's review level and at the Board's level ... 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.⁷⁸

The Veterans Ombudsman also brought up some of the concerns he had with the small number of VRAB decisions overruled at the Federal Court level. According to the Veterans Ombudsman, VRAB has made over 119,000 review decisions since its creation in 1995, of which 34,000 could have been subject to judicial review at the Federal Court. However, only 140 VRAB decisions have been reviewed by the Federal Court. "To suggest that there is nothing to worry about because only 140 of those decisions have been challenged in the Courts does a great disservice to veterans and serving members of the Canadian Forces and the RCMP," he told the Committee. In his view, "there are many reasons why ill and 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."⁷⁹

The Veterans Ombudsman also addressed the results of his March 2012 report entitled *Veterans' Right to Fair Adjudication: Analysis of Federal Courts Decisions Pertaining to the Veterans Review and Appeal Board*. The report looked at the 140 VRAB decisions that have been challenged in the Federal Court and the 11 that were subsequently appealed to the Federal Court of Appeal. The Veterans Ombudsman made seven recommendations in his report.⁸⁰ He told the Committee that VRAB has put in place a plan to address the first five recommendations and that he is currently engaged with the Minister of Veterans Affairs in addressing the last two recommendations.⁸¹

Indeed, VRAB has accepted the Veterans Ombudsman's recommendations, and John Larlee told the Committee that the Board has put several measures in place in response to the Veterans Ombudsman report.

77 OVO, *Veterans' Right to Fair Adjudication: Analysis of Federal Courts Decisions Pertaining to the Veterans Review and Appeal Board*, p. 11.

78 House of Commons, Standing Committee on Veterans Affairs, *Evidence*, 1st Session, 41st Parliament, October 29, 2012 (Guy Parent).

79 Ibid.

80 House of Commons, Standing Committee on Veterans Affairs, *Evidence*, 1st Session, 41st Parliament, October 29, 2012 (Guy Parent). The seven recommendations can be found in OVO, *Veterans' Right to Fair Adjudication: Analysis of Federal Courts Decisions Pertaining to the Veterans Review and Appeal Board*, pp. 6, 20.

81 OVO, *Veterans' Right to Fair Adjudication: Analysis of Federal Courts Decisions Pertaining to the Veterans Review and Appeal Board*, p. 5.

... We placed a priority on decisions being returned by the Federal Court. We have established a task force with the Department of Veterans Affairs to deal with decisions coming from the Federal Court to identify any items that can be addressed. We have also established a working group to work on guidelines with our members in order to provide more plain-language and clear decisions ... Those are to be in place by the end of the year.

With respect to the operation of the board, the board functions very well. We deal with many decisions. We have a very detailed instruction process for our members. Once they proceed and are appointed to the board, we have a 12-week training period. Before the board members sit on a case, they receive instruction on legal issues, administrative law, and the interpretation of medical opinions and evidence. As a result, I'm very confident that we have very knowledgeable and well-qualified administrative adjudicators.⁸²

At the same time, the Veterans Ombudsman told the Committee: "As long as the Federal Court continues to return the majority of Board decision for errors of fact, law or procedural fairness issues, then I will continue to say that fairness in the redress process is not assured."⁸³

The proportion of decisions overturned at each level of the process has raised concerns with veterans about the overall fairness of the process, which many of them regard as overly time consuming, adversarial and alienating. According to Staff Sergeant Abraham Townsend from the RCMP's Staff Relations Representative Program, several members of the RCMP have expressed frustration with the current process. He compared it to a hurdle race and referred to it as "layers of frustration."

I look at the Veterans Affairs stats, and 75% are approved in the first instance. Of those that go to appeal, 60% are approved on appeal. Now, you've jumped the first hurdle, you've jumped the second hurdle, and 25% at the appeal board are approved. You continually jump hurdles, and we're continually getting approval, albeit in a diminishing way. Members whom I talk with who have gone through this express frustration that the further you go in this process—they use words like "discouraging" and "distant" and "disheartening"—the more it becomes very litigious and removed from the individual, albeit that it's their case going forward.⁸⁴

The Committee acknowledges that the whole process can be difficult for veterans, but members feel that it is more desirable to ensure as many levels of redress are available to veterans rather than reducing or abolishing redress options as sought by some parties. The Committee firmly believes that by reviewing and improving certain aspects of the system at the first level decision stage there might be more positive results at the front end. The Committee recognizes that, in many cases, the very fact that VRAB is overturning decisions in the first place is an indication that the appeals process is working

82 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 1, 2012 (John Larlee).

83 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 29, 2012 (Guy Parent).

84 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 22, 2012 (Staff Sergeant Abraham Townsend, National Executive, Staff Relations Representative Program, Royal Canadian Mounted Police).

effectively. The Committee ultimately believes that VAC should continue to review decisions made by VRAB in an effort to avoid the necessity of an appeal to the greatest extent possible.

As such, the Committee recommends:

Recommendation 5

That Veterans Affairs Canada review its internal processes and policies in an effort to reduce the number of decisions that are overturned by the Veterans Review and Appeal Board to the greatest extent possible.

An Independent Tribunal of Experts

According to the CCAT, tribunal members must maintain their independence. “Political interference is a non-starter,” Committee members were told.⁸⁵ VRAB Chair John Larlee emphasized the independence of the Board when he appeared before the Committee. “Our independence is crucial,” he said. “It means that we are not bound by the departments’ [VAC] decision or policies.”⁸⁶

On this issue, one witness, former VRAB member Harold Leduc, told the Committee that some members of the VRAB staff have been VAC employees and that they have influenced VRAB member decisions. According to Mr. Leduc, sometimes “people from the department transferred as employees over to VRAB.” This is problematic, said Leduc, as “they already have a bias toward the departmental policies” and “that impacts us in our decision-making and it’s a huge impact.” As an example, he explained that at one point in time, VRAB’s policy advisor and trainer came from the policy group at VAC. He also said that VRAB sometimes goes back to the department for clarifications. “That should never happen,” he said. “We have our own expertise. We’re Canada’s experts in this stuff, so we should be able to figure it out on our own. That’s where the influence comes in.”⁸⁷

The Committee believes that, regardless of their background and previous employment history, VRAB should ensure that all of its employees and members understand that, as a quasi-judicial tribunal, VRAB operates at arm’s-length from VAC.

The Committee therefore recommends:

85 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 22, 2012 (James Ogilvy).

86 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 1, 2012 (John Larlee).

87 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 22, 2012 (Harold Leduc).

Recommendation 6

That the Veterans Review and Appeal Board should examine its hiring and management practices and its conflict of interest and ethics policies, and ensure that adequate training is offered to ensure that the Board operates independently as prescribed by the *Veterans Review and Appeal Board Act*.

Another issue raised by witnesses pertained to VRAB's area of expertise and the professional background of its Board members. When he appeared before the Committee, James Ogilvy of the CCAT noted that tribunals such as VRAB "have a different role in the delivery of justice from what the courts have." As he explained, "the expectation is that tribunal members will bring with them expertise in the areas that the tribunal deals with" and that "secondary to that is their expertise in the law." While the "framework within which they work is a legal framework and the framework is a legislated framework," he added, "the principal skill they must have is in the areas that are of some importance to the subjects they're dealing with."⁸⁸ As such, many tribunal members need not be lawyers. They do need a degree of expertise in their tribunal's specialized field. Accordingly, VRAB members should have a relatively good grasp of veterans' issues as well as military and police culture.

"The idea of expertise," Mr. Ogilvy told the Committee, "is to establish common language and make it possible to communicate with the witnesses or with the appellants and make judgments on fact that recognizes the exigencies of that particular field on endeavour."⁸⁹ He explained: "It seems clear that the one thread connecting all who appear before VRAB is military or police service. It makes sense, then, that the Board should have a number of members with that background."⁹⁰

The Committee commends the Government of Canada for placing a priority on candidates who have a military or medical background and encourages continued efforts in this regard.

While the proportion of Board members with military and police experience has improved in recent years (of the eight members with CF or RCMP backgrounds, for example, five were appointed in 2011 and 2012),⁹¹ many witnesses believed that there was still room for improvement. They stressed the great value of having individuals with life experiences similar to those of veterans as VRAB members and urged that the number of Board members with military or police background be more balanced. "It's important that members understand the exigencies of service," Andrea Siew of the Royal Canadian Legion stressed to the Committee. "The Board should be balanced, the composition of the

88 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 22, 2012 (James Ogilvy).

89 Ibid.

90 CCAT, "Speaking Notes of James A. Ogilvy before Standing Committee on Veterans Affairs," October 22, 2012.

91 VRAB, [Chair and Members](#), modified November 7, 2012.

VRAB should accurately represent the experience of our Veterans.” As she further explained, “it’s important to have a balanced Board with both military and non-military experience.” The ultimate aim should be to have “a very balanced Board” with “a larger makeup of relevant operational [military or police] experience.”⁹² Cal Small of the Royal Canadian Mounted Police Veterans’ Association agreed: “there would be some value if the composition of the Board was somewhat different” and that there “would be some benefit to having some military, some RCMP.”⁹³

I think if a Board member had that type of experience [military or police], it would be more easy for him to put things into context. I think that without that context, it may be somewhat lacking if you're just reading a file or listening without being able to put the injury or whatever into a proper context.⁹⁴

Similarly, Staff Sergeant Abraham Townsend of the RCMP’s Staff Relations Representative Program noted:

Who knows our work better than we do? Whether you're a veteran of the RCMP or a veteran of the CF [Canadian Forces], we're a collection of honourable people who can adhere to principles of law in making decisions about the experiences we've shared with others.

... I think what is fundamental is that the mix should predominantly be those who walk in the shoes of those being judged, for lack of a better word.⁹⁵

According to the Army, Navy and Air Force Veterans in Canada, “a veteran should be on every VRAB panel.”⁹⁶ It should be recalled that VRAB decisions are usually made by panels of two of three Board members. While most witnesses agreed that the number of VRAB members with military or police backgrounds should be increased and that the balance, between members with relevant service experience and those without, should be adjusted, only one proposed an actual number as to what the ideal balance should be. Harold Leduc, a former VRAB member, who appeared as an individual, told the Committee that, in his view, “at least 51% of the Board members should have had some kind of service, whether it’s RCMP, military, whatever, because you need at least one person on each panel that will have walked in that person’s boots so that they have empathy.”⁹⁷ In other words, he believes that at least 13 of the 25 current VRAB members should have military or police backgrounds.

92 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 15, 2012 (Andrea Siew).

93 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 22, 2012 (Cal Small, National President, Royal Canadian Mounted Police Veterans’ Association).

94 Ibid.

95 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 22, 2012 (Abraham Townsend).

96 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 15, 2012 (Jerry Kovacs).

97 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 22, 2012 (Harold Leduc).

Although there was consensus among the witnesses that VRAB members with military or police experience should be increased, some expressed a desire to have more RCMP representation on the Board. At the moment, only one of the eight VRAB members with military or police experience is a retired member of the RCMP. He was appointed in 2011. The remainder are veterans of the CF. “We’ve always struggled because we’re the minor client of Veterans Affairs,” Staff Sergeant Townsend told the Committee, but there “should be some RCMP representation” on the Board.⁹⁸ The witness from the Royal Canadian Mounted Police Veterans’ Association concurred, highlighting for the Committee some of the benefits of having individuals with RCMP background as VRAB members:

If the Board is listening to a case involving an RCMP member, I rather suspect that if the [VRAB] member listening to the case is from the RCMP, he might bring to the hearing a different set of values from those that somebody who wasn’t very familiar with the RCMP might.⁹⁹

In his testimony before the Committee, VRAB Chair John Larlee acknowledged the merit of having veterans among its members: “The makeup of the Board, with our retired police, RCMP, and military members, enables us as a group ... to have input from them in our training sessions. It gives us a more robust and more knowledgeable work environment. They assist us in providing us with information that is very beneficial when we are travelling the country conducting hearings. I think ... we have a very good cadre of members who become expert in the field.”¹⁰⁰

The Committee agrees with the witnesses that VRAB needs a balanced composition that adequately reflects military and police experience. The Committee applauds the recent 2012 appointments of three new members with military experience. This is certainly a step in the right direction.

Another possible area of improvement pertains to the training of Board members. One way of ensuring that a tribunal’s decisions are consistent across Canada is “ongoing training within a tribunal which has national scope,” explained CCAT Executive Director James Ogilvy, “to make sure that their members are trained on an ongoing basis.” Training is essential, as “many of the people, even lawyers, in fact, who come to tribunals in a decision-making role really are not accustomed to that kind of role. Training in how to manage the process can be very important.”¹⁰¹

In order to enhance VRAB members’ and staff knowledge of military and police culture, the Committee believes that there should be continuous training in those areas.

98 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 22, 2012 (Abraham Townsend).

99 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 22, 2012 (Cal Small).

100 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 1, 2012 (John Larlee).

101 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 22, 2012 (James Ogilvy).

As an expert Board that deals with veterans and serving members of the CF and RCMP, we feel it is important that VRAB members and staff fully understand who their veterans are. Training aimed at enhancing knowledge of our country's military and police culture would allow VRAB to gain greater respect from the veterans' community.

We recommend:

Recommendation 7

That VRAB training efforts ensure that VRAB members and staff are more familiar with military and police culture.

Enhancing Transparency

Transparency is another important area where improvement is needed, according to many witnesses. As James Ogilvie of CCAT told the Committee, transparency is important for any tribunal. Publishing decisions and results, he told the Committee, is a significant part of the process, one that not only reinforces the tribunal's relationship with its witnesses, but also the broader community.

Transparency often can be best served by the publication of the results of all hearings. In a situation where the tribunal deals with individuals, as this one does, of course the results have to be depersonalized. Nevertheless, for the sake of researchers, for the sake of people following along who will have similar cases in the future, it is certainly worth having decisions published on the website or in some manner. These days, typically, it is on the website.¹⁰²

As Mr. Ogilvie further explained, publishing decisions also ensures that the decisions made by the tribunal are consistent across the country. "If decisions are published," he said, "they become exemplars" and can be of educational benefit. "It's far easier to determine what precedents there are if you're either a member of a tribunal or a member of the public, or an appellant, if the material is readily available," explained Mr. Ogilvie.¹⁰³

While VRAB endorses the need for greater transparency and started to post some of its noteworthy decisions on its web site in the summer of 2012, most witnesses are of the opinion that more needs to be done.¹⁰⁴

CCAT, for example, acknowledged that "VRAB posts significant decisions on its website," but told the Committee that this was "far short of the total number of cases heard" and that "in keeping with the reference to transparency ... this practice would be

102 Ibid.

103 Ibid.

104 VRAB, [Noteworthy Decisions](#).

enhanced by providing more complete – possibly full – postings.” The Committee was told that this “could promote greater confidence in its procedures.”¹⁰⁵

The Veterans Ombudsman echoed CCAT’s position. “The first step to cultural change [at VRAB] is transparency,” explained Guy Parent. “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.”¹⁰⁶ It should be emphasized here that one of the seven recommendations that the Veterans Ombudsman made in his March 2012 report on VRAB was that the Board be “sufficiently resourced so that [it] may publish all of its decisions on its web site.”¹⁰⁷

Veterans’ organizations heard by the Committee shared this view. As a case in point, the Royal Canadian Legion maintained that “posting all decisions is full transparency.” In its opinion, making all decision public would not only increase VRAB’s transparency, it would also “enable veterans who are preparing appeals to be aware of the evidence requirements similar to their own.” In other words, it could have important educational benefits by helping veterans know exactly what they need to provide VRAB in terms of evidence when preparing their cases.¹⁰⁸

VRAB, however, told the Committee that one of the main reasons why it has not been able to post all of its decisions on its web site is due to financial reasons, specifically the high costs associated with the publishing process.¹⁰⁹

Jerry Kovacs of the Army, Navy and Air Force Veterans in Canada suggested that, as an alternative, the Canadian Legal Information Institute (CANLII), which is funded by law societies across Canada and publishes legal decisions on their web site for free, be called upon to publish VRAB decisions: “Concerns that VRAB has about the cost of publishing decisions are mitigated by the fact that there are some law societies across Canada [i.e. CANLII] who are willing to publish all of them — all of them — for free.”¹¹⁰

VRAB responded by clarifying its position, indicating that the main reason that deterred it from posting all its decisions on the web pertained to the high costs of

105 Council of Canadian Administrative Tribunals, “Speaking Notes of James A. Ogilvy before Standing Committee on Veterans Affairs,” October 22, 2012.

106 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 29, 2012 (Guy Parent).

107 OVO, [Veterans’ Right to Fair Adjudication: Analysis of Federal Courts Decisions Pertaining to the Veterans Review and Appeal Board](#), pp. 6, 20.

108 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 15, 2012 (Andrea Siew).

109 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 29, 2012 (John Larlee).

110 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 15, 2012 (Jerry Kovacs).

translation and de-personalizing the documents. These costs would still have to be absorbed by VRAB even if an organization such as CANLII agreed to publish all decisions for free. VRAB told the Committee that it would cost about \$3.5 million to have the more than 4,000 decisions it provides every year translated and de-personalized for web publication in a timely manner. “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,” said VRAB Chair John Larlee. “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.”¹¹¹

The Committee firmly believes that translating and de-personalizing all VRAB decisions so that they can be posted online will cost too much for little in return. Instead, the Committee would like to recommend first, that all decisions that have been sent to the Federal Court or that are reviewed a second time by VRAB should be posted on the web site, and second, that for the sake of transparency, VRAB engage a reputable and independent external organization to assist it in selecting decisions to be posted on the web. The purpose would be to ensure that a good, unbiased representation of decisions is made publicly available instead of spending millions of dollars translating and de-personalizing all VRAB decisions.

The Committee recommends:

Recommendation 8

That all Veterans Review and Appeal Board decisions sent to the Federal Court or that are reviewed a second time by the Veterans Review and Appeal Board be published on the web within the next year.

Recommendation 9

That a reputable and independent organization be hired to assist the Veterans Review and Appeal Board in selecting key decisions to be posted on its web site.

Conclusion

The Committee agrees with witnesses that VRAB has an important role to play as an independent quasi-judicial tribunal. VRAB should continue to move forward on this action plan and should adopt the recommendations made in this report.

The Committee was pleased to learn from this study that VRAB is already implementing a number of measures to improve its services and transparency, some in

111 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 29, 2012 (John Larlee).

response to the March 2012 report by the Veterans Ombudsman. As John Larlee told the Committee:

First, we communicate decisions to veterans more quickly. Thanks to new technologies and other improvements, the board processes requests for review about 20% more quickly than five years ago. We have reduced processing time by 50% in the case of appeals. We are also looking for other ways to set hearing dates more quickly, and that includes providing veterans with the option to have their hearing by videoconference ... The board is currently carrying out a project for restructuring the business processes in order to find ways to reduce red tape and make the process faster and easier for veterans.

A second area of improvement ... is our focus on issuing fair and well-reasoned decisions for veterans. This begins with the board's merit-based selection process, which ensures new members are qualified to hear and decide cases. The criteria include a preference for members with a military, medical, policing, or legal background, in recognition of the work we do and the people we serve.

Our excellent training program for new members combines practical teaching and support from experienced staff. All members also receive ongoing and specialized training from medical, legal, military, and lay experts on a variety of topics.

... We have also taken swift action to address recommendations from the Veterans Ombudsman and suggestions from our stakeholders. For example, we have established a team to improve the quality of decisions by ensuring they are well organized, clearly expressed, and written in plain language. We will implement these improvements by the end of the year.

Our third area of focus is in working to serve and honour veterans by listening to them and acting on their feedback. Veterans have told us they want greater access to our decisions. In May [2012], we began publishing the board's most relevant and instructive decisions on our website. These noteworthy decisions help veterans and the public better understand our work and make applicants aware of decisions made in cases similar to their own. We are also committed to building and maintaining our communications and partnerships with our stakeholders.¹¹²

The Committee encourages VRAB to continue reviewing and improving its services. We feel that this is a step in the right direction and should continue. The Committee was also pleased to learn that the Veterans Ombudsman will continue to study the way VRAB activities are conducted in the near future.

That being said, the Committee is concerned with some of what it heard about VRAB and believes more work is needed on VRAB to communicate with the veterans' community. It is clear that there are conflicting views on some of these issues, as witnesses and VRAB have had different opinions on how VRAB serves veterans. Witnesses said that the public never hears about those who are served well by VRAB and the redress process. VRAB should work diligently to implement the recommendations made in this report.

112 House of Commons, Standing Committee on Veterans Affairs, [Evidence](#), 1st Session, 41st Parliament, October 1, 2012 (John Larlee).

VRAB should work to improve and find ways to enhance procedural fairness, procedural communications, all the while ensuring VRAB's independence is paramount. The government should continue searching for candidates to sit on VRAB who have military and possibly RCMP experience.

The Committee hopes that the recommendations made in this report will help the Government of Canada and VRAB come up with reasonable solutions to some of the Board's challenges. VRAB has a critical role to play in supporting veterans and serving members of the CF and the RCMP, and ensuring that they and their families obtain the disability benefits they are entitled to for illness and injuries sustained in the service of Canada.

The Committee is confident that with a more streamlined and effective system in place, veterans' trust in VRAB will be restored. In conclusion, the Committee recommends:

Recommendation 10

That the Veterans Review and Appeal Board bolster its data collection processes so it can properly track its activities.

Recommendation 11

That the Veterans Review and Appeal Board begin publishing an annual report to Parliament.

Recommendation 12

That the Veterans Review and Appeal Board reduce its decision time frame to 16 weeks from the moment a veteran schedules a hearing with the Veterans Review and Appeal Board.

Recommendation 13

That Veterans Affairs Canada and the Veterans Review and Appeal Board both review the present report of the House of Commons Standing Committee on Veterans Affairs, as is required when a report is tabled in the House of Commons, and that they both provide an update on their progress in implementing the recommendations made in this report one year from its tabling in Parliament.

LIST OF RECOMMENDATIONS

Recommendation 1	16
That the Veterans Review and Appeal Board review its processes as to ensure the independence of Board members and their decision-making.	
Recommendation 2	17
That the Veterans Review and Appeal Board review the evidence requirements to ensure that they are consistent with the practices of the quasi-judicial tribunal industry standards.	
Recommendation 3	18
That VAC and VRAB continue to be proactive in employing outreach initiatives aimed at reaching out to the veteran community to explain what is required in terms of evidence when appealing departmental decisions pertaining to disability benefits.	
Recommendation 4	20
That the Veterans Review and Appeal Board, moving forward, will interpret and apply Section 39 of the <i>Veterans Review and Appeal Board Act</i> (the benefit of the doubt clause) as it was intended and clearly explain how this was done in all of its decisions and to the stakeholder community.	
Recommendation 5	23
That Veterans Affairs Canada review its internal processes and policies in an effort to reduce the number of decisions that are overturned by the Veterans Review and Appeal Board to the greatest extent possible.	
Recommendation 6	24
That the Veterans Review and Appeal Board should examine its hiring and management practices and its conflict of interest and ethics policies, and ensure that adequate training is offered to ensure that the Board operates independently as prescribed by the <i>Veterans Review and Appeal Board Act</i> .	
Recommendation 7	27
That VRAB training efforts ensure that VRAB members and staff are more familiar with military and police culture.	
Recommendation 8	29
That all Veterans Review and Appeal Board decisions sent to the Federal Court or that are reviewed a second time by the Veterans Review and Appeal Board be published on the web within the next year.	
Recommendation 9	29
That a reputable and independent organization be hired to assist the Veterans Review and Appeal Board in selecting key decisions to be posted on its web site.	

Recommendation 10	31
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APPENDIX A LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
<p>Department of Veterans Affairs Bernard Butler, Director General, Policy Division Rick Christopher, Director, Disability Programs and Income Support</p>	2012/10/01	43
<p>Veterans Review and Appeal Board John D. Larlee, Chair Dale Sharkey, Director General Kathleen Vent, Acting Director, Legal Services</p>		
<p>Army, Navy and Air Force Veterans in Canada Jerry Kovacs, Member</p>	2012/10/15	45
<p>Canadian Association of Veterans in United Nations Peacekeeping Ronald Griffis, National President</p>		
<p>Canadian Peacekeeping Veterans Association Ray Kokkonen, National President John Eggenberger, Vice-President, Research Joseph E.L. Gollner, Patron</p>		
<p>Royal Canadian Legion Andrea Siew, Director, Service Bureau</p>		
<p>As an individual Leduc, Harold</p>	2012/10/22	47
<p>Council of Canadian Administrative Tribunals James Ogilvy, Executive Director</p>		
<p>Department of Veterans Affairs Charles Keliher, Director, Appeals and Legal Issues, Bureau of Pensions Advocates Anthony Saez, Executive Director and Chief Pensions Advocate, Bureau of Pension Advocates</p>		
<p>Royal Canadian Mounted Police Abraham A. Townsend, National Executive, Staff Relations Representative Program</p>		
<p>Royal Canadian Mounted Police Veterans' Association Cal Small, National President</p>		

Organizations and Individuals	Date	Meeting
<p>Office of the Veterans Ombudsman Guy Parent, Veterans Ombudsman, Chief Warrant Officer (Retired) Gary Walbourne, Director General, Operations Diane Guilmet-Harris, Legal Counsel</p>	2012/10/29	49
<p>Veterans Review and Appeal Board John D. Larlee, Chair Karen Rowell, Director, Corporate Operations Kathleen Vent, Acting Director, Legal Services</p>		

APPENDIX B LIST OF BRIEFS

Organizations and Individuals

Canadian Peacekeeping Veterans Association

Confidential Brief

Council of Canadian Administrative Tribunals

Department of Veterans Affairs

Leduc, Harold

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* (Meetings Nos. 43, 45, 47, 49, 52, 53, 54 and 56) is tabled.

Respectfully submitted,

Greg Kerr, M.P.

Chair

SUPPLEMENTARY OPINION OF THE OFFICIAL OPPOSITION

The Standing Committee on Veterans Affairs on the Review of Veterans Review and Appeal Board (VRAB), November 2012

New Democrats would like to thank the witnesses who appeared before the committee for this study on the “Review of the Veterans Review and Appeal Board.”

While we support the underlying objective of reviewing the Veterans Review and Appeal Board (VRAB), the study itself was woefully inadequate and a sham. It was not helpful that the Conservatives introduced a motion restricting the committee’s study to just four meetings. This meant that the committee spent only eight hours “studying” VRAB when it should have spent at least six months. In comparison, the Office of the Veterans’ Ombudsman spent 11 months to complete a study on a couple of particular aspects of VRAB.

It needs to be said that this report is not a thorough study on the topic of the Veterans Review and Appeal Board because of the Conservative imposed time restrictions on this study (just eight hours of deliberations). Quite simply, in eight hours, the committee was unable to produce a report that gave proper consideration to the issues and problems with the Veterans Review and Appeal Board. As well, individual veterans and several veterans’ organizations have expressed profound disappointment that they were not asked to provide testimony to the committee for this particular study.

In our opinion, the Veterans Review and Appeal Board is the number one problem facing Canadian Forces and RCMP veterans’ and their families across this country. For many years, veterans have been dissatisfied with the Veterans Review and Appeal Board. It angers them to know that the members of VRAB are often appointed because of their political connections and have little military or medical experience to make decisions on their eligibility for a disability pension. Canadian Forces and RCMP veterans also express frustration that the Board discounts the professional medical opinion of the applicants’ doctor or specialist when they assess their disability claim and are frustrated at the Board’s poor record in applying the “benefit of doubt” provision.

The VRAB appeal process is not working like it should and there is a high level of dissatisfaction among veterans and their families. A report completed by the Veterans Ombudsman Guy Parent in March 2012 (“Veterans’ Right to Fair Adjudication: Analysis of Federal Courts decisions pertaining to the Veterans Review and Appeal Board) identified issues of great concern including that VRAB was failing to give veterans the benefit of the doubt, not disclosing medical information used in its rulings and were vague in explaining their decisions to military and RCMP veterans.

New Democrats have proposed replacing the politically appointed VRAB. Our bill reads:

The Government of Canada must, in consultation with Canadian veterans and veterans' organizations, develop new legislation to repeal and replace the *Veterans Review and Appeal Board Act* in order to establish a new and simplified regime that incorporates a medical-evidence-based peer-reviewed process for making decisions regarding veterans' entitlements under relevant federal statutes and must introduce that legislation in the House of Commons within three years after the day on which this Act comes into force.

In conclusion, the NDP have grave concerns with this report and are releasing this supplementary opinion.

Respectfully submitted,

Peter Stoffer, MP, Sackville-Eastern Shore, Official Opposition Critic for Veterans Affairs

Sylvain Chicoine, MP, Chateauguay-Saint-Constant, Deputy Critic for Veterans Affairs

Irene Mathysen, MP London-Fanshawe

Manon Perreault, MP, Montcalm

Minority Report of the Liberal Party of Canada

The Standing Committee on Veterans Affairs: Restoring Confidence in the Veterans Review and Appeal Board, December 2012

The Liberal Party is unable to agree with the Conservative majority on the process or the substance of this report. The flaws are numerous, and yet the Conservatives have made no effort to find common ground and have imposed a three page limit on this Liberal Minority Report.

Accordingly, the failure to specifically mention any particular shortcoming in the Conservative majority report should not be taken as agreement.

The parliamentary study on the Veterans Review and Appeal Board (VRAB) was undertaken as a result of a Liberal motion made at the Standing Committee of the House of Commons. The motion was triggered after the Veterans Ombudsman commissioned a study showing an unacceptably high rate of reversal at the Federal Court of VRAB decisions.

Witnesses Excluded

The Liberal Party put forward 12 witnesses to appear. The Conservative majority on the Committee controlled the witness list with an iron fist. The Conservative majority rejected 11 of the 12 witnesses put forward and limited witnesses' testimony to less than 4 days. Compare this to the time devoted to the Committee's study on Commemoration (8 days) and Service Delivery (14 days).

Among the witnesses rejected were veterans who had firsthand experience presenting their own case to VRAB, including Jim Newton and veterans' advocates like former Veterans Ombudsman Pat Stogran, Mike Blais, Dennis Manuge and Don Leonardo. The latter is particularly troubling as Mr. Leonardo represents Veterans of Canada; an organization which counts a large number of modern day veterans as members. Their voices were not welcomed.

Most importantly, in our view, the Conservative majority refused to allow retired members of the Bureau of Pensions Advocates to appear. This is especially egregious, as these lawyers would undoubtedly have had meaningful insight into the workings of the Board and how to improve it, without fear of reprisals.

Strengthening the Benefit of The Doubt

Even with the appallingly flawed process and cursory review preferred and undertaken by the Conservative majority, it is clear that the biggest single issue causing a profound lack of confidence in VRAB is Section 39 of the Veterans Review and Appeal Board Act which reads:

In all proceedings under this Act, the Board shall

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

As the Conservatives point out at paragraph 18 of their Majority Report, VRAB interprets Section 39 as imposing a civil standard of proof on veterans. The ``benefit of the doubt`` is only accorded to a veteran when the evidence for and against his claim is equal.

This is not in keeping with the expectations of veterans or, we submit, most Canadians.

Veterans Affairs Canada is sometimes accused (unfairly, in our view) of having “an insurance company mentality”. Applying Section 39 as they do, VRAB and the Department are applying the exact same standard of proof as a plaintiff must meet in civil court when suing an insurance company for benefits.

If we, as Canadians, want Veterans Affairs to be less rigid than an insurance company, then we have a duty to legislate different rules. In our view, the existing legal hurdle facing veterans is unacceptable.

Recommendation

The Liberal Party recommends that the Veterans Review and Appeal Board Act be amended to make “*the benefit of the doubt*” meaningful and more broadly applied. This is best done by lowering the burden of proof to one less onerous than one facing plaintiffs engaged in civil suits against insurers.

Specifically, the burden of proof should be lowered such that the applicable test is the same one contained in Section 19(1)(j) of the Immigration Act, known as the “*reasonable grounds to believe*” standard.

The Supreme Court of Canada in Mugesera v. Canada (Minister of Citizenship and Immigration), [2005] 2 S.C.R. 100 offered the following comments on this legal test:

The FCA has found, and we agree, that the “reasonable grounds to believe” standard requires something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities: Sivakumar v. Canada (Minister of Employment and Immigration), 1993 CanLII 3012 (FCA), [1994] 1 F.C. 433 (C.A.), at p. 445; Chiau v. Canada (Minister of Citizenship and Immigration), 2000 CanLII 16793 (FCA), [2001] 2 F.C. 297 (C.A.), at para. 60. In essence, reasonable grounds will exist where there is an objective basis for the

belief which is based on compelling and credible information: Sabour v. Canada (Minister of Citizenship & Immigration) (2000), 9 Imm L.R. (3d) 61 (F.C.T.D.).

In imposing this standard in the Immigration Act in respect of war crimes and crimes against humanity, Parliament has made clear that these most serious crimes deserve extraordinary condemnation. As a result, no person will be admissible to Canada if there are reasonable grounds to believe that he or she has committed a crime against humanity, even if the crime is not made out on a higher standard of proof. (Emphasis added)

Conclusion

The Liberal Party of Canada therefore recommends amending applicable legislation to adopt this standard of proof for veterans. The proposed wording to amend the Veterans Review and Appeal Board Act would be similar or identical to that contained in Section 19 of the Immigration Act.

Veterans should be treated better than litigants suing insurance companies. This lowered burden would enable that. A legislative amendment to lower the burden of proof would be a major step forward to give real meaning to “*the benefit of the doubt*”.

The Conservatives rejected this essential recommendation.

It is also unfortunate that the New Democratic Party (NDP) is so entrenched in their overly simplistic position that they are unwilling to support a more nuanced and realistic approach.

As a whole, the final Majority Report of the Standing Committee on Veterans Affairs, controlled by the Conservatives, reflects a half-hearted, imbalanced, superficial inquiry into a very serious issue facing Canada’s veterans. They let their duty and loyalty to the Prime Minister’s Office supersede their responsibility to Canadians and to veterans.

Respectfully submitted,

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