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## **Standing Committee on Veterans Affairs**

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**EVIDENCE**

**Thursday, June 16, 2016**

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**Chair**

**Mr. Neil Ellis**



## Standing Committee on Veterans Affairs

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• (1105)

[English]

**The Chair (Mr. Neil Ellis (Bay of Quinte, Lib.)):** I would like to call the meeting to order. Pursuant to Standing Order 108(2) and the motion adopted on February 25, the committee is resuming its study on service delivery. The second hour of our meeting will be in camera and is dedicated to future committee business.

First, by video conference from Charlottetown, Prince Edward Island, we'll start off with our witness from the Department of Veterans Affairs, Anthony Saez, executive director and chief pensions advocate at the Bureau of Pensions Advocates.

Good morning, Anthony. We'll give you up to 10 minutes to make an opening statement. Then we will directly proceed to questions and answers.

The floor is yours. Thank you.

**Mr. Anthony Saez (Executive Director and Chief Pensions Advocate, Bureau of Pensions Advocates, Department of Veterans Affairs):** Good afternoon, and good morning to you there.

First of all, thank you for inviting me to do this by video conference. It's a technology that we're using more and more, and it makes us more efficient and certainly more cost effective.

By way of opening, I'd like to say that the Bureau of Pensions Advocates was formed in 1971, following the tabling in Parliament of the Woods committee report. This committee recommended the formation of an independent body of lawyers, also called advocates, who would work on behalf of clients to ensure that no stone would be left unturned in the consideration of applications for disability benefits.

[Translation]

The bureau's mandate is to offer free legal advice, consultations and representation on cases brought before the Veterans' Review and Appeal Board. This service is for individuals who are not satisfied with a decision made by the department regarding their disability benefits claim.

[English]

The Woods committee was clear in its understanding of the role of BPA advocates, stating:

The role of the advocate is unique in that his responsibility is to assist the applicant for pension, and the only duty he owes to his employer (the Crown) is to do his utmost to assist this applicant. An applicant for pension has the right to expect from the advocate, without charge, the same service as an applicant would demand of his solicitor in civil legislation.

Therefore, although administratively the bureau reports to the deputy minister of Veterans Affairs Canada, by legislation it has a solicitor/client relationship with clients. A BPA lawyer works for the client and takes instruction from the client and no one other than the client.

[Translation]

The bureau is headed up by an executive director and chief pensions advocate, who is supported by two directors, the director of legal operations and the director of strategic planning and management support. The four district directors, who manage the 14 BPA offices across Canada, report to the director of legal operations, as do the pensions advocates with the appeal unit in Charlottetown. The BPA has about 100 employees, 30 of whom are lawyers.

[English]

Clients may choose to be represented by a veterans organization, such as the Royal Canadian Legion, or by a private lawyer, or they may represent themselves. The reality, however, is that over 95% of all cases presented before VRAB, and probably closer to 99%, are handled by the Bureau of Pensions Advocates.

There are five possible steps open to clients in the disability redress process.

First, they may be "counselled out". This is where the advocate, who normally has vast experience in the medical-legal field, considers the merits of the case and advises the client against proceeding, keeping in mind that the client may decide to proceed nevertheless with advocate representation, regardless of the advice received.

Second, if the case was turned down by the department at first application due to information that was missing and easily obtained after the fact, this information may be gathered and the case may be returned to the departmental adjudicators for a departmental review, which is handled quickly and often results in a positive outcome for the client.

Third, where the advocate and the client feel there is merit in proceeding to a review hearing before the Veterans Review and Appeal Board, client and advocate will work together to obtain the necessary information to substantiate the claim and prepare the case. This hearing is an opportunity for the client to appear in person before the board members, with transportation and accommodation paid for by VAC regardless of the place of residence of the client. The review hearing is the client's opportunity to give oral testimony in person, provide additional evidence in support of the claim, and have witnesses attend as necessary, with the additional benefit of legal representation.

Fourth, sometime after the review hearing, the client will receive the decision of the board. If the decision is unfavourable or partially unfavourable, there may be an opportunity to proceed to an appeal hearing before VRAB, which would be held before a different panel of board members. The appeal decision is final and binding.

• (1110)

Finally, in circumstances where new and compelling evidence comes to light after the appeal hearing, or where there may have been an error of fact or law, there is a limited option open to the client, with approval from VRAB, to make application for reconsideration.

In terms of workload, BPA completes about 6,000 claims a year, and counsels out about 4,500 claims, for a total workload of about 10,000 files a year.

At VRAB review, BPA is successful about 52% of the time, and at VRAB appeal, about 39% of the time. Understanding that the bureau represents almost everyone who is dissatisfied with their initial decision, this indicates that very few applicants are turned down, either at first application or following redress. It is of note as well that Canada is the only country in the world that allows for an independent review of disability decisions by lawyers, and for free representation by lawyers before an administrative tribunal.

Here are some additional interesting facts about BPA's workload. New cases arrive every day, while other cases are completed on a day-to-day basis as well in the bureau. We have a rolling inventory of cases flowing in and out at the same time. An advocate has about 300-350 cases on the desk at any given time, some arriving, some awaiting new evidence, some being worked up for hearing, and some being presented at a hearing. Advocates are expected to complete about 195 cases per year.

There are three hallmarks to the bureau's approach to service. First is personalized service. Clients who phone generally reach an employee; drop-in clients are welcome; and the advocate-client relationship is nurtured through conversation—either over the phone or in person—throughout the redress process.

Second is the advocates without borders business model. Some years ago, it became clear that the BPA clients served from offices with the largest backlog—those situated close to key Canadian Armed Forces bases—were waiting far longer to have their cases dealt with than those served by bureau offices in other locations with a lower volume of work. Over a period of several years, BPA has standardized its work processes across the country, allowing for the movement of client cases from busy sites to sites with a lesser

workload, in order to ensure an equitable distribution of work nationally, leading to fair and equitable client service.

Third is flexible advocacy. Prior to the borderless model I just spoke of, review lawyers and their legal assistants in decentralized locations across Canada worked on review cases, while appeal lawyer/assistant teams in Charlottetown worked exclusively on appeals. Now, more and more often, BPA employees are becoming experienced at working up cases at either level of redress—review or appeal—and can be deployed to where there is most need. This nimble workforce allows for more timely service.

[*Translation*]

After each hearing, clients are asked to complete an anonymous questionnaire and return it in a self-addressed envelope to headquarters for recording purposes. The rate of return for the questionnaires is statistically valid. The questionnaire covers all aspects of the appeal process, including staff courtesy, the suitability of communications and the quality of representation.

I would now like to talk about some of the results for 2015-2016.

[*English*]

Ninety-eight per cent of clients were satisfied or very satisfied with the courtesy of bureau employees; 94% were satisfied or very satisfied with the quality of advice provided by their advocate; and overall, 93% of respondents were satisfied or very satisfied with the service they received from the Bureau of Pensions Advocates.

Thank you for the opportunity to address you today. I am ready to take your questions.

**The Chair:** Thank you for your great presentation.

We'll start with our first round of questioning for six minutes, beginning with Ms. Wagantall.

• (1115)

**Mrs. Cathay Wagantall (Yorkton—Melville, CPC):** Good morning and thank you very much for being here. I appreciate the role that you play, and how important it is for veterans to have this avenue of opportunity when they are turned down initially.

I have a question. First of all, when you were discussing—it's point number three in the handout we have from you—when the advocate and client feel there is merit in proceeding to a review hearing, what I'm hearing is that both the advocate and the client have to be in agreement to move forward to an appeal hearing. Is that what that's saying?

**Mr. Anthony Saez:** No, not quite. What we do is we work up a case with the client that the client is happy with. The decision on whether or not to proceed rests solely with the client.

What will happen is this. When the department renders its decision on the first application, at the bottom of the letter explaining the reasons why you may not have been granted a pension or disability, it says that you have the right to appeal this decision to the Veterans Review and Appeal Board and you have the right to consult a lawyer in doing so. Very often what happens is that people will call not because they're pounding-on-the-table upset that they didn't get what they were hoping to get, but because they're seeing this as a free second opinion from a lawyer who works for them.

When we receive the file, we review the file and the medical reports and we review the department's decision. Then we get together with the client and we explain our view. We tell them either that it's a great case to go forward with or that we think the department got it right, and there's not much to appeal. At that point, the client then makes a decision. They'll either take our advice and not bother, or they'll say, "You know what? I don't care. I want you to proceed." And we will proceed.

**Mrs. Cathay Wagantall:** That's the "claims counselled out" portion.

**Mr. Anthony Saez:** That's right. Those are the claims counselled out. Basically, it's giving the client a second opinion, and when they're happy with that opinion, if it happens to be not to proceed and they accept that, then it's counted as counselled out.

**Mrs. Cathay Wagantall:** Okay. Thank you.

Point four, which may apply in the same way, states, "...sometime after the review hearing the client will receive the decision of the board. If the decision is unfavourable or partially unfavourable, there may be an opportunity to proceed to an appeal hearing...."

Again, "there may be"; what determines whether or not it does go forward?

**Mr. Anthony Saez:** It depends on the particulars of each case, of course. Let's say the client receives a decision that is partially favourable. The board has agreed at review that, yes, you should be getting this pension, and we think it should be at  $x\%$ . The client may decide they're not happy with that  $x\%$ . They think it should be  $y\%$ . We will look at that, and based on our years of experience, we will decide whether to advise them that, yes, they do have a strong case and let's go ahead, or that, no, that percentage is probably as much as they're going to get.

Again, the client makes the decision, after that discussion, on whether to proceed or not.

**Mrs. Cathay Wagantall:** Thank you.

This little chart here shows the claims completed and the claims counselled out. For the ones counselled out, then, the decision has been made that there won't be an appeal hearing?

**Mr. Anthony Saez:** Correct—except that's not a permanent decision. If next week, next month, next year, or 10 years from now the veteran decides that some information has suddenly come to them that they either weren't aware of at the time of their application or they'd just plain forgotten about, they can certainly come back to us. We can then pick it up from there and go ahead.

**Mrs. Cathay Wagantall:** I'm just thinking; in our discussions we've been talking about the fact that a lot of proof of injury has been the responsibility of the armed forces individual, and looking at

changing some of the dynamics of that. If you're a parachuter, clearly it would be your knees over time, and that type of thing.

Could that impact that in the future, then, if those rules are changed?

**Mr. Anthony Saez:** Sure.

**Mrs. Cathay Wagantall:** The percentages of satisfaction that come back in your poll following your services look very, very good. I'm just wondering if you have clarification of "98% were satisfied". This is of individuals who actually did return your survey. Do you know the percentage of people actually responding?

• (1120)

**Mr. Anthony Saez:** Yes. We have about 60% at review, and about 35% or 40% at appeal.

**Mrs. Cathay Wagantall:** Okay.

Are you aware of how many are people who were happy and their claims were completed versus those who were counselled out?

**Mr. Anthony Saez:** Sorry?

**Mrs. Cathay Wagantall:** Well, with those who are responding, is there a way to know with that survey if the individuals were satisfied and received the response they wanted or if the individuals did not get to have their claim?

**Mr. Anthony Saez:** Essentially, what happens is that, after review or appeal hearings take place, we then present clients with the survey and they fill it out at that point. At that point they're simply rating the advocate in terms of the relationship they had with their personal advocate. They're not rating on whether or not they got what they were looking for from the board.

**Mrs. Cathay Wagantall:** Okay, that's clarifies it. Thank you.

**The Chair:** Go ahead, Mr. Fraser.

**Mr. Colin Fraser (West Nova, Lib.):** Thank you very much for your presentation and for helping us understand the bureau.

The question I have relates to the lawyers themselves. I understand there are 30 lawyers who work for the bureau. Is that right?

**Mr. Anthony Saez:** That's correct.

**Mr. Colin Fraser:** So those 30 are the ones who actually are the advocates who go before the tribunal?

**Mr. Anthony Saez:** That is correct.

**Mr. Colin Fraser:** Are they full-time lawyers on staff? They don't do other work as members of the bar.

**Mr. Anthony Saez:** That's correct.

**Mr. Colin Fraser:** They are paid a salary then, I take it, and are not retained in some other capacity working for a private law firm. Is that right?

**Mr. Anthony Saez:** That's correct.

**Mr. Colin Fraser:** On the level of independence then, they are members of the provincial bar where they are working as lawyers for the bureau, is that right?

**Mr. Anthony Saez:** That's almost right. They all are members of a provincial bar. Because they're working for the Government of Canada, they don't have to necessarily be a member of the bar in the jurisdiction in which they're practising, but yes, they are all members of their respective law societies and subject to that law society's rules and regulations and values and ethics.

**Mr. Colin Fraser:** Right, I understand.

If there's some question about the independence of lawyers, for example, in your mind that would be answered by the fact that they have a professional responsibility to the bar society of which they are members and therefore subject to all of the rules and regulations that go along with that, including resolutely advocating for your client and maintaining the solicitor-client relationship, including confidentiality? Is that right?

**Mr. Anthony Saez:** That's exactly right and, in fact, that's in the legislation itself. The law says we must do that, and certainly for advocates to be lawyers with the Bureau of Pensions Advocates, they must be licensed. They can only be licensed by their respective bar societies if they are following the rules and regulations laid out by that bar society. This doesn't happen very often at all, but should it happen in a case that the duty owed to the client as set out by the bar society is in conflict with any rules or regulations established by the Department of Veterans Affairs, the duty to the client wins out every time.

**Mr. Colin Fraser:** On that same line, I'm wondering about the filing system that the bureau would have with regard to the client files. Are they maintained in a similar fashion to a private law firm, for example, in respecting that relationship?

**Mr. Anthony Saez:** Yes, that's correct. There's a firewall between us and the department, and the department has no access to our files. In fact, based on how we work and register claims that come in, the department doesn't even know that a particular veteran is a client of the Bureau of Pensions Advocates.

**Mr. Colin Fraser:** Okay.

Can you help me understand then what happens with files after they are closed? Are those dealt with subject to the bar society, for example, and they have to be maintained accordingly?

**Mr. Anthony Saez:** Exactly.

Because we have offices across the country, we've taken the strictest standard for records conservation and that, I believe, belongs to the Province of Quebec where they have—don't quote me—I think about an eight-year rule. So all of our files across the country are kept for that period.

**Mr. Colin Fraser:** Okay.

I'm a lawyer. When I was in private practice I know that sometimes difficulties arose between the lawyer and the client, and for whatever reason there was a difference of opinion and perhaps the solicitor-client relationship would break down and that usually necessitated, perhaps, another person taking on the file.

I'm wondering if that occurs at the bureau and if it's treated in a similar fashion where, in appropriate cases, the file would be transferred.

●(1125)

**Mr. Anthony Saez:** Yes, in the end we're all human beings and that happens, not very often, but once in a while it might happen. It might happen because there's a difference of opinion between what the lawyer believes is the best strategy and what the client wants to do.

Sometimes there are issues of people presenting with psychological issues, and it may be more difficult for them to establish a relationship with a particular advocate, so we will, without hesitation, change the advocate for them to make sure they find the right fit.

**Mr. Colin Fraser:** Would that happen at their request, for example?

**Mr. Anthony Saez:** Yes.

**Mr. Colin Fraser:** So if somebody were to be given advice by the lawyer that their case really didn't have much merit—which, I'm sure would inevitably happen from time to time in any tribunal-type system where somebody would feel aggrieved and want to take it to the tribunal—and if the client or the veteran was not satisfied with that advice and it caused them some strain as they wondered whether that lawyer would actually resolutely advocate on their behalf, then a fix for that situation could be to transfer the file to someone else. Has that happened?

**Mr. Anthony Saez:** Yes. Generally most people who are advised that their claim isn't very strong will take the advice. In some cases, they don't take the advice and they instruct us to proceed and, generally, they are still satisfied with their lawyer.

If an issue does arise, though, it will spark us into action to perhaps get them a new lawyer. Occasionally, their issue isn't necessarily with the individual lawyer. It might be with the bureau, generally, because perhaps they have a philosophical issue with it. Again, that doesn't happen very often, but on the rare occasion that it happens, we turn to the Royal Canadian Legion. After the bureau, the Royal Canadian Legion is probably the one that represents most clients.

**The Chair:** Thank you.

Ms. Mathysen.

**Ms. Irene Mathysen (London—Fanshawe, NDP):** Thank you very much, Mr. Saez. It's good to see you again. I appreciated the opportunity to meet you in St. John's.

I have a couple of questions. First of all, are the kinds of cases you receive in the bureau and cases that would have a chance before the veterans review board largely because of missing documentation or evidence? What would be sort of the average or usual case that you would undertake?

**Mr. Anthony Saez:** That's a good question.

Sometimes I'm asked by people why we have to deal with 10,000 files a year, because that's a lot. They ask why the department gets it so wrong. In fact, it's not that the department is getting it wrong. The department is adjudicating based on the information the client is able to provide, and then it makes its ruling based on that.

The bureau offers a more enhanced, deeper look at the file, something that the adjudicators at first instance certainly couldn't do. If they did, they'd probably gum up the whole system.

We're offering that extra level of scrutiny, and not just from the point of view of purely facts. When adjudicators adjudicate, they can only look at the facts as presented in the application form. We also consider points of law. We also have the benefit of being able to bring the client and witnesses to provide oral testimony before the board members, which obviously can't be done during the application process.

I think this enhanced level of scrutiny is the focus of our work.

**Ms. Irene Mathysen:** Thank you.

There's an interesting saw-off here. One of the things we hear from veterans is that they're rejected initially by VAC. You said that the caseworker or the adjudicator can't take an in-depth look because it would gum up the works. It has been suggested that in the case of an application from which documentation is clearly missing, the caseworker could simply make a telephone call and say, "I cannot process this as is because you've forgotten something" and it could be something quite simple.

• (1130)

**Mr. Anthony Saez:** I think as of about eight or 10 months ago, the department did start to do that. It is actually calling clients with those questions. In a departmental review, when we send something back to the department and we say to the client, "You know what? We can help you find this little piece of paper that you're missing, and the department will probably grant you this instead of it having to go through the Veterans Review and Appeal Board". The evidence that we're dealing with there is the kind of stuff that at first application the department wouldn't necessarily be aware of. It's what I mentioned earlier—something that the client forgot about, or that they didn't think was important to bring up. It's the kind of information the department wouldn't necessarily have available to it, but when we start to scratch the surface, we can identify it and send it back to the department.

**Ms. Irene Mathysen:** Thank you.

You say you have 30 lawyers and an individual advocate might have anywhere from 300 to 350 cases and be required to dispense of 195 per year. That means that there's a considerable waiting list. Does this lead to frustration on the part of both the veteran and the advocate? Do you have enough lawyers? Could you use more lawyers? Is there any difficulty securing lawyers? Is it hard to attract enough lawyers to this job?

**Mr. Anthony Saez:** That's a good number of questions.

I'll start with attracting lawyers. It can be a challenge, depending on where you need them and depending on what the linguistic profiles for the positions are. We have made it simpler to find lawyers with the appropriate linguistic profiles by establishing the initiative that I mentioned in my opening remarks, the advocates without borders initiative. Before, essentially, the bureau was 15 separate legal offices working within their own silos in their own cities. By breaking down those silos and by creating the same business processes across the country, standardizing business processes, we're now able to move files around so that they can be

dealt with in an office that might not be quite as busy as another office, in an office that has the lawyers who have the linguistic profile necessary for that particular file.

From that perspective, the advocates without borders initiative has allowed us to work more effectively with the same number of lawyers.

**Ms. Irene Mathysen:** Okay.

Quickly, some veterans have expressed frustration about the department's provision of benefit of the doubt. Have you experienced that at all? Do you share that concern?

**Mr. Anthony Saez:** It's a difficult one, and I don't know if I can answer this in 30 seconds. In a nutshell, the benefit of the doubt provision comes, essentially, from section 39 of the Veterans Review and Appeal Board Act, where it says, essentially that the board shall draw "every reasonable inference in favour of the applicant...; accept any uncontradicted evidence" that it "considers to be credible" and "resolve in favour of the applicant...any doubt in the weighing of evidence, as to whether the applicant...has established a case".

That's where the benefit of the doubt comes from. The issue there is that it's the weight the evidence given by the veteran should be given. In criminal matters, we know that the standard is beyond a reasonable doubt. In civil matters, we know it's a balance of probabilities. On the balance of probabilities, it's slightly more that it is so than it is not. On veterans pensions matters, given the benefit of the doubt, the question is where that standard is. We know it's less than balance of probabilities, but it's somewhere between 1% and 49%, and exactly where that sweet spot is, is probably the question. We'd say, on behalf of the client, it's down closer to the 1%. The board is somewhere in between.

**Ms. Irene Mathysen:** It's very subjective, then.

**The Chair:** Mr. Eyolfson.

**Mr. Doug Eyolfson (Charleswood—St. James—Assiniboia—Headingley, Lib.):** Thank you for coming, sir.

When the claims involve injuries or illness, how easy would you say it is to get hold of medical records and veterans' files from their lawyer when there's a request? Do you find barriers, or is it easy for records to come?

• (1135)

**Mr. Anthony Saez:** The medical service records come from DND. That can take a little while, but it doesn't take as long as it used to.

The real delay is in obtaining medical reports. It may be because of the growing complexity of cases. In the past, the vast majority of cases were musculoskeletal. You had a broken bone, or you had a torn muscle. You could see it. You could touch it. More and more often now, we are dealing with psychiatric conditions, which are not evident unless you really examine the patient. That has led to what you might want to call "specialist report creep".

Ten years ago, the report of a family doctor was all you needed. Then, it had to be maybe a psychologist, because they have a little more experience in the field. Then, as conditions were identified and became more complicated, a psychologist wasn't good enough; you needed a medical report from a psychiatrist.

That is probably where the system is slowed down the most for the veteran, from our perspective, because he or she needs a civilian doctor. If they are still in the forces, of course, their DND doctor doesn't provide that kind of service. They have to go out into the civilian world, try to find that report, and then get it back to us for redress purposes. We know the Canadian medical system has its challenges, and that is seen, certainly, in this process.

**Mr. Doug Eyolfson:** You would agree that this needs to be improved.

**Mr. Anthony Saez:** Yes.

**Mr. Doug Eyolfson:** Would a system of electronic medical records help to speed up the process?

**Mr. Anthony Saez:** Absolutely.

**Mr. Doug Eyolfson:** Does your department have the digital infrastructure to receive electronic reports, if they become available?

**Mr. Anthony Saez:** I am not sure exactly what the department's situation is. I know, though, that we have to have our own system because of the solicitor-client relationship of protected information. In fact, we are in the midst of developing what we call an "electronic case management system", which will do precisely that.

It will also contribute to the efficiency of advocates without borders. If we have a file that has to travel across the country, right now we put it in a bag and it is couriered over, which could take a day or two. Once the electronic case management system is in place, hopefully by next year, that will be instantaneous.

**Mr. Doug Eyolfson:** Great.

This might be a little technical from a lawyer's perspective. I am a physician, and I wouldn't be able to answer this from a medical perspective.

In developing these systems, is someone looking out to see that there are compatibilities between the medical records systems and your system so that you could receive them seamlessly?

**Mr. Anthony Saez:** I believe so, but again, as you say, that is beyond my scope of knowledge.

**Mr. Doug Eyolfson:** Okay. That would be my answer, if the tables were reversed. Thank you.

We have heard that some appeals that are sent to the review board end up not getting approved. This might not be completely in your area, but do you have an opinion as to how the process could be improved to decrease the need for appeals?

**Mr. Anthony Saez:** I can tell you anecdotally, from what we have noticed over the last while, that the system, certainly at first application, seems to have become more generous.

I can give you a couple of concrete examples, one that is more immediate and one that has taken a little more time.

I will use the issue of sexual harassment. Years ago, when someone was harassed in the Canadian Armed Forces, whether it was a male or female member, the powers that be sort of rolled it off as "Well, these are a bunch of guys. That's what happens." With time, and the sensitivities growing around that issue, both the department and the board have moved along with the tide, with society, to essentially say that it is unacceptable and won't be tolerated.

The other thing that has changed on that issue is that, in the past, they may have agreed that there was sexual harassment there and that it was not acceptable, but it wasn't in the line of duty. It wasn't as part of your job. Therefore, you don't qualify. That, again, has moved to the veteran's benefit, where they recognize now that if it happens while you are on duty, the employer is responsible. Therefore, it happened as a result of duty.

I am probably running out of time on this answer.

● (1140)

**The Chair:** You have another 30 seconds.

**Mr. Anthony Saez:** The other one that has changed more recently is the one related to cumulative joint trauma. In the past, the department and the board were always looking for the one incident—the one accident, the one event—that caused your injury. We would often argue and say, "Well, you know what, you might be a tanker wearing a heavy helmet with night vision goggles, and over time that continued bouncing around with the weight on your head is going to affect your neck." The department and the board have both moved to accept the reality of cumulative joint trauma. They now recognize that it doesn't have to be just one incident that causes your disability but a number of small incidents over a longer period of time.

**Mr. Doug Eyolfson:** Thank you very much.

**The Chair:** Ms. Lockhart.

**Mrs. Alaina Lockhart (Fundy Royal, Lib.):** Thank you for your testimony today. It's filling in some gaps from some of the other witnesses we've had before the committee.

I'd like to go back to the workload You gave us some numbers. Some of the numbers you gave us were claims completed, which included departmental review numbers and VRAB numbers.

**Mr. Anthony Saez:** Yes.

**Mrs. Alaina Lockhart:** Do you have a breakdown of how many of those go back to departmental review?

**Mr. Anthony Saez:** Yes, I do. Out of the 10,000 to 10,500 cases we do, we counsel out about 4,500, which leaves about 5,500. Of those 5,500 cases, about 2,500 are departmental reviews, which we solve without having to go to the board. The other roughly 3,300 are cases that we take to both review and appeal before the Veterans Review and Appeal Board.

**Mrs. Alaina Lockhart:** That's helpful, because some of the feedback we're hearing from veterans and other advocacy groups is that there's this frustration with the system. Their claims are being denied, so that's another step. They feel that their next option is VRAB, and then they find out that it does need to go back to the department, so I think that's a significant number to look at.

Are you seeing any commonalities in what is going back to the department?

**Mr. Anthony Saez:** No. It could be any range of issues, from the way the veteran presented his or her application form and how they filled it out to the fact that there might be an incident in their past that they're aware of but didn't think was important. Then, when their lawyer looks at it, they realize that, and say, "We think that if you presented this information back to the department, they would grant..."

It depends on the particular circumstances of the case and the particular veteran and how they apply to the department. It's a wide range of things. It's not one thing so that you might be able to say to all the clients, make sure you do *x*. That won't solve it. It's different.

**Mrs. Alaina Lockhart:** Is there any training that could be given to case managers to try to bring out this information prior to...?

**Mr. Anthony Saez:** I know that in recent months they have in fact been.... When they receive an application, they actually call the client when they see that, gee, they're pretty close to crossing that line. They call them to suss it out and to see if there's anything else that supports the claim. More recently, they have been doing that.

**Mrs. Alaina Lockhart:** Good. I think that's a good sign, and hopefully we'll have some measurables on it and be able look at it at some point in the future.

On the claims that are counselled out, to me that looks like a fairly significant number. In talking to my colleague here, who has been in private practice, I understand that in private practice the number of those counselled out is actually fairly small. I think that number also will represent veterans who feel that they should have had services or benefits; they've gotten to this point. Are there any commonalities there? What would be some of the reasons why there wouldn't be a case to go to review?

**Mr. Anthony Saez:** That's a good question.

The distinction I can make between this happening in private practice and what's happening here is that, as I said before, when the department renders its decision on the first application, at the bottom of the decision they have that little note that says if you're not happy with the decision you have the opportunity to consult with a lawyer for free.

It's the fact that they're being given this opportunity to consult with a lawyer for free, this mutual third party, to confirm whether or not the department's decision was correct. Also, as I said, these clients—most of them who are counselled out—aren't coming into our office pounding their fist on the table because they're upset. They're coming because they've seen that note and they think they might as well try that. They take advantage of that offer, we provide them the advice, and ultimately it's their decision as to whether to proceed or not.

•(1145)

**Mrs. Alaina Lockhart:** You mentioned that you're surveying the VRAB cases handled by the bureau and the satisfaction rates there. Is there any survey being done of those who are counselled out?

**Mr. Anthony Saez:** I don't think so, simply because in the end, they were able to get what they wanted in the first place through this diverted process much more quickly, much more efficiently than had they gone through the whole redress system.

**Mrs. Alaina Lockhart:** Yes, but I would imagine some of those also didn't get the result they were expecting.

**Mr. Anthony Saez:** In that case, they come back to us, we go to the board, and then they get our survey.

**Mrs. Alaina Lockhart:** All right, fair enough, that's great.

I think I have about a minute left.

One of my other questions was whether they can still proceed, and the answer is yes to that.

Did we talk about the access to records? Are you able to get the records easily that you need?

**Mr. Anthony Saez:** Yes. It would be helpful if the DND records could arrive more quickly. As I said earlier, it's gotten better, much better than it was in the past. There's probably still a little bit of room for improvement.

**Mrs. Alaina Lockhart:** All right, thank you very much.

**The Chair:** Go ahead, Mr. Clarke.

[*Translation*]

**Mr. Alupa Clarke (Beauport—Limoilou, CPC):** Thank you, Mr. Chair.

Hello, Mr. Saez. I am very pleased to have you with us today.

A few months ago, I attended a Veterans' Review and Appeal Board hearing. I was impressed by the passion shown by the lawyer defending the veteran's case. Quite clearly, their heart is in the right place.

Your office was created in 1971. I would like to know how many lawyers you had on staff at that time.

**Mr. Anthony Saez:** I don't know because I wasn't there then, but I think there were a few more than there are now.

**Mr. Alupa Clarke:** That's interesting.

Does Veterans Affairs pay your lawyers' salaries?

**Mr. Anthony Saez:** The department pays their salaries.

**Mr. Alupa Clarke:** In general, do your lawyers stay with the organization for a long time or is there significant staff turnover?

**Mr. Anthony Saez:** They stay on for a long time.

[English]

People tend to stay quite a bit, and in fact, at the moment, we're experiencing a generational change. Shortly after World War II, the government paid for many veterans to go to law school, and many of those were hired in the late forties and early fifties, and they stayed until the 1970s and early 1980s, which is when we hired a whole bunch of new lawyers. Now those lawyers are all retiring at the same time.

[Translation]

One of the challenges we are facing right now is replacing the lawyers who are retiring, while continuing to provide our services.

**Mr. Alupa Clarke:** Thank you.

Of course, the new veterans' charter came into effect in 2006. Would you like to share any observations on the impact of the charter on the type of cases you handle? I would like to hear your observations please.

[English]

**Mr. Anthony Saez:** Well, let me say at first that it's all anecdotal because, at the bureau, we are simply concerned with disability awards and reviews. We don't do the other stuff that the department does.

From a veteran's perspective, I would imagine that the suite of benefits that are offered now are more widespread than under the old Pension Act. Now there's income replacement, disability benefits, and a whole suite of things that weren't available to them.

In the end, though, I think it comes down to your particular circumstances. If you are a 75-year-old veteran or even if you are a 50-year-old veteran, who because of illness doesn't expect to live long, you'd probably want the lump sum. You don't want the monthly pension that will probably last you a few months or a few years and that's it.

If on the other hand, you're a young veteran at the beginning of your career and you have an injury, then you're probably looking at a pension that might be paid out longer than the lump sum award. Or you might be in the middle and hope to be buying a house and need the lump sum for the mortgage. It all depends on the particular circumstances of the veteran.

• (1150)

[Translation]

**Mr. Alupa Clarke:** Thank you.

Has the number of lawyers in your office increased since 2006?

[English]

**Mr. Anthony Saez:** That changes, and it depends, because there are a number of lawyers we keep on two- or three-year terms because we know there is a bubble coming through the system and we're going to need them, and then we won't need them later. Depending on the time and our needs, it fluctuates.

[Translation]

**Mr. Alupa Clarke:** Has your office seen an increase in requests for your services since 2006?

[English]

**Mr. Anthony Saez:** That's a good question.

We did immediately before the Veterans Charter came into effect. Then we started to see a slight decline. The numbers were going down, not significantly but steadily. Curiously though, in the last 12 months, those numbers have started to come up again. We dropped to levels we hadn't been to before, and now we're back up above levels we had been to previously. There is an increase. I don't know if that's just because the department managed to push through many files last summer and now we're seeing the effect of that, or if it's going to be a long-term thing. We'll have to see.

[Translation]

**Mr. Alupa Clarke:** That's interesting.

In closing, I would like to point out that the name of your organization, the Bureau of Pensions Advocates, does not necessarily reflect current realities. In fact, the new system does not deal with pensions alone.

[English]

**Mr. Anthony Saez:** Yes, it's for pensions and awards, and you're absolutely right that the name may be a little obsolete now.

[Translation]

**Mr. Alupa Clarke:** Thank you.

[English]

**The Chair:** Thank you.

Now we are going to split between Mr. Bratina and Mrs. Romanado.

**Mrs. Sherry Romanado (Longueuil—Charles-LeMoyne, Lib.):** Thank you to you and your team for what you're doing to help our veterans.

You mentioned that there are 30 lawyers, approximately 350 cases a year, and 195 completed per year. As my colleague was mentioning, there is obviously a bit of a backlog.

What is the average amount of time from when a veteran applies for the review through your service until the initial analysis is done and the decision is made as to whether it will be counselled out or it will go ahead? What is the timeline for that?

**Mr. Anthony Saez:** It depends on the particular circumstances of the case. Some are very simple, very straightforward, and it could be a matter of days. Some may be more complex on the medical front and may require a little more research on behalf of the lawyer. Some may require either a very basic legal argument, which could be done quickly within a matter of days, or they may require a charter argument. We've had a few of those, which would take much longer. It depends on the particular circumstances. It could be anything between days and weeks, depending on the particular case.

**Mrs. Sherry Romanado:** But normally we're not talking about months?

**Mr. Anthony Saez:** Generally, we're not, but that's not to say that occasionally that might not happen.

**Mrs. Sherry Romanado:** In terms of staffing, you mentioned approximately 100 people working at BPA, 30 of them being lawyers. Do you have legal aides assisting lawyers as well?

**Mr. Anthony Saez:** We have what we call legal assistants. They are PM-1 level, and they provide the initial contact with the client to make sure that, as soon as they can after the application comes in or the first contact comes in, they communicate with the client so that they know when the lawyer will be addressing their file. They have that support from legal assistants.

• (1155)

**Mrs. Sherry Romanado:** Thank you.

**Mr. Bob Bratina (Hamilton East—Stoney Creek, Lib.):** Thank you very much. You deal with veterans and still-serving Canadian Forces members. What is the relationship between Veterans Affairs and the case managers? Is there any specific relationship that you can speak to?

**Mr. Anthony Saez:** It's mostly around departmental reviews. When the client comes in and says they applied to Veterans Affairs for benefits and they were turned down or they didn't get as much as they were hoping to get, we'll look at the file and we'll say that if we do *x* instead of going to the board, the department may approve. We'll actually get in touch and work with the department and say, "I have this case that the veteran wants to go to the board with; however, what do you think about...?" whatever the option might be, and we will work with the department to see if that will work as a solution.

**Mr. Bob Bratina:** The case manager is usually the specific direct contact of the veteran, but you're not interacting with that individual, except on a broad department basis.

**Mr. Anthony Saez:** No, generally the case management side of VAC is dealing with other issues unrelated to what we do in the pension and lump sum award disability benefits.

**Mr. Bob Bratina:** Yes, but quite often the case manager is filling out the forms for the individual, who may be in some state of duress at the time.

Bearing that in mind, is there any way that we could improve the service to vets from VAC's point of view, or are you satisfied with the ebb and flow of business as you see it?

**Mr. Anthony Saez:** I think the biggest challenge is the one around the evidence that needs to be collected in order to proceed to the board, and that evidence most often has to do with medical reports. It can be difficult at times, first of all, to find a family doctor to provide that report, and secondly, sometimes the family doctor's medical report isn't sufficient. As you go up the chain into the specialist world it becomes even more difficult.

We do pay for it for them. We'll pay for a specialist's report, but we have to be able to find a specialist to do it.

**Mr. Bob Bratina:** Are you able to say whether there are any differences or similarities between veterans applying and still-

serving members applying? Are the files easier for a still-serving member?

**Mr. Anthony Saez:** No. Generally I would say it's almost the reverse. An older veteran presents with issues that are more easily dealt with. They're more related to, as I said earlier, musculoskeletal, physical things that you can see. The modern-day veterans, although they also present with those issues, are presenting with more psychiatric conditions, which are much more difficult to deal with.

**Mr. Bob Bratina:** I see. Thanks very much.

**The Chair:** Now we're into the five-minute sessions, and we start with Mr. Kitchen.

**Mr. Robert Kitchen (Souris—Moose Mountain, CPC):** Thank you very much for being here today. Your report is excellent. Thank you for providing that for us, because it makes it harder for us to ask questions when you've got all the answers in the report.

You mentioned that initially after WW II we had a lot of vets who came back, became lawyers, and got involved in this process. Do any of those lawyers now have military experience, and to what extent?

**Mr. Anthony Saez:** Yes, I'll give you an example. At the bureau we have four areas in the country: West, Ontario, Quebec, and Atlantic, and each one of those areas is headed by an area director. Three of those four area directors are former military people, either from the JAG branch or from the regular force. A number of our lawyers also have former military experience with the JAG, or as soldiers, and a number of them have reserve experience as well.

**Mr. Robert Kitchen:** Thank you.

You've provided us with some stats, 300 to 350 cases, and you expect to have 195 cases per year. I'm a health care practitioner. Are these excessive loads for the individual lawyer?

• (1200)

**Mr. Anthony Saez:** The 195 per se is not. We recognized that in the last few years cases are getting more complex, so that number has dropped from over 200. I can't remember what the exact figure was a number of years ago, but it has dropped to 195. It's the growing complexity that makes it difficult, first of all, but the 195 isn't the issue, it's handling all the work that's generated by the others that are coming in behind. With people calling and correspondence, file maintenance distracts from being able to focus entirely on the 195.

**Mr. Robert Kitchen:** You answered this next question a bit with Mrs. Romanado's question. Do you have stats that indicate the length of time that it takes to finish a file?

**Mr. Anthony Saez:** We do, on what we call the initial claims study. The initial claims study is a label we give to the first contact with a client. If the client contacts us to discuss pursuing an appeal, then we give the lawyers five days in which to initiate the claim. That is the standard that we set for our lawyers, and that's the standard by which they are measured during their performance evaluations every year.

**Mr. Robert Kitchen:** If you have those statistics, could you send those to us so that we have just an idea?

**Mr. Anthony Saez:** Sure.

**Mr. Robert Kitchen:** Thank you.

You indicated 10,000 files and you mentioned that the bureau goes deeper into those files on the clients' issues. Would you be suggesting that every veteran, once they get a disability assessment, should send it in to you to see if they can get more out of it?

**Mr. Anthony Saez:** No, not necessarily.

The system that exists in the department is the system that is best suited to deal with the vast majority of the cases. BPA is set up to deal with those cases that are much more difficult and complex to deal with, which couldn't really be dealt with at the first level. If for every single case that came into the department the first level gave the same amount of scrutiny that we do, that would probably impact resourcing, turnaround times, and so on.

**Mr. Robert Kitchen:** Okay.

We talked a little bit about electronic medical records and how they might be compatible or not compatible. Once you get that information, who do your advocates get to assess that information from a medical point of view, to give them the answers so they can understand them? I'm assuming they aren't MDs or psychologists or psychiatrists with those specialties.

**Mr. Anthony Saez:** That's exactly where the medical reports come in. The lawyer will send a letter to the doctor explaining what it is the lawyer is looking for, the client is looking for in support of their redress, and it is the doctor who provides that medical opinion.

**Mr. Robert Kitchen:** Is that their personal doctor or your specialist that you use?

**Mr. Anthony Saez:** It's their doctor or a specialist who is acting for the client, which we pay for.

**Mr. Robert Kitchen:** Thank you.

**The Chair:** I just want to get some clarification on the hours spent on a case.

We all know that in the private world, a lot of lawyers are leaving firms and a lot of our students are getting out of law because of billable hours, which is basically what the legal firms work on. You just mentioned performance reviews and this. Those hours are not billable, but with respect to a client, how does that culture in your organization differ from that in a private law firm?

Could you just give me a quick overview?

**Mr. Anthony Saez:** We don't necessarily keep track of hours. We keep track of the number of files completed, because whereas one file may take 30 minutes, another file may take 30 days depending

on the complexity of the particular file. We don't have billable hours per se. We monitor the lawyers' production on a per file basis.

As an interesting aside, we recently did a study on the cost per case to the Government of Canada for these, because there was talk about whether it would be more efficient just to contract it all out. We discovered that each case costs the Government of Canada about \$700 to \$800. If you went out to private practice, it would probably take the lawyer \$700 worth of time just to come up to speed on the legislation.

● (1205)

**The Chair:** Thank you.

We'll end with three minutes of questioning by Ms. Mathysen.

**Ms. Irene Mathysen:** Thank you very much.

I have so many questions.

You said that for the DND records, it would be helpful if they could arrive more quickly. Shouldn't those records already be at Veterans Affairs since the service person in question would be leaving or about to retire?

**Mr. Anthony Saez:** They're not always.

Back in 2000, Parliament legislated that a serving member could collect a pension at the same time, so the member does not necessarily have to leave the forces in order to collect a pension or an award.

**Ms. Irene Mathysen:** I wanted to go back to your remarks on sexual harassment and the fact that there's more understanding in terms of these kinds of complaints. Do you receive a number of cases in which there is sexual harassment in a situation, and if so, have there been successful cases where the women affected have received compensation?

**Mr. Anthony Saez:** First of all I'd clarify it's not just women who are affected; there are men affected as well.

**Ms. Irene Mathysen:** That was my next question.

**Mr. Anthony Saez:** We have had successful cases like that, but I have to say that they've been few and far between. Most of the cases we get involve either musculoskeletal injuries, hearing loss, or psychiatric conditions, and then we get a smattering of others including those involving sexual harassment.

**Ms. Irene Mathysen:** Is it perhaps because there is still hesitation about reporting this kind of injury—because it is an injury?

**Mr. Anthony Saez:** I couldn't speak to that. It's a good question.

**Ms. Irene Mathysen:** Okay.

Once a veteran has gone through the process and been rejected by the VRAB appeal, the only recourse is Federal Court.

Do many take that particular decision to go to the Federal Court, and, if so, is there a significant overturning of the VRAB decision by the Federal Court?

**Mr. Anthony Saez:** That is a good question.

First of all, they do have one last chance before the Veterans Review and Appeal Board after an appeal, and that's called the "reconsideration".

However, whereas under review or an appeal it is completely up to the veteran whether to proceed or not, the reconsideration is up to the board. The board can decide not to hear a reconsideration unless it's very special, and they probably hear about 150 of those a year.

In terms of Federal Court, the bureau doesn't have the jurisdiction to represent clients in Federal Court, but there are entities that will assist. There are a number of private law firms that do pro bono work and have taken cases to Federal Court. We sometimes liaise with the ombudsman's office and may flag a case where we think one may do well at Federal Court, and then they will liaise with the law firms to provide that pro bono service.

**The Chair:** Great, thank you.

This ends our round of questioning to the witness.

Now we will allot you a couple of minutes of time if you would like to do a quick wrap-up.

The floor is yours.

**Mr. Anthony Saez:** I am going to first of all thank you for the opportunity.

I would like to say that I've been at this job for about 10 years, and in those 10 years I've noticed two things.

I've noticed, as I've probably mentioned, that the conditions that are being presented to us are shifting as the clientele has shifted. In

the past, we had a majority of World War II and Korean veterans. They were veterans for whom the war was a calling. They put down their picks and their shovels, they went off to war, and after the war, they went back to their picks and shovels and were grateful for whatever services the government would offer.

Many of today's veterans no doubt see it as a calling, but it's also a career for them. They are much more aware of their rights and are much more willing to pursue those rights. That's changed the nature of the clientele we deal with.

Again, psychiatric conditions, although still not at the top of the list, are gaining momentum, and not necessarily because there are more of them. I think it's because the science behind it has brought it more to the fore and it's being recognized more and more as a condition.

Again, thank you for your time. I appreciate it.

• (1210)

**The Chair:** Great.

On behalf of the committee, I would like to thank you and all your fellow workers for the hard work you do for our men and women who have served us well. Thank you for taking the time out of your day to give us some excellent testimony and for your prepared brief.

Now, I'd like to suspend and go in camera. We'll suspend for about five minutes and come back in camera. Thank you.

*[Proceedings continue in camera]*

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