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## **Standing Committee on Veterans Affairs**

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**Tuesday, May 30, 2006**

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**Chair**

**Mr. Rob Anders**

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## Standing Committee on Veterans Affairs

Tuesday, May 30, 2006

• (1530)

[English]

**The Chair (Mr. Rob Anders (Calgary West, CPC)):** Good afternoon, folks. It's time to begin our lovely meeting.

I'm going to get to the point of introducing our guests, but first, as I mentioned to our guests on the way in, we have a few issues to deal with.

If we go according to the question of time, in terms of who got their motion in first, I think Monsieur Perron's motion was the first one to have been received by me and by other committee members.

Monsieur Perron, I could speak to this, but I think you probably want to move it. I'll let you speak to it, sir.

[Translation]

**Mr. Gilles-A. Perron (Rivière-des-Mille-Îles, BQ):** Good afternoon, Mr. Chairman.

Before we begin, I would like to clarify one thing. I had a very unpleasant surprise just before question period. I did not appreciate certain Committee members trying to blackmail me, saying that if I supported them, they would support me. That sort of thing should not occur in a democracy. In a democracy, people are free to vote for whomever they want, without being subject to blackmail. I felt frustrated and I really didn't like what was happening. The matter is now closed. I will not comment further, but I had to get this off my chest. I've done that now, Mr. Chairman. I won't hold it against anyone, but I do hope it won't happen again.

At the last meeting, a number of proposals were brought forward. We had trouble reaching consensus on speaking time. Mr. Chairman, I took the initiative of sending you a motion, with a table attached to it, that I believe you have received. It is a simple table, developed on the basis of the percentage of representation in the House of Commons. I did it with equity in mind, as opposed to partisanship, and I did not attempt to give anyone more speaking time than another. I just wanted to be fair and equitable. I prepared this as would a parent trying to find a happy medium.

That is my proposal. You have now seen it and read it. It is up to you to vote on it and decide what you want to do.

Thank you, Mr. Chairman.

[English]

**The Chair:** Thank you very much, Monsieur Perron.

Do we have any discussion, or are we willing to put the question?

Mr. Rota.

[Translation]

**Mr. Anthony Rota (Nipissing—Timiskaming, Lib.):** Do you have a copy of the table? I have some language here, but it isn't as clear as your table.

**Mr. Gilles-A. Perron:** What I prepare is always very clear. Could you make a photocopy of this immediately, please?

• (1535)

[English]

**The Chair:** I believe the clerk has indicated that it has been circulated—or photocopies are being made.

[Translation]

**Mr. Gilles-A. Perron:** The numbers in English are at the bottom and the numbers in French are at the top.

[English]

**The Chair:** The table is no different from what's in the wording of the motion. I've seen the table, and I know that other members of the committee have seen the table.

How many people have actually seen the table, by a show of hands?

**Mr. Gilles-A. Perron:** I sent one copy to you and one copy to

[Translation]

the official representative of the Liberal Party, and I assumed that you would have discussed this among the members of your own party. For my part, I did discuss this with my colleague.

[English]

**The Chair:** Monsieur Thibault.

**Hon. Robert Thibault (West Nova, Lib.):** With regard to the motion, I have discussed this with members of other parties and members of our party. In light of the fact that it creates harmony at the committee and that it balances out the amount of time people get to question witnesses, we are—I am—prepared to support the motion.

**The Chair:** Okay.

I think the clerk is now distributing copies of the motion, just to make sure everybody has it in front of them.

I don't see anybody else who wants to speak to Monsieur Perron's motion.

(Motion agreed to) [See *Minutes of Proceedings*]

**The Chair:** One issue down.

The second motion is from Monsieur Thibault. I will read it out:  
That the Standing Committee on Veterans Affairs recommend that Parliament institute the practice of lowering the flag on the Peace Tower to half-mast following the death of a soldier or other Canadian Government personnel who is killed in the line of duty on foreign soil.

I won't try to butcher the French.

After receiving the notice of motion on this, I did take some time to think about it. The Speaker of the House of Commons had dealt with this issue from the chair in the House, and we looked at that decision. It basically came down to an issue of heritage. So I, as your chair, will rule this motion out of order.

**Hon. Robert Thibault:** Mr. Chairman, I'd ask you to reconsider. We at committee have a right to make any report we wish. These reports are submitted to the House for discussion. Or at the House we can ask for the House to discuss the matter and vote on it. At that point, the Speaker of the House may, for whatever reason, choose not to allow the report, not to allow a vote on it, or to continue. I don't think it's the role of a chairman of a committee to decide what the committee can vote on or not.

This motion has been put to the committee with proper notice and should be discussed by the committee, as any motion is. As the mover, I should have an opportunity to discuss the motion and members of the committee have the opportunity to vote according to their belief. Then the vote carries...the committee has a vote.

If the committee finds favour with my motion, then it is reported to the House, and, once again, the Speaker of the House at that point makes a ruling. If he feels it is outside the purview of the House, this does not take away or change any regulatory capabilities or any departmental capabilities. This is a recommendation to Parliament. Parliament is the supreme authority over all departments.

Should there be a problem with it, I'm sure the Speaker would rule at that point. It can be brought to him. But I don't believe it is the role of a chairman of a committee to decide what motions a committee can or can't vote on.

**The Chair:** I appreciate your speaking to your motion, Mr. Thibault. I will take that as a challenge of the chair to my decision. So I'd like to put that as a question to the committee.

All those in favour of the challenge to the chair, please say aye or raise your hands.

**Mr. Brent St. Denis (Algoma—Manitoulin—Kapuskasing, Lib.):** It's not to your integrity in general, just this decision.

**The Chair:** I understand, Mr. St. Denis.

All those in favour of sustaining the chair, please raise your hands.

I note that we have a majority in favour of sustaining the chair. Thank you, and I'll leave it at that.

Mr. St. Denis, I assume that your speaking was—

• (1540)

**Mr. Brent St. Denis:** It may be moot now.

**The Chair:** I understand.

**Mr. Brent St. Denis:** But I would like to say for the record that—

**The Chair:** Yes, sir.

**Mr. Brent St. Denis:** It may be splitting hairs, but I think when in doubt you go to the proponent, in this case my colleague, Mr. Thibault. The spouse of a deceased military person is automatically, in my view, the spouse of a veteran. Even though that person's life did not constitute any time as a veteran, they are as beneficiaries of veterans benefits, the family of a veteran.

Does that make sense to you, Robert, that the family of a deceased military person who was killed on active duty, who in their life was not a veteran, the family, by receiving veterans benefits, are the family of a veteran and therefore the veterans affairs committee should have some purview over this question?

That was the hair I wanted to split.

**The Chair:** Fair enough, Mr. St. Denis. Hair splitting....

All right. We've dealt with our two motions, so now we are on to our two witnesses.

Today we have with us Mr. Victor Marchand, chair of the Veterans Review and Appeal Board. We also have Dale Sharkey, who is the director general.

I open the floor to our witnesses for their presentations.

[Translation]

**Mr. Victor Marchand (Chair, Veterans Review and Appeal Board):** Thank you, Mr. Chairman. Good afternoon, ladies and gentlemen members of the Committee.

[English]

I would like to make a few remarks before we get to a question period.

Since the inception of the Canadian disability pension system at the end of World War I, a constant feature has been the existence of an independent appeal mechanism so that soldiers and their dependants who were dissatisfied with the disposition of their claim can appeal.

The Veterans Review and Appeal Board fulfills that function today. The board and its function is sometimes greatly misunderstood.

[Translation]

I welcome this opportunity to appear before you today to discuss the Board's mandate and clarify its role in the disability compensation process. I will focus my remarks on a few subjects that are of key importance to the Board and of interest to the Committee.

[English]

As you know, the Veterans Review and Appeal Board is an independent, quasi-judicial tribunal and we operate at arm's length from the minister and report directly to Parliament through the Minister of Veterans Affairs.

One of our greatest challenges is breaking the misconception that we are part of the department. Let me be perfectly clear that veterans who come before the board can count on a completely independent review of their disability claims. We do not write the legislation, nor do we develop the programs. We are focused entirely on providing an independent redress system to ensure that veterans are treated fairly and receive the compensation benefits to which they are entitled under the law. It is no small job.

In 2005-06 the board adjudicated 6,594 claims on reviews and appeals of claims of disability pensions under the Pension Act, and a handful of final appeals on war veterans allowances cases under the War Veterans Allowance Act. In 2006-07 the board expects to be rendering decisions on claims for disability awards under the new Canadian Forces Veterans and Members Re-establishment and Compensation Act.

We carry out this tremendous workload with a team of full-time board members who are split between our headquarters in Charlottetown and major cities across Canada. Our members are well supported by an experienced staff of 80 located in our Charlottetown headquarters.

As you know, the disability compensation decision process consists of three levels. The first level is on the application to the department for benefits and the subsequent decision is made by an adjudicator in head office, working from the files and documents submitted by the applicant. From time to time the board is the subject of public criticism because a veteran or a group of veterans did not receive a benefit they had sought.

I would like to point out to the committee that when the board issues a ruling, that ruling is based on whether or not the correct decision was made by the department. When you receive a negative board decision from an upset constituent about a board decision, please remember that this decision is not a decision based on rules made by the board, but instead it is a decision that reflects the fact that the board has found that the Minister of Veterans Affairs has properly applied the legislation created by Parliament.

For those who are not satisfied with the department's decision, there are the review and appeal levels, which are the sole responsibility of the Veterans Review and Appeal Board. The board provides the first and only opportunity for veterans to tell their story and explain their case before the people who will make the decision on their claim. This oral testimony, as well as the testimony of their witnesses, plays a critical role in providing the evidence that can result in the board varying the departmental decision.

In 2005-06, 58.7% of reviews resulted in a variation of the decision of the department. These days the vast majority of applicants appearing before the board are former or still-serving members of the Canadian Forces, followed by active service veterans, RCMP, and their survivors and dependants.

Having been a board member myself, I can speak firsthand of the demands board members face. The change in our applicant profile from the traditional war veteran to the younger Canadian Forces member presents new challenges for the board. The files are larger, and generally the more voluminous the file the more complex the arguments.

As well, with the introduction in April 2006 of the new Canadian Forces Members and Veterans Re-establishment and Compensation Act and a new table of disabilities, the intricacies of the claims are expected to increase rather than diminish. Representatives and applicants have access to more information than ever.

Board members must remain abreast of new issues challenging the Canadian Forces and RCMP, advances in medicine and information constantly becoming available and presented at hearings. The direct consequence is that members require more time to hear and decide on a claim and the medical and legal issues are very often less straightforward than they were in past years.

Another criticism that the board frequently faces is that we are too formal, too court-like. As an administrative tribunal we make every attempt to operate as informally and as expeditiously as we can. In fact, our legislation tells us to do this.

• (1545)

In practice, this means that hearings are much less formal than in a court of law. However, our hearings are legal proceedings where applicants have the opportunity to be represented and make their case. The process is not adversarial, as there is no one at the hearing representing the other side; that is, presenting evidence that the applicant is not entitled to a disability compensation. The board members may question the applicant and representative to clarify issues. After all, if the issues were that clear, it is unlikely there would be an appeal.

Our hearings are not held in court rooms; they are in boardrooms and hotel facilities. Our members make every effort to make the applicants feel comfortable. They can appreciate how apprehensive applicants may feel about coming to their hearings and how matters of a personal nature may have to be addressed. For those applicants who would rather not appear, there are other options, such as proceeding by way of a written submission, or having their representative present their case in their absence. For those who are elderly or too sick to travel, we are pleased to accommodate their participation by telephone hearings.

In 2005-2006, the board held 887 review hearing days in 34 locations across Canada from Victoria to St. John's to allow applicants access to their hearing and to allow them to give testimony.

[*Translation*]

As mentioned earlier, the Board carries out two levels of appeal. Following the review level, if an applicant is still not in agreement with his or her decision, an appeal can be filed with the Board. I often encounter the misunderstanding that the same Members who heard a case at review may hear that case at appeal. That is not the case at all. It is spelled out clearly in the legislation that three new Members, who did not participate in the previous decision, will sit at the appeal level. The appeal hearing is an entirely new proceeding, new evidence can be presented, and each appeal is decided as if the case was being heard for the first time.

● (1550)

[*English*]

I sometimes hear the question, “Why can't claimants attend their appeal hearings?” In fact, appellants are welcome to attend, at their own expense, their appeal hearings. However, the legislation states that no oral evidence may be heard at appeal. Only documentary evidence and oral argument may be presented to the board.

Most appeal hearings are held in Charlottetown, and representatives are welcome to make arrangements via teleconference for their clients to listen to the proceedings, should they so desire.

I would like, for a moment, to direct my remarks at some of the rather unique aspects of the disability compensation system. For example, there are no time limits on any of the levels of redress. The board frequently receives appeals on decisions made up to 50 years ago.

Also, even though the VRAB Act states that a decision of an appeal panel is final and binding, there is an extraordinary provision that allows applicants to apply for a reconsideration of their decisions if they have new evidence, or if they can demonstrate that there was an error in law or fact in the appeal panel's decision.

The reconsideration is not another level of appeal. The claimant is simply asking the same panel to take another look at the decision based on the aforementioned reasons.

A complaint that I sometimes receive, as does the minister—and you may have heard it from your constituents—is that the board did not give the veteran the benefit of the doubt, as stipulated in legislation.

Adjudicating is not an easy job. The cases of the men and women who come before the board are often compelling. These men and women have served their country well and honourably in times of both war and peace. However, as a tribunal, we do not have the power to disregard or change the legislation. Members must decide appeals on the basis of the evidence available to them and the legislation as it stands.

The best interpretation of the “benefit of the doubt” can be found in Federal Court decisions such as *Hall v. Attorney General of Canada*. The decision reads:

While the applicant correctly asserts that uncontradicted evidence by him should be accepted unless a lack of credibility finding is made, and that every reasonable inference should be drawn, and any reasonable doubt resolved in his favour, he still has the obligation to demonstrate that the medical difficulty from which he now suffers arose out of or in connection with his military service; that is, the causal linkage must be established.

Everything is far from perfect in our system, and that is why we are always striving to improve our methods of operation. In the last few years we have undertaken a number of initiatives to improve service to applicants and to show Canadians that we are taking a fair, balanced, and serious approach to our responsibilities as the court of last resort in the veterans' redress system.

As you know, a nationally advertised process inviting Canadians to make application for appointment to the board has been put in place. As well, in 2005 we conducted a client satisfaction survey with applicants who had received a decision from the board. The results have identified areas where we can improve our services, and we are in the process of developing an action plan to address those.

We recognize that applicants require more information about the process. We have been improving communications through fact sheets and our website, and we are developing a brochure that will provide appellants information on the review and appeal process.

We have also worked very hard to meet our service standard of issuing written decisions within 30 days of the hearing. This year, although our numbers are not yet final, we issued 90% of review decisions in 31.6 days and 90% of appeal decisions within 30 days after the hearing.

Most of our applicants are represented by lawyers who are independent from the board. Once we have been notified that the representative is ready to proceed to a hearing, we schedule the case for the applicants for as soon as possible.

You must remember that the time it takes for representatives and applicants to prepare their case is entirely out of our control. We monitor the age of claims and communicate frequently with representatives to ensure that cases do not stagnate in the system.

● (1555)

[*Translation*]

As I stated earlier, we know the system is not perfect but we are striving to improve it in areas where there are deficiencies. I am, however, proud of the work of the Board and I am thankful for the support given to this Board and its predecessors by the government, by Veterans' groups, and by the people of Canada.

[*English*]

I am also proud of the efforts made by the members of the board and the staff who support them. They are a sympathetic, dedicated, and motivated group of people. Sometimes we don't realize what a generous, open, and proud tradition of service we have in this country. We on the board realize what those who serve do for Canada, and we do the very best we can for them.

Thank you, gentlemen.

**The Chair:** I take it that the director general will just be answering questions. Or will you be making a presentation?

**Ms. Dale Sharkey (Director General, Veterans Review and Appeal Board):** If you like, I can go through the presentation deck that was circulated earlier.

**The Chair:** I'm okay with it. How does the committee feel?

Run with it, sure.

**Ms. Dale Sharkey:** I think the chairman covered a large amount of the information in this deck in his presentation, so I will try not to take too much time going through it.

Basically, it just tells a little bit about who we are and what we do and gives a bit more detail about the board process internally.

As the chairman indicated, our mandate is quite straightforward. We provide clients with a full opportunity to request review and appeal hearings and we ensure a fair adjudicative process for the disability pension and award programs, as well as for some war veterans allowance claims.

We are quasi-judicial and independent, and we have full and exclusive jurisdiction to deal with both these programs in terms of redress. We are non-adversarial. In other words, at our hearings you will find only the board members and the representative and the client. There is no one on the other side representing, for example, the department's decision.

Our headquarters is in Charlottetown, where we have around 80 staff and approximately half of our members. Our staff are focused primarily on service delivery. We have an excellent partnership with Veterans Affairs for all our corporate services. That works quite well, and we're very appreciative of that.

We do have our own legal adviser, our own training, our own operational support for our members, and our own research and quality assurance functions. Some of our members are deployed. We do not have offices across the country, but we do have approximately 50% of our members located in major centres across the country.

We have some information on the appointment process. Would you like me to go through that, Chairman?

**Mr. Victor Marchand:** Sure.

**Ms. Dale Sharkey:** As the chairman mentioned, we established an appointment process in December 2004. Through various means of advertising since that time, most recently nationally in newspapers, we've been using the process to assess proposed members on the basis of competency and experience. It's a transparent and professional process.

It involves three stages. The first stage is something called a screening committee, where we have independent individuals who go through all the applications looking at a series of experience requirements and education requirements. Those individuals who meet the requirements are invited back for a formal written assessment to assess certain elements of knowledge, skills, and abilities. If they are successful at that stage of the process they are invited for an interview, where they are once again assessed on ability and knowledge, followed up with reference checks.

All of the information about our process can be found on our website, including the names and biographies of the individuals who participate on both the screening and interview committees.

Once the interview committee has found individuals to be qualified, they are put into a pool of qualified candidates, and based on the operational requirements of the board the minister will draw from the pool for appointments and make recommendations to the Governor in Council. I believe we gave the clerk a chart, which could be distributed, that simplifies this process in very few words.

The next chart is simply a summary of the decision-making process. It shows a bit about the volumes. As you can see, there are various levels of decision-making, so individuals have quite a few opportunities to come back to request a review of their decision: going through the department, there's an opportunity for them to have a departmental review; there are two levels of redress with the board; and then an opportunity to come back to have their decisions reconsidered on the basis of new evidence or if there is an error in fact or law. There is no limit on the number of times or the amount of time that can transpire for returning to the board, should they have new evidence. At the end of the day, they can go to Federal Court to request a judicial review.

We've given you a bit of an overview on the volumes of cases. For example, the department makes around 36,000 decisions, which we call first decisions, on disability pensions and is soon to be involved in awards. They have a 60% favourable rate; in other words, they've made decisions that are in favour of the applicant.

At the board we receive around 4,870 requests for review hearings. As you can see, not all dissatisfied applicants decide to pursue a review or appeal. We vary approximately 59% of those decisions in favour of the applicants once again.

If individuals are still dissatisfied with their disability pension or compensation decision, they can request an appeal hearing. In both of these stages it's a right of appeal. They do not have to demonstrate grounds upon which they wish to appeal; they just have to be dissatisfied with their decision. We receive about 1,510 appeal applications per year and vary around 38% of those in favour of the applicants. We receive approximately 205 applications for reconsideration yearly and reconsider 122 of them. Based on the criteria to reconsider, most of those turn out to be favourable. In any given year, we average about 25 cases at federal court.

We're not a party in federal court. It is the Attorney General and the applicant who are actually in Federal Court.

With respect to board members, we usually have about 29 board members. There are two types of board members, and it's always complicated to explain these. We're limited to 29 permanent members and any number of temporary members, based on our workload. The only difference between permanent and temporary is the eligibility for appointment tenure and the length of time for which someone can be appointed.

• (1600)

All members hold office during good behaviour, and it's important to note that this is a full-time occupation. Our members work full-time at the Veterans Review and Appeal Board and cannot hold another occupation while they're working for us.

We have a little map here that shows the current distribution of our members. We tend to have members located in cities where most of our work is. It's very gruelling work to be travelling around the country to hearings, and naturally we try to locate members where we have the greatest volume of workload. That tends to be in the Vancouver-Victoria areas. We're short members now, but also Edmonton, Montreal, Ottawa, Toronto, and Quebec City. In the Maritimes we serve Halifax, St. John's, and New Brunswick out of Charlottetown with our members.

You've probably noticed a trend there. Our greatest volumes tend to be in areas where we have significant Canadian Forces populations, since that's the majority of our clients right now.

We'll be back talking about main estimates, so I won't go into details on the budget, but we have about a \$9.4 million budget, and as mentioned before, the majority of our budget is devoted directly to operational support around hearings. We report annually through Parliament with both performance reports and plans and priorities.

Our breakdown of appellants is a bit different in terms of clientele from that of the department. Most of ours tend to be Canadian Forces. Over 75% are Canadian Forces, and the remaining smaller number tends to be World War II veterans and a small number of survivors, and about 7% within that 25% would be RCMP.

Pretty well everybody is represented by the Bureau of Pensions Advocates and about 5% are represented by the Royal Canadian Legion service officers at both review and appeal levels. We do see some private solicitors or some applicants who may choose to represent themselves, but if they choose to have someone represent them it's at their own cost, as opposed to the free service provided by the Bureau of Pensions Advocates and the Royal Canadian Legion.

As I mentioned to you, our favourability rates are indicated here, and overall about 59% are varied in favour of the client at review and 38% are varied in favour of the client at appeal.

The chairman mentioned that at review, the first level of redress is the first opportunity that appellants have to appear before the individuals who actually are making a decision in their claim, so they have the opportunity to give testimony and to bring in witnesses to provide testimony. Most applicants attend their review hearings. That's probably the unique difference in adjudication between what happens in the department and what happens at the Veterans Review and Appeal Board.

We hold hearings just about every week of the year, and we have about 34 different locations that we travel to. In fact we'll go wherever there's a significant volume of cases to be heard. All of our hearings are taped. The decisions are all in writing and sent to the appellant, hopefully within 30 days of the hearing. We found in our survey—which we're soon to be releasing—that most appellants feel they've been treated with courtesy and respect, that they've had an opportunity to tell their story at an independent review, and that they had a reasonably good feeling about the hearing.

By the time a case gets to appeal the issue has become very fine and narrow, and the hearings tend to be much shorter. They're held in Charlottetown, and as mentioned, applicants do not usually attend the hearings. A large number of our hearings at appeal are written submissions. We do some by video conference and certainly, as the chairman mentioned, if an applicant really wants to hear their hearing we can plug them in by telephone for that.

Once again, decisions are sent in writing and these decisions are final and binding; however, they can apply for a reconsideration.

With the aging veteran, we have fewer and fewer war veterans allowance cases yearly. We do a handful—less than 50. Basically that's because once a veteran reaches age 65 the war veterans allowance ceases. It's an income replacement program for the veteran, basically.

• (1605)

There are no time limits, as mentioned. We hear very old appeals heard by agencies that existed many years ago and oftentimes people don't appeal right away. However, we know that the Canadian Forces members and former members tend to appeal much more quickly than the traditional World War II veteran did in the past, so we're seeing their cases go through far quicker.

Lastly, the board also has authority to give an award called a compassionate award. It is basically for individuals who've been refused an award under the Pension Act or the new veterans charter act and they've exhausted all levels of redress. The board, under certain types of criteria, can grant a compassionate award and fix the sum.



Lastly, I mentioned Federal Court. Fortunately, we only have about 25 cases per year that we see and we certainly pay a great deal of attention to the direction and information that comes back from the Federal Court. We are a very busy board. I think we're the third-largest board in terms of volume of cases heard per year. In the last number of years we've been hearing over 6,000 cases. We are projecting to see that continue, if not grow somewhat.

I think the chairman already talked about a service delivery standard performance as well as the benefit of the doubt, so that's a very quick summary.

I'd be happy to answer any questions.

**The Chair:** All right. Thank you very much for that presentation.

Now we are going to use Mr. Perron's schedule to move to the questions for our witnesses.

Mr. Thibault, you are up for seven minutes.

[*Translation*]

**Hon. Robert Thibault:** Thank you, Mr. Chairman.

Mr. Marchand, Ms. Sharkey, it's a pleasure to see you here this afternoon. I want to commend you for an excellent presentation.

• (1610)

[*English*]

I have a large military base in my riding and as well there was—it's closed now—a training base. That means that a lot of people take advantage of the beauty of the Annapolis Valley in Digby County to retire, so a lot of the cases that come before your board are residents of my community, I think probably a disproportionate amount.

Mr. Marchand, you mentioned the percentage of people who appear before the tribunal and who are successful or get some sort of award. Do I remember 57%?

**Mr. Victor Marchand:** It was 58.7%.

**Hon. Robert Thibault:** Fifty-eight—

**Mr. Victor Marchand:** On review.

**Hon. Robert Thibault:** That points to a problem for me, and this is a problem that a lot of people tell me about when they come to my office. It is not a problem at your level, but perhaps a problem in the bureaucracy of the Department of Veterans Affairs, where, if cases are at all contentious, it might be—and I don't want to cast aspersions on the department—it might be safer to refuse them. Maybe they would appeal; maybe they wouldn't.

I am assuming that not 100% of people who should appeal do appeal. Perhaps some who would have a story to tell don't appeal because of the problems there are. I have a couple more points I'd like to make, but I'd like you to reflect on whether you see that as a problem.

Second, and again, I don't want to cast aspersions.... I am not sure that there is, but the number makes me nervous at that level—anything above 30% should make us nervous when they are refused and do find favour with the tribunal.

The second question is on the advocates who are named for these individuals. Are they named by the tribunal, by the department? Are

they employees of the department? Are they private sector legal people who are on a call list? Perhaps before I continue you could answer that for me, because it's important in the remainder of my comments.

**Mr. Victor Marchand:** The advocates are full-time government employees who used to belong to an independent agency, which was the Bureau of Pension Advocates. In the 1995 reform, the agency was brought into the department and they all work under the chief pensions advocate. There are 40 of them, and their work is totally dedicated to the preparation and arguing of cases before the board.

**Hon. Robert Thibault:** I should, again, be fair to these people, because I do hear complaints about them occasionally. But of the hundreds, if not thousands, of people with cases who live in my riding, the number of complaints I hear about the advocates is tiny. The question I would ask you to answer is do you think there is a sufficient number of them for them to be able to do a full presentation? Do we need more advocates?

I have a couple more quick points and then I'll let you respond. One more, and then if I have time, I will come back on the last one.

The board, I understand, is about a dozen members down. You have people, of course, who would be coming to the end of term quite soon. Are we at a critical period? Do you foresee that to be able to maintain with the amount of...? Because I know, as you do, that it is a long period for people who are suffering and are forced to go to appeal because they've already been refused. They already have a problem. Their cases going through the regular DVA channels take a long time, and then they are waiting to hear from you and you have a waiting time. So are we at a critical period? Do you foresee that we'll be at full complement soon?

Perhaps I could let you discuss those before I ask my final question, if we have time.

**Mr. Victor Marchand:** To answer your last question, I'll say that yes, our number of board members is down. We do require some appointments. Representations have been made to the minister, and I am very confident that the complement will be rebuilt soon.

In the interim, we've developed a number of strategies to make sure the cases are heard in a timely fashion. We've used single-member panels as a solution. We've sent all the members out on review and, in a sense, put some appeals in abeyance for a while, so that the hearings are held in a timely fashion. The regular complement is 28 to 29 members. We're down to 19, so we will need some appointments soon.

As to whether or not we should have more advocates, I'm a lawyer. I can't understand why the world would need more lawyers, but in fact the Bureau of Pensions Advocates has recently hired...I think it's half a dozen lawyers. They are rebuilding their complement with younger and more aggressive lawyers; that should make for interesting case law.

But the advocates are moving. The Legion is getting involved in every sector in every region and is presenting cases. I think people are well served from a representation point of view. My view, having heard a lot of these cases, is that they're doing a good job.

• (1615)

**Hon. Robert Thibault:** My other question asked if you think the Department of Veterans Affairs has a tendency to bounce cases to you, rather than to make difficult decisions. Do you have an opinion on that? Perhaps it's an unfair position to—

**Mr. Victor Marchand:** I don't have an opinion. What I should tell you is the numbers. What I can tell you is what the vets want and get, and that's a hearing before a board member.

I think the vet comes to this hearing well prepared. He comes with additional evidence, often on the advice of the advocates, and that's where we assess the credibility, really. When you look at the usefulness of a hearing, you've got a definite advocate of hearings, because they work—they get to the bottom of things; they get the testimony. We make rulings on credibility; we look at the evidence right then and there; and to top it all off, we render a decision within 30 days. The board member has to make that decision right there.

**Hon. Robert Thibault:** Mr. Marchand, we're running out of time. Perhaps I could ask you one quick question. If you don't have a chance to answer, you might have to—

**The Chair:** Mr. Thibault, I meant one second.

**Hon. Robert Thibault:** One second? It wasn't one minute. I'm sorry.

**The Chair:** Bless your heart for taking Mr. Thibault on in terms of answering the question, but his seven minutes have elapsed.

Now we have Mr. Perron.

[*Translation*]

**Mr. Gilles-A. Perron:** Mister Marchand, good afternoon.

**Mr. Victor Marchand:** Good afternoon, Mr. Perron.

**Mr. Gilles-A. Perron:** The two presentations were practically identical, but you did not answer one of my questions. Of course, you didn't know what it was. On page 7 of your presentation, you referred to a survey identifying areas of service that could be improved. What are those areas and how can they be improved?

**Mr. Victor Marchand:** The first thing our client satisfaction survey showed is that people are looking for quick turnaround time when dealing with an administrative tribunal. Some cases require additional evidence, expertise, or research. So, we have to find ways of processing these files quickly. Unfortunately, some files do get bogged down. In such cases, people complain at times that their case is bogged down somewhere and is not moving forward.

The second thing is that people...

**Mr. Gilles-A. Perron:** Can you identify the deficiencies and suggest solutions?

**Mr. Victor Marchand:** Yes.

**Mr. Gilles-A. Perron:** Otherwise, you'll spend a half-hour talking about the problems and only two minutes talking about the solutions. I would like you to spend as much time talking about the solutions as the problems.

**Mr. Victor Marchand:** The solution is always to ensure that there is very tight operational oversight of the processing of cases. What we can say is that 90 per cent of our cases are adjudicated within 30 days. What happens to the other 10 p. 100 of files and why do they get bogged down? It's often because of problems obtaining medical evidence. There is no available expert, or no physician is available to provide evidence in that area, and so forth. So, we have to locate that expertise quickly, and it isn't easy for anyone — either for the Board or the individuals involved.

The second very important point is that people must understand why their claim has been refused. That requires training and quality control, so that the individual being given the decision understands perfectly why his claim was refused.

Those are the two points that came out in our customer satisfaction survey.

**Mr. Gilles-A. Perron:** You're lucky; you only have two problems.

However, I do have questions about another problem. How are your adjudicators and lawyers appointed? Is it through political connections? We hear it said that there is political influence operating within the Board.

• (1620)

**Mr. Victor Marchand:** Personally, I've never seen that.

**Mr. Gilles-A. Perron:** Could I give you a couple of examples?

**Mr. Victor Marchand:** Board Members are appointed by the Governor in Council. Therefore, by definition, the government appoints them. It is within the discretionary power and jurisdiction of the Governor in Council to do that. At the Board, there is now a process in place whereby individuals must qualify on the basis of their competence. I have to ensure that the screening committees establish the criteria for the position and that all candidates are required to take a written exam. Following that, they are interviewed by another committee, and at the end of the process, that individual's name is put on a list of qualified candidates. I then make the minister aware of my operational requirements. For example, I may need someone in a specific city. I also need to have more women on the Board. That is an objective that we have set for the Board. I try to ensure that there is a good mix of individuals within the Board.

**Mr. Gilles-A. Perron:** Do you consider adding balloting to your criteria?

**Mr. Victor Marchand:** I don't understand what you mean.

**Mr. Gilles-A. Perron:** I mean acceptance of the candidate by a committee, or something along those lines. At the present time, it's the Prime Minister or the government in office that suggests the candidates among whom you have to choose.

**Mr. Victor Marchand:** No, absolutely not. We advertise in the newspapers, or publish notices in the *Canada Gazette*, and we also advertise on our own website, where people can print off a form directly from the site or call us to get one. They then have to fill out an application, which is not necessarily easy to do. It is extremely complex and rigorous in terms of the information to be provided regarding experience, training, education and references. The entry point is the application form, Mr. Perron.

**Mr. Gilles-A. Perron:** And who defends a veteran that appears before the Board?

**Mr. Victor Marchand:** He is represented...

**Mr. Gilles-A. Perron:** Represented.

**Mr. Victor Marchand:** He is represented by an advocate from the Bureau of Pensions Advocates. They are public servants who work full time for the Veterans Affairs Department. That program has been in place for 90 years. Advocates would represent veterans returning from the World War I in their dealings with the Department. They're professionals...

**Mr. Gilles-A. Perron:** ... paid by the Veterans Affairs Department?

**Mr. Victor Marchand:** Yes.

**Mr. Gilles-A. Perron:** Are you also paid by the Department?

**Mr. Victor Marchand:** That's a budgetary matter. In actual fact, I am paid by the Treasury Board, acting on behalf of the Governor in Council. From a financial standpoint, I imagine my salary is paid out of the budget of the Veterans Affairs Department, but ultimately, it comes from the Governor in Council, as does your own.

**Mr. Gilles-A. Perron:** Pardon my sense of observation, but I find it rather unusual that a little while ago, a representative sitting behind you — and I have nothing against the gentleman behind — who is supposed to be defending the interests of the Canadian Legion, was actually defending the interests of Veterans Affairs by whispering the answer in your ear.

**Mr. Victor Marchand:** No. He simply wanted a copy of my opening statement.

**Mr. Gilles-A. Perron:** No, he whispered an answer regarding the number of lawyers. He said 19, or something like that. I saw what happened. I don't understand.

**Mr. Victor Marchand:** You're talking about the number of lawyers who were hired. There are six of them. I wasn't sure. But I can tell you we have hired six lawyers.

**The Chair:** Pardon me for interrupting.

[English]

We have reached the end of the seven minutes, spirited as it was, so now Mr. Stoffer has his five minutes.

**Mr. Peter Stoffer (Sackville—Eastern Shore, NDP):** Thank you, Mr. Chair, and thank you, folks, for your presentation.

One of the biggest concerns that I have is when someone makes an appeal, usually.... The biggest one I have is for hearing loss, an

aging veteran with hearing loss. Of course they are told repeatedly, and I have seen the documents at the table, that the government is correct in its assumption that it is a 5% disability or a 10% disability and that is it.

In order to have changes to that table of disabilities, if I have called it that correctly, who has the authority to change it in order to increase the benefit to aging veterans in that regard? Do you have the ability to do that, or does the deputy minister? Is it the minister or is it Parliament that has the final decision on changing the amounts that are in that table of disabilities to assist veterans and their families?

• (1625)

**Mr. Victor Marchand:** Section 35 of the Pension Act provides for the publication of guidelines for the assessment of disabilities. Among those disabilities is the hearing loss disability, and there are criteria in relation to the hearing loss as reported by an audiogram that set formally the amount of compensation received by the individual. It is under the responsibility of the Minister of Veterans Affairs.

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

On page 7 of your presentation, you talked about Hall v. Attorney General of Canada.

**Mr. Victor Marchand:** Yes.

**Mr. Peter Stoffer:** I can see this paragraph coming back to haunt an awful lot of people now who are concerned about the Agent Orange and Agent Purple concerns at Gagetown, where it says very clearly that the causal linkage must be established.

**Mr. Victor Marchand:** Yes.

**Mr. Peter Stoffer:** The minister and others have indicated that the benefit of the doubt for that particular case—when they were in opposition—should play as a major factor in terms of possible compensation down the road. I don't know how many people we're talking about; we're talking about a large number of people.

Would the minister himself be able to say very clearly that he or his department is going to use the benefit-of-the-doubt analysis over and above what you normally have in order to achieve some form of compensation for people who are claiming they suffer from Agent Orange or Agent Purple?

The concern I have is about someone who was at Gagetown a week after the spraying occurred, smoked for 45 years, and has cancer. Some of that cancer may or may not be linked to Agent Orange, but it also may be linked to his smoking concerns. How then would you be able to adjudicate some sort of compensation package for him if he claims that his cancer was caused because of Agent Orange forty-some years ago? That's going to be quite difficult to do, isn't it?

**Mr. Victor Marchand:** I can't answer for the minister on the reasons or the logic he would use to ascertain whether compensation should be given to people who have been exposed to Agent Orange. All I can talk to is what the board under the law will utilize, as far as onus of evidence is required, under the Pension Act.

**Mr. Peter Stoffer:** I guess I should rephrase my question. How many cases of Agent Orange or Agent Purple in Gagetown has your board looked at?

**Mr. Victor Marchand:** We've looked at somewhere in the area of a dozen cases, but they are claims for disability pension. I know of certain cases that were granted, but others that were turned down.

I cannot speak to specific cases. Unfortunately, that is beyond my purview.

• (1630)

**Mr. Peter Stoffer:** I understand.

There has been a fair amount of talk in this committee and from others about the possibility of having a position for an ombudsman for veterans affairs similar to the ombudsman for the military. This office would obviously advocate concerns, or question policies or directions the government is making in that particular department.

Do you see an ombudsman of veterans affairs as someone who would be able to assist you in some of the work you do, or would it be someone you probably wouldn't have many dealings with because you can only go by what the legislation states you can or cannot do?

**Mr. Victor Marchand:** The board has exclusive jurisdiction to hear appeals or review decisions based on disability pensions. In my humble opinion, the ombudsman could not look into how the board looks at a given file or interfere with the board, any more than the minister can. We are an independent, quasi-judicial board.

Where the ombudsman could be useful to the board would be, for instance, in saying, "I've looked at your whole process, and you're taking too long to hear cases. I suggest you make the following corrections." The ombudsman could assist us in looking at the overall picture and recommend some avenues for correction.

What... I'm sorry?

**The Chair:** I just want to let Mr. Stoffer know we are over the time. I will let you finish your answer, sir.

**Mr. Victor Marchand:** Finally, under modernization there are a multiplicity of programs now—there are at least five—and only one is appealable to the board. So the ombudsman will be useful, I suspect, to a certain degree.

**The Chair:** All right. Thank you.

I'm trying to assess who is the keenest of my Conservative colleagues.

Okay, Mr. Shipley, you've been taking a lot of notes.

**Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC):** No, I'm just familiarizing myself.

I have a couple of things. I'm new on the committee and new to the legislature, and I am finding it very interesting. When I was out campaigning for my first time, I certainly came across individuals who seemed to be struggling a bit with the decision that was brought up about the 58% or 59%. That obviously is a concern. I just want to reiterate that it seemed to be a concern of the department. Then, when you have the board, that large change from what has gone forward, it seems to have raised an issue with some folks I have talked to.

Could I go back? We have a number of vacancies and I'm wondering how we advertise. How do we make sure that it isn't who the person knows and that it's actually a person who should be there,

who has the merit, who is not politically tied but has the right credentials—the medical and whatever—and that those individuals are professional people? How can we make sure? Is there a process in place, and can you explain how that actually happens?

**Mr. Victor Marchand:** Yes, sir, there is a process, and it's been in place since December 2004. In order to recruit the largest possible number of candidates, there are obvious things you can do. You can publicize, advertise in newspapers or in the official *Canada Gazette*. Some people actually do read it, apparently. You can have a standing offer of employment on the website. There are a variety of ways you can attract people.

The process, as it exists now, has gone through at least three cycles—two and a half, in fact. The initial step is to file an application. There is only one door to have your candidacy considered for a position. Then there is a committee that does pre-selection. The names of members are publicized on the website. They will basically verify two of the basic criteria, and that is experience and education.

Then there's a written exam. The candidates are provided with an extract of the law and a modernization publication, and the answers are there to the written exam. The exam also looks at the capacity of the individual to write and their reasoning, so there is a competency check.

If the exam is successful, there is the interview committee, which basically verifies the skills and abilities of the individual. This job has a lot of skills and abilities. When people show up, they must feel confident that the individual can communicate properly and will manage the case and the evidence correctly and rigorously. The individual needs the ability to communicate, to decide, and to write the decision. That's what the interview committee does.

Once this whole process is through, the name of the individual is placed on a list of qualified candidates. The board then provides the minister with its operational requirements. The decision to appoint someone is at the discretion of the minister.

• (1635)

**Mr. Bev Shipley:** We have a number of vacancies right now, so we'll be looking. What time are we looking at from the start of that process until there is someone sitting at a hearing?

Secondly, as mentioned earlier, we have vacancies of 10 or 11 people. Do you fill those with temporary people? You talked earlier about using temporary people. Is that how you're managing to keep the caseloads moving along?

**Mr. Victor Marchand:** No. In order to meet the hearings right now, our best tactic has been to hold single-member panels, but it requires the consent of the advocates and the clients. We've been able to maintain somewhere in the area of six to eight hearings per week.

**Mr. Bev Shipley:** If that is acceptable—and that's good—why is it not the practice?

**Mr. Victor Marchand:** It's because it is an incredibly heavy workload. I wouldn't ask my administrative judges or my members to keep that rhythm up too long. I have members who have heard over 800 cases this year. The work these people have put in is absolutely astonishing. It is incredibly impressive.

By law, there is a maximum of 29 permanent members. You can have as many temporary members as you wish.

Ultimately, I think the way to approach the appointments is to make sure that the individuals come on board for at least two years, and then they could proceed to a three-year appointment. Finally, I would top it off with a four-year appointment, so that the individual serves for a total of nine years on the board. I think that would be the ideal mini-career plan.

It shuts off the circle of the selection process. The individual can count on a mini-career in the job, where he'll be interested in improving himself in training and do even better at what he does.

**Mr. Bev Shipley:** Maybe I missed this, but what is the timeframe in terms of someone putting a name in now?

**Mr. Victor Marchand:** The cycle lasts about four months from application to screening, to a written exam, to interview, and to name on list. The training lasts at least nine weeks, and then you can expect the individual to be in a hearing room hearing a case.

**The Chair:** All right.

So now we have made a full rotation on the first round. We are back to the Liberal Party, and I believe Mr. Valley is up next.

**Mr. Roger Valley (Kenora, Lib.):** Thank you, Mr. Chair.

And thank you to Mr. Marchand and Ms. Sharkey.

Back to the board—and I guess you will know where a lot of our questions are coming from. I thought I heard something in an answer to Mr. Perron that I thought I'd better check. I'm wondering about the make-up of the board. Are these retired professionals? Are they all of one profession? I heard the number 19 used. Do we have 19 full-time members?

I was known on the last committee—and I should warn the chair that I had to be chastised a number of times—for making comments about lawyers. So please tell me they are not 19 lawyers.

**Mr. Victor Marchand:** No, they are not. I think the ideal composition is a mixture of individuals from varying backgrounds: from the health, legal, military, and business fields, and from public life.

To be more precise, presently we have 17 permanent and 2 temporary members.

**Mr. Roger Valley:** Thank you.

I only made that crack about lawyers because you opened the door.

**Mr. Victor Marchand:** I know. I am sorry. I shouldn't have.

**Mr. Roger Valley:** You mentioned something that intrigued me with the appeals, which happen only in Charlottetown. Where I come from, we are hundreds of miles from any military base, so the

people I see are Second World War and Korean War vets. Quite often, they are getting to be elderly.

So we know now through your presentation—and thank you for that—that the appeals are held only in Charlottetown, and they can attend at their own cost.

I think it was Ms. Sharkey's information that you work with representatives in 34 different cities. I am wondering if there has been any thought to holding the appeal back in the community where it is convenient and at a scheduling time that's convenient.

I congratulate you on your efforts to get a decision made within 30 days, but these people in my riding tend to be elderly. They may not have the means to get to Charlottetown when they want, and perhaps the way I should put it is that they do not have faith in the system.

Regardless of all the good work you do, they can't get to Charlottetown. They can't be part of the appeal, and they don't understand that.

Has there been any thought to lengthening the time if the appellant wants to attend, so that you can get to the community that's convenient to him or her? With 35 locations across Canada, there would probably be one that is fairly close to the individual in question.

•(1640)

**Mr. Victor Marchand:** Yes, there has been thought given to that. But logistically, it is extremely complex and it would also be extremely expensive.

One avenue for the persons who can't travel to Charlottetown is to listen in on the presentation being made by the advocate. The second avenue is to make sure they get a copy of the written submission. On appeal, everything the lawyer does is written down so the individual can know what is being presented in his name.

There are some appeal hearings that are done in locations other than Charlottetown, but unfortunately that is exceptional.

I think the important hearing—the crucial one—is the review hearing at which the vet can testify and tell his story to the board members. That is the important one.

The appeal hearing is often very technical and can be put down on paper from an argumentative point of view. In any event, by law, the veteran can't testify at the appeal hearing. From a judicial point of view, the usefulness of his presence is relatively limited.

**Mr. Roger Valley:** I understand that, but it's difficult to make that aging veteran understand that issue.

**Mr. Victor Marchand:** I know it is.

**Mr. Roger Valley:** I do have one quite important question I want to ask you, but very quickly. What I've heard, and I'm not saying it's fair in any way, is that they go to the appeal and a decision is rendered very quickly. They're dealing with government here and they're worried that the government takes forever. Your department does its job, they get a negative answer back within 30 days, and they say the government didn't even take the time to listen to them. I'm simply passing that on to you. That's what we face when we face them in our constituencies. It may not be fair, but that's what they think, because they automatically think government is going to be slow.

But my question that I want to get time for you to answer is, with your knowledge and background and your understanding of the situation of how the board works and why it works, do you ever get to make recommendations on how you're going to streamline this out of the department? Did I miss that in the submission somewhere? You made a very good point that you're separate from the department.

**Mr. Victor Marchand:** Yes, sir.

**Mr. Roger Valley:** But do you get input into the department to change? Have the dynamics changed from the issue decades ago of Agent Orange to new issues that we face in modern warfare right now? Do you actually get input into how to make these changes so we don't have so many appeals?

**Mr. Victor Marchand:** The only thing I should do, and I do, is try to influence the quality of the work that comes to the board for review. That I can surely participate in and have made recommendations to the department. I need a good file. I need a good first-level decision. I can work better that way: "This is what I suggest you do", and the department can do it or not. I can only recommend things that would facilitate the job of the board.

**Mr. Roger Valley:** Thank you.

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

Mr. Gaudet.

[*Translation*]

**Mr. Roger Gaudet (Montcalm, BQ):** Thank you, Mr. Chairman.

I would like you to explain what you do. I am a new member of the Standing Committee on Veterans Affairs...

**Mr. Gilles-A. Perron:** Even though you're old!

**Mr. Roger Gaudet:** Even though I'm old.

I would like to know what you do. It seems you handle 8 000 cases a year. You have a staff of 80 and you adjudicate some 6 380 claims. Tell me what you do; it intrigues me.

**Mr. Victor Marchand:** Sure.

**Mr. Roger Gaudet:** You say a World War I veteran came back to see you. It sounds like there is a problem.

**Mr. Victor Marchand:** I don't believe there are any more World War I veterans.

**Mr. Roger Gaudet:** I hope so, but there must be a number of World War II veterans left. And there has to be a problem if they need to come back to the Board five or ten times. There are no criteria in place.

This reminds me of the young man who returned from the war missing both his legs. That must be an easy case to adjudicate.

**Mr. Victor Marchand:** To be perfectly frank, I'd say we rarely see such cases.

**Mr. Roger Gaudet:** What cases do you see? Can you name some of them?

**Mr. Victor Marchand:** I can give you examples. We see claims from World War II veterans, claims for...

**Mr. Roger Gaudet:** What kind of claims? That's what I want to know.

**Mr. Victor Marchand:** Most claims deal with orthopedic problems involving the knees, the back, ankles or shoulders. Then there are claims that relate to psychological or psychiatric problems associated with their injuries, or post-traumatic stress syndrome. That is the second major category. Finally, there are claims filed for illnesses linked to overuse of the muscles, soft tissue, or for illnesses that people have contracted.

•(1645)

**Mr. Roger Gaudet:** And what are they asking for?

**Mr. Victor Marchand:** They're asking for us to acknowledge a connection between their illness or disability and their military service.

**Mr. Roger Gaudet:** They could go to court, but what would they get?

**Mr. Victor Marchand:** A disability pension.

**Mr. Roger Gaudet:** But they already have one.

**Mr. Victor Marchand:** No, not necessarily; not if they come to the Board, because the Department...

**Mr. Roger Gaudet:** Are they veterans or aren't they? If I'm not a veteran, I have no right to appeal to the Board.

**Mr. Victor Marchand:** No.

**Mr. Roger Gaudet:** If I didn't...

**Mr. Victor Marchand:** You must have worked for the Canadian Armed Forces.

**Mr. Roger Gaudet:** So, at the age of 80, 40 years later, someone all of a sudden discovers that he has a specific illness. If he was in the army at the age of 17 or 20, he can come to you. There is something that doesn't quite jibe in all of this. I have a big problem with it.

**Mr. Victor Marchand:** In many cases, the individual filed a claim a number of years previously but his claim was refused. So he comes back and asks to have his case reviewed.

Indeed, some people have come to see us with a colleague to have their case reviewed so that they can receive a disability pension for a knee injury that they received during World War II. There are even veterans with shell injuries who have come to the Board. They come to us and say...

**Mr. Roger Gaudet:** And they have never received a pension?

**Mr. Victor Marchand:** They never received a pension because they never claimed one.

**Mr. Roger Gaudet:** That is certainly a problem.

**Mr. Victor Marchand:** It's another generation.

**Mr. Roger Gaudet:** I know it's another generation, but that doesn't change anything. In that case, why do we have veterans. The fact is that we have had veterans for some 90 years. I don't understand why, when someone leaves the Armed Forces, he is not made aware of these things.

**Mr. Victor Marchand:** In my opinion, veterans are quite familiar with the compensation system.

**Mr. Roger Gaudet:** At the age of 80, 40 years later, someone decides to file a pension claim?

**Mr. Victor Marchand:** Why not? Good for them.

**Mr. Roger Gaudet:** I have difficulty understanding that. I agree that everyone is entitled to receive services, but 40 years later, I see that as a problem. I don't know whether it's because we're trying to find work for people or what. But that's only my personal opinion.

You say that you have a staff of 80 to adjudicate 8 000 cases a year?

**Mr. Victor Marchand:** No, 6 500. We only hear appeals.

All veterans seeking a disability pension must first go through the Department. In these cases, the individual completes the claim form and asks to receive a pension for a disability connected to his military service. Then the Department makes a decision. They review the file, they look at all the files at National Defence, they go through everything with a fine toothed comb and check to see whether the individual has in fact been injured and whether there is a report to prove it.

After that, the departmental official renders a decision. For example, he may decide he has seen nothing in the file or that the veteran has been unable to prove that he is having problems with his knee, his back, or whatever. There are a number of possibilities. Every individual has evidence, claims and a story to tell. But it is the official at the Department that renders the decision. He sends a letter to the veteran saying that he is sorry, but the individual has not proven the connection between his knee problem and his military service. If the veteran is not satisfied with that decision, it is referred to Mr. Marchand at the Veterans Review and Appeal Board.

There are 30 adjudicators at the Board. At the present time, however, there are only 19. So, the veteran comes to us and we hear his case. We ask him to prove his allegations. We provide him with legal counsel, at our expense. That legal counsel has represented many people with similar cases. He will do whatever he can to secure a disability pension for that person. Then, we render a decision.

• (1650)

[English]

**The Chair:** *Pardon.* We already went over the time limit.

I think Mr. Mayes indicated that he was next for the Conservative Party.

**Mr. Colin Mayes (Okanagan—Shuswap, CPC):** Thank you, Mr. Chair.

Through you to Mr. Marchand, I'm not concerned about the competence of the board or how the board is selected. I am more interested in the fact that you have 6,000 appeals. That's a tremendous workload. Is the workload a result of the criteria for compensation or benefits? Are the criteria too vague, and they can't make a good decision in the first interaction with the veteran who is looking for compensation from the department?

**Mr. Victor Marchand:** That's a good one.

The sheer number in itself creates the workload. I think there are 36,000 claims presently registered with the department. I don't know what creates this need or this quantity of applications; I honestly couldn't tell you. But over the years, we've had years when there were 20,000 or 30,000 claims put forward.

**Mr. Colin Mayes:** Would part of it be because of the aging population of the veterans? I know we have a number of veterans. I think the average age of a veteran is 37 years. Is that correct?

**Mr. Victor Marchand:** It is low.

**Mr. Colin Mayes:** Some of the older veterans would maybe have more of a reason to look for benefits or compensation.

**Mr. Victor Marchand:** Yes, and the regular force, the younger military, are more assertive and have a greater knowledge of what their rights are. The more power to them, if they know where to file for and obtain a disability pension.

**Mr. Colin Mayes:** To get back to the question, do you think that if the regulations or the criteria for compensation and benefits were a little more detailed, it would cut down on the number of appeals?

**Mr. Victor Marchand:** I don't think the objective should be to cut down or circumvent or reduce or increase. I think the objective should be that we all know what we're doing. These are the rules; these are the criteria, and if you're in, you're in. If you're not, you're not.

Back in 1999, the Supreme Court was looking at all the disability compensation systems in the country, including disability pensions under the CPP, the Canadian Pension Commission. The Supreme Court reminded everybody that the Pension Act and the disability compensation for the military is an event-based system—like workers' compensation, for instance. In other words, you can't just walk up to the department, tell them you've got a disability, and ask for compensation. You have to prove there was an incident, an event—that something happened during your service that can be linked to your disability.

**Mr. Colin Mayes:** Does the department review your appeals and set that as some sort of precedent for the cases it's dealing with on a daily basis?

**Mr. Victor Marchand:** I'm told so, sir.

**Mr. Colin Mayes:** It would be important that they do so.

**Mr. Victor Marchand:** Yes, indeed—and we have the power, for instance, to make interpretive decisions, which we did about a year and a half ago. We clarified the concept of new evidence on reconsideration and built into the system due diligence, so that people understand that it's important, when they file or claim for something, that they come forward prepared with all the evidence, reasons, and justifications they have up front, so that we can deal with the problem up front.

**Mr. Colin Mayes:** Thank you.

Thank you, Mr. Chair.

**The Chair:** Now we're over to Mr. Rota.

• (1655)

**Mr. Anthony Rota:** Actually, we swapped.

**The Chair:** Oh, you swapped? I see.

**Mr. Brent St. Denis:** We swapped, but if I don't use up all my time, it will go back to Anthony.

Thank you, Mr. Chair. Thank you, witnesses, for being here.

Among the many very interesting points that have come up this afternoon, what stood out to me was your reference on page 4 of your notes: “The change in our applicant profile from the traditional war veteran to the younger Canadian Forces members presents new challenges for the Board”. We've all had many conversations with veterans from the Second World War, and it brought into sharp focus a conversation I've had a few times with one of my elderly constituents in the little town of Massey in my northern Ontario riding.

He, for years and years, has been trying to get his disability claim for a knee injury recognized and accepted. He described for me the context, so when I read this, I thought there sure is a change in the context from the early days of World War II to these new recruits going in. Often—most times—they are teenaged boys or, I should say, young men. He described being injured in training. He had an injury to his knee. I believe he's had surgery and I'm not sure about a knee replacement, but it bothered him his whole life.

He recounted the peer pressure—in fairness it was a challenging time—to just go ahead and put up with the pain and go out marching, and the pressure not to be seen as a wimp or as a weakling, which of course he was not and is not. He suffered through it, but to pay the price, in his mind, later on.

This is not to question the decisions on this particular case, because I'm not going to give you his name, of course, but are the board members trained to make that paradigm shift from the 1940s to today? When they're dealing with cases now, as you mentioned yourself, Mr. Marchand, the appellants are much more knowledgeable about the rules and their rights. When you're a young teenaged man in the 1940s—or maybe shortly after the war, in the late 1940s or early 1950s—making these claims, your degree of sophistication is much lower. I know this is acknowledged, but is it actually in the training for board members? Are they told, when they're dealing with somebody from World War II, to look at it this way? Not that you're being unfair to somebody from modern times, but it was a different time. I would like your comments on that. I find it interesting.

**Mr. Victor Marchand:** Of course, you're talking about the individual who wouldn't want to pass off as being a malingerer.

**Mr. Brent St. Denis:** Right. He was a brave young soldier who got hurt in training, probably in the first days or weeks. Imagine, as my colleague here said, going home with that and what people would think of you. It was a very tough time.

**Mr. Victor Marchand:** Indeed it is.

When you're trying to ascertain the evidentiary foundation of an event occurring in any given case, there are all sorts of evidentiary rules and avenues offered to you. One is obviously a documented report on file of an injury. That's an example of something that is extremely useful. The military are pretty good at that, at documenting what they call the “medical attendance records”. Often you will find notes from the doctor, way back to the 1940s: “Showed up with a bad knee today...gave him an ointment...will be okay.”

If an individual didn't want to go on sick parade because he wouldn't pass off as a malingerer, he can obviously maintain that and testify to that at the hearing. That's where the board member's professional training at ascertaining whether or not he's telling the truth becomes paramount. That's why you have a hearing sometimes, because the evidence is not there.

So the training of the board member is to look at the documentary reported accident claims that are on file, what the hard paper tells you, and if you don't have that paperwork, then you apply what the law tells you to apply, and that's the benefit of the doubt, by which the circumstances of the accident explain why there's no documentary report or injury report, and if you believe the individual who's testifying in front of you as to the circumstances of his injury, once that is ascertained, there is link to the present-day disability.

So it's experience. It's training. It's something that all board members face, and must face, and are trained to deal with.

• (1700)

**Mr. Brent St. Denis:** Thank you.

**The Chair:** Now we'll go to Mrs. Hinton for five minutes.

**Mrs. Betty Hinton (Kamloops—Thompson—Cariboo, CPC):** I'm more than willing to share my time. There are just a few comments I'd like to make, and then perhaps your answers might take up a little more of it.

**Mr. Gilles-A. Perron:** I'll share.

**Mrs. Betty Hinton:** You'll share? Oh, you're so sweet, Gilles.



I think we can agree on one thing, that the objective of both the Department of Veterans Affairs and the Veterans Review and Appeal Board is the same, which is to serve veterans.

**Mr. Victor Marchand:** Exactly.

**Mrs. Betty Hinton:** I think maybe that's something that has been overlooked from time to time, and I'm hoping we're going to get that back on track.

I found Mr. Valley's comments very interesting. I will preface what I'm going to say by saying that some of my best friends are lawyers, so I have nothing against lawyers, but I happen to agree with Mr. Valley that there are some other criteria that should probably be looked at very seriously in appointments. One of those would be military experience, which I think would be extremely helpful. The other would be a health background, so that you could have a better idea of determining how this person in front of you is actually feeling.

The benefit of the doubt was mentioned a couple of times today. I can tell you, I don't speak for the minister, but I can certainly speak for myself, and in my own opinion, the benefit of the doubt is something that is first and foremost. The most important thing we do is to give the benefit of the doubt to veterans who have served their country, when they come and stand in front of us.

The other part is that some of the comments that have been made have been very interesting, too, but I'd like you to tell me whether, in your opinion, with the peacekeeping and the peacemaking missions we're involved in worldwide, you believe that today, in the present time, the record-keeping has improved over, let's say, World War II. I don't imagine there was a whole lot of emphasis put on record-keeping for injuries in World War II, but I would like you to reassure me that this emphasis is currently there with the new veterans.

**Mr. Victor Marchand:** Yes, record-keeping has improved. The board's function, however, is often to rule in the absence of documentary evidence. But I can say that the record-keeping has improved.

**Mrs. Betty Hinton:** Good.

The rest of my time, over here.

**The Chair:** There you go; we have two and a half minutes for our Conservative colleague.

**Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC):** I have just one question. This follows from some of my colleague's questions regarding the huge amount of cases put toward the department, and then, of course, the substantial amount of cases coming for review. Considering as well that the length of time is one of the things that frustrates veterans and causes discomfort, has there been any direct dialogue...?

One thing you said is that one of the things the department can do is give you a good file. But has there been direct dialogue to say that one of the things the department can do is really take a look...? It's a high percentage, 60%, that you reverse a ruling on. There has to be some way to get on the same page so that the percentage isn't as high. Has there been some direct dialogue about that?

**Mr. Victor Marchand:** In its decisions, the board will regularly say, "Sufficient evidence was provided", or "The story is credible, and I find in favour of the department." So there's a hearing

component that the department will never be able to do, and that's very important to understand, because the variety of cases and the varying levels of evidence brought forward will always be in the board's domain. What I can say—

● (1705)

**Mr. David Sweet:** Okay. I only have about two minutes.

One of the things I wanted to mention is the passport application, for example. I find those rather intriguing. It has a separate sheet that says, "On question 2, do this."

I'm just wondering, is the application process robust enough that the veteran understands that causal representation is required? Could that be bolstered somewhat, to reduce that amount?

**Mr. Victor Marchand:** I think the best thing the department can do is try to get it right and put together whatever means—claims, engineering, adjustments—they can fit in from a management point of view.

As a CEO of a board, that's what I would say: "People, get it right. Come and tell me why you're not getting it right, and we'll try to fix it."

**The Chair:** Time's up; sorry.

Normally we'd be giving another five minutes to our NDP representative, but since he's not here, and Mr. Rota hasn't spoken yet, I wonder if the committee would allow Mr. Rota the opportunity.

**Some hon. members:** Agreed.

**The Chair:** Mr. Rota.

**Mr. Anthony Rota:** Thank you, Mr. Chair. I really do appreciate that.

**Mr. Gilles-A. Perron:** You have to go and sit in that spot now.

**Some hon. members:** Oh, oh!

**Mr. Anthony Rota:** I have to go and sit in the NDP spot? I don't think so.

I had the opportunity to visit Charlottetown last summer, and I saw the operations. I was very impressed with the amount of feeling that goes into it. A lot of caring goes into the decisions. They're not taken haphazardly.

When you have an appeal, though, I guess one of the points that was brought up earlier was the fact that it's another generation. It's not the generation that maybe you know, that I know, that it's okay to do this over the phone, or it's okay to do this via video conference. It's the personal touch, and that's a concern that keeps coming up over and over again in the riding: "I talked to the guy on the phone and I don't know what he looks like." That eye contact means a lot.

Now, failing to have that, we can look at the people who are on the board and the representation they give. I looked at the map on page 12, the one that shows the distribution of the members. If you can't relate to that person because you can't see them, sometimes it helps to know that they're from the same region you're in, or the same area, so that there is that bit of understanding. According to the distribution on the map, we have 19 members, but the west is not represented at all. There are none from Alberta, none from Manitoba, none from Saskatchewan. Ontario, which is probably the most populous province, only has four. There are eight out on the east coast, five in Quebec, two in British Columbia, and none in the territories. There are ten spaces that have to be filled.

What are the timelines for filling those spaces, and how representative will they be of the Canadian population, spread across? We are one strong and united country, but we do have regional differences, and it would seem that someone from that area would be able to relate better to someone they know. Is that anything that comes into consideration, as opposed to just a very cold bureaucratic front that people come up against?

I'm looking for that connection between the person who's representing and the person who's being represented.

**Mr. Victor Marchand:** The board member who has a cold bureaucratic front is in difficulty with me. I want board members who have the skills and the working habits that make them amicable and where vets feel open and at ease with them. That's the objective.

To have the same board members in the same areas constantly is not a good idea. You need to shuffle the deck once in a while. Otherwise, you have certain types of decisions rendered in one area and another type in another, depending on the advocacy, depending on the nature of claims. So it is important to mix the board members coast to coast, have a systematic mixing of the people.

I agree that the complement is low out west. Our foremost priority is to fill the complement out west. I am hopeful that shortly we will have people out there.

Manitoba is not very busy, nor is Saskatchewan from a review hearing request accountability point of view. Alberta is busy and so is B.C.

What you must remember about the Atlantic regions is that board members in the Atlantic regions handle both review and appeals, so you will always have a higher number of people based in Charlottetown to handle both reviews and appeals.

There is a concern about bilingual capacity also. I must maintain always a regular complement of fully bilingual board members to handle Quebec, eastern Ontario, and the Atlantic provinces. So it is a juggling act sometimes, to get those members out and hearing cases. Our low number does not help, but I am very confident that it will be corrected shortly.

● (1710)

**The Chair:** My apologies, Mr. Rota, we are out of time.

The next rotation will be five minutes for the Conservative Party. Mr. Sweet, since you only had two and a half minutes last time, I will give you first dibs if you so wish.

**Mr. David Sweet:** No. My question was answered.

**The Chair:** Do we have any others on the Conservative side? Mr. Shipley.

**Mr. Bev Shipley:** I want to go back a little. When you're talking about the number, it is actually a staggering number of appeals that you hear each year and go through. When I first read that, it is actually a staggering amount that you cover. Having been involved in municipal work, where municipal boards have been involved, I know the importance of having the right people on them.

In terms of Charlottetown, we have these people all over the country who can't actually go. With technology the way it is now, is there not a way where these people could go to a major city and, through technology, video and whatever, have something in our offices in these major cities where they do go from time to time? Is there any value in that sort of discussion?

I am wondering also, because of the numbers, what is the backlog?

**Mr. Victor Marchand:** To answer your first question, the high-tech video conferencing stuff, I call it, people aren't too excited about that. People really don't like the video conference way of doing things. People are like that. They want a hearing. They want to see the guy 10 feet in front of them. They want to see him sweat, smile, or blink.

**Mr. Bev Shipley:** But if he can't be there....

**Mr. Victor Marchand:** I know, but we can't force them to show up at a video conference room.

The telephone system works relatively better than the video conference system.

On the backlog, there are presently twice as many cases pending at the board than there were last year. It's as simple as that.

**Mr. Bev Shipley:** Has that been ongoing, that they're going to keep moving ahead of us, faster than you can deal with them?

**Mr. Victor Marchand:** The plan for the board is simple: it's to do as many as we can with what we have.

The board's priority is to be fast, fair, and friendly, and we're going to try to do it no matter what.

**The Chair:** There are two and a half minutes for the Conservative side. Do you have a question?

**Mrs. Betty Hinton:** It's not really a question. It's just some thoughts that are floating through my head.

A number of us sitting around this board table were on the veterans affairs subcommittee last year, and we heard from an awful lot of constituents and from an awful lot of veterans across the country about their concerns. I think everyone at this table is very concerned about what's happening, and we want to move things forward as well.

I wonder, do you have any sort of feel at this point in time, with the change in government, whether there have been any different thought processes about fast-tracking, speeding things up, anything like that, or are you in a position to even know that?

• (1715)

**Mr. Victor Marchand:** I'm not privy to any sort of strategic plan or new strategic plan with regard to moving the backlog.

What I can attest is.... Any government's determination to make sure the vets don't wait.... And I see and I sense this in the new government, clearly.

For the board, it's a question of getting its complement back up to its regular force using the new appointment process, to make sure we meet what we know will be a great demand for review hearings this fall. The Bureau of Pension Advocates has already advised us that they want at least eight boards per week this fall, and we want to put those board members to work.

**Mrs. Betty Hinton:** Can I ask you one other really quick question? Again, if you haven't sat on this board before, you may not be aware of it. What's the approximate cost of your department?

**Mr. Victor Marchand:** It's not approximate; it's \$13.1 million. We get \$9.4 million to work with. Our unit cost has to be the lowest of all the administrative tribunals in this country, I think. The last time I calculated it, I merely divided \$9.2 million by 6,500 cases, and it was something in the area of \$1,400 per decision.

**Mrs. Betty Hinton:** Thank you.

**Mr. Victor Marchand:** Workers' compensation is \$5,000, \$3,000. We are flying on fumes, if you ask me.

**Mrs. Betty Hinton:** I only raised the question....

Oh sorry, my time's up.

**The Chair:** Now over to Mr. Perron.

[Translation]

**Mr. Gilles-A. Perron:** Should I call you Mr. Marchand or "Maitre" Marchand?

**Mr. Victor Marchand:** Mister is fine.

**Mr. Gilles-A. Perron:** You seem to be a really good salesman.

There is another question that concerns me. As you know, under the new Veterans Charter, veterans have the right to receive lump-sum payments for the purposes of disability compensation.

**Mr. Victor Marchand:** Yes.

**Mr. Gilles-A. Perron:** Are the former version and new version of the Charter similar? Do you have the same Charter as the Department? Have major changes been made? How many cases will you have to adjudicate? I have the feeling there will be a lot of appeals and that the decisions won't necessarily suit people. You may offer \$100,000 to someone who wants \$150,000, or \$10,000 to someone who wants \$75,000. We're talking about money. So, the

appeals will increase the number of cases the Board has to hear over the coming year.

I'd be interested in hearing your comments on that.

**Mr. Victor Marchand:** There is no doubt the new Charter offers an entire range of new services that did not exist previously. The new compensation system focusses on people's well-being, as opposed to lump sum payments.

On the other hand, the new system does provide for lump-sum payments for suffering, pain and inconvenience, and these payments are made in the form of a single, one-time amount, rather than a short- or long-term disability pension. Under program modernization, that part can be appealed to the Board.

So, we will indeed have new cases and new claims.

**Mr. Gilles-A. Perron:** Do you have a table setting out the amount paid for a broken knee, a torn-off ear or other injuries?

• (1720)

**Mr. Victor Marchand:** Yes, the Table of Disabilities.

**Mr. Gilles-A. Perron:** Do you have that table?

**Mr. Victor Marchand:** I don't, but you can find it on the Department's website. It's easy to access and brand new, Mr. Perron. A new table was published on April 1, 2006.

**Mr. Gilles-A. Perron:** It's on the Department's website?

**Mr. Victor Marchand:** Yes, on the Department of Veterans Affairs website, under Table of Disabilities.

**Mr. Gilles-A. Perron:** Good. I thought you were talking about your own organization. I'm having a lot of trouble distinguishing you from the Department of Veterans Affairs. I would so like to be able to separate the two of you.

**Mr. Victor Marchand:** Would you like to move us?

**Mr. Gilles-A. Perron:** No.

I would like to pass on some of the comments I've been hearing, and tell it straight from the heart.

**Mr. Victor Marchand:** Oh, yes!

**Mr. Gilles-A. Perron:** There are people suffering from post-traumatic stress syndrome who come to see me at my office, including members of the Armed Forces. Perhaps their view is not an accurate one — I am not here to judge — but these people tell me that when they go to the Department of Veterans Affairs, they are represented by people in the Department and have the sense that they are the underdogs in the system, to use their term. If they don't agree with the decision, they appeal. Once again, government or departmental employees — I'm talking about you — hear their arguments. They tell me that even the lawyers are paid by the Department.

Veterans who are represented before the Board have the feeling they are the underdogs. When they're represented in the Federal Court, again they have the sense that they are the underdogs having to fight the big federal machine. These are the veterans themselves telling me this.

For that reason, I tend to think that if your Board came within the purview of the Department of Justice, rather than the Department of Veterans Affairs, people might have a different perspective. It might not change the decisions in any way, but at least there would be the appearance that average Canadians and veterans were being treated fairly.

I don't know whether you are understanding my message or my cry from my heart. I'm not criticizing here. This is what people have told me and I'm only passing that along to you. I have tried to describe how they feel about their dealings with the Department of Veterans Affairs, the Board, the Federal Court, the Appeal Court...

[English]

**The Chair:** *Pardon.*

[Translation]

**Mr. Gilles-A. Perron:** Thank you. Those were meant to be friendly comments.

[English]

**The Chair:** We're at time.

We'll allow Mr. Marchand a chance to respond.

[Translation]

**Mr. Victor Marchand:** There is no doubt that believing justice has been done is just as important as justice itself.

**Mr. Gilles-A. Perron:** Yes, exactly.

**Mr. Victor Marchand:** And it will always be a challenge, Mr. Perron, for all adjudicators and judges in this poor world of ours. However, we are always seeking to improve that part of our communication. Indeed, the Members work together regularly to do just that. But it's not an easy task.

**Mr. Gilles-A. Perron:** I agree wholeheartedly with your answer. However, you have a big job ahead of you to sell your idea, because it won't be easy getting rid of that appearance of a conflict of interest.

**Mr. Victor Marchand:** I believe in this Board, and in the tremendous amount of work we are doing, and I also believe in the integrity of my colleagues and the entire staff.

**Mr. Gilles-A. Perron:** That is not in question.

[English]

**The Chair:** All right. It's Liberal time now.

Mr. Valley, go ahead, please.

**Mr. Roger Valley:** Thank you for the opportunity again.

I want to go back to the question I asked. You did provide an answer, but it's clear that we're talking about how you can do it with the resources you have. You have all these cases. I just heard that you have about twice as many cases lining up.

**Mr. Victor Marchand:** Right.

**Mr. Roger Valley:** I prefaced my last question by saying that things are changing in the military. We're at a much higher level of involvement. We're going to have more military personnel. How are we going to get all this done? I know you're confident you're going to fill the board. I don't know what's going to happen to your budget when we get all these people working for us. The fact is that there's going to be an increased caseload. You mentioned already that

younger veterans are more astute at knowing their rights and applying for them and getting what they deserve.

The title of your board is the Veterans Review and Appeal Board. My question is—and I may have heard part of the answer before—how long has it been since we reviewed what you do? I don't suggest that this group be the group to do that. Does it happen internally? Do you have a method or a mechanism to say, "This is the way we've done business for 10 years, and now it's time to change the new reality"? Do you have that flexibility in the system?

You are obviously a forward-thinking person. How do you see dealing with the next five to 10 years? You may not be there. But how do you deal with that big question of how we provide the service needed in the years ahead, knowing that the cases are going to increase, knowing we are going to be more actively participating in the world, knowing all these things and the facts that you're going to have to deal with?

• (1725)

**Mr. Victor Marchand:** The normal life expectancy of a board is about 10 years, I agree. When the new charter was adopted for the board to obtain jurisdiction over modernization, it was a reaffirmation I think on the part of the legislator of the board's existence. For the board and its employees and the members it was an incredible compliment. It was an act of faith that the board could look at this new work and do something good about it.

There are some propositions that are fundamental no matter what happens in the next five or 10 years. I think the system has to remain non-adversarial. It's extremely important for the board to remain that way.

The second thing is to make sure the evidentiary onuses don't vary by way of too much or too prevalent expertise. By that I mean that we don't go into the realm of one expert saying this and another expert saying that and having the board rule between two experts. Always keep a relatively simple medical evidentiary basis that is reasonable. I think that will be extremely important.

The final thing is to reassert the principle of what administrative law has always been, and that is to make sure the people who are in these jobs as board members are people who are dedicated to doing the work they do.

Then you'll have a good recipe.

**Mr. Roger Valley:** I just want to make sure I heard right. Did you say you want the board to remain non-adversarial or that we have to get to that point?

**Mr. Victor Marchand:** No, non-adversarial. Absolutely.

**Mr. Roger Valley:** Is that the position we're in now, or are we heading that way?

**Mr. Victor Marchand:** No, no. We're in that situation now.

**Mr. Roger Valley:** So maintain that.

**Mr. Victor Marchand:** Maintain it.

**Mr. Roger Valley:** I have one last quick question.

You mentioned that what we don't want is to get to where the board has to rule between experts. Have you seen that happen in other cases, in other jurisdictions?

**Mr. Victor Marchand:** Well, the common law courts are regularly faced with that. Workers' compensation boards went into that realm in the eighties and nineties, and their costs and their slowness became so prevalent that they had to scrap complete systems of medical expertise and arbitration. That's extremely important.

**Mr. Roger Valley:** And that's what we want to avoid at all costs?

**Mr. Victor Marchand:** Oh yes. We have to remain reasonable from a medical opinion or expertise point of view.

**Mr. Roger Valley:** Thank you, Mr. Chairman.

**The Chair:** Okay.

Now we're going to move over to the Conservative side. Mr. Mayes, you have it for two minutes, until we wrap up at 5:30.

**Mr. Colin Mayes:** Right. I have just a short question.

I think what Mr. Valley was saying is that there are some structural changes that could be made to make the job easier as we move into the future. For example, would there be a possibility of a two-tier appeal system where you'd have maybe four or five regional appeal boards, and then if that didn't work it could be passed on to the national appeal board? That's one question.

In the United States, what do they do? What is their structure? Is it similar to ours, or is it more complicated? Do you have knowledge of that?

**Mr. Victor Marchand:** Yes, I do.

As far as breaking the system in two is concerned—having an appeal decision, a review decision, a regional system of decisions—I don't necessarily think that can pay off in the long term, because then you'd develop different cultures in the regions and in the levels, for example, "Ah, he's only on review; I'm appeal". I prefer mixing the people up, getting them to see the vets and then sit on appeals. There's a dynamic system involved with your administrative judges.

In 2001, we were in Washington, the DVA. We saw the system. They're the second-biggest department in the U.S. There are 220,000 employees at the U.S. DVA.

● (1730)

**Mr. Colin Mayes:** So quit when you're ahead, eh?

**Mr. Victor Marchand:** But I must admit, when we left, the chairman did ask, "Would you have some suggestions to make to improve our system?"

**Mr. Colin Mayes:** Thank you very much.

**The Chair:** That's the last word.

I would like to thank our guests for appearing today, giving us some background on what they do and some of the things ahead of us, projects that need to be tackled and all of those good things.

We're going to stand adjourned until we next meet on Thursday.

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