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Chair

Mr. Rob Anders

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•(1530)

[English]

The Chair (Mr. Rob Anders (Calgary West, CPC)): Welcome, folks, to yet another meeting of the Standing Committee on Veterans Affairs. We're still doing our study on the veterans ombudsman.

Today we have as our witnesses André Marin, the Ombudsman of Ontario; and Barbara Finlay, the deputy ombudsman and director of operations.

We look forward to your comments, particularly with regard to the structuring of your role and what advice you may have to give us with regard to that in structuring one federally for the veterans.

Generally what happens is that I allow 20 minutes—10 minutes each, or 20 minutes in aggregate, however you wish to split that up—and then afterwards, according to our time allocations, questions by our members.

Monsieur Marin.

Mr. André Marin (Ombudsman of Ontario): Thank you very much, Mr. Chair. It's indeed an honour for me to be here this afternoon. It's a topic that I hold very close to my heart, and I want to say at the outset that I've been extremely impressed by the work this committee has conducted so far and the genuine concern for getting it right and for coming to terms with this position.

I'm the only one who will make an opening statement this afternoon. It will be about 10 or 15 minutes, and then we can go to questions.

[Translation]

I would like to thank the committee for inviting me here this afternoon to tell you my thoughts on the creation of a veterans' ombudsman position.

I have reviewed some of the transcripts of the hearings of this committee. I congratulate each and every one of you for your impartiality and your sincere concern for current and former members of our military forces.

[English]

The government's proposal to create such an office is an important one for our veterans, many of whom have grown disillusioned with their treatment, both at the hands of the Canadian Forces and the Department of Veterans Affairs. Although I appreciate the government's cautiousness in proceeding with the implementation of this commitment and its motivation to get it right from the get-go, I would respectfully submit to this committee that this initiative is,

contrary to some of the self-serving testimony you've heard so far, mostly from Department of Veterans Affairs bureaucrats, neither a costly proposition nor a complex or legally problematic venture.

A bit of history might be useful to understand the evolution, or more appropriately the bastardization in some cases, of the term “ombudsman”. A good example of this testimony was when this committee heard the “expert” testimony of Keith Hillier, the assistant deputy minister at Veterans Affairs, who's in charge of the ombudsman file for the department, during which he professed to you that the term “ombudsman” has “yet to be defined”, as if frozen in a primitive state in a twilight zone somewhere. At times, he spoke of the term as if in flux, capable of morphing into different models, depending on people's competing views.

In fact, what an ombudsman is has been well established since the appointment of the first parliamentary ombudsman, Lars Mannerheim, in Sweden in 1809. It is the role of an ombudsman to investigate citizens' complaints against the administration and to make recommendations to fix maladministration. In order to effectively conduct business, the ombudsman must be independent, impartial, function confidentially, and enjoy a credible investigative process.

•(1535)

[Translation]

Following Sweden's lead, the appointment of an ombudsman became common in the Western world. Citizens and government administrations favouring democracy and good government rightly believed that the appointment of an ombudsman produced fairer and more equitable decision-making and policies.

The creation of Canadian ombudsman offices as checks and balances for bureaucracies started in the late 60s and continued until all but one province had their own offices.

In 1978, a bill was tabled in the House of Commons to create a federal ombudsman. The bill died as a result of an election call and was never revived. The federal government then proceeded with the establishment of commissioners with focussed and specialized jurisdiction, such as the Commissioner of Official Languages or the Information Commissioner. In effect, each acts as a specialized ombudsman overseeing a narrow field of jurisdiction.

[English]

Despite the goodwill that quickly amassed behind the notion of an ombudsman as an administration watchdog, the last decade has not been kind to ombudsmanship. In what some have described as the Americanization of the classical approach, universities and private and public sector organizations increasingly appoint ombudsmen concomitant with slick marketing campaigns as a sign that they care. These positions may have public relations value or be prized as human resources or customer relations assets, but ombudsmen they are not.

The umbrella organization for these entities that call themselves ombudsmen, ombudspersons, ombuds, ombuddies, or similar names is the International Ombudsman Association, the IOA. The IOA publishes standards of practice—which I will refer to as the “ombuddy” model—that in many respects are anathema to sound ombudsmen practices.

For example, the ombudsman, according to article 2.6 of these practice directives, does not recommend solutions, but rather “helps develop a range of responsible options to resolve problems and facilitate discussion to identify the best options”. Ombuds are also encouraged to develop “consistent and standard” practices of shredding and destroying records on a regular basis—article 3.6. The standards of practice admonish that they shall keep “no records containing identifying information on behalf of the organization”. That’s in article 3.5. Another interesting prohibition is against formal investigations, which, according to article 4.5, are strictly forbidden. Not only is this type of ombudsman not in accordance with the classical notion of what it is to be an ombudsman, but it is an affront to all the basic tenets of ombudsmanship.

I suspect that when senior Veterans Affairs bureaucrats speak of the variety of different ombudsman models that exist, they are keeping a door open to the ombuddy model, a door I strongly submit ought to be slammed shut by this committee. Granted, it is tough medicine for bureaucrats to be told by elected representatives that they will be overseen by a watchdog, but to succumb to the ombuddy model would be seen by veterans as the ultimate betrayal of the sacrifices they made for this country.

In my review of the transcripts of witnesses you’ve heard from, what is highlighted is the need to create an ombudsman as a mechanism of voice to give veterans a big group hug and a shoulder to cry on. I haven’t heard of voices from the bureaucracy advocating an empowered statutory office overseeing all aspects of Veterans Affairs, reporting to Parliament or to one of its committees such as this one, with subpoena power, power of entry, and offences provided for lack of cooperation.

My office has enjoyed similar powers for over 30 years over 500 different provincial government ministries, agencies, tribunals, and crown corporations. Any person in Ontario can complain against these bodies to the Ontario ombudsman’s office, and they will have the confidence that their complaint will be thoroughly, independently investigated. Why should we offer any less to the veterans?

● (1540)

[Translation]

What I’ve read of the transcripts of senior officials is a no-can-do, not in my back yard approach that raises imaginary barriers that, if allowed to stand, will defeat the Government’s stated and important commitment to creating an ombudsman for veterans.

For example, you were told by the Chair of the Veterans Review and Appeal Board as well as the Associate Deputy Minister that the Ombudsman could not look at how the Board considers a given file or intervene with the Board as it is an independent, quasi-judicial board. That is a misunderstanding of the role of ombudsman.

There is nothing in our common law that would prevent that kind of intervention. In fact, I oversee all administrative tribunals in Ontario, from the Ontario Human Rights Commission and the Ontario Human Rights Tribunal to the Assessment Review Board. Our office has had all these powers since 1975.

How can the Ombudsman co-exist with the judicial system?

Quite simply, the Ombudsman has only a recommendatory function and not an adjudicative one. The last word will always go to the governmental body to agree or not with the recommendation, while a court decision is binding.

[English]

There also exist umbrella organizations supporting the ombudsman function. The United States Ombudsman Association, or USOA, and the International Ombudsman Institute, or IOI—of which I am North America vice-president, incidentally—pride themselves on being guardians of the legislated and effective ombudsman model.

I have consulted both presidents of these associations in preparation for this appearance. They have asked me to convey to this committee their strong support for a legislated model, with its key characteristics of independence, impartiality, confidentiality, and credible investigations. I have submitted to the clerk originals of letters from these presidents, to become exhibits for this committee. I have distributed to each member of this committee the original English letter, with a French translation.

I will conclude by submitting to you that you are the last ray of hope for veterans, many of whom have simply lost faith in government. The Department of Veterans Affairs has historically strongly opposed the establishment of an ombudsman to look over their shoulder. Now they’re being told by their elected government that they will get one, notwithstanding their philosophical objections. It is now up to you, as a non-partisan committee of Parliament, to help the government shoulder this initiative so that veterans truly have an ally to slay administrative injustice. Do not be inadvertently swayed into supporting what could become a mere facade of an ombudsman’s office.

Thank you, Mr. Chair.

Voices: Hear, hear!

The Chair: You used thirteen minutes. Is there anything Ms. Finlay would like to say at all?

• (1545)

Ms. Barbara Finlay (Deputy Ombudsman, Director of Operations, Ombudsman Ontario): No, I have nothing to add. Thank you.

The Chair: That's fine.

All right, we're going to go over to Mr. Cuzner, for the Liberals.

Mr. Brent St. Denis (Algoma—Manitoulin—Kapusksing, Lib.): My colleague Mr. Cuzner is going to start.

The Chair: He was the first one to indicate.

Mr. Rodger Cuzner (Cape Breton—Canso, Lib.): Thank you very much for the presentation.

I have a couple of questions.

Earlier in the presentation you mentioned something about one of the significant roles and that it's imperative that there be a number or a spectrum. You said that once an offence is found or there's a problem, the ombudsman must have at its disposal a penalty or some type of recourse. What types of tools do you have at your disposal, and which ones have you exercised over the course of your experience?

Mr. André Marin: There are two aspects to that. First of all, you need robust investigative tools to get the job done. By "robust", I mean power of entry, subpoena ability, the power to take testimony under oath, compulsion, cooperation, powers. You need those, on the one hand. I'm not advocating, however, that the role of the ombudsman for Veterans Affairs be anything more than recommendatory in nature.

So you have a robust, powerful investigative authority, backed up by offence provisions for lack of cooperation. Then, in classical ombudsman form, you make your recommendation, but that recommendation will be founded on the rich resources you are able to tap into. Those are the two things that I'm recommending.

The tendency in government, when they're looking at an ombudsman, is to say it's far too abrasive, it's far too offensive, that the people are nice guys, and so on. That's not the point. You don't want to put an ombudsman in the position of having to grovel, of having to arrive hat in hand, asking for you to please give them an answer.

One of the issues I used to have as ombudsman for the military was being told to put in an ATI request. Well, I'm not a member of *The Citizen*, I'm an ombudsman, but then I'd have to make some calls and so on. In the position I have now as ombudsman of Ontario, with subpoena ability, when I write to somebody and I say I require a statement on this, if there's any issue, I say they'll be subpoenaed. It's as simple as that.

So you need robust authoritative of power, but I'm not advocating any more than a recommendatory power in the end. The power of the ombudsman is one of moral suasion, nothing more, and that works.

Mr. Rodger Cuzner: In your experience, have you found...? Has it been your experience that this power that's included in the legislation has been adequate, or has the Office of the Ombudsman

had to go back and recommend changes in legislation in order to carry out your duties or to garner further support? Has that sort of grown, expanded, matured over the period of time that the ombudsman's office has been in place?

Mr. André Marin: No, we enjoy the exact same status as in 1975.

Mr. Rodger Cuzner: In 1975.

Mr. André Marin: Yes.

As ombudsman, what you do is talk softly but carry a big stick. And the stick is the ability to blow the whistle publicly on maladministration. So there are no penalties involved. Your recommendations are merely recommendations, but they have authority because you've reached into an organization, grabbed the evidence and you are articulating it in a convincing fashion.

Mr. Rodger Cuzner: Give me some references as to how many cases you would have ongoing each year. Sort of give me an accounting and the cost of the operation.

Mr. André Marin: First, on the costing of our operation, when I'm reading the transcripts and I see these costs that are thrown about and when you throw all these inflated numbers around, it scares people off and they don't want to provide any power to the office because we don't have the funds.

There was a suggestion that I read in the transcript, for example, that you need to fund the office with \$8 million or \$9 million, and then you'd have to create a parallel office in the department, which would be another \$8 million or \$9 million. I don't know what they're talking about. I oversee all the provincial government, 500 ministries and agencies. There's no shadow organization in the Ontario government to respond to me. So I don't know where....To me, that is again a defeatist approach. Are you going to have a shadow ombudsman's office in the department to keep an eye on the main office? Again, you'd have an overlap in bureaucracies.

We take 24,000 complaints a year in the Ontario ombudsman's office. We have a budget of \$9.6 million to oversee all of those, including dozens and dozens of administrative tribunals. Of our case resolution, 90% is done by using diplomacy and soft skills. I call it the "soft glove" approach. You try to convince, informally, the vast majority of those.

Then we take about six out of the pile to conduct systemic field investigations. These are investigations where you investigate to the core. You interview witnesses. You build transcripts. You'll avail yourself of the formal authorities of the office. We do that in about six cases.

Right now, for example, we're investigating the lottery corporation in Ontario. That is a systemic investigation, because there are issues that have been raised about insiders padding their pockets with winnings that they've fraudulently acquired. So that is a systemic investigation involving billions of dollars in Ontario. That's an example of our formal ways.

Our phones are ringing every day, our Internet, to the tune of 24,000 cases a year.

•(1550)

Mr. Rodger Cuzner: On the cases you're not able to arbitrate or to bring resolution to, or where you feel that due diligence or due process has been pursued, are there a fair number of cases where the client or the person putting forward the complaint would go beyond the Office of the Ombudsman and pursue litigation, or is your word final? In most cases, are you finding that your word is final?

Mr. André Marin: Normally, the Office of the Ombudsman is the office of last resort. It doesn't preclude legal action, though. Complainants are free to use the courts.

Mr. Rodger Cuzner: Would you have any kind of sense that there has been much of that, or are they—

Mr. André Marin: To my knowledge, normally when they come to us they don't go to the courts afterward. We are really a last resort. We've gotten involved in cases where there were class action lawsuits. Then they come to us. We resolve it and there's no class action lawsuit.

A good example is an investigation we did in Ontario about special needs children, where the government was being sued for not supporting families with special needs children. It was a class-action lawsuit in which we got involved. So it doesn't preclude legal proceedings, but normally once we're involved it discourages proceedings before courts.

This is another advantage to having an ombudsman.

Mr. Rodger Cuzner: Thank you.

The Chair: Mr. Perron, for seven minutes.

[Translation]

Mr. Gilles-A. Perron (Rivière-des-Mille-Îles, BQ): Good day, Mr. Marin. Thank you for being here. I appreciate your submissions because they are clear, straightforward and specific.

I'm going to start with a little criticism of your brochure. It says that, in Ontario, the Ombudsman is the watchdog of Ontario. You know the word "dog" is not allowed here in the forum of the Parliament of Canada. It's a bad joke.

Seriously, Mr. Marin, who is your superior?

Mr. André Marin: The Legislative Assembly of Ontario.

Mr. Gilles-A. Perron: So you recommend that the veterans' ombudsman report to the House of Commons?

Mr. André Marin: Yes, and it should be through this committee or another committee. I am against having an ombudsman report to a minister.

Mr. Gilles-A. Perron: You speak from experience.

Mr. André Marin: The problem is, very simply, that there is a conflict of interest. The role of a minister is to administer his or her department. The minister is the person in charge. If we consider the British theory of ministerial responsibility, the minister is responsible for the actions of the department. I know that, over the years, there have been attempts to change that theory. However, there was a time when the minister had to resign, if a gaffe was committed by the department. That has changed over time; we are no longer as strict.

The problem is that, when a minister is responsible for a department, and an ombudsman reports to the minister, it is in the

minister's interests to protect and promote the best interests of the department. When the ombudsman identifies a systemic problem, a great deal of pressure is exerted on the ombudsman not to make it public, which causes a conflict of interest, a problem in relations.

I experienced it for seven years. I left. At a certain point, it was implied that I had been dismissed. That is not the case. I left because I had completed my seven years and another opening was offered to me. During those seven years, there were conflicts. I experienced them. It wasn't necessarily because the ministers were not good or were given bad advice by politicians, although that sometimes happened. It was more because it can't work within the infrastructure of a department. We can't all be friends. The ombudsman is there to blow the whistle on improper administration. Sometimes that doesn't make the minister or the department look good.

•(1555)

Mr. Gilles-A. Perron: It is true that you were not dismissed but you were told that your contract would not be renewed in July 2005. I am one of the people who got the information directly from the department.

I suppose you are familiar with the Quebec Public Protector Act. The Public Protector is what we call an ombudsman here.

Is that Act similar to the Ontario Act?

Mr. André Marin: Yes.

Mr. Gilles-A. Perron: Then we could base the creation of federal legislation on legislation that exists in Quebec and Ontario.

Mr. André Marin: Absolutely. All the provinces have slightly different legislation on the ombudsman or public protector, but they are all more or less the same.

Mr. Gilles-A. Perron: Is the legislation well-written?

Mr. André Marin: Yes. I brought a copy of our Ontario Act. I am willing to file it with the clerk if you wish. Unfortunately, I only have the English version, but it is available on our Web site in French and English.

This is good legislation, very simple. The laws are very succinct, not complex or very lengthy. It's very simple. In Ontario, the Ombudsman monitors all the agencies, all the departments and all the Crown corporations of Ontario to blow the whistle on unreasonable, unfair or inequitable decisions or policies. The Ombudsman can compel a person to testify under oath. The Ombudsman has the power to enter any premises in the province and can require a department to produce documents. The department has an obligation under the Act to provide full cooperation. If the department does not co-operate, there are penalties. The Ombudsman's ultimate authority is to make a recommendation, which is not binding.

There are only two exceptions to my jurisdiction in Ontario. The Ombudsman cannot investigate the office of elected provincial officials and cannot investigate the Provincial Court, which is strictly judicial. Those two limits are easy to explain.

Mr. Gilles-A. Perron: That is the case in Quebec, too.

Mr. André Marin: Yes, it is the case in Quebec, too. Everything else is within the jurisdiction of the Ombudsman of the province. The chair of the pension administration committee said that there were pitfalls, that the situation was unconstitutional and impossible. Tribunals of that kind have quasi-judicial independence. That shows a profound lack of understanding of the situation and the rules that apply. It may also be an attempt to change the subject; I don't know. However, it is clearly false. I exercise the authority our office has exercised for 30 years.

• (1600)

Mr. Gilles-A. Perron: Mr. Marin, let's try to speed up a bit, because five minutes is pretty short.

How long should an ombudsman's appointment be? For five years, six years, seven years?

Mr. André Marin: I was appointed for five years. Most of the provincial ombudsman appointments are for a period of five years. Previously, in Ontario, an ombudsman was appointed for 10 years. The term of the mandate was reduced to five years. However, it is renewable. The Ombudsman also holds office during good behaviour.

Mr. Gilles-A. Perron: What is the salary of an ombudsman? What percentage of the salary of the Premier is it equivalent to?

Mr. André Marin: The salary of the Ombudsman is usually the same as the salary of the most senior public servant in the province.

Mr. Gilles-A. Perron: It's approximately the same salary, the equivalent?

Mr. André Marin: That's right.

[English]

The Chair: All right.

Next is Mr. Stoffer, for five minutes; Ms. Hinton is on deck.

Mr. Peter Stoffer (Sackville—Eastern Shore, NDP): Thank you, Mr. Chairman, Mr. Perron, and Madam Finlay.

Thanks for appearing before us. Mr. Marin, I thought you did a great job when you were the ombudsman of defence. I always thought it was the federal government's loss and Ontario's gain when you left.

I'm not sure if you're aware, but the ombudsman of defence came out with a report today that clearly stated some major inaccuracies in relation to what happened during the Kuwait Gulf War, and how the concerns raised over and over again by the people who were behind us were completely sidetracked by, I would say, all members of all governments—not just the government, but other political parties as well, because they didn't take their issues seriously enough and were hiding behind so-called factual evidence.

Today the ombudsman I think verified many of their claims. If ever there was justification for an ombudsman, today proved it.

I've been asking various groups about one of the concerns I have. We have a defence ombudsman and we're advocating for a veterans ombudsman. What would be your view on having the ombudsman do both—that is, expanding his or her particular role and giving adequate resources for the one individual to do both? I ask because many people who work in the service would leave either through

retirement or through a disability; when they're out of the military, they are now veterans, but some of their concerns are defence-related and not necessarily related to Veterans Affairs Canada. I'm just wondering what your views would be on that. Should it be one overseeing both, or should there be two separate ombudsmen?

Mr. André Marin: When I left my post in March 2005, Mr. Stoffer, I published a white paper in which I recommended there be one office for both. My concern is that since the military so adamantly opposes a statutory ombudsman, if the option is to piggyback a veterans ombudsman on the military one, it would be a shame, because it is an inferior model. It should not serve as a precedent; it should serve as lessons learned on where not to go. I was in that job for seven years, and it was like pulling hair a lot of the time.

The Chief of Defence Staff is not interested in oversight; oversight brings bad news, bad publicity, and detracts from the mission. It is not a popular concept in the chain of command. They view it as meddling in the chain of command, diluting authority, and calling their good judgment into question. They have very thin skin. It would be a shame to say....

I'm quite aware that there are some economies of scale to be achieved if you had just one. In an ideal world you'd have one, but you have an opportunity here, because of the clear commitment by the Prime Minister, to create a strong veterans ombudsman—to do it from a clean slate and to do it right, and maybe have the military ombudsman later join in, as opposed to grafting a model onto an inferior model. That's my concern.

Mr. Peter Stoffer: I have a second question for you. I know this will mean a vague answer, because I know you can't find a World War II or Korean War or Cold War or Kuwait or Afghanistan veteran with a legal and medical background to fill the role of the ombudsman, but if you were advising the government on the individual, what credentials do you believe that individual should have to come to the table to assist veterans and their families when it comes to concerns on DVA?

Mr. André Marin: That's a very good question.

I've examined the world of ombudsmen and people who come through this world, and there are two kinds of backgrounds that I would discourage. One is someone with not enough experience who would not be able to properly put things in context; it has to be somebody who has some good work experience. Conversely, I would discourage someone who has too much experience in their background. You sometimes see people who are well into retirement who become ombudsmen, and they don't have the level of wherewithal, I would think, to do this job. This is not a ceremonial job. It's a job where you have to be prepared to slug it out.

I would think your ideal candidate would have legal training, would understand the machinery of government. Being a former military or not I think cuts both ways. I've seen former military members who've been in the military for 35 years and they can never see anything wrong with anything the military does. That's a problem. To answer succinctly your point, I think somebody with experience with the machinery of government with preferably a legal background.... These jobs are full of people who raise legal pretexts as reasons why they can't do things—for instance, the Privacy Act. You've heard it here that you can't oversee an administrative tribunal, which is patently false. You've heard that testimony here. I do it in Ontario; I oversee dozens of them. So a lawyer, someone with a legal background, can spot these smokescreens and be able to navigate around them, as opposed to being intimidated by them.

•(1605)

The Chair: Mr. Stoffer, I apologize, but you're already 27 seconds over. We'll have a chance to come back, I'm sure.

Mrs. Hinton.

Mrs. Betty Hinton (Kamloops—Thompson—Cariboo, CPC): I'll begin by saying it's a pleasure to see you once again. I'm never bored with what you have to say. You're always very interesting. There might be people out in the listening audience who might feel that some of what you said may sound jaded, but I happen to think that it's your version of the unvarnished truth, and I appreciate that. It's refreshing to listen to.

The “ombuddy” model that you've outlined in here, I can tell you from my own personal perspective that's certainly not in my vision of what an ombudsman would be, and I don't believe it's the minister's version of it either.

The only thing I was interested to ask a little bit more about is since you're an ombudsman for Ontario, and this is going to be a national ombudsman, you were talking about what you do in Ontario. You oversee agencies and ministries and crown corporations, but in the federal level we use an Auditor General for that. So this position federally I would envision as being specifically for veterans issues. Would you agree with that?

Mr. André Marin: Absolutely. I understand the things you're trying to draw. I was talking from my experience. There is also a provincial Auditor General who has Auditor General functions. The distinction between an Auditor General and an ombudsman is the following: an Auditor General conducts an audit of the money trail as well as conducts other accounting functions, such as value-for-money auditing. So think of the Auditor General as the paper trail. An ombudsman makes the decision. They look at the administrative decisions that are made with that money. That's the distinction, and it's an important distinction.

The function of an ombudsman would be to look at day-to-day policies and decisions and determine whether they are just, equitable, reasonable, or plain wrong. That's what my statute gives. You're completing the tag team. If you only have an Auditor General, which is what you have federally, you have a great ability to track money—we've all followed very closely what happened in the big Auditor General investigation that led to the Gomery commission—but you never follow the administrative decisions that were made with that money. You were looking at the misappropriation of funds and so on.

That's the distinction between both. An Auditor General can co-exist very well with an ombudsman. I think both functions are complementary.

Mrs. Betty Hinton: I appreciate the clarification on that.

Did I understand you to say you'd be opposed to reporting to a minister who's an elected MP?

Mr. André Marin: Yes, I would advise against that, because in my experience there's a conflict of interest there. It would make it very hard for the ombudsman to be able to conduct the job as objectively and impartially as the ombudsman can when they report to Parliament through a committee. The minister's job, as I said in French, is to put forward the best footing of the department. The difficulty arises when the ombudsman identifies systemic issues within the department, which may reflect badly on the minister. It brings together the whole issue of ministerial accountability. And it makes it very hard for an ombudsman.... It's doable, but it just makes the job very difficult and you have to do a lot of skating as an ombudsman.

•(1610)

Mrs. Betty Hinton: I'm going to talk really quickly now. I have about fifty questions, and I'd like to hear your answers.

Mr. André Marin: Okay.

Mrs. Betty Hinton: You made a comment that I found rather interesting. You said that you felt it was the minister's duty to protect his or her department. You and I would disagree on that completely. I think it's the minister's responsibility to protect the people who fall under the umbrella of it. In this case, it would be to protect veterans, not to protect the department. If there are flaws in the department, I think ministers would want to know that. That would be my perspective on that.

Mr. André Marin: I agree with you on that. Perhaps something got lost in translation here.

Mrs. Betty Hinton: Okay. And I know that's the view of this particular minister now, to protect veterans. That's their sole purpose.

My next really quick question is what do you know about Australia? We're going to examine Australia as a potential role model, and I'm sure you would agree that to do this job properly we would have to talk to a lot of different groups, which is what this committee is doing, and get a lot of different perspectives. We've been listening to department people, to the Legion, and to veterans groups, trying to get an overall picture.

What light can you shed on the Australian model? Is it similar to what you're proposing or is it completely different?

Mr. André Marin: I haven't examined the Australian model lately, so I'd prefer not to go there and mislead you on it. There was a time when I was very comfortable with it, but I'm getting a little rusty on that end of things.

Mrs. Betty Hinton: Oh, I doubt you're rusty. Maybe you are on that issue, but you're not a very rusty kind of guy.

Do I have some time left, Mr. Chair?

The Chair: You have a minute and a half.

Mrs. Betty Hinton: My goodness.

Is there anything else you'd like to add, sir?

Mr. André Marin: The only thing I would say is that in talking about the different ombudsman models, there has been a tendency by organizations, specifically private ones, to use the word “ombudsman”, which conjures up all this credibility, without properly equipping the office to do its job. People wonder how that happened. I want to give you the reason why people started doing that.

It all comes out of a movement in the United States where companies were being sued for harassment in the workplace. In order to mitigate damages after a lawsuit, they started creating ombudsmen. That way, at the stage of the trial where you're assessing damages, they could argue that they should pay less because they did their due diligence; they had an ombudsman in place. If you look at the States now, you have the Department of Homeland Security and a whole bunch of them in the private sector, including Coca-Cola, with ombudsmen. It's a legal way to mitigate damages.

That trend has become very attractive, but at the end of the day, you don't really have an ombudsman, you have an extension of the human resources sector.

Mrs. Betty Hinton: If it brings you any comfort, this committee hasn't chosen to examine the U.S. model. We're looking at possibly the Australian model, the British model, and a few others that have been established for quite a long while.

The Chair: Over to Mr. Valley, for five minutes, with Monsieur Gaudet on deck.

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

I appreciate your opening remarks. Something we don't get a lot of around here is straight talk. I was with you all the way until you started talking about lawyers. I kind of disagree with you on that part of it. By the way, speaking as an MP, this is the only job in the world where you can make comments about lawyers and get away with it.

I appreciate your straight talk, but I'm a little confused by one of your answers. I missed the part when you were speaking to this gentleman here, and then Ms. Hinton talked about it. Where are you going to report to, and where do you report to now in Ontario? Do you report to the Ontario Parliament?

Mr. André Marin: We report to the Legislative Assembly, yes.

Mr. Roger Valley: You seemed very clear at first that you think that's the way it should be, instead of reporting to a minister, and then you started to waffle a little bit. I'd like to hear, in terms of your opening remarks, how clear you are on where you should report to.

Mr. André Marin: I'm absolutely 100% clear that it's to Parliament through one of these committees. There's no doubt about it: this is the only way the ombudsman can freely do this difficult job.

I want to also say that everyone is of good faith. I have no doubt that this current minister is of good faith. The point is that it's not about personalities, it's about creating an infrastructure for you to do your job properly.

The minister relies on his senior bureaucrats to give advice in order to make decisions. One of them who testified here on June 1 told you that the term “ombudsman” has yet to be defined. Well,

excuse me, it has been defined. Second, you were told that it would be contrary to law to have the ombudsman oversee the veterans pension appeal board. Again, that is mistaken.

Coming back to the ombudsman and the reporting relationship, they must report to a committee, and that's in order to be free of bureaucratic interference, not just political interference. Can you imagine if this committee had the resources of an ombudsman to follow up the things you hear through your testimony? Wouldn't that be a valuable commodity for this impartial committee? I think it would very much strengthen your committee work. So that's another function the ombudsman can have.

•(1615)

Mr. Roger Valley: Thank you. That's what we need, some clear advice, and you're very forceful.

You have done many investigations. A lot of them are made public. Are there instances when they're not made public to protect someone?

Mr. André Marin: Absolutely. We never make anything public unless we have a complete, explicit waiver of confidentiality by the complainant. Confidentiality is one of the cornerstones of the ombudsman process. Most of our work is done in complete anonymity. The results of investigations are reported in our annual report. It is very rare for the identity of people to become known. When it happens, it is only with their express consent.

Mr. Roger Valley: When you're investigating files or individual cases that come forward, at what point does an ombudsman make a decision that this is not an individual characteristic but something that could be a group action? At what point, in your experience, does this come about? It's not with the first case that comes forward, so is it the fifth, the tenth? Where do you draw the line and try to protect groups while investigating a certain scenario?

Mr. André Marin: The most obvious ones occur in cases where you detect a trend. People who don't know each other, who are geographically apart, come forward with the same experience. This discloses to you that there is a systemic problem, a problem that lies beyond an individual case or decision. That's the most obvious case. But we also have cases where very few complaints may disclose a systemic issue. So trends are not always the rule, but they're the safest rule.

Mr. Roger Valley: An ombudsman for veterans affairs would build that kind of history behind him, to enable him to look for these things. It's an experience thing, I would assume.

Mr. André Marin: Yes, I think the first year or two would be a good indication of where the problems lie. Administrative tribunals—and I'm not an expert in the one that you've been hearing about, the veterans pension appeal board—are typically haunted by backlogs, delays, and injustices suffered in the hearing process. All these problems are within the authority of the ombudsman.

If you're going to cut the pension appeals board out of the ombudsman's mandate, it would be better not to create the office at all. This is the meat and potatoes of what an ombudsman does. If the government creates an ombudsman that can't oversee this board, don't bother. Call it something else, because it won't be an ombudsman. This is how crucial oversight of this body is.

The Chair: Monsieur Gaudet.

[Translation]

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

Mr. Marin, my question is very simple. I may be getting ahead of the others, but what do you think about a senior ombudsman with associate ombudsmen?

There would be one main ombudsman and associate ombudsmen handling different departments, such as the Department of Veterans Affairs.

Mr. André Marin: Are you talking about a federal ombudsman?

Mr. Roger Gaudet: Yes, that's right.

Mr. André Marin: As I indicated in my opening remarks, there was a bill in 1978 to create a federal ombudsman position that would have taken a similar form. There is no doubt that an ombudsman is lacking at the federal level. There is a federal ombudsman in Australia and in England. All the provinces of Canada have an ombudsman. There is no doubt that an ombudsman is lacking at the federal level.

•(1620)

Mr. Roger Gaudet: Do you believe we have the required skills, either in Quebec, Ontario or in any other province, to hire a good Canadian ombudsman, without having to go and look at the work of an ombudsman in Australia, in England or elsewhere?

Do we have enough skills and expertise in this field?

Mr. André Marin: There are examples throughout the world. In my opinion, all the Canadian provinces have excellent provincial legislation.

I think we have to start by looking at what is being done in the provinces. Quebec's Public Protector Act is excellent.

In fact, in Quebec, the jurisdiction of the ombudsman was just expanded to cover healthcare, hospitals, etc. So Quebec is ahead of the Ontario legislation, but the powers are similar.

Mr. Roger Gaudet: : Social services.

Mr. André Marin: Quebec is even ahead of the Ontario legislation, but the powers are similar.

In Alberta, the authority has just been extended to hospitals.

In New Brunswick, the Ombudsman's jurisdiction has just been extended to complaints against the youth protection agency.

Each province has an excellent model. If the committee opts for this route, I think we have resources in Canada, in all the provinces, to help you in your mission.

Mr. Roger Gaudet: Thank you very much.

Do I have any time left?

[English]

The Chair: There are still about two minutes left.

[Translation]

Mr. Roger Gaudet: I have asked all my questions.

Mr. Gilles-A. Perron: Mr. Marin, you know I was one of the people who insisted you appear before this committee, because I valued the meetings we have had in the past enormously.

I want to raise a specific problem. Do you remember the fine report you produced on the pensions of retired veterans who, when they were in the army, did not pay income tax and, when they left the army, paid income tax. In a word, it was a mess! That report is still on hold. To some extent, it may have been the beginning of the deterioration of your relations with the Department of National Defence. I congratulate you for producing this famous report; it was a good one.

I raise this issue to ensure my colleagues present here understand that an ombudsman cannot, does not have the right to bite the hand that feeds him or her. Your boss, at the time the general who is now at NATO was in power, was the Minister of National Defence. You dared to bite that hand and, I'm sorry to say, you were told your contract was not being renewed.

If you do not want to comment on that subject, it's up to you. I don't want to put you in an awkward situation politically. It's a personal comment I'm making mainly for the intention of the people present today.

Mr. André Marin: I would just like to clarify what you said somewhat. I am aware that it was you—I read it in the minutes—with the support of some of your colleagues who took part in the discussion, including, of course, Mr. Stoffer, who insisted I appear before this committee. I greatly appreciate the committee's invitation. I think you have fulfilled your functions very impressively and I congratulate all of you.

An ombudsman has to have the courage of his convictions. He has to make decisions that are not always popular. In my case, I was appointed during good behaviour. I reported to the Minister. However, there was an opening for the position of Ontario Ombudsman in December 2004. I applied for the position and left my former position. My position as Ombudsman at National Defence was not supposed to end until June 2006. It was a political appointment and, at that time, a different party was in power. Although some generals didn't like me, that did not necessarily mean that their decisions would have had an impact on the new government.

In any case, I just want to say that I agree with you that it's not a popular position. You have to have the courage of your convictions. Recognizing that, you have to be able to provide the structure required for the office to be able to work and succeed, right from the start. You must not pull the rug out from under it.

•(1625)

Mr. Gilles-A. Perron: Thank you, Mr. Chairman.

[English]

The Chair: Thank you very much.

Over to Mr. Shipley for five minutes.

Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC): Thank you, Mr. Chairman.

Thank you, Mr. Marin and Ms. Finlay, for coming here today. This has been great. For lack of a word, straight talk is always good to hear, and it's also good to see our young people who have come with their parents to listen today as part of take our kids to work day, especially when we're talking about veterans.

Can you tell us about any other jurisdictions that would follow the format or the model you promote?

Mr. André Marin: What I'm promoting is what is referred to as the classical ombudsman model. It's a parliamentary model. In England you have the U.K. parliamentary ombudsman to take complaints regarding U.K. institutions. You may want to go to the United Kingdom. They have had a very well-established ombudsman's office for the last 40 years. It's an ombudsman of broad jurisdiction.

Every single province in Canada has enjoyed a classical ombudsman for provincial affairs for over 30 years. So it's a tried and true model. I've tabled the Ontario legislation with the committee. There's one exception—Prince Edward Island—but otherwise every other province has enjoyed it. I think this committee should at least have a look at that legislation. Typical objections when you raise the subject of an ombudsman is that it wouldn't work in our system. Well, these are provincial ombudsmen. They work in common law systems; they look at all types of things provincially. They will work federally, there's no doubt about it. There's no veterans affairs in provincial ministries, but so what. You have ministries of justice, schools, hospitals. It's so wide. Whatever applies in those areas will apply for veterans affairs, and I would strongly urge the committee to look at those models.

And yes, you are correct, there are three young people here, and I just want to introduce them briefly. Connor Ling is my stepson, Mercedes Marin is my daughter, and Katherine Jones is here as well. They're very proud to be here and follow their parents here.

Mr. Bev Shipley: We welcome you.

Mr. André Marin: This is in fact bring your child to work day.

Mrs. Betty Hinton: Yes, it is.

Mr. André Marin: I'm doing my part.

Mr. Bev Shipley: I think that's great.

In terms of the workload, you have been involved at DND and as the Ontario ombudsman. Have you any idea in terms of workload comparison?

Mr. André Marin: On the workload, in my former job I believe we were dealing with about 2,500 cases a year. I think that's probably a good indicator of the caseload you would expect at veterans affairs.

Mr. Bev Shipley: So it was much smaller than what you're dealing with.

Mr. André Marin: Yes. We're dealing with 24,000.

Mr. Bev Shipley: Yes, so 10% of what you're doing.

Mr. André Marin: Yes.

Mr. Bev Shipley: You talked about the Veterans Review and Appeal Board, and that there was the ability and the authority for an ombudsman actually to be involved with that. Does it matter at any particular stage of an appeal? Can you intervene halfway through when something starts to go off the rails? Do you have to wait until all options have been looked at? Or do you have to be right at the start of it, and then you have to wait until the end?

Mr. André Marin: As an ombudsman, you're an office of last resort. You would get involved if there's an issue that arises after you've exhausted internal mechanisms.

Now, that is not an absolute rule. If your issue is that your case has never been listed to be heard, then of course you wouldn't wait until it's heard, because you'd never hear the case. So there are exceptions to that rule, but normally it's an office of last resort. Until then, the function of the ombudsman is normally one of assisting complainants to use those mechanisms. There are a lot of exceptions, but that is the short answer. And it works.

Mr. Bev Shipley: That's good.

St. Anne's Hospital has an ombudsman. When we develop an ombudsman for veterans affairs, how do you see that evolving? Do they still need an ombudsman?

• (1630)

Mr. André Marin: There's no doubt that whoever occupies that position adds value to the system. I don't necessarily see that it would affect their jobs, but they're not a classical ombudsman. They call themselves an ombudsman, but to be truly a classical ombudsman, you must report to somewhere that's outside your oversight ability. If you work at a hospital and report to the hospital CEO or the board, you're still too intimately tied to really call yourself an ombudsman. I want to say that doesn't mean they don't bring value. So I could see them continuing to co-exist with one properly constituted statutory ombudsman.

Mr. Bev Shipley: Is that it?

The Chair: That's it for you, sir.

Mr. Bev Shipley: For now.

The Chair: Now we have Mr. St. Denis.

Mr. Brent St. Denis: Thank you, Mr. Chair.

Thank you, Monsieur Marin and Ms. Finlay, for being here and for a very fascinating presentation.

In listening to you, it occurs to me that if our committee could agree on a framework for an ombudsman and have it actually implemented, then it may cause, hopefully, a ripple effect through other departments, eventually leading to an overall ombudsman for Canada. It's bottom up, absent the top-down approach, which, as you say, was proposed many years ago.

You mentioned the two international organizations, the association and the institute, the institute being the more professional. Are there standards? We see ISO standards for forestry, for trucking, for all forms of things. In other words, is there a standard for ombudsmen?

Mr. André Marin: Yes. The United States Ombudsman Association, which is the third organization I mentioned, publishes ombudsman standards. I don't have them with me, but they're available from their website, which is USOA.org.

Actually, I do have them here, so I would like to table these with the committee. They're excellent standards. The USOA president has written to this committee, with a copy to the Prime Minister, as well, which is in your folder. Those standards are excellent and they're very descriptive of how to set up properly an ombudsman's office.

Mr. Brent St. Denis: Is there a system to maintain the various provincial ombudsmen's offices and elsewhere around the world? In other words, is one verified by the international institute as being up to standard, up to snuff? Do you have the backup of an international institution to say we had nine out of ten on this year's score? In other words, it gives you some strength to do your job.

Mr. André Marin: Yes, the International Ombudsman Institute, the IOI, states very clearly in its constitution—again, available on the Internet—how to qualify as an ombudsman, and there are different categories of memberships. The IOI carefully reviews ombudsmen's offices around the world to decide which ones qualify as ombudsmen and which ones don't qualify, and which ones have mid-status.

So the IOI would be the body that decides on proper accreditation for ombudsmen worldwide.

Mr. Brent St. Denis: We've heard from lots of witnesses, including today an excellent witness. If this committee were of a mind to put something on the table, that would be available to us so that we actually have something to propose to stakeholder groups. There's no reason, I take it, that we have to be talking in a theoretical way as we go along. I won't say we could actually adopt something, but we could have a pro forma example to use as a benchmark to move forward. We don't need to be doing this in theoretical terms all along.

Mr. André Marin: No, absolutely. As I mentioned in an earlier response, your best resource, really, is a Canadian one, and every single province in Canada has an excellent model to look at. The USOA publishes standards; the IOI provides accreditation and reviews characteristics for ombudsmen's offices. So those would be the natural resources to look at.

The IOA is an organization of “ombuddies”, and it's a very different approach. I would caution strongly to stay away from that particular model, unless you're into shredding and not keeping track of anything, never recommending anything. Their main motto is “Helping complainants help themselves”. In other words, if you have a problem, the problem may well be with you. The first thing is to project the problem back to the complainant. So it serves private corporations very well, but it doesn't help in getting into the public interest of issues.

• (1635)

Mr. Brent St. Denis: Without casting any aspersions, I know the banks have ombudsman positions, as does the insurance industry, and some may or may not be in that category.

Mr. André Marin: My submission here is not to tell you that these people have no value to add to the system. If you want to follow your bank, and your ombudsman helps you, God bless him or her. The problem is that they're not ombudsmen in the classical sense. Some of them are more classical than others, and they're all very useful in our system, but when you're dealing with an issue involving Veterans Affairs and the pension review board, you want

somebody who can dig a little deeper than these kinds of ombudsmen. That's my pitch today.

Mr. Brent St. Denis: Thank you.

The Chair: Thank you, Mr. Marin.

Now we go to Mrs. Hinton.

Mrs. Betty Hinton: I'm going to share my time with Mr. Sweet.

I have just a couple of things. I'm not sure if I said this to you before, but I agree wholeheartedly that if, as an ombudsman, you can't oversee VRAB then there's really no purpose to being an ombudsman. We're in agreement on that.

You're leaving me with a mixed message. I heard you say to look at the provincial models because you think those are a great starting point. I thought I heard you say not to bother looking at any other country's models, but then I also heard you recommend looking at the United Kingdom. I'm a little confused, and I'd like you to clarify that.

The rest of the time will be for Mr. Sweet.

Mr. André Marin: I would strongly advise looking at the provincial models. The U.K. model I'm very familiar with because I've had dealings with the U.K. ombudsman and her office. I'm aware of their constitution, and it's an excellent office. I would encourage you to look at that model. There are other international organizations, such as IOI and the USOA, that provide extremely good resources on where to go with the Veterans Affairs ombudsman. I would strongly recommend all those resources.

Mrs. Betty Hinton: Thank you.

Mr. Sweet, go ahead.

Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC): Mr. Marin, you mentioned that in Ontario right now you handle 24,000 complaints with a budget of \$9.6 million. Give me the aggregate staff that you would have for that budget.

Mr. André Marin: It's 85.

Mr. David Sweet: When you were at DND, the 2,500, was there similar...?

Mr. André Marin: It's 55.

Mr. David Sweet: There is a staff of 55?

Mr. André Marin: Yes.

Mr. David Sweet: Do you remember the budget?

Mr. André Marin: The budget was between \$5 million and \$6 million. I believe it was \$5.5 million.

Mr. David Sweet: It's much more efficient.

Mr. André Marin: Well, for 2,400 complaints, who is more efficient?

Mr. David Sweet: Well, Ontario is right now.

Mr. André Marin: The Ontario ombudsman's office has been around for 30 years, and it's developed a very sophisticated triage method. As well, you have to remember that in Ontario, because our field of oversight is so broad, people call and complain about a lot of small issues. For the military, usually for someone to come to our old office there had to be something serious, whereas here in Ontario we'll get complaints about someone who had qualified not receiving their driver's licence, and then we oversee the driver's licence.

Mr. David Sweet: So the complexity was substantially different with DND, and no doubt will be with Veterans Affairs as well.

Mr. André Marin: That's correct.

Ms. Barbara Finlay: The other aspect to add, if I might, is that when you're dealing with the complaints for DND and CF, they're coming from across Canada, and you need to have regional representation, as would likely a veterans ombudsman to some extent as well, whereas in our office in Ontario, because we're in the province, there is a certain economy and efficiency there as well.

Mr. David Sweet: That makes sense.

Since you have the powers to subpoena as well as to investigate, do you have specialists for investigation?

Mr. André Marin: Yes, we have a special unit in our office called the special ombudsman response team; we call it the SORT. It's a small administrative unit to conduct field investigations. Mr. Jones, the director of SORT, is here this afternoon.

Mr. David Sweet: They would have a forensic-level capability?

Mr. André Marin: Yes.

You know what really consumed a lot of our resources at the military ombudsman's office? It was constantly fighting with the brass because we didn't have the tools to do the job. We'd make a request for documents, put in an ATI. "Well, we don't respond to ATI. I don't know about that; send it to JAG." JAG comes back.... That's what I'm saying: if you're going to do this right, give this ombudsman the tools to do the job. You'll find you can do it a lot more cheaply, rather than having to butt heads with military lawyers all day long, which is what we have had to do far too much.

• (1640)

Mr. David Sweet: You mentioned six out of the pile that you systemically investigated. It seems like a small number. However, you have elucidated the fact that there are a lot of minor issues, or at least ones you can clear up more quickly in Ontario. Is that a restriction because of budget or priority?

Mr. André Marin: No. It's my decision as ombudsman. It's not in statute. It's self-imposed, but we pick really big ones.

We just conducted an investigation of property assessment in Ontario. There are 4.4 million properties in Ontario, representing trillions of dollars. Our intervention created a freeze on property assessments in Ontario. So those six ones are six big ones. There are lotteries. We're investigating the Lottery Corporation. It brought in \$1.25 billion last year.

So we picked the six ones that would have the maximum impact on the population.

Mr. David Sweet: One of the things that really interested me was when you mentioned that on a number of occasions—or maybe it

was only the one, but I'd like to know if there were a number—you, in your capacity as an ombudsman, were able to intervene in cases of class action suits, and they were actually dropped.

Mr. André Marin: Yes. I'll give you one example from my former job. We investigated the treatment of—

Mr. David Sweet: And will you tell me the total number after? I'm just being notified that I have run out of time, so can you give me an idea about the number?

Mr. André Marin: The number of cases—

Mr. David Sweet: Can you tell me the number of times that a class action suit would have been eliminated because of your investigation?

Mr. André Marin: Yes. It's hard to say, because sometimes there have been individual lawsuits that were also dropped.

In my former employment as military ombudsman, I was involved in a case in which the Suffield guinea pigs—the ones who were sprayed with mustard gas during World War II—had been fighting the government for 50 years. They launched a class action lawsuit, and when we initiated our investigation and wrapped it up, they dropped the lawsuit, which was a huge lawsuit involving lots of money—millions and millions of dollars—in Federal Court. Again, it demonstrated the value of the intervention of an ombudsman's office.

Mr. David Sweet: Thank you very much.

The Chair: Mr. Stoffer, you're next.

Mr. Peter Stoffer: Thank you very much.

Madam Hinton said something that I thought was very poignant, that the minister's role is to protect veterans, and I couldn't agree with her more. If you extend that argument, the role of every member and every employee of DVA is to protect veterans, and I assume their families as well.

With whistle-blower attention getting a lot of newsprint these days, would you suggest that employees of a particular department, if they see something going on that is wrong, would be able to use the services of an ombudsman?

Mr. André Marin: Do you mean if you had a general ombudsman, federally?

Mr. Peter Stoffer: No. For example, you have somebody in an Ontario ministry that you're overseeing, and somebody in say the finance department sees something wrong. Can they go to the ombudsman quietly, without letting their name go out, to let you know that this is going on in that department?

Mr. André Marin: Absolutely. And there is protection against reprisal built into the legislation.

Mr. Peter Stoffer: Very good. Also, could civilians then use the services of an ombudsman? For example, I'm thinking of a veteran who passes on and his spouse is left behind, and say she's fighting, we'll say for argument's sake, VIP services or something of that nature, and she feels that she warrants getting this.

Mr. André Marin: Yes.

Mr. Peter Stoffer: Thank you.

I see Madam Finlay over there. Would you be able to briefly explain...? Having an ombudsman is important, but you can't do every case on your own, so I would assume that the deputy ombudsman and director of operations plays a very important role in this. Can you please advise us of what your role is in terms of assisting the ombudsman? How would it assist, for example, a veterans ombudsman or one that National Defence has?

Ms. Barbara Finlay: Certainly. I like to think that I do play an important role from time to time.

Mr. Peter Stoffer: Hear, hear.

Ms. Barbara Finlay: My role, largely, is to keep the operations of the office running smoothly. As was mentioned, we have in Ontario approximately 24,000 complaints a year. The ombudsman sets the general tone and direction of the office for Ontario. Our direction is that we want to obtain meaningful, concrete results for people as quickly as possible.

My goal is to put that into action in every single case. So I'm in charge of overseeing the staff and overseeing how the complaint files are handled to make sure that people are receiving a high quality of service. So I'm dealing with the daily functioning and operations of the office, whereas Mr. Marin is setting the general tone and direction. He's also setting for us the priorities in terms of the systemic cases we're investigating. Mr. Jones is the director of SORT and is carrying those investigations out.

So it's very much a team approach. And it's very critical that you have solid, experienced people and that the employees you have in that office have the investigative skills to get right into the files, know what they're looking for, can identify problem areas, know the documents they want to have, and are able to establish relationships with the persons working in the departments so they will get the cooperation they need.

• (1645)

Mr. Peter Stoffer: My last question for you both is—and I say this as a devil's advocate—that it's quite simple, then, for some, and I notice that in private industry this case happened, that a particular manager of a department would say, "Well, if you don't like it, go to the ombudsman." So instead of dealing with the issue directly, as they should have, they shuffle it off to the ombudsman. So the person thinks, "Oh, okay, I will." That, in some circumstances, could be a bureaucratic delay, because the ombudsman, of course, is busy and everything else, and has many other case files. Is it not possible that an ombudsman could be used as a crutch to delay certain proceedings that an individual may have or potentially have?

Mr. André Marin: That's absolutely a fair comment. We did have that experience with a provincial ministry, and we had to meet the senior echelons of the public service in that ministry in Ontario and advise them of the need to set up their own internal complaints resolution mechanism. We are there as a last resort. So it's an example of us saying—pushing it back to the ministry, and I think that's very important—the existence of an ombudsman is not an abdication of the department's obligation to try to resolve things internally; ombudsmen should be the last resort.

Mr. Peter Stoffer: Thank you.

The Chair: Thanks, Mr. Stoffer.

It's now back over to the Conservative side. I'd like to use the chair's prerogative to ask a few questions. Your budget is, as you say, about \$10 million right now. Forgive my ignorance in asking, but compared to the overall Ontario budget....

Do you know, for example, what the Province of Ontario would bring in, in revenue?

Mr. André Marin: I don't know right off the top of my head. I know just in health care, for example, we spend close to \$35 billion.

I seem to have in my head \$80 billion. I could find that answer and give it back to you, but it's in the tens of billions for sure.

The Chair: Okay, that's good to know.

When your budget was \$5.5 million as the ombudsman in regard to the Department of National Defence, I'm guessing the budget at that time for DND would have been around \$7 billion. But you'd have a better number than I would.

Mr. André Marin: I'd have to look back, but what you're saying sounds like the ballpark figure. I stand to be corrected on that.

The Chair: With regard to either of these posts, are your budgets somehow linked to inflation? For example, is the ombudsman budget for DND always fixed at \$5.5 million, or how does it fluctuate?

Mr. André Marin: It has evolved over time. I think it's a little larger now.

My current budget is set by the Legislative Assembly every year. I have to present a business plan with initiatives, and that's weighed against other budgets, such as the Auditor General's. The Ombudsman of Ontario is one of the officers of Parliament in Ontario. Other officers of Parliament are the Auditor General, the Information and Privacy Commissioner, the Integrity Commissioner, and the Environment Commissioner. Those are the five officers of Parliament. Every year, the five officers of Parliament supply budgets, House leaders meet and deliberate, and they decide how to allocate the resources. That's how it's done.

The Chair: Are you aware of any circumstances where an ombudsman's office is set up as a percentage of the overall department that they serve that function for, or...?

Mr. André Marin: I'm not aware of that. It would certainly be relevant, I would think, but I'm not aware of a precise formula tying it together.

The Chair: Would most of the formulas for ombudsmen with regard to setting their budgets be presentation of a budget and acceptance by their legislative oversight?

• (1650)

Mr. André Marin: It goes to a parliamentary committee. In Ontario, it's the Board of Internal Economy, which is a committee at Queen's Park that sets budgets for officers of Parliament and other areas. That allows the budget issue to be assessed independent of government, and it has been a very effective way to do business.

The Chair: I'm splitting my time. I still have four minutes left in what is typically Conservative time. So Mr. Sweet is the first up, and then maybe Mrs. Hinton.

Mr. David Sweet: There's one thing I don't know whether you'll be able to articulate an answer on, which is, because of the magnitude and nature of the sacrifice and investment that veterans make, how their sacrifice and that of their colleagues of other conflicts or initiatives are portrayed in history.

I've had calls and letters regarding things in the media as well as even in museums on how their activities have been portrayed. Do you see a role that the ombudsman could play there in making sure that those kinds of things that have played out in history are set straight?

Mr. André Marin: My advice for the jurisdiction of the ombudsman is to keep it simple. I ran into this in my other job when we were defining our mandate in 1998. You shouldn't have a list from A to Z of what the ombudsman shall do and try to define everything, because every time you have a case someone will say, "Well, this falls between B and C, so technically..." Then all the lawyers get involved and you're tearing your hair out for days and weeks. So you shouldn't have a list of what you can do and a list of what you can't do, because that's just inviting legal quagmire. It's not the way to go. It should be simple.

If the government wants an ombudsman it should make it simple, all-encompassing, and that's it—or don't have one. The competence should be simple. "The ombudsman of Veterans Affairs shall oversee all Veterans Affairs initiatives, decisions, policies, and decision-making to ensure that decisions, policies, and practices are fair, just, and reasonable." That's simple. That's the way to do it. "The ombudsman shall not review decisions of the minister as part of the executive." That's it. Have a good time. It's simple. You get away from all the lawyer stuff.

Philosophically and legally there's absolutely nothing preventing you from doing that. It's very simple. "Every public servant shall be compelled to cooperate with the ombudsman in a prompt, full, and complete fashion. The ombudsman may compel the appearance of any public servant to advance the case. The ombudsman shall publish reports as necessary to advance the public interest." There you go—a one-page act.

The objections you will hear as a committee, when you dig deeper through the surface of them, will be because people are reluctant to relinquish control. If you were to write a mandate like that you wouldn't have control of your ombudsman. But either you want an ombudsman who has the independence to do the job, or you don't have one.

The Chair: Mrs. Hinton.

Mrs. Betty Hinton: You're not a lawyer, are you?

Mr. André Marin: I am.

Mrs. Betty Hinton: You are? Oh my.

Mr. André Marin: I'm a member of the Ontario Bar. That's why I can talk like that.

Mrs. Betty Hinton: There are a number of veterans who are frustrated by the difficulty of obtaining a disability pension or award, or by their lack of success in winning a favourable decision through the Veterans Review and Appeal Board when they appealed the initial decision.

Do you see an ombudsman position as a way to streamline cases by setting a precedent? "Here's how we handled Mr. X's problem, and here's what was wrong. Here are 25 more that have exactly the same thing." Bang—here's the answer every time.

Mr. André Marin: Absolutely.

Mrs. Betty Hinton: Okay. Thank you.

The Chair: Monsieur Perron.

[*Translation*]

Mr. Gilles-A. Perron: Mr. Marin, I think they did not read your résumé before the meeting. Besides referring to you as counsel, we could also call you professor, because you have also taught.

Mr. Marin, political appointments are a problem for me. How do we ensure it's not a political appointment? In Quebec, the National Assembly found a way to do it, I think. The ombudsman is proposed by the Premier but accepted by a two-thirds vote in the National Assembly, to which he or she is accountable.

How does Ontario proceed to avoid a political appointment?

• (1655)

Mr. André Marin: When the position in Ontario became available, an ad was published in the *Globe and Mail*. A committee made up of an MLA from each political party and chaired by the Speaker of the Legislative Assembly, not the Premier, reviewed the applications and called candidates for an interview. I was selected unanimously by the committee made up of a Liberal, a Conservative and a New Democrat. Each member of the committee had one vote. The Speaker of the Legislative Assembly did not vote; he chaired the committee and organized the meetings. That's how I was selected.

Once I was selected by the committee, my name was submitted to the Legislative Assembly. There was a vote, and the result was unanimous because three MLAs—one from each party—had participated in the selection process. That is one way of doing it. The way you suggested is also a good way.

Mr. Gilles-A. Perron: What do you think of the procedure in Quebec?

Mr. André Marin: It works. For me, the appointment experience was positive. All of these methods ensure the non-partisan selection of a candidate.

Mr. Gilles-A. Perron: I think there is a risk that the era of minority governments in Ottawa will last for a while. I foresee most future governments as being minorities.

Tell me if my reasoning is right or not. I won't be offended if you tell me it isn't right. The House could always remove the incumbent from the position, but I would recommend an appointment for a term of six years, to allow the incumbent to remain for at least two governments. If the term of the mandate is five years and the governments are only in power for two years... However, if they are in power for five years, that may change things.

So, if possible, I would like the term of the mandate to be six or seven years. I wouldn't want it to be for 10 years: that's too long. But I would recommend an appointment for a term of six or seven years rather than five years.

I would like to hear your comments.

Mr. André Marin: I think it's an excellent position; it's very logical.

I am in favour of a renewable mandate; however, I think a term of six years is an excellent suggestion.

Mr. Gilles-A. Perron: In Quebec, it's five years. Yours is also for five years, I think. Therefore given the problem of minority governments we're experiencing here in Ottawa, it seems to me it would be a good idea to extend the mandate by a year or two in order to try to protect the position of someone who is doing a good job.

Mr. André Marin: I think your reasoning is good.

Mr. Gilles-A. Perron: Thank you.

[English]

The Chair: Monsieur Gaudet, there's one minute.

Mr. Gilles-A. Perron: Did you say a minute? I'm going to use it, you know.

[Translation]

Thank you very much for being here. I think you have been very informative. I am proud to have had the opportunity to ask you questions in a much more worthwhile context for both you and me. My best wishes to your family.

Mr. André Marin: Thank you.

[English]

The Chair: Well done.

Now we'll go to Mr. Valley for five minutes.

Mr. Roger Valley: Thank you.

Mr. Marin, the committee, I can tell you, is putting a lot of weight on your comments and your advice. We're even prepared to overlook that you're a lawyer; we can do that for you.

Some hon. members: Oh, oh!

Mr. Roger Valley: I have a question on the document you gave us.

• (1700)

Mr. André Marin: Nobody's perfect.

Mr. Roger Valley: Especially not lawyers.

In the document you gave us, the Ombudsman Act, on page five I understand point 4 pretty clearly—"May consult minister". If you need to talk to a minister, we can understand that.

It's the fifth one, "Must consult minister". I read it several times to be clear on it. I wouldn't ask you, in your own position today, because you work for the Ontario government and work for the people of Ontario, but I'd like to know, with all your experience and how much you have heard in all your experience with the ombudsmen you know across Canada and the experience you have with your international group, how much interference can come from a clause like that. Have you ever heard of it?

Again, we're not asking you to talk about your current job for Ontario, but in your years of experience with DND before, and with the international experience, does or could this clause bring about political interference?

Mr. André Marin: Actually, the way this clause is interpreted is that when you're going to make a final recommendation, you're giving the minister an opportunity to respond before you finalize the report, so I don't think it's a bad one. The language used is "must consult". The language could be more precise if it said "must give notice or an opportunity to respond", but that's really how it's interpreted.

To come back to the other question, whether there is political interference in my experience, yes, there is potential for it. That's why, in my view, the ombudsman should not report to a minister but to a committee, to further insulate and protect not only the ombudsman but the minister.

A minister never wants to be in a position of being accused of meddling in the jurisdiction of an independent organization, so it's for the protection of both parties.

Mr. Roger Valley: Thank you.

Just on the final line there, it almost begs the question whether, before you have a final opinion.... I understand this, being a politician, but for somebody reading this, it almost looks as if you're giving the minister an opportunity to change your final opinion.

Mr. André Marin: If you report to Parliament, the minister has no power over you, so he can say what he wants. If you report to a minister, that's when you run into problems. That's why I don't recommend that the veterans ombudsman report to the minister.

Mr. Roger Valley: I wouldn't be particularly worried about somebody with your abilities, because you've shown them clearly today. But there are other people who don't have your strengths, and I would worry.

It almost looks as if we're setting ourselves up for a bit of a problem. But again I've just seen it recently, that's why I asked your opinion on your experience.

Mr. André Marin: It takes a lot of fortitude to weather all the storms that will happen in the course of a five- or six-year term. That's why I recommend a reporting relationship to a parliamentary committee such as this one, or to Parliament.

Mr. Roger Valley: Thank you.

The Chair: Thank you.

My friend, Mr. St. Denis.

Mr. Brent St. Denis: Just 30 seconds, Mr. Chair, thank you.

The notion of benefit of the doubt has been talked about in the context of veterans. In the ideal situation, the benefit of the doubt goes to the weaker party to a dispute, which is usually the applicant to have a pension or some kind of reprieve. Within your legislation, or within the ambit generally of ombudsmen, is there a discussion of benefit of the doubt?

Mr. André Marin: The ombudsman is not an advocate. The ombudsman is an independent, impartial body. So before the ombudsman takes a position on an issue, I have to be convinced that a decision, policy, or practice is unjust, unfair, or discriminatory. Once you've convinced yourself there is such a problem, then you become an advocate for getting it fixed. So you don't approach cases with an idea of giving the benefit of the doubt. You approach cases with a view to determining if there has been an administrative wrong you need to correct.

Mr. Brent St. Denis: Thank you.

The Chair: At this stage, since we don't have any other people on the question roster—it's down to ping-pong between the Conservatives and the Liberals—we'll call an end to your presentation.

Thank you very much for being a witness today. You've been one of our better presenters in terms of giving us some detail for things to mull over. Monsieur Perron is going to take great credit for that. And it was nice of you to bring your family today to take in the proceedings.

We've got a little bit of committee business I want to raise after this. Thank you very much for your presentation.

Mr. André Marin: Thank you.

Some hon. members: Hear, hear!

• (1705)

The Chair: I'm going to start talking and hope that some of the committee members return to their chairs. Okay, the Liberals are here, fair enough.

We've just had Monsieur Marin's presentation.

On Monday, we're going to have Don Ethell. On Wednesday, we have a vacancy. Then there's a break week, the week after that. On November 20 we're going to Ste. Anne's Hospital in Montreal.

We've broken that up because of Ste. Anne's; it's pretty much going to be a full day to go to Montreal. I'm wondering, in the normal time we would have for the two hours of committee meeting, 3:30 p.m. to 5:30 p.m. on Wednesday, November 8, if we make the trip to the Ottawa facility. How do you feel about that?

Mr. St. Denis.

Mr. Brent St. Denis: I don't mean to jump ahead of Gilles, but considering what we heard today, I'm wondering if we could have something on the table. Could we have an ombudsman draft or something we could use as a benchmark, rather than always talking in the ethereal? I'd like Gilles to speak to that.

The Chair: It's tangential to the idea if we go to the hospital or not.

Mr. Brent St. Denis: No, but it's future business.

The Chair: Okay, yes.

Mr. Gilles-A. Perron: I think right now...

[Translation]

The committee's big problem is that our work is not grounded. When people from the Department of Veterans Affairs or young people come here to discuss the Ombudsman bill, they are not sure about the topic to be discussed. Therefore the committee and the

government should table a draft of their view of an ombudsman. That way people who come to testify could say whether it's good or not and tell us what has to be improved.

I don't want to say anything against the witnesses we had last Monday, but they talked to us about the Korean War for 18 minutes out of 20. When we brought up the subject of the ombudsman, they were reticent and we had to drag everything out of them. If the witnesses had a document or a draft bill in hand that is to be examined, they could speak with more authority.

On that subject, I've reached the point where I think we have almost heard enough testimony. We have reached the stage of going to see the Ombudsman of each province and starting to draft a bill. I think we have heard enough witnesses.

• (1710)

[English]

The Chair: I sense we're going to go off on a discussion of a report or the tabling of a bill; fine, we can do that, but I want to get this dealt with. Is it okay if we head off on the eighth to visit the Ottawa facility?

Does everybody capisce...? Okay, good. Now that we've got that established—

Mr. Gilles-A. Perron: It's got nothing to do with the ombudsman, but we'll go anyway.

The Chair: No, I think it is actually important to the idea of the ombudsman, because touring the facilities and having an understanding of what they deal with—

Mr. Gilles-A. Perron: You're going to do it on the 20th.

An hon. member: We'll stop by the legion for a beer on the way back.

An hon. member: Two beers.

The Chair: Mrs. Hinton.

Mrs. Betty Hinton: Are we finished with the eighth? I have no problem with that.

The Chair: I think we're going to go on the eighth.

Mrs. Betty Hinton: Okay. I'm a little bit surprised at what I'm hearing.

Maybe you could clarify it for me, Gilles. Are you saying that the witnesses who are coming are unclear on the ombudsman? Or are you saying that you—

[Translation]

Mr. Gilles-A. Perron: Ms. Hinton, I see a problem. The first good testimony we have heard since we have been examining the ombudsman issue is Mr. Marin's testimony this afternoon. He came to the committee prepared to talk about the ombudsman position.

I don't want to say anything against the former president and the new President of the Canadian Legion, but they hesitated and sometimes answered yes, sometimes no. I understand these people do not want speak out with more assurance; they have nothing in front of them. If a bill or a draft gave them a definition of an ombudsman...They don't even have the government's definition.

Ask Ms. Richard, who is here, to talk to us about the ombudsman for 10 minutes. Instead she could talk to us for two hours about veterans who took part in the Gulf War and it would be very interesting. However, she does not have any tools for talking to us about the ombudsman. We should give her a copy of the Ontario or Quebec legislation and ask her what she thinks of it.

Give people the tools to come and tell us what they think. Give them something concrete. Right now, the ombudsman is like the Holy Spirit, a vague notion.

What is the government's definition of an ombudsman?

[English]

The Chair: Welcome to the zoo.

Anyway, Monsieur Perron, I think what's going to happen is that we're going to be listening to the testimony of witnesses to come up with a report and recommendations for the creation of an ombudsman. That's what it says.

Mrs. Hinton.

Mrs. Betty Hinton: You just hit the nail on the head.

My impression when this committee started was that our objective was to listen to witnesses, to look at a variety of different ombudsmen positions and a bill of rights, and to listen to the input that came forward and then to take something to the minister.

What I'm hearing you say is that you want the minister to bring something to the committee, rather than have input from the committee on how it should be structured. You're saying have the minister bring a bill.

[Translation]

Mr. Gilles-A. Perron: Madam, all of us on the committee are like dogs running after their tails right now. We're going around in circles.

Ask the clerk to get out all the committees' blues. Do you read the committees' blues? If you read the committee's blues, you will notice that, in 80 per cent of cases, there is no mention of an ombudsman.

Read the blues our clerk makes available for you. You will see that, in 80 per cent to 85 per cent of cases, we are not talking about the ombudsman with the witnesses who appear before us, except today, when we talked about an ombudsman 100 per cent of the time.

I found this interesting. It should give us an idea of what an ombudsman should be. As far as the others are concerned, if we ask them whether the term of the mandate should be five, three or two years, they answer that they don't know. If we suggested that it be six years, they could tell us it's too long or not long enough.

• (1715)

[English]

The Chair: We have four people who want to speak. We're only taking four, because I don't know how productive this is. I'll let you know that we have Yves Côté coming on the 22nd. We're hoping to have on the 27th of this month somebody from the Netherlands. We

also have Mr. Winzenberg from Australia on the 29th. These are all pretty pertinent to the ombudsman.

Mr. Shipley.

Mr. Bev Shipley: As to the definition, we should not pre-empt what we're going to put forward unless we're satisfied that we've got all the witnesses. If we're going to do that, then we've already taken the lead in saying what we're going to do. If we want to have witnesses from the provinces, we can do that. I think our clear direction is to learn about the ombudsman. But if we're asking witnesses questions that are not about ombudsmen, then it's not their fault but ours.

We need to make sure that we don't short-circuit it. When we put a draft forward, I believe we're getting close to making a decision. So if we're done hearing witnesses about the ombudsman, then we can get the clerk to draft a report. Until then, we may still want hear options. We've heard a lot of them already. Today was likely the most clear in direction given, no doubt about it. But on some of the other ones, there was a lot of talk about how they see it.

His report today laid out different options of how other people see an ombudsman. That's good to know. When we go to the House and defend this as a committee, they'll want to know whether we've looked at all the others, whether we understand what some of the other jurisdictions use in the way of an ombudsman.

So if we've heard enough about the office of ombudsman, then we start to do a draft of our final report to the House. That's how I see it.

The Chair: By the end of this month, certainly by the beginning of the next, we should be at the report stage.

Mr. St. Denis has suggested bringing in Mr. Owen, who used to serve as an ombudsman in British Columbia.

Mr. St. Denis.

Mr. Brent St. Denis: I think we all generally agree that we're moving in the right direction. To me, it's just a process thing. We've heard quite a few witnesses. Today, in particular, was helpful. But I think we should have something, even a working document with two or three options, that witnesses could use to tell us how we're doing. Right now, we're shooting in the dark.

I don't think it's pre-emptive of anything. You've heard of mid-term reports, draft reports, working documents. I don't see anything wrong with setting down some reasonable ideas. This field is not an infinite field. There are only a limited number of things one can do, and I think Mr. Marin spoke clearly to that today.

Mr. Rodger Cuzner: My view is similar. I thought today's witness was very helpful, and I'm sure the committee benefited from his testimony. It's not surprising that some witnesses are more sophisticated than others, more experienced in certain areas. Some have a broader perspective—the whole nine yards. The thing is to dial them in on what's relevant.

I know it's a lot to ask of the researcher, but I think it would help to have a mid-term report identifying some of the options that have been offered with respect to, say, the selection of the ombudsman and the duration of his term. We need some context to help us focus in the short time we have left to put forward a draft proposal.

• (1720)

The Chair: Mrs. Hinton, I am sorry, you are not on the list any more. You had your chance.

Mr. Mayes.

Mr. Colin Mayes (Okanagan—Shuswap, CPC): We're trying to establish whether there's a need for an ombudsman, whether there's a problem with the department, whether an ombudsman is warranted to meet veterans' issues. Are these the only questions this committee is going to deal with, or are we also going to look at the framework in which the ombudsman works and his roles and responsibilities?

We also have to consider the work plan and the cost. There has to be a cost associated with this. Could it be afforded by the department? I don't know whether money would be available.

These are the steps in front of us. Are we addressing just one, or are we looking at all of these steps?

The Chair: I'm sorry. Mrs. Hinton won't get a chance to speak, nor will Mr. Gaudet. We're coming up on time.

I'm going to ask our researcher to prepare one page for our witnesses that lays out some of the larger, if you will, branches in the tree that this can take. This would be so they can direct their comments to how many years is in a term; who they should report to, whether it be the minister or the committee, and that type of thing. That way it helps direct some of their comments. They can give their reflections on some of those various options. If we could have something simple at this stage, so it's not onerous, either on you or for them, in terms of having to prepare and address it, does that make sense?

Is that acceptable to the committee?

Monsieur Perron.

Mr. Gilles-A. Perron: No, and I'm going to tell you why. I'm going to tell you one thing, Rob, and I'm going to speak English, so that everybody will understand what I mean. I gave you the tools to find out by telling you to see

[*Translation*]

the site of the Public Protector Act. You have all received a copy; I had them distributed. I also encouraged you to go look at the Ontario Ombudsman site. Be honest, don't answer like politicians. How many of you went and looked at it?

[*English*]

The Chair: No, of course not.

[*Translation*]

Mr. Gilles-A. Perron: Yes, but that is part of our work. We are supposed to become informed, ask intelligent questions and move the project forward. That is our responsibility as Members of Parliament and members of this committee. Each of us must have at least an approximate idea of what an ombudsman is and what he or she should do. It is not up to Michel to give us questions we should ask. Go on. It is written here that the mandate should be five years or three years, that he or she should be selected by the Speaker, by the assembly. Go ahead, kids, do your own research. Of course it's political. We shouldn't wait for everything to be handed to us.

[*English*]

The Chair: Monsieur Perron, nobody writes questions for me. Okay?

Monsieur Perron, I appreciate your passion on this issue, but we're—

[*Translation*]

Mr. Gilles-A. Perron: We're going around in circles.

[*English*]

The Chair: —hearing from people. We're going to come up with a report. We're going to guide them in the presentations so they give us answers to the questions you're asking: whether or not it reports to the minister or reports to the committee, etc. We're getting feedback on this, and at the end of the month or the beginning of next month, you're going to have a report. End of story.

Okay.

The meeting is adjourned.

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