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## **Standing Committee on Veterans Affairs**

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**Chair**

**Mr. Rob Anders**

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## Standing Committee on Veterans Affairs

Thursday, February 15, 2007

• (0905)

[English]

**The Chair (Mr. Rob Anders (Calgary West, CPC)):** Good morning, folks. Welcome to another meeting of our veterans affairs committee.

Our witnesses this morning are from the Veterans Review and Appeal Board. Laura Kell is a legal adviser, and Victor Marchand is the chair.

Generally we allow you 20 minutes. You can split the time however you wish. Then we'll open it for questions.

The floor is yours.

**Mr. Victor Marchand (Chair, Veterans Review and Appeal Board):** Good morning, Chair, ladies and gentlemen.

I have just a small opening statement to situate the board.

As you all know, the Veterans Review and Appeal Board is a quasi-judicial, independent administrative tribunal that has existed since 1995, when pension reform was instituted. Since then the board has adjudicated over 100,000 appeals from veterans, mostly in the disability pension area.

The board is arm's length. It has a regular complement of approximately 28 to 30 full-time board members, and on average the board produces some 7,000 decisions a year.

We're proud of our track record because most of the board's decisions are issued within 30 days of the actual hearing. Veterans appreciate the rapidity with which we hear their cases. Overall we are still handling a workload of 700 cases per month. We hold hearings in some 30 locations across the country, and our output is maintained at approximately 6,500 decisions a year.

In a nutshell, that's where the board is right now. We continue to hear as rapidly as possible all the appeals that come from the department to us.

That's really all I can say at this point. I'm ready to answer questions should the committee have any.

**The Chair:** Just before we switch it over to the committee members for questions, does Ms. Kell have anything to add to the discussion?

**Ms. Laura Kell (Legal Advisor, Veterans Review and Appeal Board):** No, thank you.

**The Chair:** That was an incredibly brief presentation.

Ms. Guarnieri.

**Hon. Albina Guarnieri (Mississauga East—Cooksville, Lib.):** It was very brief but to the point.

Thank you, Mr. Chair.

First let me join my colleagues in welcoming Monsieur Marchand back to the committee. I want to convey my appreciation for the good work he did during my tenure as minister.

I'll be sharing my time with Mr. Valley.

I would like to focus on the appointment process to VRAB and the impact the recent appointments of ex-politicians have on the integrity of the process.

In 2004 we added a screening process that was intended to vet potential candidates and ensure that only qualified people would reach the board. It was also intended to give veterans and other knowledgeable individuals who had worked with veterans in medical and community settings a fair opportunity to join the board.

Given that half the appointments are now former Conservative appointments, do you think applicants have the same sense of fairness that they might have previously had? Do you believe there is still a point in having a screening process, when at the end of the day the selection is so politically biased?

My supplementary turns to Agent Orange. I wonder if you could provide the committee with some broad statistics as to how many Gagetown appeals your board has heard in the last year, and what the outcomes have been. More particularly, what have these appeals indicated in terms of the quality of information available to determine whether a veteran has been exposed to and harmed by Agent Orange? Do you know how many appeals the department has refused to date? Do you have an estimate of the pending workload ahead of you?

• (0910)

**Mr. Victor Marchand:** Well, to answer your first question, Mrs. Guarnieri—

**Hon. Albina Guarnieri:** There were a lot of questions.

**Mr. Victor Marchand:** —the selection process, which was put in place in the fall of 2004, held its first series of candidate screenings in early 2005. At this point, we're up to the sixth cycle of screening candidates. We have screened, I would say, an average of 150 candidates per cycle. So far, we would have seen some 500 candidates applying for an appointment to the board.

The criteria are published, and as you know they are on our website. They seek to review basic criteria: education, experience, knowledge, university education or experience that is equivalent to university education. Some preference is given to people who have a legal or medical background. In essence, those are the criteria.

In our experience, the screening usually excludes one-third of the applicants. Then there is a written examination and another one-third are lost. And finally, the last third make it to the interview. About 10% fail at the interview stage.

All the candidates on the list of qualified candidates go through this screening process: the pre-selection, written examination, and interview. The criteria are tested at each stage of the process.

Since the selection process has been adopted, some 17 persons have been appointed to the board. The qualifications of these 17 persons were right on the criteria, as far as I remember. I was involved personally in both the pre-selection, the written examination verification, as well as the interview process. Their names were all on the list of qualified candidates.

Having sat on the interview committee, I have seen most of the candidates, and I must say I was, and still am, very impressed by the quality of persons who applied for those jobs.

The selection process will profoundly affect the culture of the board now that people have to compete. It has changed the attitude of the board members. They are motivated. They insist on being up to par. That process has increased the value of the candidates to an extremely high degree. It has influenced, and will continue to influence, the long-term quality of the work of the board.

That's my impression of what the selection process and appointment of qualified candidates has brought to us so far.

• (0915)

On the Agent Orange issue, according to the latest statistics—you'll have to be kind here, because these are just off the top of my head—something in the area of 1,400 disability pension claims were made by military at the department. The last time I saw some statistics on that, some 500 of these applications had been adjudicated upon by the first-level adjudicators, and overall some 25 claims had been recognized and accepted. Most of these claims were for service persons in Vietnam. Half a dozen were for claims based in, I think, Gagetown.

The adjudication thereof was based on the Institute of Medicine's categorization of conditions associated with, or recognized as being possibly linked to, or probably linked to—I forget the actual categories—exposure to Agent Orange. Often the dilemma in those cases is that the actual exposure to the agent is the critical component.

With regard to the status of studies and reports on the subject, I think the latest came from Dr. Furlong in November. He drew some statistical conclusions after the fact on possible health effects from exposure to Agent Orange.

So as far as I can recollect, those in a nutshell are the latest events from a research point of view and the statistics that I can recall on the subject.

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

Just so that everybody knows, the first round of questions is generally seven minutes, except for the NDP with five.

We let you go longer in response to the question, but that means Mr. Valley doesn't get a chance to question now. He'll be up in a later rotation. I think he understands.

Monsieur Perron, for the Bloc.

• (0920)

[Translation]

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

First off, I apologize for my tardiness.

This is not the first time that we've spoken, sir. As you know, I'm not a big fan of the review and appeals process. What bothers me the most about it is how you go about selecting the people who will oversee the process and the appearance—and I emphasize the word appearance—of a conflict of interest among lawyers called upon to defend a veteran. Ms. Guarnieri has just touched upon that subject.

Counsel for the veteran is paid by the department. He comes under your responsibility and that bothers me. Let me tell you about one case in particular, that of Mr. Armand Pilon. I'm sure you've heard speak about that incident. I found it truly disgraceful that after contacting the lawyer who defended Mr. Pilon before your Board, he called me to tell me to close the books on this matter.

How could this lawyer be the person representing the veteran before the VRAB, and at the same time, be the person making a case against him to me? That's quite a dilemma. Moreover, Mr. Marchand, the veteran in this case was not given any benefit of the doubt. Mr. Pilon and his wife testified before the Board. All Board members said they believed Mr. Pilon, but that didn't change the decision, namely that Mr. Pilon was not entitled to any compensation.

I mention Mr. Pilon's case in particular, but I know of many others. I'm curious to get your reaction because this case niggles me. I would suggest that we offer this veteran a lump sum amount or a certain number of hours so that he can have his own lawyer, just as if he were presenting his case in a real court of law.

**Mr. Victor Marchand:** Up until 1995, the Bureau of Pensions Advocates was an independent agency. In 1995...

**Mr. Gilles-A. Perron:** You paid for this independent agency.

**Mr. Victor Marchand:** No, from a legislative standpoint, it operated as an independent agency prior to the 1995 reform. Subsequently, responsibility for the Bureau of Pensions Advocates was transferred to the department. The advocates who now handle the cases form a division within the department. There are about forty lawyers in all spread across the country and they work in a totally independent manner. They are not instructed to handle files in a particular way. They are fully autonomous in terms of preparing their cases.

**Mr. Gilles-A. Perron:** Mr. Marchand, you know very well that I won't bite the hand that feeds me. Before 1995, the board operated with taxpayers' money provided either by your department or by National Defence. How can you expect these persons to be impartial when they are paid by the very same taxpayers, who are veterans, and to oppose their boss? I see a problem with this arrangement.

• (0925)

**Mr. Victor Marchand:** Well, now I have a problem. This has not been my experience with the Bureau of Pensions Advocates. As a Board member, I heard a number of cases. I was a full-time Board member for several years and I listened to all of these lawyers argue their cases before me. I can honestly say, Mr. Perron, that contrary to what you may think, these advocates argue with conviction and are dedicated to their work. They enjoy representing veterans and systematically do good work.

That has been my personal experience. There's nothing else I can say.

As for Mr. Pilon, because I'm not familiar with his case, it is rather difficult for me to comment.

**Mr. Gilles-A. Perron:** I don't wish to discuss his case. I was simply giving you an example.

**Mr. Victor Marchand:** As I said, I'm not familiar with his case. In any event, it would be inappropriate for me to comment on a case currently before the Board.

**Mr. Gilles-A. Perron:** I wasn't asking you to comment. I was simply giving you an example. Generally speaking, I like to give out sound examples, so as not to look foolish.

If the people seated at this table are honest, they will tell you that they receive many telephone calls and complaints from veterans about the lawyers who are representing them before your Board. I get calls on a regular basis.

If you like, I can forward these complaints to you via e-mail. You'll see that your inbox will be quite full, Mr. Marchand.

Do you wish to continue?

**Mr. Jean-Yves Roy (Haute-Gaspésie—La Mitis—Matane—Matapédia, BQ):** No, that's fine.

[English]

**The Chair:** I have to say I've missed these kinds of sessions, because I get to see the animation and the passion of Mr. Perron again. It's good, sir.

**Mr. Gilles-A. Perron:** I let my heart talk once in a while. Instead of using my head I use both my head and my heart. When I see injustice, I cannot stand injustice.

**The Chair:** I understand. It reminds me of Thomas Jefferson, his head and his heart and the debates he would have. That's very good.

We don't have the NDP with us this morning, so next I'll move on to Mrs. Hinton. Before I do, though, I just want to make a quick mention of something. I believe earlier—and I was a little surprised, because I think it's one of the first times I've ever seen this—I saw a recording device that was placed on the table.

**Hon. Albina Guarnieri:** Yes. The press use them all the time.

**The Chair:** I understand that.

**Hon. Albina Guarnieri:** Transcripts.

**The Chair:** Ms. Guarnieri, I'm just going to clarify this here. I talked about this with the clerk, and as far as I understand it, that would be a violation of members' privilege. Here's the reason why. Those things can pick up sometimes not only the testimony of the witness but also side conversations. Anyhow, we talked about it, and I don't know if that's still in use, but unfortunately I would have to ask that it be removed.

**Hon. Albina Guarnieri:** I am being censored.

We'll get it from the transcripts. Thank you.

**The Chair:** I understand. I'm just letting you know how it works here.

Now on to Mrs. Hinton for seven minutes.

**Mrs. Betty Hinton (Kamloops—Thompson—Cariboo, CPC):** Thank you.

Welcome back, Mr. Marchand. We've had the pleasure of your company before. Some rather interesting comments have been going around the table, but the fact of the matter is this committee agreed to invite you here today to ask you for your views on the bill of rights. We've not actually touched on that yet. I will have a couple of questions for you and I'll split any remaining time with my colleague, Mr. Shipley.

How do you feel a bill of rights would impact VRAB's current work? That's the first question.

Secondly, what in your opinion should be included in the bill of rights? You deal with veterans on a fairly regular basis. I would like to have your perspective on this. We've certainly heard from a number of veterans groups, and we have a pretty good idea of what they want in it. Personally, I have a pretty good idea of what I'd like to see. I'd like to see it kept very simple, clear, and easy for veterans to understand.

I'd like to know what your views on those two things are, please, and I'll leave the remaining time with Mr. Shipley.

**Mr. Victor Marchand:** All right. My initial reaction is that it will always be the same. Any time the legislature wishes to adopt a system, a new approach, a set of rules, a bill of rights that will improve the lot of veterans, I will support it in any way, shape, or form. So any endeavour to do so the board will support at the first and at all occasions. I think it's important to continuously review and revisit the systems and services that vets receive. So to answer right away, I support it, and I hope it succeeds.

As for the actual text of the bill of rights, I may have seen an early version of it. There were many components to it. There was the right to be treated fairly and respectfully. There was the right to be accompanied or represented. There was the right to receive services in both official languages. There was a set of four or five principles involved.

In my view, the thing that vets will always appreciate and that is extremely important for the system to realize is that speed in services is a very important thing to consider and always be conscious of. The extent to which the rights are available and the extent to which the services are available is of course very important, but the speed with which the services are rendered, in my opinion, is also extremely important. That's our experience at VRAB.

• (0930)

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

Mr. Shipley, go ahead.

**Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC):** Thank you, Mr. Marchand. It's good to see you back again. I think, as we mentioned earlier, it was in about May that you were here. That seems like a long time ago. It was a lot warmer at that time.

I just want to go back a little bit to Ms. Hinton's question. She'd asked you how you felt the bill of rights would impact the current work. I'm not so sure that you actually really answered that.

I want to go back. At the time we came into play here, there were about 8,000 or 7,500 claims backlogged. I think the question was asked as to how the bill of rights would impact the current work when you had that backlog.

First, I would like to know where you are with the backlog. How have you been able to move ahead and accomplish what we talked about back in May, to start to dissolve some of those and get them off the plate? If the bill of rights comes in, what kind of impact will that actually have, when you know that you have a backlog?

I'll ask those questions first, and then I have some other ones, actually, following up from my colleague who had brought up questions. Could I have just a quick response on those, please, first?

**Mr. Victor Marchand:** All right. From a functional merit point of view of the board, the board works and deals with the rules of justice and natural justice. So we're in the business of being fair. We're in the business of being even, impartial. If the bill of rights comes to us and we are told to do even better there, we will, because it's our business to make sure that these things are applied and done right by the vets.

To me, any enhancement of that proposition or system is a good thing. That's my view of how the bill of rights can affect us. It can challenge us to do our job even better. To me, it's an asset, it's something good, it's valid.

The second thing on the backlog, yes, at the time there was an assessment done of matters not necessarily pending at the board, but matters that are presently in the hands of, or are being handled by, the advocates. The tally at that time was some 8,500 cases.

These can be phone calls, these can be vets calling in and saying "I just got a decision on a given subject. Advocates, look at my problem, give me your opinion. Should I move ahead with this matter before the board?" I think what is important to know there is that in the 8,500 a lot of these matters will never make their way to the board because there's no reason to proceed to the board with the case itself.

Last fall we blitzed the caseload the BPA had. We succeeded in hearing and rendering 500 more decisions in a period of

approximately three months, mostly by using single-member panels, and that is asking for the permission of the vet and the advocate that but one member hear the case so we could hold more hearings in various locations. With that, we succeeded in literally hearing 500 more cases.

As an aside, we plan on repeating the exercise, a variation thereof, and concentrating our work and hearings in the months of April, May, and June in areas where there are many files pending. We're going to increase our capacity for three months.

At last count, there were approximately 8,000 cases pending at the BPA. There are, of that number, 4,000 cases that are being studied, reviewed, and commented upon by the BPA for further action. It is not certain that these cases will proceed at the board because they may be counselled out or the veteran may decide not to proceed. There are 700 cases being prepared by the board, because you must know that once the BPA says "I'm ready to proceed, please prepare the file for me", we in fact prepare the files for the advocates and the clients. There are approximately 700 of those, and there are another 1,500 that have been registered with the board for eventual hearing. So that is the amount of 8,000 cases added on to one another.

We made a dent in the fall with the blitz. We want to blitz again in the spring, hopefully. We have new members, whereby our complement is up to 26 members, so our hearing capacity will be up because of that.

• (0935)

**Mr. Bev Shipley:** Am I out of time?

**The Chair:** Yes, sir. Actually, we've allowed for 9 minutes and 50 seconds.

The way I work generally is as long as you guys are under your time limit, that's fine. The guests I allow some discretion.

We'll be on to Mr. Valley next, for five minutes.

I wanted to be able to say with regard to the situation we addressed earlier, just for clarification, if the media are here, they're able to plug into the actual House of Commons sound system in the back, which are the mikes that are turned on and off, of course, by our staff here. Anything that's extraneous to that, the press are not allowed access to, nor are staffers, for microphone purposes, etc.

**Hon. Albina Guarnieri:** You'll notice that the microphone was where the witness was, not where the other members were. Anyway, that's fine.

**The Chair:** I'm just telling you the way it is.

**Hon. Albina Guarnieri:** I'll just review the transcripts. No problem.

**The Chair:** Now, Mr. Valley for five minutes.

**Mr. Roger Valley (Kenora, Lib.):** When it was my turn, he started to talk. Did you notice that?

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

Thank you very much for coming before us today.

You mentioned a couple of times that the bill of rights we're working on is going to improve service for veterans, and that's what we're all about. It's also about your board working to its capacity. You mentioned a couple of things. On May 30 you were here, and you told us about a huge number of vacancies. This deals with the veterans bill of rights because I want to make sure that your board has the capacity to do this.

I called you on September 25 because there had not been a lot of appointments. My question is, how many appointments were made to your board from January to May, and then from May to September 25? When I called you, you expected a lot to happen very quickly then. You've told us that 17 new appointments have happened. Can you give me the timeframe on when they happened? On September 25 you expected a lot of things to happen. You just mentioned a bump in the fall, and you were able to take care of a lot of cases. How many more appointments do you have to go? Are you full now?

• (0940)

**Mr. Victor Marchand:** No, we're not.

Our regular complement is 28 from an operational point of view. The law says we can have up to 29 permanent members and any number of temporary members. We got six members in the fall of 2005. We got two members in June of 2006, three more in the fall of 2006, and we just had six appointments in early 2007. That should tally up to 17.

**Mr. Roger Valley:** That information must be public. We'd be able to get that off your board. We'd enjoy seeing that.

I'm sorry, how many do you have left to do?

**Mr. Victor Marchand:** Our regular operational complement is 28, and we're presently at 26, so two more. I've always asked for what I call operational spares. Like a fleet manager of an airline, it's always good to have operational spares when you've got a plane down, or you've got a member down for illness. I've seen the board go up to 30. With that, from an operational point of view, it's very comfortable.

**Mr. Roger Valley:** That leads to my next question.

With the bill of rights, as already mentioned, we intend to improve services for veterans. We know that you serve veterans from bygone days to the new veterans who are coming out as we speak. The complexity of their cases is getting to be more and more complex as the years go by, with different areas that have to be looked into.

The cases you have had in the past may be complex because of time, but there are issues out there now that we'd never dreamed of, that our soldiers have to face in the current areas they're serving. Is the complexity of cases going to cause the backlog to grow? Is the

sheer number of veterans we're going to be putting out in the next little while going to cause your backlog to grow? If so, how do you plan on dealing with that part of it?

**Mr. Victor Marchand:** The answer to dealing with more complex cases is clear: it's training, training, training for the board members.

The increasing complexities exist in the nature of medical conditions: not in the factual happening of the event, causative of damage or of the disability, but rather in the area of medicine. Training will always be required to stay abreast of the various medical conditions out there. It's as simple as that.

No, I don't foresee that the complexity of conditions will enhance or aggravate the backlog. What in fact can create delays is the preparation of the files in relation to expert testimony or expert reports. Often it is the availability of medical expertise—and this is strictly procedural, and almost a societal problem—where vets have difficulty finding an expert to look at their condition. So it's not the complexity of the condition but the availability of the expert to look at the condition that often creates a delay in the preparation of cases.

**Mr. Roger Valley:** If you hadn't talked so long, Mr. Chairman... I'm just kidding.

**The Chair:** Sir, I didn't start timing until after.... It's 5 minutes and 18 or 20 seconds.

Now, we're on to Mr. Roy.

[*Translation*]

**Mr. Jean-Yves Roy:** Thank you, Mr. Chairman.

After listening to your presentation, sir, I have a question. You stated that since 1995, a total of 100,000 appeals have been filed.

• (0945)

**Mr. Victor Marchand:** A total of 102,000.

**Mr. Jean-Yves Roy:** A total of 102,000.

**Mr. Victor Marchand:** That's the number of decisions that have been handed down.

**Mr. Jean-Yves Roy:** You mean 100,000 decisions, not appeals.

**Mr. Victor Marchand:** Correct. The number of appeals filed is probably in the range of 200,000.

**Mr. Jean-Yves Roy:** So then, 200,000 appeals have been filed.

Is there anything unusual about the high number of appeals? That's the question I was getting at.

**Mr. Victor Marchand:** It's a reflection of the way in which the system was designed. Since the First World War, veterans have always had an appeals process to which they could turn.

**Mr. Jean-Yves Roy:** What strikes me is that decisions seem to be appealed almost automatically.

**Mr. Victor Marchand:** The appeals process is automatic because it costs nothing to the veteran and they have access to lawyers to help them prepare their case. Naturally, when all of these services are available, a person will take advantage of them. That's always been the case.

**Mr. Jean-Yves Roy:** That's not the point here. If a person is satisfied with the initial decision handed down—excuse me for being so blunt—then he certainly will not file an appeal. This means that veterans are totally dissatisfied with the initial decisions handed down by the Board.

**Mr. Victor Marchand:** That's not so. The system in place is one based on entitlement. A person may contact the department, but may not be able to justify his request. That person must provide some proof in order to receive a service. Obviously, the person must be a veteran, an incident must have taken place to cause his disability and that incident must have occurred while he was on duty. In other words, the request must be backed up by supporting evidence.

Occasionally, people do not come prepared with all of the documents they need to support their application for a disability pension. Between 60% and 70% of applications are accepted right way. In the remaining 30% of cases, some proof is lacking, either a medical report or account confirming that the disability is the result of an accident or incident that occurred in the line of duty. These veterans then turn to us and ultimately get a hearing before the Board and an opportunity to present their case.

From this point onward, the system becomes considerably more sophisticated. An independent member examines the evidence, weighs the credibility of the testimony—because by law, the veteran must be given the benefit of the doubt—and then grants, or denies a pension based on the evidence adduced. The success rate at this stage is 60%. The next stage, the final stage, is the appeals process. The current success rate at this level is approximately 30%. Basically, we're working with a system that has been around for 90 years, one that involves the department and the appeals process.

If you consider the overall structure and if you compare Veterans Affairs to other agencies that award compensation for bodily injury, you have to admit that the system in place at Veterans Affairs is working. In the final analysis, perhaps 10% or 15% of applicants fail to obtain anything. One has to look at the overall system and ask if it works well and if the veteran benefits. In my opinion, the system does work. It is sometimes slow, but occasionally, we need to stir things up a little.

● (0950)

[English]

**The Chair:** Since there are only three seconds left, I think we'll move on to the next round. I'm sorry.

Thank you very much.

Now it's on to Mr. Sweet, for five minutes.

**Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC):** Thank you, Mr. Chairman.

Thank you, Mr. Marchand, for giving us some very cogent and concise answers. I'd ask for a couple of concise ones, because I want to verify some things.

I remember your testimony the last time you were here quite well, and some of the questions that were asked. I think you probably left here feeling that there was significant concern in this committee to make sure the board was fully staffed so that you could serve the veterans.

I was trying to do some math while you were answering. Is it correct that 11 appointments have been made during this session of the 39th Parliament?

**Mr. Victor Marchand:** Yes.

**Mr. David Sweet:** And of those 11, how many were appointed since May, when I would assume you left here feeling impressed, after your visit, that we wanted to see people on the board?

**Mr. Victor Marchand:** There were two in June, three in the fall, so it's eleven after May.

**Mr. David Sweet:** Eleven after May? Thank you very much for taking action.

Could you tell me, since 2004 when you set up the screening process, have you changed it at all?

**Mr. Victor Marchand:** No. The criteria are efficient. They're producing the type of candidate we want to see, want to test, want to interview, and whom we want to put on the list.

**Mr. David Sweet:** So the process has remained the same consistently since 2004. You've basically acted upon the push you got here from the committee, and now the board is almost at a peak of functioning.

Did you say you have 27 right now?

**Mr. Victor Marchand:** It's 26.

**Mr. David Sweet:** And you would like to get to 30.

Are you okay to get to the 30, even though the legislation says 29?

**Mr. Victor Marchand:** Yes, because then it's 29 permanent members—that's three-year terms or more. There is an unlimited number of temps.

**Mr. David Sweet:** In making the 500 more decisions that you made, I take it you asked each veteran who was coming before the board whether it was acceptable to them to be heard by a single member.

**Mr. Victor Marchand:** Of course.

**Mr. David Sweet:** Of the decisions that were made, could you tell me the percentage of favourable decisions for the veterans? Were they consistent with the average percentage of favourable judgments from the past, when there were multiple members of the board hearing these cases?

**Mr. Victor Marchand:** In my rapid review of those statistics, favourability rates are slightly higher with single-member panels.

**Mr. David Sweet:** Slightly higher?

**Mr. Victor Marchand:** Yes.



**Mr. David Sweet:** Finally, we've had a lot of conversation around the committee about the fact that a lot of the benefits that go to an armed forces veteran also extend to their family now, with the new suite of services that are offered. That said, we don't want to make the bill of rights too convoluted. Do you think the bill of rights should mention veterans' family members?

**Mr. Victor Marchand:** I think veterans' family members are an integral part of a veteran's compensation and care package, so I would, indeed.

**Mr. David Sweet:** You feel that should be right in the text of how we actually craft that bill of rights.

**Mr. Victor Marchand:** It's very important, I think.

**Mr. David Sweet:** Good.

Thank you, Mr. Chairman.

**The Chair:** You still have a whole minute and a half.

**Mr. David Sweet:** A minute and a half?

Do you have a question, Colin?

**Mr. Colin Mayes (Okanagan—Shuswap, CPC):** To get on to the veterans bill of rights, when you have rights, they have to be defined—things such as reasonable access, reasonable timelines for response, reasonable representation for the veterans. Do you see any challenges in defining what is “reasonable”, and could that slow up the process for a bill of rights?

**Mr. Victor Marchand:** Well, that's the balancing act. You're asking a lawyer, and if you ask a lawyer to write down in black and white how something should be defined, you're in trouble, basically, because it could be very lengthy. But it will also be very precise.

My understanding of the efficiency of a bill of rights is that it's basically its simplicity in comprehension, so that the buy-in from the vets and from the people who inhabit the system of Veterans Affairs will be easy. The trade-off is there. I don't think you want to become extremely complex legally, but simple and clear, from a common sense point of view, so that people can relate to what's in it. I think that's the ideal.

It's a balancing act, I admit, but it's an important one for people to understand what's involved.

• (0955)

**Mr. Colin Mayes:** It's a symbolic message to the veterans of the concern the Government of Canada has for their rights.

**Mr. Victor Marchand:** Yes.

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

**The Chair:** Oh, that hang noose doesn't apply to you, Mr. Marchand, just to the committee members. You can carry on and finish your response.

**Mr. Victor Marchand:** I can just keep on talking? Okay.

**Mr. Colin Mayes:** I was so caught up in the answer, I lost track of time.

**The Chair:** We have to keep our members in line—not so much our witnesses, thank goodness.

Your response is finished? Okay, fair enough.

Mr. St. Denis, for five minutes.

**Mr. Brent St. Denis (Algoma—Manitoulin—Kapusking, Lib.):** Thank you, Mr. Chair.

Thanks to both of you for being here today.

Taking a cue from Colin's questions, I don't think we know today exactly what the final recommendation will be from this committee on a bill of rights. But there's access, and wait time guarantees if that's possible, and I imagine it might include something along the lines of benefit of the doubt.

Generally speaking, how do you handle it now? And under a bill of rights, if that were included, how do you see that notion of benefit of the doubt handled? If I'm a veteran and I'm applying, always the expectation is that I'm going to win my case. Obviously that's why a person proceeds with an application. They're not happy if they don't get it, but they're not as unhappy if they have been dealt with efficiently and they feel they've been treated fairly and so on.

Could I have your comments on that, please?

**Mr. Victor Marchand:** Again, I'll answer as a lawyer, and then I'll try to move on to comprehensive things.

Benefit of the doubt is basically an onus of evidence rule that lies in many aspects of the legislation dealing with veterans affairs. In a nutshell, the legislator is saying forget the normal rules of preponderance in civil cases. In other words, in civil cases when you're a plaintiff, the evidence you bring forward has to be preponderant. It has to be higher than that of the individual you're suing or pursuing a case against.

What the benefit of doubt does in the situation of a tie, say, where the evidence is relatively equal on both sides, is that the legislator says you go to the vet; forget the normal preponderance issue as being determinative of whether or not you win your case.

To try to write that into a bill of rights might be just too complex to do, to my mind, unless you understand these various preponderance issues. I think it would be more useful to simply reiterate the principle that from an evidentiary point of view, the proposition that somebody brings to the table when they're presenting their case, there is a presumption that the evidence is there to grant. In other words, it's the bill of rights itself that is the message, versus that simple evidentiary rule.

So I think it's a question of choice. If you want to build a very complex evidentiary preponderance rule into the bill of rights, or simply state in the bill of rights that this is done in order to make sure that the veteran has available to him every recourse possible and imaginable, and that the system is to deal with the claim or the representation accordingly, I think it's probably more efficient from a perception point of view and a practical point of view also.

• (1000)

**Mr. Brent St. Denis:** Certainly I accept... And I'm sure all of us around the table know the simple rule in baseball that if it appears the runner got to first base at the same time as the ball from, say, the shortstop, then the runner is safe. Obviously that's a very physical act. It's not so easy to do that when it's with evidence. So I appreciate your comments there.

With the expectation that the government will proceed with an ombudsman's office and an ombudsman, there will be some sort of interplay, presumably, between your office, the future bill of rights, and the future ombudsman. Have you thought through the complications or benefits, or both, in that interplay among the three?

**Mr. Victor Marchand:** Yes, we have. As I stated earlier, the board is a quasi-judicial, arm's-length, independent board, so it would be inappropriate, to a certain degree, for an eventual ombudsman to get involved in the decision-making of its members. The member who hears and rules on a case has the quasi-judicial benefit of being independent. He's arm's length from the minister. He's also arm's length from an ombudsman. He's also arm's length from the chair of the board. He has to be secure in the fact that he makes his decision impartially and independently. From a member's perspective, that has to be protected for the board's credibility as an independent agency.

That is not to say that an ombudsman could not bring practical, realistic, pragmatic comments and criticisms to the board. He could obviously come to the chair. He could easily come to the deputy chair, for that matter, and say that our scheduling could be done better, that he's getting complaints from veterans that we're not doing enough hearings in their locations, or that we're too slow when we prepare our cases. In that sense, not only would it be important, it would also be very useful for an ombudsman to give us feedback on how we do our job, on whether our process is good and if it is working. I don't think the ombudsman could get involved in the particular cases.

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

Now on to Mr. Sweet, for five minutes.

**Mr. David Sweet:** Mr. Chairman, my colleague has one question, so I'll just let Mr. Mayes go with his question.

**Mr. Colin Mayes:** I'm curious, in your role as chair of the board, to make sure that balance is given to the veteran, do you review the decisions of the individual board members to make sure there isn't a board member who maybe makes a greater number of arbitrary decisions? Do you monitor that to ensure that the philosophy or the position of the board is followed?

**Mr. Victor Marchand:** The chair and deputy chair monitor the performance of our board members. We do not monitor the merit of their decisions. We make sure they show up for work on time. We make sure they put out their decisions in a timely fashion. We will maintain overall certain sets of statistics, and we use that, along with quality assurance systems we have in place at the board, through analysts and assistants who prepare the decisions, review the decisions. We try to build a system of feedback to the board member so he knows how he's doing from a performance point of view.

From a merit point of view, usually what happens is if a decision is issued and the veteran is incredibly dissatisfied with the result, I'll hear about it—and I want to hear about it—or if something went wrong in the hearing: the board member wanted to be friendly and made a joke the veteran didn't think was a joke, things like that. Little events sometimes pop up and make you ask what happened, but rarely does it go beyond that.

Honestly, with the complement of board members that I have and the complement and the quality of the staff I have at the board, I can

honestly say that things are running smoothly. I like the way we're going. I like the way we're doing business. Unfortunately, some things always crop up that you can't expect, but overall the system is working well.

If we get a dozen complaints a year about the performance of the board members, it would be a big year.

• (1005)

**Mr. David Sweet:** Mr. Marchand, I have two more questions. I'll give them both to you you can speak to them.

I heard Mr. Perron's concern about objectivity. My first question is whether you have had a lot of concerns from veterans regarding the lawyers you have.

Secondly, are these lawyers who are called to the bar? Are they responsible to an authority higher than the board, as far as their credentials are concerned?

**Mr. Victor Marchand:** You're speaking about the advocates?

**Mr. David Sweet:** That's correct.

**Mr. Victor Marchand:** They aren't our advocates and they don't report to the board. Well, they report to the board in the sense that they're officers of the court.

Often advocates will try to talk to board members about how they present their cases, how they could do better. Board members will tell them maybe they shouldn't concentrate on certain areas, or don't worry about this, we've read the files. There is a conversation between most advocates and board members on how to carry the business through the day. That's a good thing. There's a dynamic relationship there, and they learn to work with each other. There's a working relationship.

What sometimes happens when there are a lot of files is that clients call in asking where their file is or when their case will be presented. We can't manage that for the lawyers. They have to learn that for themselves. We don't get involved in the lawyer or client relationship.

Could the board help the lawyers manage their files better? Of course we could. But they don't necessarily want the boards to tell them how to manage their cases. What can I say? We can sit down with them and try to work things out, but ultimately they're the ones who are managing their caseload.

**Mr. David Sweet:** These are independent lawyers?

**Mr. Victor Marchand:** They are all members of the bar.

**Mr. David Sweet:** They are accountable to the bar.

**Mr. Victor Marchand:** Of course they are—in each province. There were 40 of them at last count.

I've often suggested that they be moved to the board, but nobody wants to manage lawyers, basically. They're not an easy group.

I was at Air Canada for many years, and we had a huge law branch there. I remember the vice-president saying you can't manage lawyers.

• (1010)

**Mr. David Sweet:** On the other aspect of the question, have you had a lot of complaints from veterans?

**Mr. Victor Marchand:** I think the issue for BPA to be considering is the following. We could all ask ourselves what people want. Do they want independent lawyers, or do they want lawyers who work well and fast? If you have to choose between a management system.... The ideal is to get the two working in conjunction. How do you work that? Maybe one solution is to get them to administratively report to the board—a deputy-chair who say he wants 700 cases ready to proceed to a hearing by next month and this is how he sees it evolving to meet the objectives.

Is that feathering the lawyers, or is that pushing them along to get the files prepared? We could discuss that at length, but that's obviously an avenue. It's a balancing act, and it's not an easy one.

**The Chair:** If you wish, you have another minute and a half.

**Mr. David Sweet:** No, I'm fine. Thank you.

**The Chair:** Monsieur Perron is next, for five minutes.

**Mr. Gilles-A. Perron:** It's going to be less than that.

[Translation]

If at all possible, could you possibly supply me with a list of the 26, 27 or 28 members of your Board? I can't recall the exact number of members.

**An hon. member:** There are 26 members in total.

**Mr. Gilles-A. Perron:** Then I'd be interested in getting the names of the 26 members.

I have something I'd like to say, having observed that people seem to have some reservations about the ombudsman. I think it's clear to everyone here that the ombudsman is not there to do your job. His mandate is to conduct inquiries and studies and, first and foremost, to make recommendations. His job is to advise the House and minister that a particular situation isn't working and to ask that problems be rectified, if at all possible. That's his job.

He cannot change situations. He can only make recommendations. Therefore, everyone must have a clear understanding of his role, because everyone seems to think that this is just one more person carrying a big stick. That will not be the case. His role will be to review situations and make recommendations.

I have nothing further.

[English]

**The Chair:** That was more of a comment than a question.

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

**The Chair:** Now we'll go to Ms. Guarnieri and Mr. Valley. I assume you're splitting your time.

**Hon. Albina Guarnieri:** Yes, and I will prove that I can be succinct.

Monsieur Marchand, earlier you cited exhaustive numbers about your pending workload. I can appreciate that you don't have all the stats surrounding Agent Orange at your fingertips, but perhaps you'd be good enough to provide the committee at the earliest date possible.... You mentioned a backlog of 8,000?

**Mr. Victor Marchand:** There are 8,000 cases registered in the system, some 4,200 of which are not with the board; they're with

BPA at this juncture. At the board there are 700 pending cases for hearings, 700 cases in preparation, and 1,700 cases registered.

•(1015)

**Hon. Albina Guarnieri:** Perhaps you'd be good enough to provide the committee, at the earliest date possible, a breakdown of how many of those pertain to Agent Orange specifically, and how many you have refused to date surrounding Agent Orange. I believe earlier you cited figures on how many had been approved, but perhaps you could also shed some light on those that have been refused.

Thank you. I'll pass the floor to my colleague.

**Mr. Roger Valley:** Thank you, Ms. Guarnieri.

I think I asked for it before, but I would like you to send information on the timing of the appointments. You have two more to fill, and we want you to have them filled as soon as possible.

We're designing a veterans bill of rights to provide more service to veterans. When you get to 28, you're full. You mentioned you can go to 29 or 30. Tell us bluntly if you need 32. Do we need to put in that the resources have to be there to serve veterans, or when you're full will you have enough? We need to know how to plan for the future.

**Mr. Victor Marchand:** The optimal number operationally is 28. With 30 I would have operational spares. It's logical, with the provision of 29 permanent members, that if I can have a turnover and maintain 28 board members perpetually, I'll be operationally safe from a capacity to hear cases.

It may mean that sometimes I'll go up to 30 and then fall back down to 26 or 27. The challenge is really to keep that human resources number at an average of 28. People come and go; they're new and need to be trained. I always want to keep a core of experienced board members and never let the number of experienced board members fall too low. I can't have 28 brand-new board members at one specific time. So we need to have a planned turnover.

**Mr. Roger Valley:** I'll ask the same question a little more directly, then: if your operational component were 32, would you be able to provide a higher level of service to veterans?

**Mr. Victor Marchand:** No. The optimal complement is 28. It's the capacity of BPA to put the cases forward. At the point that I had 50 board members, I couldn't hear more cases if the cases weren't being brought to me by BPA.

**Mr. Roger Valley:** Okay. Thank you, Mr. Chair.

**The Chair:** We will go on to Mr. Shipley for five minutes.

**Mr. Bev Shipley:** We had the discussion earlier about the potential for an ombudsman to come back in. We're now talking about a bill of rights. All of these are to improve the services and to help out our veterans, so we want to move ahead with that.

If that position of an ombudsman were to get filled and the bill of rights were to come along and get into position, how would that help you with your performance?

**Mr. Victor Marchand:** I think it would help the performance of the whole portfolio, not just of the board. If the whole portfolio feels the pressure is on to get the job done, to move, obviously it will also affect the board and VRAB. In that sense, VRAB is part of the portfolio and it will be there to do the job. What the ombudsman's office will probably do for the board is provide it with important feedback on how it's doing its job and on areas in which it can improve processes in the short and middle term.

The bill of rights, I think, will be an automatic buy-in by the board, because that's our business. That's what we're in: servicing, recognizing rights. I think it's going to be an important component.

•(1020)

**Mr. Bev Shipley:** I have one other question. In terms of the members, we have two, and I think two left that basically you couldn't get filled. This committee has been very supportive of getting those filled. Obviously, a number of vacancies were sitting there.

I just want to make sure that in terms of their qualifications, having an open process based on merit and qualifications and having the lack of political influence in it makes you confident that these people are selected through a process that is clear, accountable, and transparent, so that the positions are in fact being filled by people who will serve the best interests of the veterans.

**Mr. Victor Marchand:** I will quote the candidates themselves. More often than not, candidates at the interview have said, "This is a rigorous system. It was a learning process for me on how you define and review qualifications for people to be members of your board."

So far, the people who are in it tell us it's rigorous and efficient.

**Mr. Bev Shipley:** The only thing that we do here, and likely all of us hear that, is there seems to be some lack of compassion based on documentation of benefit of the doubt. That's always an issue for our service people, our veterans who come back. They have spent their time protecting not only this country but also the democracy that we so much enjoy in this country, but when the benefit of the doubt comes, there seems to be that lack of conscience sometimes. When we go back through the review, I think you said there's a 60% and a 40% approval on some of these.

As much as we're trying to say this is all about the vets—and I think there isn't one around the table here who doesn't say that, and I really do have this compassion for those we may know as individuals—the benefit of the doubt always seems to keep flopping back up from time to time. I know that back at that time in the Second World War—and we've had that discussion—the transfer of the records from the Department of National Defence to Veterans Affairs was very difficult.

That's just a comment. You don't need to reply to that one. Thank you.

Thank you, Mr. Chair.

**The Chair:** He's got four seconds. That was very well timed.

**Mrs. Betty Hinton:** I can't speak that....

**The Chair:** Not as well timed as the intervention that was four minutes and 50 seconds by Mr. Roy...but it was very good.

Now, we don't have anybody else really on the speakers list as far as questions go, unless I see any eager beavers. No? Fair enough.

A slightly eager beaver—yes, Mr. St. Denis.

**Mr. Brent St. Denis:** A very short question, and I'm sure the answer will not be a long one. I've asked this before of other witnesses.

An assumption I make is that the veterans, mostly from the Second World War, Korea, and from peace-keeping, from the decades past, their cases being of a certain general nature.... Do you have a sense of how those cases are changing because the demographics are changing, the types of conflicts, the types of military experiences are changing? Are you seeing already a difference in the nature of the caseload now from what you might have seen ten years ago, for example, or ten years from now? Are you seeing a different flavour to the general case?

•(1025)

**Mr. Victor Marchand:** Yes. The files and the conditions being dealt with are more complex from a medical point of view. I think I alluded to that earlier. From the board's perspective, ultimately, on a mid-term basis, I would say that within the next few years, the board will progress and change because of the change in the nature of cases. It will move from a high-volume system to a high-quality system eventually. The files and the subjects being dealt with will require a lot more attention, a lot more expertise from an evidentiary point of view. So you should notice that eventually the board will evolve that way.

So instead of rendering the possibility of 7,000 or 8,000 decisions a year, it may go down to 2,000 or 3,000, or possibly 4,000 decisions a year, but each of those decisions may require a lot more time, effort, and energy in the evidentiary side of the issue.

**The Chair:** Now, because Mr. St. Denis did what he did...Mrs. Hinton.

**Mrs. Betty Hinton:** I just have a comment regarding something you mentioned. You were talking about the ombudsman and the bill of rights. I feel that the ombudsman position and the bill of rights are actually going to change VRAB considerably because there will be two very firm sets of rules here that are going to be adhered to, and I think you're going to see that things are going to move along a lot more quickly—at least I hope they are.

In terms of those wonderfully brave men and women who are in Afghanistan now, we've had them there since, what, 2002?

**The Chair:** 2003.

**Mrs. Betty Hinton:** So I would imagine that since they've been there since 2002, you would have had several of them in front of you who would have finished their tour of duty and that you would have a better idea of what their needs are going to be. So maybe in a few months' time we can talk about that particular issue.

Thanks.

**The Chair:** Fair enough.

Now...going once, going twice, going three times....

Thank you very much for your presentation. I think it will be very instructive going into our next phase. I will just let the committee members know that I think there are a couple of members who would like to raise some issues not related to these matters. So I'll allow a few minutes for people to make their greetings, say their goodbyes and hellos, and then I think there are still a couple of people who would like to speak to some things.

I have a quick question before we walk around. Is it okay if we adjourn and if just the committee hangs...?

**Mr. Gilles-A. Perron:** Yes, it's only about some information. I could get that.

**The Chair:** Mr. Valley.

**Mr. Roger Valley:** It's nothing very controversial. I could do that right now.

**The Chair:** Okay.

The meeting is adjourned.

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