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Mr. Rob Anders

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• (0905)

[English]

The Chair (Mr. Rob Anders (Calgary West, CPC)): Good morning, ladies and gentlemen.

We are starting off yet another session of our Standing Committee on Veterans Affairs and continuing our study of the veterans bill of rights. We're very lucky to have with us this morning our law clerk and parliamentary counsel, Mr. Rob Walsh, as well as his parliamentary counsel, Ms. Melanie Mortensen.

You folks, I'm sure, are well aware of the circumstances, for the clerk has made you aware. We are dealing with this new veterans bill of rights. You've got a little statement here—that's great—and people are wondering about the legality, enforceability, implications, etc.

I leave it to you, sir.

Mr. Rob Walsh (Law Clerk and Parliamentary Counsel, House of Commons): Thank you, Mr. Chairman.

I'm pleased to be here today to respond to members of the committee on questions they have regarding the proposed veterans bill of rights. I met with the clerk of the committee and the library research officer supporting this committee yesterday morning, and they provided a briefing on the committee's consideration of this matter to date.

[Translation]

With me today is Melanie Mortensen, Parliamentary Counsel, Legal. She helped me pull together on short notice as much background material as possible in preparation for this meeting. We quickly examined the report on the veterans ombudsman, as well as the transcripts of the previous committee meeting at which this topic was discussed.

[English]

I understand that the basic question I am asked to address is whether the proposed veterans bill of rights could be done as legislation, as an act of Parliament. The answer is in the affirmative, Mr. Chairman, but there will be much that would need to be sorted out. The devil is in the details, as we often hear said.

[Translation]

I would only add that an act of Parliament should not be limited to words on paper. It should also provide for a series of appropriate mechanisms to ensure its application.

[English]

Mr. Chairman, Ms. Mortensen scanned the legislative field last night, and if you would permit, I would ask Ms. Mortensen to report to the committee on what she found and how the architecture of other acts might provide some insight to committee members on the legislative options for a veterans bill of rights.

Ms. Melanie Mortensen (Parliamentary Counsel (Legal), House of Commons): Thank you, Mr. Walsh.

Good morning, everyone.

I have not prepared an opening statement, as Mr. Walsh has; I'm going to give you a presentation ad hoc.

What I've looked at is various examples of rights regimes or interpretive specifications set out in different acts, by which I mean a purpose or guidelines as to how an act is to be interpreted with respect to the rights of certain individuals within the application of the acts.

I've also looked at examples of an ombudsman in order to determine the enforcement of how these rights would be set out. I understand that today you're looking at the veterans bill of rights and not at the ombudsman as such, but it was helpful for me to understand what was being anticipated in terms of the application of the bill of rights you're considering.

As to the architecture of different legislation, I know that in your last committee meeting there was some question as to the legal effect of the veterans bill of rights as it was proposed. As Mr. Walsh will no doubt indicate, the effect of this will really have to do with how it's implemented. If you implement it as part of legislation, then it will have the effect of legislation; where it is in the legislation will have a different effect. For instance, if something is set out in the preamble, it might have a different weight for a court that is going to consider it. If you set it out as the purpose and scope of the application of the act, then it will be considered as interpreting how the act is to be implemented. If, by contrast, it is in, let's say, ministerial directives or what have you, then it may have a lesser effect, as, for instance, quasi-legislation.

I've looked at the example of the military ombudsman. As you know, that example is not set out in legislation but rather is a delegated authority. That may be considered as executive legislation or quasi-legislation and may not have as strong an effect as other implementations of the veterans bill of rights may have if it were to be put into the act as a statutory bill of rights.

Another example we looked at after reading the report of your analyst is the example of the bill of rights for Ontario in the Long-Term Care Act. This is set out in part III of the Ontario Long-Term Care Act as the bill of rights in that section. In that section, the people who are staying in certain care facilities have a certain bill of rights, which, at the end of that section, is deemed to have the effect of a contract: the patients in long-term care would be considered to have a contract with the care provider. That's an example.

Obviously this is a government department you're talking about; it may not necessarily be appropriate, but these are different examples of architecture you can set up. It's up to the committee to make its recommendations as to what it considers to be appropriate.

Thank you.

Mr. Rob Walsh: Mr. Chair, if I could just reiterate, it is important that an enforcement mechanism be given serious consideration by the committee. It's all well and good to have provisions that recognize the rights, as this statement that you've provided to members today as a sample indicates, which are the public policy objectives of this project, but if there isn't sufficient recourse available to the veterans in the event of a failure, in their view, to respect those rights, then the legislation might have given rise to expectations that are not fulfilled when the rubber hits the road, as it were, with the result that the whole project is brought into disrepute.

I just emphasize that to members, that, really, the hard part in much legislation isn't so much articulating the rights but designing the regime by which those rights would be enforced.

Thank you, Mr. Chair.

The Chair: No problem. I appreciate that.

I can go to questions. I think that's what we will do. I have some of my own, but that's all right.

Mr. St. Denis.

• (0910)

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

Thank you, Mr. Walsh and Ms. Mortensen, for being here. It's a very helpful beginning, and there will be lots of questions.

When this idea was batted around and discussed at the last meeting, there was no disagreement that a statement to that in some form, of a level of service, a level of commitment, a level of bureaucratic care and oversight, would make sense.

The concern was, on the one extreme, could a bill of rights be seen more as sort of a statement of departmental principles or as a mission statement, a statement that in these areas we will do the best we can to help you, Veteran, without an implied legal obligation should a bureaucrat make a mistake or an expectation by a veteran not be met? At the other extreme it could be seen as an absolute, that you shall have such and such type of a service, which could then lead to the potential for lawsuits, presumably, if somebody felt they were aggrieved by the process.

In wanting to be helpful to veterans, I think we wanted to be responsible, too, and what was it that we were getting ourselves and this and future governments into when it came to these things?

In the example, Ms. Mortensen, of the provincial nursing homes act, where they incorporated a bill of rights into an act, was it an amendment to a previous act or was it a whole new act? Would you know that?

Ms. Melanie Mortensen: I believe it was brought in as an amendment. I saw it in a compendium of amendments, but I can't give you an authoritative response about that.

Mr. Brent St. Denis: As an example, then, if it were the will of the government or the will of this committee to recommend, one possible scenario is for this committee to recommend that a bill of rights, or whatever the final wording is, be incorporated as an amendment to some appropriate existing piece of legislation, or presumably it could be as a stand-alone bill.

I'm wondering if you could talk about the two extremes: the general statement of principles, that we'll do the best we can in these areas, versus these being some absolutes that we will provide you with.

Mr. Rob Walsh: Yes, Mr. Chairman. I'd be pleased to answer.

Let me first say that I get the impression from reading the proceedings of the previous meeting that this is not a case where there's an adversarial agenda relative to some public policy objective. The committee is not seeking to find some way to put the government at peril if it doesn't deliver a certain program.

From what I've read, I see this as both sides of the committee seeking to find a common solution that will respect the rights of veterans and the role they have played in the history of Canada. And that's fine. I think there is a way of finding that. But it's a political decision, if you like, as to what kinds of optics you want to bring to bear. Do you want this to have its own standing as a law, or do you think it should be treated as a subset of some other larger legal regime?

That depends on where you are in that spectrum, I suppose. I don't think you necessarily have to be thinking of what you might call punitive measures in the legislation that would penalize or punish some official if he or she didn't meet the required standard.

You can bring in measures that could give credibility to the bill of rights. It has already been mentioned, I think in the material we saw yesterday, about enabling the Bureau of Pensions Advocates to be available at no expense to advance the veterans' cause vis-à-vis the government or the department. That's one measure. It could be that the ombudsman is another measure, and it would depend on what powers you give the ombudsman.

In all cases, one could give priority to this being a constructive regime. For example, you could set the rights in your legislation but give it to government to set standards by regulation, in respect of which the government would be held accountable. Regulations are quasi-legislation. They can be called upon to demonstrate whether they have met the standards in the regulations.

The act would call upon the government to do that. It wouldn't necessarily be Parliament imposing its own view of the standards; it would be government determining its standards by regulation, which may or may not meet with acceptance with members of Parliament. As you know, there is a process in the House for looking at regulations, and there could well be comment by parliamentarians about whether they think these regulations live up to the objectives of the act in terms of making a bill of rights meaningful.

You search out various mechanisms. That's what we do on your behalf, search out various mechanisms, various regimes that would find that balance between outright enforceability through a court of law versus outright discretion on the part of the government.

You find mechanisms to provide that balance, Mr. Chairman. I hear Mr. St. Denis describing a search for a balance that respects the importance of veterans' entitlements but on the other hand recognizes that we're not out to punish anybody. We're out to see that the right result is obtained in each case.

So you look at these options. What do you want an ombudsman to do? What powers do you want to give him? You could look at the Ethics Commissioner's powers. You could look at other sources for the kinds of legal powers an ombudsman has.

You might look at things like reverse onus, where it's not up to the veteran to prove he's entitled to the benefits; he has a prima facie entitlement and it's up to the government to prove he's not entitled. So the burden of proof then switches.... The cost of all of that would arguably shift to the government to prove the veteran is not entitled, instead of the veteran being put to the huge task of demonstrating that he is entitled.

If we were drafting a bill for this committee, Mr. Chairman, we would lay out all these options. The committee would then look at it and decide which way it wanted to go.

● (0915)

The Chair: All right.

Mr. St. Denis, your time is up. I apologize.

Now we're on to Monsieur Perron for seven minutes.

[*Translation*]

Mr. Gilles-A. Perron (Rivière-des-Mille-Îles, BQ): As you know, Mr. Chairman, I have some commitments in the House at 10 a.m. this morning in connection with the anniversary of the Battle of Vimy Ridge. Consequently, Mr. Roy will be addressing the committee on behalf of the Bloc Québécois.

Mr. Jean-Yves Roy (Haute-Gaspésie—La Mitis—Matane—Matapédia, BQ): Thank you, Mr. Perron.

I'd like you to clarify something for me, Mr. Walsh. You say the committee can adopt...

You started to list some options. Nevertheless, I'd like you to take it a step further. Perhaps the committee could have two options. That's what we are currently discussing, and that's something Ms. Mortensen talked about as well. Specifically, you said that this measure could be included in legislation and that there might be a second option, although I haven't quite grasped its significance.

Mr. Rob Walsh: A second option? What option might that be?

Mr. Jean-Yves Roy: The option presented by Ms. Mortensen.

You stated that incorporating this into legislation carries more implications. What was the other option that you mentioned?

Mr. Rob Walsh: The government could also bring in regulations. If truth be told, to bring in legislation, all that is needed is a bill. However, the government can also make regulations, which are a form of delegated legislation. That's a possibility.

Ms. Mortensen demonstrated a model where legislation established a contract between the client and the health care facility.

Mr. Jean-Yves Roy: The act provides for a contract.

Mr. Rob Walsh: That's right.

Mr. Jean-Yves Roy: It's more or less the same in Quebec. For example, the preamble to the health services act states that all services must be provided in an equitable manner throughout the province, and so forth.

In which piece of legislation could we include this statement?

Mr. Rob Walsh: In new legislation that you would bring forward, that is in a new bill that would contain a declaration on veterans' rights.

Mr. Jean-Yves Roy: For example, could the declaration be included in draft legislation to establish an ombudsman's position?

Mr. Rob Walsh: Possibly. Provision could be made in the veterans rights legislation for the creation of an ombudsman's office which would be authorized, among other things, to find solutions to problems that veterans encounter in dealing with the government.

Mr. Jean-Yves Roy: Consequently, the seven articles mentioned here should be clarified.

● (0920)

Mr. Rob Walsh: Yes.

Mr. Jean-Yves Roy: Thank you. That answers my questions.

Mr. Gilles-A. Perron: As you know, we already have a veterans' charter. Why not include this declaration in the veterans charter?

As you may recall, the Canadian Charter of Rights and Freedoms enacted by the Trudeau government drew its inspiration from a bill of rights.

We have a veterans' charter. Could we include in the charter a declaration of veterans rights?

Mr. Rob Walsh: You're right in that the two could be combined. It should be remembered that Mr. Trudeau's charter is a constitutional charter. It's critically important to understand that this charter takes precedence over all other acts, including this one.

Mr. Gilles-A. Perron: Would the veterans' charter not become a priority for all veterans in terms of their dealings with the government?

Mr. Rob Walsh: Yes, in so far as relations between veterans and the government are concerned. However, the Canadian Charter of Rights and Freedoms is not affected in any way by it.

Mr. Gilles-A. Perron: I understand. I don't want to tinker with the Canadian Charter of Rights and Freedoms. I was merely giving you an example.

Mr. Rob Walsh: If we include in the act a declaration of veterans rights, the act will be like all the others. It will not be considered constitutional or quasi-constitutional in scope. It will simply be a piece of legislation.

Mr. Gilles-A. Perron: This declaration could be incorporated into the existing veterans' charter.

Mr. Rob Walsh: Possibly, it could. It's really up to the committee to decide.

Mr. Gilles-A. Perron: Thank you.

[English]

The Chair: Thank you, gentlemen.

Next is Mr. Stoffer for five minutes.

Mr. Peter Stoffer (Sackville—Eastern Shore, NDP): Thank you very much, Mr. Chairman.

Thank you both for coming today.

If you've had a chance to look at the bottom sample here, if I were working for Veterans Affairs Canada, the word "accountable" would always make me nervous.

You're saying this could be an amendment or an addition to the Veterans Charter, but is it at all possible to design a bill of rights that not necessarily has legal standing but has sort of a complementary standing? It would basically say, "Here's what we would like to see happen for all veterans when they approach DVA on various issues. This is what we hope happens, but it doesn't necessarily need to have legal standing."

What exactly does the word "accountable" mean in legal language? Should something like that be in something of this nature?

Mr. Rob Walsh: Mr. Chairman, certainly the English word "accountable" has become a word of much contention *des finances énormes, ces jours-ci*. What are the options to have something? First of all, any drafter would look very closely at this language, more closely than perhaps the author of this document has had an opportunity to. Yes, there are problematic words in here, for sure. There may be a need for greater precision with regard to the meaning of some of these words. Don't forget the Charter of Rights and Freedoms itself has language that is elastic, and there are some people who object to the elasticity of some of this language in terms of how it has been stretched over the years.

One of the risks you take when you use large language is that it's given large interpretations that the authors may not have intended. Having said that, Mr. Chairman, I think one of the things you could do if you wanted to soften this down considerably in terms of being a legal instrument is in the context of accountability under the new Accountability Act, where the House of Commons declares this to be a legal bill of rights for veterans and the standard by which the House of Commons will hold the department accountable to it.

Now, that relationship is between the department and the House of Commons. The veteran may still be standing out in the cold wondering when his or her needs get addressed. It's all very nice for the department to be accountable to the House of Commons by this, and perhaps some veterans would take comfort in that kind of

regime, but it doesn't give them the mechanism they as individuals might want to go to assert their rights vis-à-vis the government.

Mr. Peter Stoffer: Is it possible to have something similar to this in nature that doesn't have legal standing but gives comfort to a veteran? The intent is for all of us here to work together to assure the veterans and their families that when they have concerns that need to be met, these are more or less the principles that would be abided by without having legal standing. Or does it have to have legal standing?

Mr. Rob Walsh: I don't know how you could have something that could give genuine assurance that didn't have legal standing, because at the end of the day you need to have the ability to go somewhere to a third-party adjudicator and insist on your rights and have your rights respected and enforced. There is no middle ground, apart from the one I just suggested, which is more of a public debate. Maybe that could be done in addition to the legislation. These aren't mutually exclusive. There could be two regimes that are available, so that the government is accountable to the House in terms of this bill of rights and the department is accountable to the individual veteran by virtue of this act of Parliament affirming these rights and providing a regime for a third party, like an ombudsman or a board or a court, to intervene on behalf of the veteran to enforce those rights where they're not being respected.

● (0925)

Mr. Peter Stoffer: Thank you.

Mr. Chair, I'm done.

The Chair: Thank you, Mr. Stoffer.

Now to Ms. Hinton.

Mrs. Betty Hinton (Kamloops—Thompson—Cariboo, CPC): Thank you, Mr. Chairman. I'm going to share my time with Mr. Shipley.

Your last statement was very interesting. I would offer you an opportunity to go into that in a bit more detail if you want. I think it merits more time and maybe a more thorough explanation from you. In terms of tying the bill of rights to anything, the bill of rights is the softer part of the actual ombudsman position. So I think if you were going to tie them, those might be the two sensible things to tie them to. I would be really interested in hearing if you'd like to elaborate at all on your previous statement.

Mr. Rob Walsh: Thank you.

Mr. Chairman, I don't know what I can say by way of elaboration at such an early stage on this project. As I said earlier, the devil is in the details. One needs to move further down the road on this project to see with some precision what is contemplated in order to make a useful comment beyond what I have done.

For the moment, as the drafter I would ask this committee, as the instructing officer to me the drafter, what you are really trying to achieve here. As the bottom line, what are you trying to achieve here? Is your objective accountability of a department of government? Or is your objective assurance to veterans that their rights will be respected? Or is it both?

An hon. member: Both.

Mr. Rob Walsh: I'm sure it is both, but to some extent one has to have that very clearly in mind to look at the architecture of this bill. Is it an ombudsman who is going to enforce these rights by simply making a public comment that they're not being respected and that's the end of the matter? Or are there some further steps possible?

The Ethics Commissioner, when he is looking at a complaint raised by a member about another member because of parliamentary privilege, reports to the House, and it is anticipated that the House then might do something. It might not, but there is certainly an element of embarrassment to the members involved by virtue of that process. Is that where you want to go with this, or do you want to go to a court of law and enable the court to make an order, not against the particular official but against the government, that certain actions be taken or not taken?

You have the whole question of costs. You might say it's the cost of independence. It is contemplated here to have free legal services of the Bureau of Pensions Advocates. I have nothing but respect for that bureau. I don't mean to suggest anything unprofessional here, but it is a government bureau. It would not be unreasonable for a given veteran to have reservations about how much the lawyer in that office is working for him or her, as opposed to working for him or her within the context of some bureau or bureaucratic policy that puts limits on what can be done for veterans. It's just the nature of things.

In the Soviet Union everybody's lawyer was an employee of the state. That's all very nice; I'm sure many of them did their best. But the reality is they probably had some overriding policies that put constraints on what they could do for their client, whereas we have a tradition in our country, and other countries as well, that your bar—your lawyers—are utterly and completely independent, so that the only interests they have in mind are the interests of the client, and they advance those as far as the law enables them to be advanced.

Again, I don't mean to make any criticism of the Bureau of Pensions Advocates. I understand they do their jobs very professionally and very diligently, but in the minds of the veterans, some veterans might—

A voice: Or the politicians.

Mr. Rob Walsh: Or perhaps the members of Parliament might not be sure that veteran is getting the full representation that he or she deserves.

Do you then say, "All right, we're going to have a regime where you can hire a lawyer of your choice, and we'll provide some compensation for your costs by a prescribed tariff to a certain degree?" Do you know what I mean? There are all those kinds of mechanisms that come into play.

How equitable is this system if you can say, yes, you can fight the system, you have these rights, but the veteran responds, "Yes, but I haven't got a nickel to hire a lawyer, I don't really like the lawyers you're giving me, and the bureaucrats are so smart they know everything, and I don't know what's going on"? Pretty soon the rubber hits the road, and the test of the pudding is in the tasting, and all of a sudden the rights are very nice on the page and the veteran is very moved by them, but these and a dime will get a cup of coffee, as we used to say.

That's the challenge, isn't it?

• (0930)

Mrs. Betty Hinton: That's an interesting comment.

From my own perspective, all I can say is that as a committee we put forward a unanimous report on the ombudsman, which is a rarity at any level of government, but it is also a real rarity in a minority government situation.

I think I'm safe in saying that the intent was not to have another legalese hoop for a veteran to jump through. The intent was to make certain that the ombudsman position and the bill of rights actually saved veterans from having to go that court route again. We want them respected. We want their needs met in a timely fashion, and we want an ombudsman there to protect them.

That is just a statement, and I'll pass to Mr. Shipley.

Mr. Rob Walsh: If I could just comment, as I said earlier, you could have a regime where the ombudsman simply has to find a prima facie case of a lack of adequate service, and then the onus is on the department to show that they have done it. Now the burden and the complication of legal hoops, if you like, are on the government side of things to show to the ombudsman, or whoever it is they are required to show it to, that they did everything within their power in accordance with the bill of rights, etc., and if they don't show that, they lose. I agree that obviously veterans aren't in a position to hire high-priced lawyers and go through a very complicated process that takes forever.

I read this report. It's a very good report, Mr. Chairman, and it addresses those issues.

Mrs. Betty Hinton: The intent is actually to stop that from having to happen to a veteran.

Mr. Shipley.

Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC): Thanks, Mr. Walsh. I appreciate it.

I'm just going to make the same sort of statement. I think the message needs to be really clear.

I would say this is not about an adversarial committee, about developing an adversarial regime that veterans have to go through. We're actually trying to seek what I would say is a way to articulate the intent of respect for veterans.

Quite honestly, I want to stay away from courts and judiciary, or ineffective boards, where the client's interest is secondary to that of the government. We've put in these seven things, and they are the general intent, I would say, of what the committee wants to see in some way put into documentation for how we would like to see our veterans respected.

Obviously, there are going to be some legal issues in it, but quite honestly, the first objective, from my point of view, is the veterans' respect and care. If that is done properly, then the accountability is there. Let's not get muddled up in the words of accountability. Let's put it in some way so that we have the legislation that says the objective of the veterans' respect and care is there.

The ombudsman can deal only with recommendations at this stage. Whether we do that through an amendment to the Veterans Charter, I believe, Mr. Chair, we as a committee.... At the end, you're going to hear our comments. We're going to compile those and we're going to say, "This is our objective. How can you do it for us to most effectively represent the veterans?"

We've gone through a lot of discussion around the Veterans Appeal Board. I can tell you that is not a route we want to see the veterans having to travel down.

Mr. Rob Walsh: Mr. Chairman, to respond directly to the member's question regarding your wanting the most effective way to do it—and I understand your concern about boards, including courts, and how that would be burdensome on the process—it's my view, and some in the field might disagree, that unless ultimately there is a court there, you're not going to get the bureaucrats' attention. Do you know what I mean? In a sense, you need them as a backdrop; you need that as an ultimate. You don't want to have to have the veteran relying on that from the get-go, because that's just too burdensome and too cumbersome. But you ought to have it there so that if you don't make this work, that's where you could end up.

Mr. Bev Shipley: I understand that's a last resort, and we have to have that. I just don't want that interim period to be where it's actually just going to end up at the board anyway, with that attitude.

Mr. Rob Walsh: Correct.

Mr. Bev Shipley: Whatever we do, we don't want that. I would say this committee doesn't want that.

Mrs. Betty Hinton: No more deny and delay. We want to help.

The Chair: All right.

Now over to Mr. Cuzner.

Mr. Rodger Cuzner (Cape Breton—Canso, Lib.): Thanks very much, Mr. Walsh and Ms. Mortensen.

On your assessment of where the committee is, that we do want to make this work for the veterans, do what's best for the veterans without creating any further cumbersome, intimidating level of bureaucracy, I have two questions.

Is there a bill of rights that you know of that isn't supported by or doesn't have some type of legal obligation?

• (0935)

Mr. Rob Walsh: There might be a bill of rights in some private associations or clubs. But no, I don't think there's anything that one purports to have enforceable that isn't somehow legislation or quasi-legislation.

Mr. Rodger Cuzner: There's some kind of legal standing behind it.

Mr. Rob Walsh: You'd have to have it.

Do you know of any?

Ms. Melanie Mortensen: In doing the research for this appearance, I have seen, for instance, in some of the veterans associations there's an example—unfortunately, I can't recall the name of the association—of a bill of rights that was set out, and it was available on their website. Now, it may be that was set as an

example or for discussion purposes, but it would be questionable, I would say, whether that had any legal effect.

Mr. Rodger Cuzner: You've laid out the spectrum as to where we could go with this. We do want to make this the most practical and legitimate way. If there's any sense that veterans' rights are being bridged or not respected—a veteran realizes that the information he has shared with the department has in fact not been secure and certain people have been talking about his case and information has been passed along, or if he's six months into waiting for a benefit, there is no benefit there, and he's frustrated with calling the office and not getting any satisfaction and he's reluctant to call his MP.... So we need the mechanism now.

Would you suggest that he go straight to the ombudsman? What's the next step?

Is that what we're looking for here, folks, the next logical step? The ombudsman will stand behind this charter. I think that's what we're looking for. Are there triggers? Would it be better if we set time limits, or is that a whole other box of headaches that we're creating here?

Mr. Rob Walsh: Mr. Chairman, the ombudsman, or an officer like the ombudsman, is what you're looking for as an intermediary between the veteran and the bureaucracy. The scenario you describe, which I gather is not an unusual one, is one where simply the veteran has found himself or herself ineffective in bringing any response from the government. Let's not forget many of these veterans are simply not in a position...they are not here in Ottawa.

The Veterans Affairs department isn't situated here in Ottawa, is it, entirely?

A voice: Charlottetown.

Mr. Rob Walsh: Right, Charlottetown.

So they're not in a position to deal with it. Yes, going to an ombudsman-type person to act as an intermediary is important. That ombudsman in the legislation could have these bills of rights as his context, his criteria, by which he represents the veteran, and the ombudsman, in effect, is calling upon the government to act in accordance with these bills of rights. The ombudsman is, in effect, seeking to enforce these rights on behalf of the veteran—I think that's true. It's a fairly simple process, subject to resources being adequate to the demand, and it should be an effective one. Certainly if the response to the ombudsman is inadequate, the ombudsman is in a position, as an independent third party, to bring public attention, if necessary, or parliamentary attention to the fact that despite his or her efforts, the veteran's needs were not addressed or not taken seriously, as the case may be.

So I would think you might have a mechanism there.

Mr. Rodger Cuzner: There has to be a filter mechanism. There has to be a filter on the other end of that as well. If the veteran comes into the office with a problem, the lady says, "Well, take a seat", and he says, "I'm not taking a seat, I fought for this country, you're abusing my...." I'm just saying on the front end there has to be a...

Mr. Rob Walsh: When the veteran was in the army, he got in line, didn't he? When he gets to the ombudsman's office, you have to trust the discretion of the ombudsman to respond appropriately and to service veterans with respect. Mr. Cuzner, I thought you were going with the idea that maybe we have to be concerned about eccentric demands upon the ombudsman.

Mr. Rodger Cuzner: Yes, or even nuisance files.

● (0940)

Mr. Rob Walsh: Yes, nuisance files. You have to trust the ombudsman, and the language and legislation could be there for that purpose, to have the authority to deal with those cases and not feel obliged to follow up on complaints that in his judgment are either frivolous, vexatious, eccentric, or simply don't have enough merit to warrant further attention.

The Chair: Mr. Cuzner, while I do love the exchange, unfortunately your time is up. Perhaps you can wait until a further time.

We do have a Bloc space, if they wish.

[*Translation*]

Mr. Gilles-A. Perron: In other words, Mr. Walsh, instead of pursuing legal action, a veteran who is dissatisfied with a situation could have his problem settled either by the ombudsman, or by invoking the provisions of the veterans' charter. Is that correct?

Either the ombudsman or the charter would have the final say.

Mr. Rob Walsh: If a veteran can choose between the ombudsman or some other recourse provided for in the Charter, then there needs to be a mechanism in place to ensure respect for the rights conferred by the Charter. Who is going to ensure that rights are respected? Either the courts, or a tribunal of some kind. Either way, the veteran will have to choose the course of action he wishes to take.

Mr. Gilles-A. Perron: So then, the logical choice would be for him to turn to the ombudsman for assistance.

Mr. Rob Walsh: I think so.

Mr. Gilles-A. Perron: Thank you. You've answered exactly...

Mr. Rob Walsh: What came to mind first was to limit the choices available so that veterans first look to the ombudsman for help. I felt that it would be more effective to direct all veterans' requests to the ombudsman's office.

Mr. Gilles-A. Perron: If the person opts to seek recourse through the veterans' charter, then he will have to turn to members of Parliament for help and to ask us to defend him under the charter's provisions. If that happens, should we agree to defend this individual or should we recommend that he contact the ombudsman?

That's the flip side of the coin.

Mr. Rob Walsh: Obviously, when all is said and done, if the veteran is dissatisfied with the outcome, he can contact a member of Parliament who in turn will decide whether or not to follow up on the complaint.

Moreover, at the same time as the ombudsman's office is investigating the complaint, the veteran could direct a more detailed inquiry about policies and legislative provisions to the MP. It's

impossible for you to distance yourself completely from veterans' issues.

Mr. Gilles-A. Perron: Nor would I want to either.

[*English*]

The Chair: We'll now hear from Mr. Sweet.

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

Thank you, Mr. Walsh. I'm fascinated by your capability to animate the law.

I just have a couple of things to clarify. I appreciate all the members' questions, because I wanted to zero in on something. The courts are really, in all of our discussions, the last resort in any case. In answering Monsieur Perron, you had just mentioned that as the end of the process. Generally speaking, from the experiences I've had with ombudsmen, when you call them, they usually ask if you have exhausted all routes of appeal. The ombudsman becomes the second-last choice, and then the courts.

What we're trying to do is create something that would be more specific for the courts to be able to use, because, frankly, someone can take civil action on any statement you make in public and say it was a contractual commitment. Am I right in that?

Mr. Rob Walsh: Just on your earlier point, if I may, Mr. Chairman, the ombudsman asking if you have exhausted all your remedies says something to me. I don't know which ombudsman you're referring to in saying that, but that ombudsman may be saying that in the regime under which he or she operates, the party has recourse in the statute. The party can go to court, they have a cause of action, and so on, or maybe they've started that process and it hasn't finished yet.

What I hear in some comments today is the idea that this door doesn't open until after the ombudsman has been involved. In the regimes you're describing, it may be that this doorway to the court is open right from the beginning, and the individual has that choice. Some ombudsman you're referring to is therefore saying he is not going to get involved until you've exhausted all those court things. That's a policy on the part of that ombudsman. On the other hand, it may be set out in legislation for the ombudsman that he intervenes when those remedies have been exhausted.

What you want to do is say you don't want that regime. You want veterans to have their first option with the ombudsman. They go to court after the ombudsman has been unsuccessful or, by the way, the ombudsman goes to court.

● (0945)

Mr. David Sweet: I would concur with you. And now we have the quasi-judicial process in which they have access to appeals prior to any end result right now. The end result right now is that they would go to the courts after the appeals. The ombudsman would be their specifically identified advocate/defender prior to the court process.

Mr. Rob Walsh: Yes, but some veterans probably won't live long enough to get through all that. That process of boards and courts and all the rest of it, for goodness' sake, can take a long time.

Mr. David Sweet: Believe me, that's a very big concern of ours.

Mr. Rob Walsh: Yes, not to mention the dollars.

Mr. David Sweet: We've talked about the backlog.

Which one is easier to modify? You've talked about a regulatory process and you've talked about a legislative process. If in the future we wanted to modify the bill of rights in order to enhance services for veterans, which would be easier to modify, the regulatory process or the legislative process?

Mr. Rob Walsh: You have to remember that the legislative process and the regulatory process are quite separate, so who is "we" here? If it's the government, obviously the government can change its regulations faster than it can change the law, in terms of going through the process in the House and in the Senate. On the other hand, if it's a parliamentary intention that you're talking about, the only option available to parliamentarians is to amend the law.

You have to think about who it is that you have in mind here in terms of who will be seeking a change. Don't forget, if the government changes regulations, those changed regulations come to the House for scrutiny by the Standing Joint Committee on the Scrutiny of Regulations, so it's not as if it can be done by the government without oversight.

Mr. David Sweet: That's fine.

The fastest way obviously would be regulatory, but we'd be left with the choice of the government responding to this committee if we made a recommendation that, twenty years down the road, we felt there should be some modification that best served that choice. But should the government not be willing, then we'd be out to lunch in that case.

Mr. Rob Walsh: Correct.

I should point out that you don't want your rights as such, in the bill of rights, subject to change by regulation. If those are the sacrosanct Ten Commandments on the tablet, then you want them to be changeable only by the parliamentary initiative. It's the regime that applies under that, for the implementation of it, that might be done by regulation. That could be changed—

Mr. David Sweet: It may be the process.

Mr. Rob Walsh: Correct, along with the commitment to service levels and so on.

Mr. David Sweet: Very good. Thank you very much.

Thank you, Mr. Chair.

The Chair: You're welcome, sir.

Mr. Cuzner, you were in a great exchange there. I don't know if you fully exhausted all of your questions.

Mr. Rodger Cuzner: If I could, I'd finish it off.

What I was trying to get at was whether there should be what warrants another level of conditions or regulations or whatever, something that warrants a call to the ombudsman. Should we look at something after the statement, maybe at some type of piece that further fleshes out what's intended by each of the statements? When we say "an understandable period of time", if it has been dealt with in such a period of time and we state that timeline, are we getting too detailed there?

Mr. Rob Walsh: Let me give you an example.

I was briefly a legislative counsel in one of the provinces. We had a situation that became very difficult and a matter of public controversy in the educational domain. We had the act that set standards, then we had the regulations, then we had the ministerial guidelines, and then we had the guidelines used by professional group, for their professionals who were involved. The professionals started with the guidelines for the professional group before they got to the ministerial guidelines, before they got to the regulations, and before they got to the act. You have to ask yourself, then, what the rules were, because the rules were being tweaked somewhat at every level. You can't get into that sort of game.

It seems to me that there are two levels that are enforceable in the making of laws. One is legislation, and the other is by regulation by the government, subject to oversight by Parliament. You want your sacrosanct principles, if you like, enshrined in legislation—actually, there's a third level, and that's the Constitution, but we're not talking about that today—and then you might leave the implementation of the standards and this sort of thing for regulation.

Government, and the department in particular, ostensibly knows best how it can deliver the standards you're articulating by your rights. No doubt they would, regarding those regulations, consult with veterans groups to see that they are doing what they think will work with veterans groups.

They may need to tweak things from time to time as they find that a situation has changed, but the rights don't change, arguably. They may be added to, but they aren't going to be removed, ostensibly, and you want that enshrined in legislation.

So there are only two levels, and there ought not to be a contemplation that the veterans association itself can make some rules that somehow modify the regulations or so on. It then gets to the point of what the rules are, after all. It's the legislation, and it's the regulations made pursuant to that legislation.

● (0950)

Mr. Rodger Cuzner: Okay.

The Chair: Mr. St. Denis, I think you might have had some questions to ask.

Mr. Brent St. Denis: Very briefly, Mr. Chair. I'm not sure if we're going to go past 10 o'clock or not, but just to get this on the record, I think we would need an indication from the parliamentary secretary, or the government anyway, of what was the intention behind the commitment to have a bill of rights. Was it to have some legal weight or was it a general statement of principles?

To split it in two, or absent of the government saying what it had intended, the committee is going to have to decide which of the two it prefers so that we can then say to the drafters.... Ultimately it comes back to Mr. Walsh's shop anyway to draft something to respond to the committee and/or the government.

If I understood Ms. Mortensen, let's say it's an amendment to some future ombudsman's act that the government is going to send back to us. Maybe it's the preamble, then, if this ombudsman act has a bill of rights section, and maybe it's the preamble, then, if I understood, that could clarify whether that bill of rights section.... There would be one "whereas", maybe, and I'm not a lawyer, that determined or said the bill of rights was to be interpreted as a level of service, as a non-litigious—is that the right word?—level of service.

In other words, just to follow up on my colleague's question, does the term "bill of rights" have an unalterable interpretation if a veteran went to a court? Does it have an interpretation that requires that it always be legal? Then maybe the problem is the words, "bill of rights".

Is that clear as mud?

Mr. Rob Walsh: I'll pass it on, but let me just say this and give Melanie a chance to think about it.

Remember, Prime Minister Diefenbaker brought in his Canadian Bill of Rights, and "bill of rights" as an expression—

Mr. Brent St. Denis: I don't remember that, actually.

Mr. Rob Walsh: Well, I do, and it was spoken of in great and large terms, because "the Bill of Rights" is a phrase in American legal and political culture that has sacrosanct standing. We have the Magna Carta, and we have the Bill of Rights Act, 1689, in Britain, that's part of our Constitution in Canada. So it's a certain *baguette magique*, a bill of rights, right? But, hey, it's just wrapping on the package.

The courts turned up and they didn't find Mr. Diefenbaker's bill of rights to have quite the impact he thought it should have had. There was only one case where it had any impact, and then it went into desuetude, as it were, and it really didn't amount to much. That's why Trudeau, in effect, came along years later with a constitutional bill of rights, if you might call it that.

So you can call it a bill of rights, but that's not going to tell a court that all of a sudden they have to salute because we have something holy here. They're going to look at the language that's used. They're going to look at the language in all four corners of the bill, the legislation, and decide, what is Parliament legislating here?

You're right, and I think Melanie would confirm, that you could, by way of a "whereas", indicate how the later provisions are to be read. But then they have to interpret the "whereas", too, so it may not be read as you like.

Mr. Brent St. Denis: That's exactly what I was getting at. Thank you.

Did Ms. Mortensen want to add something to that?

The Chair: I think she's hoping to.

Ms. Melanie Mortensen: Yes. Thank you, Mr. Chair.

I'll be brief, which is sometimes difficult for me.

I saw this language today on my way here, and I found it musing. This is from John Mark Keyes's *Executive Legislation: Delegated Law Making by the Executive Branch*: "Languages, and the dictionaries and grammars that describe it, are not considered to have legal effect." I found that interesting out of context, because language as such does not have legal effect; it depends on the source and where you find that language.

"Bill of rights" as a term, if you really think about it, is meant to just say some legislation that's giving effect to rights. Rights can be found in different legislation; if you look at the Privacy Act, for instance, you'll see in the scope and application part that rights are set out, and the right is the right of the individual to have the government treat the personal information of the individual in a way that's set out in the legislation; here too you could have the bill of rights, if you wanted to call it that, of veterans set out in the scope and application section of whichever act is appropriate for the scheme you want to set out.

Maybe it would be appropriate in the Department of Veterans Affairs Act. Maybe it would be appropriate in the act that is now being called the Veterans Charter. I think it can be a bit confusing, because we have the Charter of Rights and Freedoms, which is a charter that sets out certain rights and freedoms in a constitutional setting; by contrast, what we're calling the Veterans Charter is an act that sets out a package of programs and so on. If you intend that package of programs to be delivered in a manner that meets certain standards, it may be appropriate for that act to have the scope or interpretation section saying that this is the bill of rights we intend the veterans to be able to have in a way that's enforceable by our ombudsman. If you put it in the preamble, though, it may have less weight, because it's more for the court to determine how that's interpreted. If it's within the section of the act, then it has more effect.

● (0955)

The Chair: At that, I'm going to ask everybody to stew on the wise and sage advice they've received today with regard to the legalities of all this.

I thank our witnesses for their presentations.

Now we adjourn to go and hear what all the various parties have to say in the House on Vimy.

The meeting is adjourned.

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