



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Veterans Affairs

ACVA • NUMBER 043 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Monday, October 1, 2012

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Chair

Mr. Greg Kerr

Standing Committee on Veterans Affairs

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• (1530)

[English]

The Chair (Mr. Greg Kerr (West Nova, CPC)): I call the meeting to order.

Good afternoon, everybody.

As you know, we're looking at VRAB issues, and various witnesses are starting off today. Also, I appreciate the point that staff are going to restrict their time to 45 minutes. We're then going to go for an hour with the witnesses from VRAB. Then we're going to take 15 minutes at the very end to talk about future business.

First, may I say welcome back, Bernard Butler, and hello, Rick Christopher? I think you know the drill by now. We look forward to an opening session. Then we do a round of questioning. Because of the 45-minute restriction, some of the staff probably be squeezed a little right at the end.

Do we have a point of order?

Mr. Peter Stoffer (Sackville—Eastern Shore, NDP): Yes, I have just a point of clarification. We anticipated a Mr. John Larlee coming before us today. I understand that he was on the list. Is he for later on...?

The Chair: That's the next round.

Mr. Peter Stoffer: Thank you.

The Chair: That's why I say the staff is going to have 45 minutes, and then we're going to be a full hour with VRAB.

Go ahead, Mr. Butler, please.

Mr. Bernard Butler (Director General, Policy Division, Department of Veterans Affairs): Thank you, Mr. Chair.

It's a pleasure to be here again in front of this committee. My name is Bernard Butler. I am the director general for policy in the policy, communications, and commemoration branch at Veterans Affairs Canada.

I am joined here today by my colleague, Rick Christopher. Rick is the director of program management in the service delivery branch of Veterans Affairs.

[Translation]

Our objective is to support your review of the processes and activities of the Veterans Review and Appeal Board, including any recommendations that could improve the current appeal process.

[English]

Essentially, our objective here today is to support your review of the processes and activities of the Veterans Review and Appeal Board and to assist you in any recommendations that could improve the current appeal process.

Today, we, Veterans Affairs Canada, will provide you a technical briefing on the disability benefit application, decision-making, and redress processes that take place with regard to a disability benefit application at the departmental level. We will endeavour to help the committee better understand the department's processes and at which point a departmental decision could make its way to the Veterans Review and Appeal Board for review.

Mr. Christopher will start with a high-level overview of the department's disability benefits adjudication process, and he will conclude with the departmental review process and how that links with the Veterans Review and Appeal Board, including the role of the Bureau of Pensions Advocates in the redress process.

After that, we'll be happy to answer any questions you may have.

I'll now turn to my colleague Rick.

Mr. Rick Christopher (Director, Disability Programs and Income Support, Department of Veterans Affairs): Thank you, Bernard, Mr. Chair, and committee members.

As Bernard said, my name is Rick Christopher. I'm the director of program management at Veterans Affairs Canada, or VAC. My role is to oversee management of the department's disability benefits programs.

Today I'm going to describe for the committee the process that a disability benefit application goes through. I'm going to talk about the support systems in place at each stage of the process, as well as the legislated authorities the department uses as a basis for decision making. I'm going to speak about our own redress mechanisms, including some of the statistics, and finish off at a point where the disability benefit decision could potentially make its way before the Veterans Review and Appeal Board.

I'm going to start with a brief description of the disability benefit application process. When a veteran, serving member, or RCMP member believes that they have a service-related disability, they must first submit a formal application to the department. This application can be found online, at VAC offices, or any of the 600 Service Canada locations across the country.

VAC's authority to provide disability benefits is found in the Pension Act and the Canadian Forces Members and Veterans Re-establishment and Compensation Act, commonly referred to as the new Veterans Charter.

There are two criteria that a veteran, Canadian Forces member, or RCMP member must meet in order to receive a disability benefit, which are essentially that they suffer from a disability and that the disability be related to their service. Evidence that an applicant meets these two criteria is often a combination of medical documentation, military service records, and testimonials from colleagues, commanding officers, or others.

Support is available through the department's team of disability benefit officers who work in area offices across the country. These are individuals who work one-on-one with the applicant to ensure that his or her claim is as complete as possible before it is submitted. This can include a gathering of service records from DND and health records from health care providers.

I'd also be remiss if I didn't note that an applicant can get help with completing the application from the Royal Canadian Legion or other veterans' organizations. Service Canada can also review application forms to ensure that they are completed appropriately before they are forwarded to Veterans Affairs for adjudication.

The next step, once an application is completed and submitted, is to assign it to one of our 46 trained disability adjudicators.

These adjudicators assess the information against a predetermined set of criteria laid out within authorizing legislation to determine whether the individual is entitled to disability benefits. These decisions are based on the merits of the case and the weight of the evidence. However, in the absence of compelling evidence to the contrary, the benefit of the doubt always flows in favour of the applicant.

The benefit of the doubt is applied when there is an equal amount of supporting and non-supporting evidence. This means that in those cases, the decision is made in favour of the veteran.

Once entitlement is established, an assessment is made as to the extent of the disability, based on the degree to which the condition impacts health and quality of life. Assessments are made according to the table of disabilities. It's one of a suite of tools that ensure effective and consistent decision-making. With entitlement and eligibility guidelines and the table of disabilities, the adjudicator is provided with a well-defined evidence-based system with which to make decisions.

Once the assessment is completed, a monthly or lump sum payment is processed.

● (1535)

[*Translation*]

Decisions are communicated to veterans in writing. Our decision letters have already improved—15 of our high-volume disability benefits letters have been redesigned, reworded in plain language, and are already being used. That will benefit approximately 19,000 clients this year. We continue to improve our efforts in terms of plain language by cutting red tape and reducing complexity.

I will now speak about redress measures.

As I mentioned earlier, both favourable and unfavourable decisions are communicated by letter. The letter outlines the reasons for decision, redress rights, possible next steps and the support available for exercising these rights. Veterans who are dissatisfied with a decision of the department have two options available to them.

One of those options is a departmental review. When a departmental review is requested, a new adjudicator is assigned to the case to ensure a fresh set of eyes and to avoid any bias in the process.

● (1540)

[*English*]

Departmental reviews can be triggered in two ways. Either an error in fact or law is found, or there is new evidence to be considered. The departmental review can be requested by the applicant or be initiated by the department itself.

The second option is that the applicant may wish to forgo the departmental review process and proceed directly to the Veterans Review and Appeal Board. In these cases the final decision-making authority is permanently removed from the department. This means that in the event of an unfavourable decision at the VRAB level, the individual may not re-enter the departmental review process, as the department would no longer hold jurisdictional authority.

Leading up to the review or appeal by the VRAB, the department provides access to legal advice from an advocate in our Bureau of Pensions Advocates. The Bureau of Pensions Advocates is a unique nationwide organization of lawyers within Veterans Affairs Canada. The bureau provides free legal help for veterans who are not satisfied with the decisions about their claims for disability benefits. All advocates at the BPA are experienced in disability benefit matters. They are considered specialists in the area of claims for disability benefits. The solicitor-client privilege relationship between the veteran and the advocate ensures privacy is fully protected.

The bureau is very active in outreach programs that provide information and education to stakeholders. The BPA represents between 90% and 95% of veterans who appear before the Veterans Review and Appeal Board. The remainder choose to represent themselves, acquire private counsel, or seek representation from the Royal Canadian Legion or others.

That concludes the portion leading up to the point where an appeal or review before the VRAB would start.

I'm going to read a few statistics into the record.

In 2011-12, total expenditures for disability pensions and awards were \$2.05 billion. Annually, we process more than 20,000 first applications for disability benefits. VAC has a service standard for first disability benefit applications being processed within 16 weeks 80% of the time. We are currently standing at 83%. I'm also pleased to advise that in fiscal year 2011-12, 73% of total applications reviewed were assessed as favourable and a payment schedule was initiated. The turnaround service standard for departmental reviews is 12 weeks 80% of the time. Last fiscal year, there were 2,213 departmental reviews conducted, 81% of which were completed within the 12-week window.

We're continuing to work to improve processing times and programs while cutting red tape and reducing program and policy complexity. I understand that my colleague, Maureen Sinnott, will be appearing later this week, and she'll speak to you about some of those.

I'll stop there, as I understand that Mr. Larlee and his associates from the Veterans Review and Appeal Board will be called upon shortly to provide their own briefing.

This concludes my briefing. Bernard and I are open to any questions that you might have.

The Chair: Thank you very much.

We will go to the NDP first. Mr. Chicoine, I understand you're the lead-off. You have five minutes.

[Translation]

Mr. Sylvain Chicoine (Châteauguay—Saint-Constant, NDP): Thank you, Mr. Chair.

I would also really like to thank our witnesses for joining us today.

I have some questions about the adjudicators who are retained. You said during your presentation that the adjudicators who represent the board were well-trained. What kind of training do those people receive?

Mr. Rick Christopher: Are you asking about the adjudicators of the Veterans Review and Appeal Board or about the adjudicators who make first decisions?

Mr. Sylvain Chicoine: I am talking about the adjudicators who work for the court of first instance.

Mr. Rick Christopher: Thank you. So you are talking about adjudicators who make the first decision. They are nurses. The requirements have been changed, and those adjudicators must have a nursing background. They have bachelor's degrees in sociology or in another health-related field. They are trained for 6 to 12 months. A supervisor ensures the quality of each decision.

Mr. Sylvain Chicoine: Thank you.

Do you train the 46 adjudicators who deal with issues pertaining to disability benefits?

Mr. Rick Christopher: Yes, they are trained by the department.

Mr. Sylvain Chicoine: They are trained. What kind of training do you provide them with?

Mr. Rick Christopher: We provide them with in-class training. The training also includes a practical component, with a supervisor reviewing each decision.

• (1545)

Mr. Sylvain Chicoine: What kind of an examination do those people have to pass as part of your process for selecting adjudicators? You said you use 46 adjudicators for decisions on benefits. What kind of qualities do those people possess in general?

Mr. Rick Christopher: Many of those people are nurses who come from the provincial system. We also have people with experience in health care, including occupational therapists. To become public servants, individuals usually have to pass examinations and go through an interview.

Mr. Sylvain Chicoine: What is the usual length of their appointment?

Mr. Rick Christopher: The benefits adjudicators are employed on an indeterminate basis; they are not in the same category as VRAB members.

Mr. Sylvain Chicoine: A number of cases require a judicial review process. Usually, veterans who are unhappy with the decision receive help when their case is handled by the administrative tribunal, but they receive no assistance when their case is handled by the Federal Court.

Would there be a way to provide them with the services of a lawyer? If only a small portion of decisions was being referred to the board, I would say it was a matter of fishing expeditions, but the number of such cases is very high.

What do you think about that?

Mr. Rick Christopher: As a public servant, I have no personal opinion about that. However, the approval rate is fairly high in the case of first applications for disability benefits. It's about 73%.

Mr. Sylvain Chicoine: My colleagues may want to ask a question.

How much time do I have left, Mr. Chair?

The Chair: One minute.

Mr. Sylvain Chicoine: It's okay, Mr. Chair. I have no further questions.

[English]

The Chair: We'll learn more from Mr. Stoffer. Thank you very much.

We'll go to Ms. Adams for five minutes.

Ms. Eve Adams (Mississauga—Brampton South, CPC): Thank you very much, gentlemen, for joining us today.

I'd like to build on some of the remarks you made regarding the appeals process. I'd like first to confirm that the Veterans Review and Appeal Board is an arm's-length agency, separate from the minister and separate from government.

Mr. Rick Christopher: That's correct. It's at arm's length from the department.

Ms. Eve Adams: When it makes decisions, it makes those decisions independent of Veterans Affairs, the minister, or our government. Is that correct?

Mr. Rick Christopher: That's correct.

Ms. Eve Adams: Okay.

Can you quickly walk us through what happens when a veteran contacts the department with a complaint about his or her benefits?

Mr. Rick Christopher: A veteran can contact the department about a complaint and the veteran will be informed of his or her rights. The veteran is informed when the decision is made. As I said in my comments, the veteran will receive a letter in writing. It will talk about the reasons for the decision. It will also talk about what recourse the veteran has.

The veteran can contact the department or go to the Bureau of Pensions Advocates, which will represent the veteran even at the first level. They will give the veteran advice, help him or her with the decision, and provide additional material regarding the options the veteran has, such as going directly to the Veterans Review and Appeal Board or filing a request with the department for a review. Veterans have a few options.

Ms. Eve Adams: Mr. Christopher, you mentioned legal support that's available for veterans. Are you aware of any other country that provides that type of legal support?

Mr. Rick Christopher: I'm not personally aware of that, no.

Ms. Eve Adams: Mr. Butler, are you aware of any other country that provides legal support?

• (1550)

Mr. Bernard Butler: No, I am not. To our knowledge, Canada is unique in this respect, in providing free legal services to veterans who are seeking redress before an administrative body dealing with their issues.

Ms. Eve Adams: The Veterans Affairs ministry will render a decision. The veteran can then either appeal internally or go to the independent body. If they choose to go to the independent, arm's-length body, they would have their legal services paid for by the taxpayer.

Mr. Bernard Butler: If they choose to do that, that's absolutely right. Yes.

Ms. Eve Adams: Thank you.

I'm going to ask this question of VRAB when they come forward in the second hour, but I was hoping to get your thoughts on this item also. How many VRAB decisions are currently being sent to the Federal Court for judicial review?

The reason I ask is that I've heard from the Veterans Ombudsman that 60% of the cases reviewed at the Federal Court are overturned, but what's the actual number of cases that are referred to Federal Court?

Mr. Bernard Butler: I'll make a stab at that, Ms. Adams.

Other than those statistics quoted in the ombudsman's report, we would not track cases necessarily going to the Federal Court, because they are not sent to the Federal Court; these are cases of veterans who are unhappy with the decision of the Veterans Review

and Appeal Board making a decision, based on advice that they may receive or otherwise, to seek judicial review.

It's a process that is open to Canadians who are unhappy with decisions of administrative bodies regulated by the federal government. There is a process before the Federal Court, but they are not sent there as such. It's strictly an option.

The board may have more detail. They may track them. The department doesn't, necessarily, so I could not give you a precise number.

Ms. Eve Adams: Can you tell me how many decisions are rendered each year by Veterans Affairs?

Mr. Bernard Butler: Yes, we can.

Mr. Rick Christopher: Yes, I can tell you that.

For first applications, I would say that there are about 20,000 per year, on average, and there were around 18,000 in 2011-12.

Ms. Eve Adams: You say there are 20,000. You mentioned earlier that your approval rate is some 73%.

Mr. Rick Christopher: That's correct.

Ms. Eve Adams: Then out of the 20,000, 73% are approved.

Mr. Rick Christopher: That's correct.

Ms. Eve Adams: Okay.

You also indicated earlier on that the decision is very clearly communicated to the veteran, so 73% of those 20,000 are approved, and for those that are not approved, the veteran will receive a letter indicating why the decision was made not to approve benefits and the options available to that person.

You've introduced a new plain language initiative. Could you perhaps speak to that very briefly for me?

Mr. Rick Christopher: Sure. We've looked at our higher-use letters and we're going through those. We have people who have experience in developing plain language who take out some of the more bureaucratic language to make them easier to understand. We now have 15 letters that we've created or changed.

We've also decommissioned a number of letters that are no longer being used or may be duplicates or a little more confusing. There are about 250 that we decommissioned, so—

Ms. Eve Adams: The idea behind this is to make it very clear and very simple and straightforward for the veteran to understand why the benefit was not being offered and how they might go about providing additional information—

Mr. Rick Christopher: That's correct.

Ms. Eve Adams:—so that if they are entitled, they can receive that benefit.

Mr. Rick Christopher: That's right, and they have to have the reasons for the decision.

Ms. Eve Adams: Of course.

The Chair: Thank you very much.

We'll now go to Mr. Casey for five minutes.

Mr. Sean Casey (Charlottetown, Lib.): Thank you, Mr. Chairman.

Welcome, gentlemen.

Mr. Christopher, in the course of your remarks, you indicated that once a matter goes in front of the Veterans Review and Appeal Board, the final decision-making authority is permanently removed from the department. Section 85 of the Pension Act allows for a reconsideration. It actually allows for VRAB to send it back to the department. Can you square the apparent inconsistency between what section 85 says and what you've said?

Mr. Rick Christopher: My understanding is that once something is referred formally to the Veterans Review and Appeal Board, the minister no longer has jurisdiction to rule on that.

● (1555)

Mr. Bernard Butler: If I might, Mr. Casey, you're absolutely right. I think that what Mr. Christopher was saying essentially is that in the normal course, once the matter goes to the Veterans Review and Appeal Board, the board becomes seized of the jurisdiction of the case. There is the provision that if there's an issue and the board chooses to refer it back to the department, the department would become engaged, but in the normal course of proceedings, once the veteran elects to have his case dealt with by the Veterans Review and Appeal Board, unless the board should refer it back formally to the department, then the department would not have jurisdiction otherwise. I think that essentially was the message.

Mr. Sean Casey: Mr. Christopher, another thing you said troubles me a bit, as someone who practised law for most of his career.

You indicated the real test in front of the Department of Veterans Affairs, if I understand correctly, is the balance of probabilities—whether it is more likely than not that a claim should be approved. You indicated that once you get to that balance of probabilities, you apply a doubt in favour of the veteran. In other words, if it's 50-50, then and only then does the benefit of the doubt apply. Do I have that right?

Mr. Rick Christopher: I wouldn't say "balance of probabilities". It's not a probability. The adjudicators are trained to look at and consider all of the evidence. They may have medical opinions or incident reports, and they may have some that contradict each other or do not clarify. At the end, in some cases in which there is evidence for and against, they weigh it, and then they are to apply the benefit of the doubt.

Mr. Sean Casey: Did you not say that when the case is 50-50, the veteran gets the benefit of the doubt? Did I hear you say that?

Mr. Rick Christopher: No, I never used the words "50-50". I don't know if there are any cases that would be 50-50.

Mr. Sean Casey: Okay.

Then you wouldn't agree with my characterization that the standard that is applied within the department is the balance of probabilities. You wouldn't agree with that.

Mr. Rick Christopher: I would say that each case is completely different. There is complicated evidence that each adjudicator has to look at. They are instructed to apply the benefit of the doubt if there's contradictory evidence.

Mr. Sean Casey: Okay.

Each of you would have seen the pretty extensive report that was done by the ombudsman, dated March 2012. It includes some very damning statistics and seven recommendations. I would be a little bit surprised if you disagreed with the statement that there are problems within the Veterans Review and Appeal Board that need to be addressed. That's why we're here.

My question for each of you is this: are the problems within the Veterans Review and Appeal Board structural, or are they personnel problems?

Mr. Bernard Butler: Perhaps I will go first.

It may well be inappropriate, Mr. Casey, for us to comment on the Veterans Review and Appeal Board at that level, given the nature of its work. It would obviously be very difficult for us to weigh in on that as public servants. It's an independent, quasi-judicial agency, as has already been noted. Certainly we'll look at the analysis, conclusions, and recommendations of this committee based on your review.

The Chair: Okay, time is up, unless, Mr. Christopher, you want to respond as well. Thank you very much.

Next is Mr. Lobb. You have five minutes.

Mr. Ben Lobb (Huron—Bruce, CPC): Thank you, Mr. Chair.

First of all, I would like to acknowledge all the men and women here who serve with the Canadian Forces. Thank you for all your service to Canada. It certainly is appreciated, and I want to make sure you are acknowledged here today in the room.

The first question is to Mr. Christopher. Of the 20,000 claims per year that are filed, how many are filed correctly the first time? Do you track that number?

Mr. Rick Christopher: No, I don't have a statistic on that, although I would say that we do a very good job of getting all the information we need. The disability pension officers who work in the area offices provide that assistance.

● (1600)

Mr. Ben Lobb: All right. Just so I have a rough idea here, 46 adjudicators work at Veterans Affairs Canada. How many people would support those 46 people?

Mr. Rick Christopher: I don't have an exact figure. There would be a fair number of people—

Mr. Ben Lobb: Would it be 150?

Mr. Rick Christopher: It would be somewhere in that ballpark.

Mr. Ben Lobb: Okay.

I'm trying to wrap my head around the math and the who, what, where, when, and why. If your department deals with 20,000 applicants every year and you have a 75% success rate, that would be 15,000 a year that are approved right off the bat, and 5,000 would go to VRAB. It's my understanding that about 65% of those come back in favour of the veteran. We've looked at 20,000. Now we're down to 1,250 that have actually been rejected. Annually, we spend \$11.5 million on VRAB's budget. I'm going to guess that we probably spend that much again on the Veterans Affairs budget to go through all these. We're spending somewhere in the neighbourhood of \$20 million to get this done.

As a taxpayer, with fairness to veterans, where has the process gone wrong and how can we improve it? We're spending all this money, yet literally more than 80% of them actually get approved. What can we do to improve the process? Where are we going wrong that so many are turned down and then overturned?

Mr. Rick Christopher: I don't know. I have no opinion on where we're going wrong. We have to make sure that they meet the tests, that the disability is linked to their service and that there is a disability. We have to make sure that we assess the impact of that disability. There are legislative requirements to do these things.

Mr. Ben Lobb: Not to give you a hard time, but of those 5,000 that have been rejected by the department, over 65% come back changed. With those 3,200, has your department identified where those problems are or why that is?

Mr. Bernard Butler: I wonder if I might weigh in on that issue, Mr. Lobb.

As in life, nothing is as simple as it appears on its face. As Rick has said, there are a few things to keep in mind. One is that these are legislative provisions whereby Parliament has said that these benefits are payable for service-related disability. If you look at that stark figure and say that of the 20,000 applications, 75% are favourable, and then you look at the balance, there's a lot of complexity within that. Of the ones that are favourable, other questions may arise out of those cases—

Mr. Ben Lobb: That leads me to my next question—

Mr. Bernard Butler: There may be issues around degrees of entitlement or there may be unhappiness. A veteran may say, "The department says I should get a 20% assessment for my bad knee, but I think it should be 25%." He or she may then choose to appeal that ruling.

It's a process that's actually very generous. The design is to try to maximize the generosity, if you will—the fairness, or the liberal construction—to try to make sure that veterans do receive the benefits to which they are entitled, but when you have a system that's designed that way, you're always going to have folks who are able to do so trying to maximize it, which is what they should do.

On issues coming back to the department or clients coming back in, bear in mind that it's open enough so that if they have been turned down at the first decision but they have some new evidence, or if they didn't have enough evidence—maybe they didn't have a medical diagnosis—the system allows them to come back with an updated report. It opens the door to—

Mr. Ben Lobb: I have one last quick question.

Of the 46 adjudicators, does the department rank their outcomes in terms of approvals versus rejections? Is there a way that you rate them? They're going through so many hundred per year. Do you say, "Joe is rejecting 95%, while Sally down the hallway is approving 90%." Is there a way to measure that?

Mr. Rick Christopher: We don't measure that.

Other than making sure that we're doing quality assurance and training, we do not interfere with the decision-making of the adjudicators. We do not put any pressure on them and say they have to average a certain number of approvals or rejections. We do not interfere in the decision-making process. We recognize that each case has its own merits.

• (1605)

The Chair: Thank you, Mr. Christopher.

Go ahead, Mr. Stoffer, for five minutes.

Mr. Peter Stoffer: Thank you, Mr. Chair, and thanks to both of you. I'm sorry I had to step out.

Mr. Butler, I say this with great respect. You talked about the generosity of the program. In fairness, the generosity comes from the men and women who serve. It's their sacrifice and it is their families who give their generous lives to our country in order for us to do the things that we're able to do.

I think there are a lot of veterans—not necessarily in this room, but across the country—who would think that the service is not that generous. On the Agent Orange *ex gratia* payment, there are a few hundred thousand people, I think, who would question that. I just say that as a comment.

I do have one case for you that came up with me recently. I know that you can't talk about a specific case, but you can talk about the generalities of it.

I have a gentleman—Blair Davis is his name—from Nova Scotia who applied for a benefit because of bruxism. Bruxism, as you know, is the grinding of the teeth due to suffering from post-traumatic stress disorder. He was denied. He took his case to VRAB. He was denied. He took it again, and he won his case.

The Veterans Review and Appeal Board actually agreed with him. The problem is that the legislation says there's no benefit for you. The officials at VRAB agreed with him that, yes, he now has bruxism. It's causing him a huge problem in his quality of life, but unfortunately the legislation says there's no benefit for him.

I'm wondering if you're aware of that. That's just one of many questions I could ask you about, but with the time I have, I can't. To me, this is a concern. Probably many other people have applied across the country.

Are you aware of that problem? Also, is there any possibility that we can change it to ensure that men and women who suffer from bruxism due to PTSD can actually get a benefit when they win their case through VRAB?

Mr. Bernard Butler: If I might, Mr. Stoffer, I'll thank you for the question. I do appreciate your correction on the issue. Once I said "generous", I knew that it was poorly chosen, and I was thinking "flexible". I appreciate the correction.

On the issue of bruxism, I'm certainly not aware of the particular case to which you refer, but I am aware that the issue around bruxism and the related issues around dental damage and so on have been an issue over the last while. I can tell you that I am aware of it and that we are looking at it to see what we can do.

As you know, with our treatment programs through our veterans health care regulations, for disabilities for which entitlement is awarded—meaning a pension service-related condition—then treatment associated with it falls under our treatment regulations. Sometimes the challenge becomes showing a direct link between the outcome and the condition.

I appreciate your raising it. We are sensitive to it and, from a policy point of view at least, we are looking at it.

Mr. Peter Stoffer: Okay.

I have another question for you. It's indicated that 73% of initial applications are approved. How many of those are appealed? An example might be a person who gets 5% for hearing loss but feels he deserves 15%. How many of those 15,000 actually make it to an appeal?

Mr. Rick Christopher: It's difficult to tell by the year. We talked about some departmental reviews and how 68% were favourable. The issue we have is that we don't know from year to year which years they came from: they might be favourable and they came back. In 2011-2012, about 2,200 came back. Now, whether those were from the previous year or from years before, I don't know. I don't have that stat.

Mr. Peter Stoffer: Than on roughly 20,000 you have claims, and 15,000 are approved. Of that 15,000, possibly 2,200 have come back for a possible review.

Mr. Rick Christopher: About 2,200 have come back for review. Now, whether they're—

Mr. Peter Stoffer: Is that out of the 15,000?

Mr. Rick Christopher: It's out of the 20,000, because as Bernard was saying earlier, they were approved, but the applicant did not agree with the assessment.

Mr. Peter Stoffer: Again, I'm just trying to figure this out. Of the 15,000 that are awarded initially, how many of those 15,000 actually appeal the decision they receive?

Mr. Rick Christopher: I don't have that number. I know that 2,200 come back, but as I said, some of those will be considered to be positive.

Mr. Peter Stoffer: Is it possible in the future to have that sent to the committee?

Mr. Rick Christopher: Yes, we can provide that number.

Mr. Peter Stoffer: Thank you, Mr. Chair.

The Chair: Do you want that as a written answer?

• (1610)

Mr. Peter Stoffer: Yes, please.

Thank you.

The Chair: If you can squeeze in a real fast one, you have—

Mr. Peter Stoffer: No, I'm done.

The Chair: Are you okay?

Mr. Peter Stoffer: Yes.

Thanks for coming.

The Chair: We'll go to Mr. Hayes for five minutes, please.

Mr. Bryan Hayes (Sault Ste. Marie, CPC): Thank you, Mr. Chair.

This first question is to Mr. Christopher. It goes back to that 73% again.

You stated that you were "pleased to advise" that 73% of the total applications reviewed were assessed as favourable, so I imagine that statistically there must be some reason for you to feel that you're pleased. Is this trend, then, trending upward so that more and more applications through the year on a first-time basis are assessed as favourable?

Mr. Rick Christopher: I can't identify a trend. What I would say, though, is that when a higher number of first applications are approved and a lesser number come through as appeals or reviews, it means that you're making a proper decision the first time.

Mr. Bryan Hayes: I'm new to this committee and I'm in the learning mode. I really don't understand the appeal process. Could you outline what a veteran goes through to launch an appeal?

Mr. Rick Christopher: To request a departmental review, it's a matter of filling out a form and providing additional information. They can submit that directly to the department on their own. They can also engage somebody from the Bureau of Pensions Advocates, which, as we mentioned earlier, is a service with no charge. It's free to the applicant, and they would advise them what the best course of action would be.

It's a matter of filling out some forms and providing information that would support the request for a review. They would get correspondence from us saying they were assessed at a certain rate, as well as whether the decision was positive or whether their claim was declined, and the reasons for that, and then they could address those in their appeal.

Mr. Bryan Hayes: I want to go back to Mr. Lobb's line of questioning, because statistically it seems that 65% of the appeals that are launched are coming back in favour of the veteran. It raises the question of whether Veterans Affairs Canada could be doing something better or different up front, at the beginning of the chain, so that these individuals wouldn't launch an appeal in the first place.

Certainly you must have a pretty strong sense of what it is that's being appealed and why it's being appealed.

Mr. Bernard Butler: Perhaps I'll speak to that quickly. It's a very good question.

Of course, as you know, the department is engaged in many initiatives right now around transformation and trying to improve service delivery, improve our communication to veterans, and improve our policy framework so that adjudicators have easy access to updated, clear-speaking policies. We're doing a lot of things internally to help facilitate the adjudication process.

That said, there is a lot... One has to understand the reasons cases are dealt with favourably at the Veterans Review and Appeal Board and have a different outcome from what they do at the departmental level.

A lot of those reasons relate to basic things, such as new evidence. The advantage of the system currently is that at the departmental level, a departmental adjudicator, as Mr. Christopher has referred to, will look at the evidence available, make a decision, and provide very clear reasons to the veteran as to why he or she is not qualifying. Those can be very simple things. It can be because there is not clarity around what the medical diagnosis is—in other words, what is the disability? There may be very little evidence on the record to show that this individual in fact had a service-related injury, for any number of reasons.

At the Veterans Review and Appeal Board level, the difference is that at their first level, which is called a review level, the veteran, for the first time, has the opportunity to actually appear in person before a review panel and provide oral evidence with respect to the issues that were identified by the department.

That's the first time in the process that the veteran is actually present. He can look in the whites of the eyes of the tribunal members and give clear evidence to fill in the gaps. Clearly, at that point, it's a new perspective. There is new information. There is a better opportunity to assess the credibility of the witnesses in terms of their recollection of events and so on.

That's a simple example of why, at the review level of the Veterans Review and Appeal Board, a fixed percentage of cases are favourable. If we did that at the front end, the problem or the challenge is that you would then delay the first adjudication for many veterans, particularly those for whom the outcome is very clear and who make up the 75% favourable cases that Mr. Christopher refers to. There is always a balancing process in these administrative types of decision-making, and one is challenged to find the best one, the one that works most favourably to the veteran.

There are always opportunities for improvement, but right now this is the system. We're trying to reduce the processing times at the front end. As Mr. Christopher says, we're making good headway there, and as a function of that, in a certain number of cases you are going to find that there is simply not enough evidence; however, if there is another opportunity to come back, that may change.

Hopefully that helps.

•(1615)

The Chair: That is very helpful.

We're about at the end of our time, but, Mr. Zimmer, you may ask a really quick question.

Mr. Bob Zimmer (Prince George—Peace River, CPC): I would concur with my colleague Mr. Lobb in thanking all the veterans who

are in the room for their service to Canada. I've had family who have served as well, and I have the utmost respect for all of you. Thank you.

I have a question in terms of this appeals process. It seems to be a frustration, and obviously it is for those who have served. We want to get to the bottom of making it an easier process. What has been done by our government that has reduced the red tape involved in that process to make it as easy as possible for our veterans to go through?

Mr. Rick Christopher: A number of things have been done internally around reducing red tape. We talked about the plain language initiative. We're going to be looking at all the documents that we send out to applicants. We've reduced the number. We've reduced documents on how to manage your lump sum award from 12 pages to two, for instance. We've done some outreach to veterans who've received decisions from us, both favourable and unfavourable, and asked them about the material they got from us—what they read, what they don't read, how they found it. Did they find the letters easy to understand? Were they difficult? Were the decisions clear? We made some changes based on that. A large number of people said they'd rather go to the web, so please don't send them any more pamphlets. That's one of the things.

The other thing we're doing to continue to reduce our turnaround times is examining the processes we use to make decisions and reducing the number of hand-offs that have to take place. We are making sure that the process is as streamlined as it possibly can be to get a correct decision out as quickly as possible.

The Chair: Thank you very much, Mr. Christopher.

We jammed our time pretty hard, so I'm going to thank both our witnesses very much. I'm sure at some point down the road we will see you again.

We're going to break for a minute, and I'd ask the witnesses to please change fairly quickly, now that we have others here.

•(1615)

_____ (Pause) _____

•(1620)

The Chair: We're going to reconvene. As you know, we're pressed for time, so we're going to proceed fairly quickly, please.

Continuing along with our study on VRAB, we are very pleased to have with us the chair of the VRAB, John Larlee. It's good to see you again. We have also Dale Sharkey, who is the director general, and Kathleen Vent, who is the acting director of legal services.

Welcome. I think you know the routine. We ask you for an opening statement and then we go to questions from members.

Go ahead, Mr. Larlee, please.

Mr. John D. Larlee (Chair, Veterans Review and Appeal Board): Thank you, Mr. Chairman and honourable committee members.

[*Translation*]

Thank you for inviting me today. I am joined by members of my management team: Dale Sharkey, the board's Director General, and Kathleen Vent, Acting Director of Legal Services.

We are here today to talk about the board and to bring you up to date on the improvements we have made since our most recent appearance, last March.

[English]

The three main areas of improvement since our last appearance in March are faster decision-making, clearer decisions, and the way we are listening to veterans.

First I would like to tell you about the board. The board's primary role is to support veterans, members of the Canadian Forces, members of the RCMP, and their families in obtaining benefits for service-related disabilities. We do this by providing an independent avenue of appeal for disability benefit decisions made by Veterans Affairs Canada.

Our independence is crucial. It means that we are not bound by the department's decisions or policies. At board hearings, veterans have the opportunity to tell their story, bring forward new information, and be represented at no cost by lawyers from the Bureau of Pensions Advocates or by service officers from the Royal Canadian Legion.

The hearings are not adversarial. No one is arguing against the veteran. Board members take a fresh new look at the information and will award new or increased benefits to veterans if there is credible evidence that satisfies the legislation.

To come to the board, veterans need only be dissatisfied with their departmental decision. The reality is that many veterans are satisfied and never come to the board. Only 10% to 15% of the decisions made by the department each year are appealed to the board. Last year we issued a total of 4,900 decisions for veterans and other applicants. We are pleased that we can change a large number of decisions to favour veterans. For a small tribunal, this is a high-volume workload, especially since we deal with the most complex and challenging cases.

Veterans who come to the board have access to two levels of independent redress: a review hearing and, if they remain dissatisfied, an appeal hearing.

The review hearing is often a pivotal moment for veterans. It is their chance to finally appear before decision-makers and be heard. Our board members take considerable care to conduct the hearings informally, with compassion, and in the interest of giving the veteran the last word. Last year the board granted new or increased benefits to veterans in half of its review decisions.

If applicants are not satisfied with their review decision, they can appeal it. The appeal hearing is an entirely new proceeding, conducted by a different panel of board members. The legislation does not permit oral testimony at the appeal level. Rather, it is another opportunity for veterans, through their representative, to submit new information and arguments in support of their case. Last year the board granted new or increased benefits to veterans in one-third of its appeal decisions.

These success rates tell us that veterans and their families benefit from the opportunity to appeal their decisions to an independent tribunal, yet despite this generous system, not every case can succeed.

While we know that some veterans will disagree with our decisions, we are committed to dealing fairly and efficiently with their applications. This means getting their cases heard at the earliest opportunity, conducting full and fair hearings, issuing clear decisions, and treating them with respect and dignity.

• (1625)

[Translation]

I would now like to talk about three aspects of our program where we have made improvements in order to ensure that veterans and their families are well-served.

First, we communicate decisions to veterans more quickly. Thanks to new technologies and other improvements, the board processes requests for review about 20% more quickly than five years ago. We have reduced processing time by 50% in the case of appeals. We are also looking for other ways to set hearing dates more quickly, and that includes providing veterans with the option to have their hearing by videoconference. As I told you in March, the board is currently carrying out a project for restructuring the business processes in order to find ways to reduce red tape and make the process faster and easier for veterans.

[English]

A second area of improvement I want to talk about is our focus on issuing fair and well-reasoned decisions for veterans. This begins with the board's merit-based selection process, which ensures new members are qualified to hear and decide cases. The criteria include a preference for members with a military, medical, policing, or legal background, in recognition of the work we do and the people we serve. Our two newest members, appointed last year, are CF and RCMP veterans.

Our excellent training program for new members combines practical teaching and support from experienced staff. All members also receive ongoing and specialized training from medical, legal, military, and lay experts on a variety of topics. In fact, as part of our annual training, later this week we will be hearing from Rear-Admiral Andrew Smith, chief of military personnel, and other serving members about military culture and operations at CFB Greenwood.

We have also taken swift action to address recommendations from the Veterans Ombudsman and suggestions from our stakeholders. For example, we have established a team to improve the quality of decisions by ensuring they are well organized, clearly expressed, and written in plain language. We will implement these improvements by the end of the year.

Our third area of focus is in working to serve and honour veterans by listening to them and acting on their feedback. Veterans have told us they want greater access to our decisions. In May, we began publishing the board's most relevant and instructive decisions on our website. These noteworthy decisions help veterans and the public better understand our work and make applicants aware of decisions made in cases similar to their own. We are also committed to building and maintaining our communications and partnerships with our stakeholders.

In short, we are listening. We know there is more work to do. We are determined to make it happen, and as soon as possible.

• (1630)

[Translation]

Before I wrap things up, I would like to invite all the members of the committee to attend a review hearing at one of our locations, in one part or another of Canada. Two of your honourable colleagues, Mr. Stoffer and Mr. Casey, have already accepted that invitation. They have told us that it was a useful and rewarding experience.

Mr. Chair, I want to thank you for the opportunity to speak today about the board's commitment and about serving our veterans, Canadian Forces and RCMP members, as well as their families.

Thank you.

[English]

I'm prepared for your questions.

The Chair: Thank you very much, Mr. Larlee.

We will go to Mr. Stoffer for five minutes.

Mr. Peter Stoffer: Thank you, Mr. Chair. I thank all of you very much for coming today.

Mr. Larlee, how long have you been on the board?

Mr. John D. Larlee: I have been on the board since 2009, Mr. Stoffer.

Mr. Peter Stoffer: In all that time, how many files have gone back to the minister for reconsideration? I know there has been one, the famous Steve Dornan case, which was reconsidered back to the minister pursuant to section 85. Have there been any more since then, or any more before that one that you may be aware of?

Mr. John D. Larlee: I know we get a number of applications back to the minister under section 85, but I'd refer that to Ms. Sharkey to see if she has that information. If not, I can provide it to you.

Ms. Dale Sharkey (Director General, Veterans Review and Appeal Board): I have information going back to, I believe, 2009-10. At that time there were 154, and there were 171 in the following year. There were 143 in 2011-12.

Mr. Peter Stoffer: How many were actioned back to the minister for reconsideration, similar to the Dornan case?

Ms. Dale Sharkey: All of these were referred back to the minister under section 85 for decision-making.

Mr. Peter Stoffer: Okay.

How many VRAB decisions are on your website?

Ms. Dale Sharkey: I think there are approximately between 70 and 80.

Mr. Peter Stoffer: Not all of them make the website, correct?

Ms. Dale Sharkey: That's correct.

Mr. Peter Stoffer: May I ask why?

Ms. Dale Sharkey: Partially, we have currently published all of our noteworthy leading and persuasive decisions, decisions that we feel are useful and provide some instruction around the law or are of general interest. The cost of publishing all decisions is about \$3 million to \$3.6 million a year, which is one-third of our budget. That would include depersonalizing the decisions as well as the translation in both official languages.

Mr. Peter Stoffer: Have you heard of an organization called the Canadian Legal Information Institute?

Ms. Dale Sharkey: Yes.

Mr. Peter Stoffer: Are you aware that they would be happy to do all of that for free?

Ms. Dale Sharkey: I actually did some research into that, because it was raised to me by one of the veterans organizations. After looking into the Official Languages Act, I can say that using CanLII it doesn't relieve our organization, as a federal organization, from publishing in both official languages. Using them as an agent does not relieve us of that obligation.

Mr. Peter Stoffer: If they were to be able to provide translation in both official languages, would you maybe reconsider that as a way of saving money and also of having more decisions available for the general public and the veteran community at large to see?

Ms. Dale Sharkey: I think the board would be happy to have any financial means to publish all of the decisions, but in this time of restraint we've tried to find a way that shares with veterans the decisions that illustrate the most common conditions, decisions that illustrate areas of interpretation of law, and decisions that would be useful to them.

Every case is decided on its own merit. There are many cases in the board that may not be all that useful, but we have tried to meet that requirement as well as we can.

• (1635)

Mr. Peter Stoffer: Okay.

In conclusion, Mr. Larlee, you mentioned the "generous" system. I just caution that word from a departmental official, because there are an awful lot of veterans I know who would take umbrage with the word "generous": Sarah Atwood, for example, who was denied a Veterans Review and Appeal Board hearing in order to get to Camp Hill Hospital; Art Humphreys from Musquodoboit Harbour, who was denied a lift to get up and down his stairs; and other people who were denied various benefits because they didn't have the medical information. I'm not sure if they would consider it as generous, so I just say this as a word of caution. Maybe another word might be helpful in the future, because there are an awful lot of veterans who think that the system is not necessarily there to help them.

However, I do give the department credit, and I will say this publicly, that when I went to those hearings, I found them very useful. I thought they were very good. Although I have a particular view on those issues, I think it was helpful for my understanding of how the VRAB actually works. Thank you for that.

The Chair: Are you done, Mr. Stoffer?

Mr. Peter Stoffer: Yes.

The Chair: Thanks.

We'll go to Ms. Adams, then, for five minutes.

Ms. Eve Adams: Thanks, Mr. Chair.

Mr. Larlee, hello and welcome. Thank you very much for attending.

Last June, Minister Blaney asked you to repay the travel expense claims that you had put through dating back to 2009 and 2011 for your travel to Cambridge. Has that now been repaid?

Mr. John D. Larlee: My attendance was with respect to my professional development, personal professional development. Upon hearing that there were questions raised by veterans on whether or not it was beneficial to them, although I did feel it was beneficial to me, and with regard to the fact that the country is in a period of fiscal restraint, I took it upon myself to repay all those expenses related to my travel to those lectures.

Ms. Eve Adams: Then all of those costs have now been repaid at the request of the government.

Mr. John D. Larlee: On my own behalf, yes, that's right. I did it on my own part immediately upon being informed that there were concerns by veterans that it may not have been in their interests. Although I feel that they were worthwhile for my own professional development as chair of a national tribunal, I did so because I didn't want any question that they may not have been in the best interests of veterans.

Ms. Eve Adams: Thank you.

Moving on, I'd like to ask a question that I had earlier put to Veterans Affairs Canada officials related to the number of decisions rendered by VRAB that are then referred to Federal Court. We've been told that some 60% are being referred to Federal Court, but that's clearly not the correct number.

Could you perhaps shed some light on that?

Mr. John D. Larlee: I can shed some light on the statistics or the actual numbers.

Since 1995, the board has rendered 118,000 decisions, and fewer than 1% of those decisions have gone to the Federal Court. I believe the number of decisions that have gone to the Federal Court is 140. Of the decisions that went to the Federal Court in that timeframe, I believe 80 were returned to the board to be reheard. That's quite a large number of cases that have been rendered and a small number that have gone to the Federal Court. The numbers that were chosen in the ombudsman's study, where he arrived at a percentage, were on those that were returned to the board for rehearing.

Ms. Eve Adams: There have been 118,000 since 1995. For the last couple of years, how many decisions has VRAB rendered each

year? I'm sorry to keep zeroing in on this, but I think it provides a very important context for us as we develop a report on VRAB.

Mr. John D. Larlee: As I said in my opening statement, I think there were 4,900 decisions this year, and I'll ask Ms. Sharkey if she can provide the numbers.

Ms. Eve Adams: Could we have last year and the year prior, please?

Mr. John D. Larlee: If we don't have those numbers right at hand, we can submit them to you.

Ms. Dale Sharkey: I have the number of decisions finalized, and I should have the number of cases.

I'm sorry, I may not have that right in front of me, but it was roughly the same number or a little bit less. There's a slight variation, but the number of decisions finalized in 2010-11 was about 4,700. Last year, in 2011-12, it was 4,900. The year before it was roughly between 4,000 and 5,000.

• (1640)

Ms. Eve Adams: That's perfect. Thank you.

I'd like to confirm information about the 60% figure that keeps floating out there. In fact, since 1995, 118,000 decisions have been rendered by VRAB, and fewer than 1% have been referred to the Federal Court.

Mr. John D. Larlee: That's correct, yes.

Ms. Eve Adams: Okay.

Mr. Larlee, are you aware that the funding for your board is provided through Parliament, through what's known as the estimates?

Mr. John D. Larlee: Yes.

Ms. Eve Adams: Do you know which estimates funded you this year?

Mr. John D. Larlee: I'll refer that to my director.

Ms. Eve Adams: Ms. Sharkey's doing all the heavy lifting today.

Ms. Dale Sharkey: Do you mean which vote in Parliament?

Ms. Eve Adams: Yes.

Ms. Dale Sharkey: Oh, I should know that.

The Chair: Could I suggest that we go back to that at the end? We're just about at the end of the questioning.

Ms. Eve Adams: Sure, we'll do that so that I don't run out of time.

In a nutshell, though, the NDP members have consistently voted against funding these estimates. If the opposition members had their way and if the NDP was able to stop funding for your department, what would be the impact for veterans as they go through the veterans appeal process?

The Chair: You don't have to comment on the party side of it, but perhaps you could provide the numbers, if you have them.

Ms. Eve Adams: What would happen if you were not funded?

Mr. John D. Larlee: The board wouldn't exist.

Ms. Eve Adams: How many veterans would not be able to access your services each year?

Mr. John D. Larlee: As I stated, it's in the range of 5,000 decisions rendered per year.

The Chair: Thank you very much, Mr. Larlee.

We will go to Mr. Casey for five minutes, please.

Mr. Sean Casey: Mr. Larlee, I want to come back to a point that was raised by Ms. Adams.

You got some bad press back in May as a result of your overseas travel. Did I understand you correctly to say that there was no demand from the government or from the minister for you to repay that money, and it was a decision that you made of your own accord?

Mr. John D. Larlee: That's correct, sir.

Mr. Sean Casey: Okay.

You would also know from that press that I indicated we wanted a chance for you to provide a full explanation. I heard your answers to Ms. Adams. This is your chance, if there's anything else that you want to say in connection with the travel to the Cambridge lecture series.

Mr. John D. Larlee: I would only say that it was a matter of my own professional development. As the chair and the leader of a national agency, a quasi-judicial tribunal, I felt that it was of benefit to me. I remain in the position that it was of benefit to me and assisted me in leading this tribunal. Again, as I stated, upon being made aware of the concerns raised, those expenses, all of which were pursuant to Treasury Board guidelines, were repaid in full.

Mr. Sean Casey: I expect that you have read in detail the report of the ombudsman back in March. In fact, I think you indicated in your remarks that a bunch of steps have been taken as of March. I presume they were in response to the report.

Mr. John D. Larlee: That's correct.

Mr. Sean Casey: The ombudsman, with the assistance of a major Canadian law firm, raised some very serious concerns about the rate of overturn in the Federal Court.

My question for you is a broad one. If we can take it that a high rate of overturn is indicative of a problem—and I hope you'll give me that—can I ask you, sir, whether you believe that the problem that results in this high rate of overturn is a problem of structure within the board, or a problem of personnel?

Mr. John D. Larlee: The ombudsman's report was received by the board, and we welcome the recommendations in the ombudsman's report and have taken measures to put into place responses to his recommendations.

I can address four of them. We placed a priority on decisions being returned by the Federal Court. We have established a task force with the Department of Veterans Affairs to deal with decisions coming from the Federal Court to identify any items that can be addressed. We have also established a working group to work on guidelines with our members in order to provide more plain-language and clear decisions. As I stated in my opening statement, those are to be in place by the end of the year.

With respect to the operation of the board, the board functions very well. We deal with many decisions. We have a very detailed instruction process for our members. Once they proceed and are

appointed to the board, we have a 12-week training period. Before the board members sit on a case, they receive instruction on legal issues, administrative law, and the interpretation of medical opinions and evidence. As a result, I'm very confident that we have very knowledgeable and well-qualified administrative adjudicators.

They work in 30 locations across the country in rendering decisions so that veterans are well served in this country. In addition, the tribunal is supported by 85 full-time equivalents in Charlotte-town, and they are very well qualified and very dedicated to all the work they do for veterans. They work tirelessly to ensure that the decisions we render provide veterans every entitlement that they are allowed under the law.

• (1645)

The Chair: Thank you very much, Mr. Casey.

Go ahead, Mr. Lizon, for five minutes.

Mr. Wladyslaw Lizon (Mississauga East—Cooksville, CPC): Thank you very much, Mr. Chair.

To start, I would like to thank all the veterans present here for their service to our great country. Thank you to the witnesses for appearing, and I thank you for your work for the veterans.

I would like to ask a question along the same lines that the parliamentary secretary asked. It is on the number of cases. You mentioned that you made a number of decisions, about 7,000 a year. Is the number of new cases a year the same as the number of decisions?

Mr. John D. Larlee: The number of decisions is 4,900—

Ms. Dale Sharkey: They are roughly the same. We have no backlogs of work, so what comes in generally goes out in a year.

Mr. Wladyslaw Lizon: There are no backlogs, so it's about 4,000 or 5,000. If I did my math correctly, you mentioned that since 1995 there were over 119,000 decisions. Is that correct?

Mr. John D. Larlee: Yes, 118,000 decisions were delivered.

Mr. Wladyslaw Lizon: Yes, that would bring the average to 7,000. Does that mean that the number of cases in recent years has decreased significantly?

Mr. John D. Larlee: That's correct. There have been peaks over the years in the number of decisions. My director, Ms. Sharkey, can perhaps give you a better history of the numbers.

Ms. Dale Sharkey: I don't have all of the details with me, but I note that since 1998, when I started with the board, we had a peak of between 9,000 and 10,000 decisions a year. It would go down to 7,000, back up to 8,000, down to 6,000, so over time it has decreased. As I said, we're at 4,900 this year; last year it was approximately the same. There have been a lot of peaks and valleys.

Much of the volume depends very much on the number of first applications that are made with the department. For example, last year they rendered between 35,000 and 40,000 decisions that were appealable to the board, and we received about 10% of those.

It's also difficult to predict volume because veterans need only be dissatisfied, and there's no time limit within which they must appeal. They may decide to appeal 25 years after they've received a decision or they may appeal within a year. They don't have to come to the board and prove they have an error in fact or law, or bring new evidence; they need only be dissatisfied. I think that's part and parcel of the fluctuation, but it greatly depends on the volume at the department. It also depends on how representatives deal with the applicants in terms of counselling them in or out, based on the strength of their cases.

Another element that's played into the decrease in numbers is that a larger proportion of our cases, the more straightforward ones, go to a departmental review. I believe Mr. Butler probably spoke about the departmental review, an administrative redress mechanism within the department. I think over 2,000 cases were done at departmental review; in years past they might have done a few hundred, and those cases would have been at the board. It's a better process for them to go to the department. They get all of their appeal rights if they're still dissatisfied.

• (1650)

Mr. Wladyslaw Lizon: How does this reflect on your annual budget? Taking into consideration the fact that you have a fluctuating number of cases and they're unpredictable, how do you deal with it? Do you have a set budget? Does it increase? Does it decrease? How do you deal with it?

Mr. Larlee, you mentioned in your remarks that you do a tremendous amount of work with rather limited resources. If you could, put this together and maybe shed some light on what you meant exactly.

Mr. John D. Larlee: First of all, the budget has remained the same since 1995, I believe.

Ms. Dale Sharkey: Yes. In 2006 we had a slight adjustment, but it's pretty well been stable since 1995.

Mr. John D. Larlee: We have managed to carry out our work with those funds. As I say, our work is mostly the cost of our members in travelling the country to provide hearings in over 30 locations and in conducting our appeals in Charlottetown, as well as the cost of our support staff, including people who do quality analysis of our decisions.

Part of that, of benefit to the veterans as well, is that in recent years, with the modern CF veteran, the conditions and the cases that come before our tribunal are much more complicated and require more work. As a result of the shift from the traditional veteran to the modern-day veteran and to the serving Canadian Forces members as well as the RCMP, those funds in the budget are well used to make sure that those veterans receive their decisions in a timely and fair fashion. We worked, as I said in my comments, to reduce the timelines. We use modern technology, and the money is well spent to make sure that veterans get their benefits.

With regard to how the transition from the percentage of traditional veterans to modern-day veterans has gone, I think Ms. Sharkey has the percentages that give us exactly how those are divided.

Ms. Dale Sharkey: Yes. Unlike the department, the majority of the applicants who come to the Veterans Review and Appeal Board

are Canadian Forces members or former members. About 86% of our applications come from that group; about 8% are traditional veterans, and 7% are RCMP. As you can appreciate, the traditional veterans number has steadily decreased and the modern-day or Canadian Forces members, former and still serving, number has increased.

The Chair: Thank you very much, Ms. Sharkey.

Mr. Lizon, you got more time than anybody else today, so don't give me that look.

• (1655)

Mr. Wladyslaw Lizon: I'm just surprised.

The Chair: Before we go on, I'd like to welcome the substitute members today: Ms. Tilly O'Neill Gordon, Mr. Lapointe, and Mr. Côté. Thank you for coming.

Mr. Lapointe, you're up next. You have five minutes.

Mr. François Lapointe (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, NDP): It's a real pleasure.

[Translation]

As a guest, today....

[English]

Do you speak French?

A voice: *Oui.*

Mr. François Lapointe: Okay.

[Translation]

Since I am here today as a guest, I will present more of an outside perspective—in other words, it will be less specific than that of my colleague, Mr. Stoffer. My questions will be more generic, but I think they will be relevant.

It seemed to me—perhaps because I have no expertise on the topic—that the percentage of cases brought before the Veterans Review and Appeal Board—between 10 and 15%—was fairly high. Can we make a comparison with countries that use a relatively similar process, such as Australia? Of course, I am not talking about comparing Canada and Bangladesh.

[English]

Ms. Dale Sharkey: I don't have any kind of information like that. Every organization has its own legislative scheme, and it might be difficult to compare to the United States or Australia on the basis of numbers. I don't have those numbers. Also, the base of veterans would make a huge difference—for example, Australia has millions of veterans—compared to what the base might be in Canada. I don't have that information.

[Translation]

Mr. François Lapointe: I was talking about the percentage. I understand that Canada has fewer veterans than the United States.

One issue worries me a little bit. You talked about holding hearings through a system similar to Skype. Have older veterans been asked whether they were comfortable with that way of testifying regarding cases that, sometimes, have been going on for years?

Mr. John D. Larlee: In terms of hearings, I am talking about videoconferences.

[English]

Video conferencing is done through a secure system. It wouldn't be done through Skype.

[Translation]

Mr. François Lapointe: That resolves the confidentiality issue in principle, and I am very happy to hear it. However, I wanted to discuss the simple fact that those people have to debate their issues on camera. I am mainly referring to older veterans. This used to be my area of expertise, and I know it can be very difficult to get older people to use new technologies.

Have those people been asked if they are comfortable with that approach?

Mr. John D. Larlee: We currently provide veterans with options. Occasionally, it is faster for them to use that system than to wait for our members to arrive in their region of the country.

Mr. François Lapointe: What kind of a difference are we talking about, in terms of time, if an individual prefers to appear before the board in person instead of electronically? Are we talking about a difference of a few weeks or a few months?

Mr. John D. Larlee: With the videoconference option, the hearing may be held within a few weeks or a few months. However, the schedule we follow for visiting cities across the country is set in advance. So it may take a few months for a veteran to obtain a hearing.

[English]

As a result of the board responding to what was going on at the department with respect to transformation and the deficit reduction action plan, we, on our own, have been working on this process redesign project. One of the aspects of the project is to look at the possibility of using video conferencing in more of our hearings. At present, we are conducting a survey on whether or not veterans are interested in it. We've also asked our stakeholders. We've asked the Royal Canadian Legion and others to give us feedback.

To date, the veteran has agreed to do it by video conference on a voluntary basis. As the technology improves, it makes it much more adaptable. It's quite remarkable.

[Translation]

Mr. François Lapointe: I understand the accounting parameters imposed on your organization. I understand that. I am not completely comfortable with the idea itself, but that does not take anything away from your work. I understand the parameters you have to follow.

• (1700)

[English]

The Chair: Go ahead, Mr. Lapointe, very briefly.

Mr. François Lapointe: It's a very brief one.

[Translation]

I just want to know, when it comes to the case that has now come up three times and when it comes to the fact that you have decided yourself to pay for the costs of training, are there any guidelines from the current government in terms of standards, with regard to

what can be covered and what is not? Is that clear, or do you always feel like you are following a somewhat random formula?

Mr. John D. Larlee: It is very clear. It is always a matter of following orders from the Treasury Board Secretariat.

[English]

The Chair: Thank you very much. That's put us out of time.

Now we'll go to Mr. Lobb, please, for five minutes.

Mr. Ben Lobb: Thanks very much.

In the first hour I asked Mr. Butler a question, and what he said was that some of these—and I don't know if he used the words “a lot” or “some of these”—cases that go to VRAB are cases in which a veteran has received, say, 20% for disability, but wants to go for 25%. That's what the veteran feels the disability is.

Of all the cases that come to VRAB, what percentage of those are that particular case?

Mr. John D. Larlee: It's quite a substantial number, I'm sure, because when we talk about favourable decisions, an individual could receive a favourable decision giving a certain percentage and still not be satisfied, and then he would be entitled to come back to the tribunal to go to the next level.

Keep in mind that we have various levels. We have our review, we have our appeal, and we have our reconsideration, so the individual could be coming at each level.

In answer to your question, I'd refer to Ms. Sharkey to see if those kinds of statistics are kept.

Ms. Dale Sharkey: We don't have statistics or any means to track what you're suggesting. I do know that roughly 30% of our caseload relates to assessments—

Mr. Ben Lobb: I'm sorry to interrupt you, but I find it hard to believe that we don't know this. Why can't it be tracked?

I'm going to take a very simplistic approach here. If I were on the board, when the document came on my table, I'd say, “This person was rejected and received nothing” or “This person received 20% and is going for 25%” and put a tick in either one box or the other to track it. Is there a reason that it's more complicated than I understand?

Ms. Dale Sharkey: I don't believe there's a reason. I think it was just information that no one felt needed to be tracked because it's based on entitlement, and we look at what you're entitled to under the law. I—

Mr. Ben Lobb: I'm sorry again. It's just because my time is limited.

On the flip side, then, there's no way to know how many of these potential 5,000 cases per year haven't received anything yet, and have not been awarded anything at this time.

Ms. Dale Sharkey: I can look into it and get back to the committee. I'm happy to see if there is a way to do that. Given the way the information is recorded, I'm skeptical that there is, but certainly we can look into it.

Mr. Ben Lobb: Okay.

The other thing is this, and I'm really trying to make it simplistic because I'm having another tough time understanding it.

In our previous hour, Veterans Affairs mentioned that it's very important to get the case in. An adjudicator would look at it, and if there's not enough information to make a good decision, it potentially could be rejected. Then, if they decide they want to go directly to VRAB, it goes to you folks. At that point, the veteran is required to get more information.

Is the onus on the veteran to get more information, or do you folks help them get the information? Let's say it's a meeting with a specialist; who helps them get that?

Mr. John D. Larlee: The veteran has an obligation to bring his case forward. In response to your—

Mr. Ben Lobb: In that case, if the file has been deemed insufficient or lacking by the adjudicator, who is responsible to get that file or meet with the specialist or do whatever? Who's responsible at that point in time?

Mr. John D. Larlee: The veteran, the applicant, has access to the Bureau of Pensions Advocates. Those are the lawyers who are provided to the veterans. That would be the role of the lawyer from the Bureau of Pensions Advocates, or of the service officers from the Royal Canadian Legion who prepare the individual's case to come before the board.

• (1705)

Mr. Ben Lobb: I'm just trying to get your opinion coming at it from a Veterans Affairs standpoint.

If I were an adjudicator and I was missing something that would really help me find in favour of a veteran, why wouldn't I call up the veteran and say, "Jimmy, you're looking good here, but you're missing a document. Go to your specialist and get it done."

I know that in the case of passports, if they're missing something or if the picture isn't right, they call the person and say, "Get your picture fixed. It's file number such-and-such." They send it, and it gets approved.

From your standpoint, wouldn't it make the whole system a lot simpler if we were to just fix it at the Veterans Affairs point? Then it wouldn't have to come to you folks. Am I missing something?

Mr. John D. Larlee: That would be a question for Veterans Affairs.

The Chair: Thank you very much, Mr. Lobb. You had a good line of questioning going there.

We now go to Mr. Hayes for five minutes, please.

Mr. Bryan Hayes: Thank you, Mr. Chair.

I want to be clear on the math. I was under the impression that 20,000 cases a year are heard by the Department of Veterans Affairs, but you're telling me that 4,900 decisions were made this year, representing a 10% to 15% appeal rate. It seems to me that appealing 4,900 decisions is a lot higher than a 10% or 15% appeal rate.

I first want to understand how many decisions actually get appealed.

Mr. John D. Larlee: I'll ask Ms. Sharkey to answer that, but I think the department deals with more than the numbers you quoted.

Ms. Dale Sharkey: I'm quoting numbers from Veterans Affairs Canada.

I believe that when they talk about 20,000, they're referring to first applications, when veterans make their first applications to receive entitlement. However, there are also reassessments and departmental reviews, and all of these have appeal rights to the Veterans Review and Appeal Board, so that adds up to somewhere between 35,000 and 40,000 applications over the past two years.

Mr. Bryan Hayes: Okay.

Earlier I asked department officials if they could do more up front to reduce the number of appeals. In your mindset, can department officials do more up front to reduce the number of appeals coming your way?

I'm guessing that you must have a sense of a standard theme in appeals coming your way. It would seem logical that...

Ideally our goal, collectively, would be fewer appeals. That would be classified as efficiency, and I think what we're all shooting for is efficiency. Based on your experience, can department officials do more to lessen the number of appeals?

Mr. John D. Larlee: Perhaps I could refer that question to our legal director for a response.

Ms. Kathleen Vent (Acting Director, Legal Services, Veterans Review and Appeal Board): At our last member seminar we had guests from both the Legion and the Bureau of Pensions Advocates. A common theme that was exposed was the problem veterans have in gathering their evidence at the first instance.

From recent conversations we've had with reps from the ombudsman's office, I know his office as well is very interested in the disclosure that's occurring to veterans. Often veterans are getting a first-level decision without really being aware of the evidence that was reviewed in the rendering of that decision.

I would agree. I think there are issues with evidence, especially at first instance. Anything that can be done by all of the organizations to help the veterans get better evidence at first instance would be assistive.

Mr. Bryan Hayes: There are various levels: the review itself, the appeal hearing, and then there are other procedures for review and appeal, including reconsideration and the judicial review. It could be the Tax Court of Canada. It could be a compassionate award.

I'm trying to get a sense of how you're counting an appeal. If an individual launches an appeal and it goes to the review stage, and then if it fails and the person goes to the appeal hearing, does that count as two separate incidents or as only one incident in terms of calculating the number of appeals that the particular individual has launched? Of course, the individual may go to a third stage of appeal. Is each one counted separately?

Voices: Yes.

Mr. Bryan Hayes: That's interesting.

I'm getting a sense again, through Mr. Lobb's questioning... The ombudsman released a report; obviously there was an action plan, but I'm getting a sense that there's still something missing, and that's the case management system, somehow. I'm getting a sense that data.... We're asking questions today, and the data isn't not readily available because either the data isn't there or the system isn't there.

Is there something lacking in terms of a case management system, in your opinion?

• (1710)

Ms. Dale Sharkey: In terms of managing cases, I believe that's better directed to Veterans Affairs, because managing cases is their role. As Ms. Vent described, I believe veterans bring their cases to the Veterans Review and Appeal Board and usually have an expert representative work with them, someone who's very knowledgeable about the law and the kinds of evidence they need to bring forward. In a sense, then, Veterans Affairs provides free legal advice to veterans to help them with their cases. As I understand it, this is unique in the world.

We look at the information and evidence brought before us and try to render the very best decisions that we can to explain to them why their cases were approved or denied.

The Chair: Thank you very much, Mr. Hayes.

That will end round one. We have time for one each from the NDP and the Conservative side.

I'll go to Mr. Stoffer, please.

Mr. Peter Stoffer: Thank you.

Ms. Sharkey, I believe you said 100-some were sent back to the minister for reconsideration under section 85. How many of those that the Federal Court ordered back were for a particular case, such as a hearing loss?

Ms. Dale Sharkey: I don't have that information with me today, but they wouldn't be ordered by the Federal Court. It is what we decided was the fair thing to do around the hearing loss cases. We decided to allow the veterans, as a result of that Federal Court decision you're referring to, to have a first decision.

Mr. Peter Stoffer: I understand the BPA and why there's legal advice to veterans to help them as their cases meander through the appeals and everything else, but when you look at it objectively, you see people who have served their country who are now saying that they have a problem or an issue of some sort, and they are denied. Then, of course, the generous government offers them legal help in pursuing their cases with the government or the department.

I've spoken to many veterans who feel they are doing something wrong in actually begging the government for legal help when they feel their medical documents and their word should be enough. It is unfortunate that we still have this situation. I understand why, and I appreciate why, but it is rather unfortunate, when you look at it objectively outside the system, that veterans need lawyers or legal help to pursue a hearing loss or pension benefit of any kind. Hopefully one day we can get around that.

I just say that as a comment. Thank you.

The Chair: Thank you, Mr. Stoffer.

Mr. Zimmer, you're listed here as the last questioner.

Mr. Bob Zimmer: I'll defer to our guest and Ms. Adams.

Ms. Eve Adams: Thanks very much, Mr. Chair.

I'd like to thank you for coming in today and for the good work you do in assisting veterans.

Could you give me a descriptive overview of the type of qualitative improvement that the veterans who come before you experience in their lives as they're going through their hearings, and then once you've provided them with a decision within the year? Do you have some examples of that, perhaps one of a younger veteran and one of an older veteran?

Ms. Dale Sharkey: I think you're perhaps referring to the benefits that Veterans Affairs provides. Some of them are linked to a pension or an award decision to which they are entitled.

If a favourable decision is rendered at the board to give entitlement, obviously that entitlement would enable them to gain access to certain treatment and medical benefits. I'm not an expert in that area. That really is an area for the department.

As we mentioned, we vary 50% of our review decisions and 30% of our appeal decisions, so certainly there's a financial element that comes to the veteran based on an increase in entitlement, a new entitlement, or an increase in assessment.

• (1715)

Ms. Eve Adams: Very briefly, to sum up, could you remind us of some of the experiences of the board members, especially any board members who have any military experience?

Mr. John D. Larlee: The makeup of the board, with our retired police, RCMP, and military members, enables us as a group of, at present, 24 board members to have input from them in our training sessions. It gives us a more robust and more knowledgeable work environment. They assist us in providing us with information that is very beneficial when we are travelling the country conducting hearings.

I think that given the way the board is structured and given our merit-based system of applicants who apply to come to the board, we have a very good cadre of members who become experts in the field. They are very, very interested and committed to make sure that the applicants, the veterans, whether they are still-serving CF members or RCMP or members of families, receive all the benefits to which they're entitled in their application.

The Chair: Thank you very much, Mr. Larlee.

That concludes our time for witnesses.

To the witnesses, thank you very much for coming. I'm sure you may get an invitation later to return. That's up to the committee, of course.

I'm going to suspend and tell everybody here that because we're going to be discussing witnesses, we'll come back in camera to discuss the witness list.

I thank all the visitors for being here as well today. It's nice to have you all here.

[Proceedings continue in camera]

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