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Chair

Mr. Anthony Rota

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● (1730)

[English]

The Chair (Mr. Anthony Rota (Nipissing—Timiskaming, Lib.)): We'll get started.

As you've heard, we don't quite have a quorum today. We'll have the meeting. We have a quorum unofficially, so we'll be able to hear witnesses and ask questions.

There are a few members who were going to be here today. Unfortunately, one of them came earlier and was supposed to be here by now. With the meeting being held later, I guess some people had other commitments. Unfortunately, we have a lot of commitments here and people are gone, but we'll be more than happy to hear what you have to say.

You'll do your presentation and we'll ask some questions. From there, maybe we'll have the dinner that is already served back there and continue informally.

First of all, our witnesses are from the Veterans Review and Appeal Board. We have Victor Marchand, who is the chair, and the director general, Dale Sharkey.

Welcome, Mr. Marchand. I understand you have a presentation for us. Maybe we'll let you get started, and then we'll go from there.

Mr. Victor Marchand (Chair, Veterans Review and Appeal Board): Thank you very much, Chairman. Thank you for this invitation.

It's a short presentation. Copies in both French and English should have been provided to you by now.

Since the inception of the Canadian disability pension system at the end of World War I, a constant feature has been the existence of an independent appeal mechanism so that soldiers, veterans, and their dependants who are dissatisfied with the disposition of claims can appeal. The Veterans Review and Appeal Board fulfills that function today. In this position, as the last and most visible body in the pension system, the board and its function are sometimes greatly misunderstood.

[Translation]

I am therefore pleased to present to you today the mandate of the board and to explain its importance in the pension delivery system.

You already have a copy of our presentation in hand which explains the structure and functioning of the tribunal. I will be

concentrating on certain issues that are of the utmost importance to the tribunal and that are of particular interest to the subcommittee.

[English]

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

One of our greatest challenges is breaking the misconception that we are part of the department. Let me be perfectly clear that the veterans who come before the board can count on a completely independent review of disability claims. We do not write the legislation or develop the programs. We are focused entirely on providing an independent redress system to ensure that veterans are treated fairly and receive the pension benefits to which they are entitled under law.

It is no small job. Annually the board renders approximately 6,500 decisions on reviews and appeals of claims for disability pensions under the Canada Pension Plan Act and a handful of final appeals on war veterans allowance cases under the War Veterans Allowance Act. We carry out this tremendous workload with a team of full-time board members, who are split between our headquarters in Charlottetown and major cities across Canada. Our members are well supported by an experienced staff of 80 in our Charlottetown headquarters.

As you know, the disability pension decision process consists of three levels. The first level is on the application to the department for benefits, and the subsequent decision is made by an adjudicator in head office working from the files and documents submitted by the applicant.

From time to time, the board is the subject of public criticism because a veteran or a group of veterans did not receive a benefit that had been sought. I would like to point out to the committee that when the board issues a ruling, the ruling is based on whether or not the correct decision was made by the department.

● (1735)

When you receive a negative board decision from an upset constituent, please remember that this decision is not a decision based on rules made by the board, but instead, a decision that reflects the fact that the board has found that the Minister of Veterans Affairs has properly applied the legislation created by Parliament.

For those who are not satisfied with the department's decisions, there are the review and appeal levels, which are the sole responsibility of the Veterans Review and Appeal Board. The board provides the first and only opportunity for veterans to tell their story and explain their case before the people who will make the decision on their claim. This oral testimony, as well as the testimony of their witnesses, plays a critical role in providing the evidence that can result in the board's varying a departmental decision. Fully 56% of reviews resulted in a variation of the decision of the department.

These days, the vast majority of applicants appearing before the board are former and still-serving members of the Canadian Forces, followed by active-service veterans, RCMP, their survivors, and dependants.

Having been a board member myself, I can speak firsthand of the challenges board members face. Board members must constantly strive to keep abreast of new issues challenging the Canadian Forces and RCMP. With advances in medicine, new information is constantly becoming available and presented at hearings.

The change in our applicant profile from the traditional war veteran to the younger Canadian Forces members presents new challenges for the board. This group has greater expectations regarding entitlements and is far more likely than the traditional war veteran to pursue all levels of redress.

In addition, cases are becoming more difficult. With the department awarding more pensions at their level, and representatives taking the majority of cases with the new evidence back to the department for departmental reviews, the types of claims coming before the board are of an increasingly complex and challenging nature. The files are larger, and generally the more voluminous the file, the more complex the arguments. Representatives and applicants have access to more information than ever through the Internet and can gain access to an expanding pool of medical and legal information. In consequence, members require more time to hear and decide a claim, and the medical and legal issues are very often less straightforward than in the past.

Another criticism the board frequently faces is that we are too formal, too court-like. As an administrative tribunal, we make every attempt to operate as informally and as expeditiously as we can. In fact, our legislation tells us to do this. In practice, this means that hearings are much less formal than a court of law. However, our hearings are legal proceedings, in which applicants have the opportunity to be represented and to make their case.

The process is non-adversarial. There is no one there—representing the other side, that is—presenting evidence that the applicant is not entitled to a pension. The board members may question the applicant and representative to clarify issues. After all, if the issues were clear, it is unlikely that there would be an appeal. Our hearings are not held in courtrooms; they are in boardrooms or hotel facilities.

Our members make every effort to make the applicants feel comfortable. They can appreciate how apprehensive applicants may feel about coming to their hearings and how matters of a personal nature may have to be addressed.

For those applicants who would rather not appear, there are other options, such as proceeding by way of a written submission or

having a representative present their case in their absence. For those who are elderly or too sick to travel, we are pleased to accommodate their participation by telephone hearings.

• (1740)

The board holds review hearings in over 34 locations across Canada, from Victoria to St. John's, to allow applicants access to their hearings and to allow them to give testimony. I am confident the committee members can appreciate, with a country as large as Canada, that the logistics of moving members to various locations are extremely challenging, and travel costs are a major expense to the board. Our members hear between 500 and 700 cases each year. This involves a lot of travel, for sometimes three or four weeks on the road at a time.

I can, however, assure you that the travel expenses for members are in accordance with Treasury Board guidelines and are directly related to hearings and board business. Past criticism of board members' travel expenses were clearly made with limited understanding of the work of a board member.

[Translation]

As I stated earlier, the board is responsible for two levels of appeal. After the review, if an applicant is still unhappy with the decision rendered, he can appeal to the board. I have often realized that people mistakenly believe that the board members who study the file at the review stage could also hear the appeal. This is not at all the case.

It is clearly stipulated in the act that three members other than those who rendered the previous decision will hear the appeal. The appeal hearing is a completely new proceeding, new evidence can be filed and every appeal decision is rendered as though it were an original hearing.

[English]

I also understand that in previous committee sessions a concern was raised about why claimants cannot attend their appeal hearings. In fact, the legislation states that no oral evidence may be heard at appeal. Only documentary evidence and oral argument may be presented to the board.

Most appeal hearings are held in Charlottetown. Applicants are welcome to attend, but at their own cost. I am assuming that applicants are aware of the case to be presented, through the written submissions filed by their representatives prior to the hearing and from pre-hearing communications with their lawyer. Representatives are welcome to make arrangements via teleconference for their clients to listen to the proceedings, should they so desire.

I would like for a moment to direct my remarks to some of the rather unique aspects of the Canadian military pension system. For example, there are no time limits on any of the levels of redress. The board frequently receives appeals of decisions or decisions made up to 50 years ago. Also, even though the VRAB Act states that a decision of an appeal panel is final and binding, there is an extraordinary provision that allows applicants to apply for a reconsideration of their decisions if they have new evidence or if they can demonstrate that there was an error in law or fact in the appeal panel's decision. The reconsideration is not another level of appeal. The claimant is simply asking the same panel to take another look at the decision based on aforementioned reasons. There is no limit on the number of times an applicant can apply to the board for a reconsideration.

We sometimes hear complaints from applicants who have been denied a request for reconsideration or who, at the end of the process, do not receive a favourable decision. When we hear these complaints we have to remember that by the time a claim has reached the reconsideration stage it has already been ruled on and possibly reviewed again by the department, studied by VRAB at the review level, and again by the appeal level. By this point in the process, all relevant evidence should have been made available, and if a claim is to be considered again, there has to be a valid reason to do so.

A good summation of this very topic can be found in the board's recent interpretation decision. I've brought a copy for the committee. This document stresses the need for all relevant evidence to be presented as early in the process as possible, so that claimants can receive the pension to which they are entitled as soon as possible. In general, this puts more pressure on representatives to better prepare the case earlier in the process and may explain why some concerns have been expressed about this decision.

A complaint I sometimes receive, as does the minister—and you may have heard it from your constituents—is that the board did not give the veteran the benefit of the doubt, as stipulated in legislation. Adjudicating is not an easy job. The cases of the men and women who come before the board are often compelling. These men and women have served their country well and honourably in times of both war and peace. However, as a tribunal we do not have the power to disregard or change the legislation. Members must decide appeals on the basis of the evidence available to them and the legislation as it stands.

The best interpretation of the benefit of the doubt can be found in Federal Court decisions such as *Hall v. Canada (Attorney General)*. The decision read in part:

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

• (1745)

Please do not interpret my remarks today as meaning we feel everything is perfect with our system. We're always striving to improve our methods of operation, and recently we have undertaken a number of initiatives to improve service to applicants and to show

the public at large that we are taking a fair, balanced, and serious approach to our responsibility as a court of last resort in the veterans' redress system.

As you know, a new selection process that introduced measures to improve the appointment process was announced by the minister in December 2004, and that new process is currently under way. The board is piloting a project focused on applicants who have PTSD by accessing expertise, providing training at the Sainte-Anne-de-Bellevue Centre, and having customized hearing formats that meet the needs of these individuals. The board will be conducting a survey of applicants in the coming year.

We recognize that applicants require more information about the process, and we've been improving communications through fact sheets and our website. We have also worked very hard to meet our service standards of issuing written decisions within 30 days of the hearing. This year, although our numbers are not yet final, we issued 90% of review decisions in 31.6 days, and 90% of appeal decisions within 30 days after the hearing.

Most of our applicants are represented by lawyers who are independent of the board. Once we are notified that the representative is ready to proceed to a hearing, we schedule the case for applicants as soon as possible. You must remember that the time it takes for a representative and applicant to prepare their case is entirely out of the control of the board. We monitor the age of claims and communicate frequently with representatives to ensure that cases do not stagnate in the system.

• (1750)

[Translation]

As I said earlier, we know that the system is not perfect, but we are doing our best to make improvements where we have noted shortcomings.

I am nevertheless proud of the board's work and I thank you for the support that the board has benefited from as have our predecessors, the support coming from the government, from veterans' groups and from the Canadian population.

[English]

I am also proud of the efforts put forward by the members of the board and the staff who support them. They are a sympathetic, dedicated, and motivated group of people. Sometimes we don't realize what a generous, open, and proud tradition of service we have in this country.

We on the board realize what those who serve do for Canada, and we do the very best we can do for them.

Thank you. Merci.

[Translation]

The Chair: Thank you, Mr. Marchand.

[English]

Thank you.

We'll move on to questions.

Mrs. Hinton, go ahead, please.

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

Welcome, and thank you very much for coming today.

I have many questions, but I'll just ask a few, if I may.

I looked briefly through the biographies of the members of the VRAB and I noticed there are only two that have military experience. One was in the JAG office and the other served in the regular forces for six years—but that was over 40 years ago—and served two years in the militia more than 20 years ago. The one thing that stood out the most for me is that I do not see any doctors or nurses who are part of this board, yet the board rules on medical conditions.

So the first question would be, do you feel it's fair for someone who has no background at all in the medical field to be trying to determine what's right and what's wrong with a claim?

The second question is, just for my own edification, I'd like to know how you become a board member. What are the qualifications, based on what I just mentioned earlier? What are the qualifications to be a board member and how are you appointed?

I'll let you answer those, if you could, and then maybe I'll ask a few more.

Mr. Victor Marchand: The medical issues that are raised in a claim by a veteran, both at the department and then on to the tribunal, are on the question of disability, and medicine is a means by which you assess the extent of a disability. But the issue remains the disability and the presence thereof. In other words, we don't pension medical tests; we pension disabilities. Clearly the existence of a disability can be properly ascertained by a medical test.

Mrs. Betty Hinton: I will let you answer the second one as well, but I just want to go back to what you just said.

If there are no physicians per se, and no nurses, and you're talking about the disability assessment already being done before the people appear in front of you, is there anyone there who is trained for what I like to refer to as the invisible wounds, for those who have been damaged in their minds rather than by something you can physically see, like the loss of a leg or the loss of an arm? Is there anyone with a psychiatric background sitting on this appeal board?

Mr. Victor Marchand: There are some board members who I know have training in psychology. That I know. But that issue, the issue of the presence of a disability, is often settled long before a matter ever comes to the board. What is usually a challenge—and it's a challenge in law, not a challenge in medicine—is to establish the link between the event and the disability. One of the means by which applicants can do this is by filing medical opinions to that effect. The quality of the medical opinion provided is significant. It has to be more than an inscription on a notepad. I don't think the board expects people to consult with experts in fields, but the basic ruling to be determined is one in law, not in medicine.

Doctors usually work on a measure of 95% certitude when they try to assess the presence of a link between an event and a condition. One of the reasons you don't have doctors in these adjudicative decisions is the onus of evidence would be extremely high. The law

says to give the benefit of the doubt, so what you want is people applying the general principles of law to a particular case, not the general principles of medicine.

• (1755)

Mrs. Betty Hinton: Mr. Marchand, are you answering that there are more lawyers on the board than medical people?

Mr. Victor Marchand: No. No, there aren't more lawyers than... well, there are definitely more lawyers than doctors—

Mrs. Betty Hinton: Well, there are no doctors, so—

Mr. Victor Marchand: There are no doctors.

In administrative law, the principle behind having administrative judges is borrowed from the jury system. If you look back on the history of administrative tribunals, they borrowed the simple fact that ordinary citizens—not necessarily lawyers, not necessarily doctors, not necessarily trained judges—will assess in fact what has happened. That's the issue, and you want to have on that board many perspectives—not only legal perspective, not only medical perspective, not only military perspective, but a variety of people bringing their various backgrounds.

Mrs. Betty Hinton: We could agree on a number of the points you've made, but I think there need to be some medical people on this board, and I think there need to be some military people, but... I'm sorry; they're going to cut me off in a second, and I have two more questions I want to ask you.

This takes us back to the one I first asked you, which was about the qualifications required to become a board member. That's one.

Second, I'd like you to comment on a comment. The board that turns down the veteran at the appeal in the first place is the board he has to face once again when he appeals.

Mr. Victor Marchand: No, never. It's a legal impossibility.

Mrs. Betty Hinton: You have two different boards? When someone goes with a complaint, you're saying that they don't have to go back in front of the same...?

Mr. Victor Marchand: It happens in a demand for reconsideration. In other words, when the process has expired, and the individual has gone through review and appeal and files then for a reconsideration based on new evidence—error of fact and law—he goes back to the same committee, but between review and appeal, there is a legal prohibition for the same members to sit on review and for appeal. It can't be. The law is clear; it can't be the same members.

Mrs. Betty Hinton: Unless I'm very much mistaken—and I'd have to go through the minutes—I think we've had other witnesses who stated a contrary opinion.

Mr. Victor Marchand: No, no, it's in the law.

Mrs. Betty Hinton: We'll let that one ride. I would just—

The Chair: We're out of time.

Mrs. Betty Hinton: Are we out of time?

I knew he was going to cut me off. That's why I was trying to talk fast.

The Chair: I let you go over just because I knew you had some very good questions.

[Translation]

Mr. Lemay, do you have any questions?

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Good afternoon, Mr. Marchand. Good afternoon, madam.

In fact, I would rather skip my turn and leave the floor to my eminent colleague Mr. Stoffer. He must have some very interesting questions to ask.

The Chair: Very well. If the committee agrees, we will continue.

[English]

Mr. Stoffer, if you want to continue, you have seven minutes.

Go ahead.

[Translation]

Mr. Peter Stoffer (Sackville—Eastern Shore, NDP): I thank my colleague.

[English]

First of all, I want to apologize for being late today. I also want to thank our researcher for some of the questions that I'm about to ask you.

Regarding the chair of the VRAB, how is that person selected? How is that done? How are they appointed?

•(1800)

Mr. Victor Marchand: Do you mean me?

Mr. Peter Stoffer: Yes.

Mr. Victor Marchand: Honestly, when I look back at how I progressed through the organization...I was asked if I would give my permission to my name being added to the list of potential candidates for the job and ultimately got a call to the effect that I was the lucky one. I had been a member of the board for four years by then. In fact, I was first asked to be deputy chair. The chair that year was leaving and was not immediately replaced, so I acted for some nine months as acting chair.

Mr. Peter Stoffer: Excuse my ignorance on this. The members of the board pool together a name or two. Do they forward that on to the minister, and is it the minister who has the ultimate say on who the chair is, or is it somebody else?

Mr. Victor Marchand: For all appointments to the board, whether they're regular members, the deputy chair, or the chair, the order in council that is ultimately signed is always on the recommendation of the Minister of Veterans Affairs.

Mr. Peter Stoffer: Very good. Thank you.

In relation to all of this, as you know, when Mr. Duhamel was the Minister of Veterans Affairs—and God bless his soul—he changed the definition of veteran. How has that had an effect on the VRAB in terms of the various types of cases or rulings you get?

Mr. Victor Marchand: Not at all, from a legal standpoint. None that I can ascertain.

Mr. Peter Stoffer: So even from the war veterans, which were traditional in the concerns, to what is called “the new veteran”, which is armed forces personnel just leaving the armed forces.... They could have three years of service, they could have 10 years of

service or 22 years of service, but they may not have served in a theatre of war, for example.

Mr. Victor Marchand: Precisely. They may not have gone to a special duty area. They may have stayed regular force for 30 years.

Mr. Peter Stoffer: I couldn't help but notice in the notes that we have been passed that the budget has been reduced ever so slightly. It was \$13.4 million but now is estimated to be at \$12.9 million.

Mr. Victor Marchand: Correct.

Mr. Peter Stoffer: What effect will that have on your availability to fulfill your duties?

Mr. Victor Marchand: Hopefully none. We will continue to strive to provide full service.

Maybe, Dale, you would like to explain the....

Ms. Dale Sharkey (Director General, Veterans Review and Appeal Board): A number of years ago when they brought in the legislation to provide pensions to still-serving veterans and the quality of life study, which the full committee dealt with, we were given temporary funding that peaked two years ago. I think it was over five years. The last of that funding is leaving us in this fiscal year, and that accounts for the reduction in the budget.

Mr. Peter Stoffer: Will this cause a delay in any way in terms of claims or appeals or anything that you may be aware of?

Mr. Victor Marchand: Not that I can conjecture at this point.

Mr. Peter Stoffer: As you know, sir, next Tuesday the minister will introduce a new piece of legislation on behalf of veterans. Have you had an opportunity to peruse that legislation or the documentation, and can you please advise us what you think the advantages or disadvantages of that would be in terms of serving our veterans?

Mr. Victor Marchand: Well, like everybody else in the portfolio, I was privileged to sit in on information sessions that were destined to all portfolio employees, but honestly I can't comment unless and until I see the final act. That's filed with Parliament.

Mr. Peter Stoffer: So you have to wait until then. I have to bring it back, is that what you're saying?

I'm just kidding.

Mr. Peter Stoffer: My last question for you is in relation to my colleague Betty Hinton, who had asked about the qualifications of people and the lack of medical personnel. One of my concerns, and she had mentioned it, was the injury, as Roméo Dallaire says, “between the ears”. My concern is that if you don't have people on that board who are specifically trained or qualified to fully understand the mental disorder of any kind, how then can you give satisfaction to someone that the evidence you hear, regardless of the rule of law in that regard, can be qualified or quantified in an area so that the people who the complainant is bringing the concern to can fully understand or appreciate what the individual is going through?

•(1805)

Mr. Victor Marchand: I may not have answered your questions. One of the tools we have at our disposal is independent medical advice. I did not have the occasion to mention that the act provides us, if we're faced with a complex medical situation, with the power to hire independent medical advisers to advise us. That's one of the tools we have under the act.

I suspect you're referring to PTSD cases. They are complex and difficult cases. Psychiatry itself says so, because there are often questions of co-morbidity involved, and they are not easily managed cases from a health point of view. They are complex and difficult, and they require time, effort, and support. We were striving to modify our approach to be able to provide to the veteran, no matter what his condition, his right to a hearing, to be heard, and yet to comply and recognize the very nature of his affliction.

So one of the things we will try to do shortly is to get our board members to go to Sainte-Anne Hospital for the training. This is the approach you should have: what sort of image and what sort of efforts you should have to produce outside of the quasi-judicial style. One of the issues, for instance, would be to just have one board member instead of two, so it's not threatening, so it's comfortable to the individual. There are a lot of things we could do to improve our track record there.

Mr. Peter Stoffer: How is the relationship with the members of the board with organizations, for example, with the Royal Canadian Legion? As you know, the Royal Canadian Legion represents many veterans and their issues, as do other groups. How is the relationship between the VRAB and those organizations?

I see them in the back there. That's why I asked the question.

Mr. Victor Marchand: Yes, I think we have a working relationship that I'm very proud of. We meet, we discuss issues, we try to solve problems—and we do solve problems. We go beyond talking about them. I think Pierre Allard would support me there. There's the qualification issue that was brought up. The qualifications are on the website, they're published, they're available for everyone. I can provide you with a copy.

The thing to remember about the qualifications of a board member, I think, is that it's mostly a skills and abilities job, more than an experience job. Experiences, knowledge, schooling, background, of course, are important, but at the end of the day it's a skills and abilities job. It's the capacity to organize your work, to sift through evidence, to understand the important components versus the less important components of a claim, to be able to sort out, to do the fact-finding, to recognize that the evidence is there, and to be able to communicate and hear people, which makes them happy with the process, comfortable that they had a fair hearing.

So it's a skills and abilities job, as far as I'm concerned, and no profession has a monopoly on that.

[Translation]

The Chair: Mr. Lemay, do you have any questions?

Mr. Marc Lemay: Yes.

The Chair: You have seven minutes.

Mr. Marc Lemay: Mr. Marchand, I would like to understand.

Did I read correctly that representatives of the Canadian Forces as well as officers from the RCMP deal with your board?

Mr. Victor Marchand: Yes.

Mr. Marc Lemay: Therefore, police officers from the RCMP...

•(1810)

Mr. Victor Marchand: ... may turn to the department in order to obtain a disability pension for a disability which is connected, or directly caused by their work as a police officer. So we take care of the regular forces, the veterans and the RCMP.

Mr. Marc Lemay: I am not sure if you know it, but this is somewhat similar to the CSST in Quebec, the Commission de la santé et de la sécurité du travail [The Quebec Workmen's Compensation Commission].

Mr. Victor Marchand: Absolutely. I worked there for several years.

Mr. Marc Lemay: Therefore, at the first stage, there is a decision; at the second, there is a review; and at the third stage, there is an appeal before the board.

Mr. Victor Marchand: Before the CALP [Commission d'appel en matière de lésions professionnelles—Quebec Employment Injury Appeal Board]

Mr. Marc Lemay: Which in your organization is the VRAB.

Mr. Victor Marchand: That is correct.

Mr. Marc Lemay: If a person is not satisfied, they can appeal to the Federal Court.

Mr. Victor Marchand: Yes, sir. It is the general review power of the Federal Court.

Mr. Marc Lemay: What competences are required of the VRAB members? What is their background? I do not want to get political, but it is not enough to just be a former Liberal candidate. It has to be taken more seriously than that.

Mr. Victor Marchand: Yes.

Mr. Marc Lemay: What is the necessary skill set? Do you look for lawyers, doctors, notaries?

Mr. Victor Marchand: We try to put together a variety of people who, literally, make up the board according to the principle that an administrative tribunal should not be entirely composed of lawyers or of people from a particular field. The principle of the administrative tribunal must remain what it is, that is to say an assessment of the facts by people who have the required skills and abilities to recognize and enforce the law.

Mr. Marc Lemay: I am pleased to be here, Mr. Chairman, because I did not know what was in store for me. I often pleaded before the CSST, over a 20-year period.

Mr. Victor Marchand: Really? I understand.

Mr. Marc Lemay: Who pays for the experts? Is it the veteran or the police officer from the RCMP? Is there a refund, if they win the case?

Mr. Victor Marchand: First of all, an expert report—as understood by the Quebec Court of Appeal—is not generally required by the board. People usually bring us a letter or a medical opinion containing certain basic elements explaining the causal linkage.

The veterans have access to lawyers from the legal services office of pensions services. They prepare the file and have a budget to pay for letters from the doctors.

Mr. Marc Lemay: I am sorry to interrupt you, but—and what I am about to say may seem unkind—in the case of someone who has gone to war and lost an arm, it is easy, we are able to determine the value of the lost limb.

Mr. Victor Marchand: Indeed, it is generally easy to say. Those people usually do not need to be accompanied by a doctor.

Mr. Marc Lemay: What is more complex are psychiatric, psychological problems, permanent after-effects. That requires expert assessments.

Mr. Victor Marchand: Generally speaking, a veteran is being taken care of by the department. He is being treated, and the department is providing follow up. The doctors and specialists are there to support him.

Mr. Marc Lemay: Things seem to be going well for the veterans. What concerns me more are the RCMP officers. It is a coincidence, but there is currently a case in my riding.

Are the decisions written?

Mr. Victor Marchand: By the board?

Mr. Marc Lemay: Yes.

Mr. Victor Marchand: Absolutely.

Mr. Marc Lemay: In English and in French?

Mr. Victor Marchand: They are written in English and in French.

Mr. Marc Lemay: Is the information on a potential appeal appended to the decision document? For example, is information provided on the timeframe for appealing the judgment?

Mr. Victor Marchand: Yes, sir.

Mr. Marc Lemay: I see that the hearings take place in Charlottetown.

Mr. Victor Marchand: Those are the appeal hearings.

Mr. Marc Lemay: Do you mean the appeal hearings?

Mr. Victor Marchand: Yes. These are appeals, and not reviews. The work is divided in two. There are 15 board members in various parts of Canada to deal with reviews and 15 others for the appeals.

•(1815)

Mr. Marc Lemay: Do all the appeal hearings take place in Charlottetown?

Mr. Victor Marchand: In general, yes. On occasion, there may be appeals committees that sit in other major cities, but that would be the exception. For the appeals, everything is done on paper, through lawyers' representation, with written submissions

Mr. Marc Lemay: How do you explain to a veteran that his application has been denied?

Mr. Victor Marchand: A veteran must first of all turn to the department. He must file an application with the department. It is the department that makes the initial decision on granting or refusing it.

The letter he then receives contains information on where to address an appeal. This is in fact an application for review. The appeal comes after that. There are lawyers at his disposal. From then on he can communicate with legal services and ask that an appeal be filed.

Mr. Marc Lemay: That is all for now, Mr. Chairman.

The Chair: All right. That is fine. Thank you very much, Mr. Lemay.

[English]

Now we'll continue with Mrs. Hinton.

Mrs. Betty Hinton: Thank you very much.

Regarding a couple of comments you made a little earlier, I would just like some clarification on when those events happened. You said there's no time limit.

Mr. Victor Marchand: No.

Mrs. Betty Hinton: I spent 18 months of my life working on behalf of a constituent of mine named Lieutenant Colonel Al Trotter. He had been denied a prisoner of war pension, with the reason given that his time had run out. We went through the whole appeal process, with two separate veterans affairs ministers, and he finally won his appeal. I'm very pleased to say that a number of other people, as a result of that, have now been able to receive their prisoner of war pensions, which they were more than entitled to.

You're saying there's no time limit now. Is that a result of that particular case, or of something new that's happened? There definitely was a time limit before.

Mr. Victor Marchand: In the case of Mr. Trotter, it's an active matter before the board, so it would be very inappropriate for me to comment on the merits of Mr. Trotter's case. If you'll oblige, I will avoid commenting on the merits of that case.

What I can tell you is that under the Pension Act and the VRAB Act there is no time limit for filing a claim based on service in the military. In other words, an 80-year-old active force service veteran could walk up to the department and claim a pension for something that happened to him during World War II. He wouldn't be told, "Sorry, you're out of time; you didn't file within six months or a year of the event that caused your disability".

What the legislature has provided for—and this is for basic actuarial reasons—is the maximum retroactivity available under the law.

Mrs. Betty Hinton: I would like to clarify something. The case I'm referring to when I'm talking about Lieutenant Colonel Al Trotter was resolved a year or so ago. If there's been an appeal, that's not what I'm referring to, but it was resolved. I say that just for clarification.

In paragraph 41 of the interpretation decision, it states that "The entire process is non-adversarial".

Mr. Victor Marchand: Correct.

Mrs. Betty Hinton: But I've heard from Legion members, the CPVA and NCVA, and a number of individual veterans that it is in fact very adversarial. I'm wondering if you would care to comment on that.

Mr. Victor Marchand: Well, my view of adversarial is having a lawyer present for the other party who can cross-examine you, file evidence against you, and contest the foundation of your right to anything. That's an adversarial system. It's a two-party system.

In the pension system, Parliament has decided, no, you won't have judicial battles in front of the board members. What the individual will be asked to do is to come forward with evidence that his case is well founded. What can be expected is that board members, if they don't have the benefit of all the information, all the evidence, that they need to rule, they will ask applicants to provide them with information and evidence. If people perceive that as being adversarial, I'm sorry, but I disagree with that perception.

• (1820)

Mrs. Betty Hinton: Okay. Thank you. I have no further questions.

The Chair: Okay.

Mr. Bagnell, do you have some questions?

Hon. Larry Bagnell (Yukon, Lib.): Thank you.

My riding is in the Yukon, so my questions are related more to that area.

I noticed in the distribution chart of where the members are coming from that there aren't any from the northern half of the country. Have you had any in the past from one of the three territories?

Mr. Victor Marchand: No, none that I can recall. I certainly have not heard of any.

Hon. Larry Bagnell: Have there been any efforts to have that part of the country represented on the board?

Mr. Victor Marchand: I couldn't answer that. I honestly don't know if there were representations made to that effect, sir.

Hon. Larry Bagnell: Hopefully you would tell whoever needs to know that in the future we should probably add Nunavut to the chart now that it exists.

There were hearings all across Canada in 34 locations. Were any of those in one of the three territories?

Mr. Victor Marchand: Not as far as I know, sir.

Hon. Larry Bagnell: I'm hoping the answer to this is no, but do you see aboriginal people having any more problems with claims than non-aboriginals?

My understanding, after researching some of it, is that any problems that existed were more in terms of perception. Once we dealt with all the individual cases, they had indeed all been solved. But do you see any problems that aboriginal people may be experiencing, for whatever reason, more than your average claimant?

Mr. Victor Marchand: No, sir.

Hon. Larry Bagnell: My last question I asked at a previous meeting. I think our veterans are treated very well. We've got great systems for appeals, looking into them, and lots of help and everything, and it's wonderful; but I'm surprised that there are so many, actually.

In fact, if we did this with all of the government programs...it just amazes me how many problems we had the first time around. I wonder if you could make any recommendations resulting from your work that might prevent us from making mistakes the first time round, so we don't have to get to that stage. Could you identify systemic problems that you might see and make some recommenda-

tions, other than on the individual cases? You know, an ounce of prevention is worth a pound of cure.

Mr. Victor Marchand: I think one of the basic things we do right and well is to proceed rapidly. We don't have a backlog. We issue our decision in a month or so. So if any board can get to that point, I say bravo.

Hon. Larry Bagnell: That's certainly good, but I was talking about the reasons people are coming to you in the first place. If I was dealing with my brain surgeon or 737 pilot, hopefully there wouldn't be too many mistakes. Obviously, we've had a lot of mistakes that have had to come to your level, so I'm just saying that when you find the reasons for those, you could feed them back into the system so that some veteran in the future doesn't have to go to an appeal.

Mr. Victor Marchand: That's an institutional dividend, which is something the workers' compensation boards do. They will put up a flag and say, painters are all getting carpal tunnel syndrome, so watch out, guys.

Hon. Larry Bagnell: So do you do that?

Mr. Victor Marchand: No, we don't. Presently we don't.

Hon. Larry Bagnell: Thank you.

The Chair: That's it?

[Translation]

Mr. Lemay, do you have a question?

Mr. Marc Lemay: I thought it was Mr. O'Connor's turn.

The Chair: He has no questions.

If I may, I'd like to ask for a small clarification.

[English]

I'll just take the chair's prerogative here.

What you're telling me is that the appeals come by, you rule on them, they get shelved, and nobody really knows that the changes have happened. I'm just thinking of the principles of common law here. You're basing yourself on previous cases. You're telling me that you have a legal system, you're very close to being a legal tribunal, and yet you're not allowing the courts, or the people who are making the judgments out there, to base themselves on a precedent that's been appealed at a higher level.

Is that correct?

• (1825)

Mr. Victor Marchand: The precedent is not a rule that normally applies to administrative tribunals. Each case is assessed and dealt with on its own merits. What I do know is that the department keeps tabs on and learns from our decisions. Basically, the initial decision is made by the department. If the body of the board's decisions is considered, then we will have had an institutional effect on the system. That is something that I understand the department does do. They do keep track of our decisions and learn from them. They basically have an adjudicative system, but it's done only on paper initially.

The Chair: Where does your decision go? How does it affect policy, or how does it affect the actual, everyday ruling?

Mr. Victor Marchand: An order is rendered that provides for specific remedy in a given case. In other words, we will order that a pension be paid, or we will order that a pension assessment be $x\%$. We will order things to be paid, basically. So we have a very real effect on the system.

When a matter is in our hands, the department cannot look at it. It's in our hands. We deal with it. We make an order subsequent to it.

The Chair: Forgive me, but I guess I'm not clear on this. Please be patient here.

You come up with a ruling, and there's an effect on the one individual who has a case.

Mr. Victor Marchand: Yes, sir.

The Chair: How does that get fed back into the system so that people making future decisions don't make that same mistake?

I understand that everybody's case is individual. None are really general. They're all unique. But if something is decided on at the appeal level, how is it fed back into the system so that the person coming up against the same problem, the caseworker coming up against the same problem, doesn't make the same judgment so that it ends up on appeal? What is the process of it being fed back into the system?

Mr. Victor Marchand: *Stare decisis*: in other words, between the appeal level and your trial judges, there is.... In the system, when an appeal decision is rendered that overrules the review members, he is informed and given a copy. He knows how he's being corrected and why. It usually is new evidence, but it can sometimes be something else. So the system is learning within itself.

That's one point. Then we have a published collection of what we call "preferred stance" decisions, available to both the public and the board members.

The Chair: Thank you. That answers my question. It had kind of worried me, because it just sounded like there was no feedback mechanism there.

Mr. Victor Marchand: No, there is.

The Chair: Very good.

[Translation]

Mr. Lemay, thank you for your patience. Go ahead.

Mr. Marc Lemay: Is there written and codified case law, for example VRAB, volume 1, 2005, etc.? Are the appeal decisions codified, as is the case with the Commission des lésions professionnelles?

Mr. Victor Marchand: No.

Mr. Marc Lemay: Why not?

Mr. Victor Marchand: It is primarily because the system has not reached the point where we would need that in order to function. That is the first reason. The second reason is that our legal structure was not clearly set out by the legislator.

We are asked to study each case in isolation and to apply the evidentiary rules and the burden of proof to the specific case before us.

Mr. Marc Lemay: But these are legal decisions.

Mr. Victor Marchand: They are in fact legal decisions. On the other hand, we did not want to have a *stare decisis* system which is adversarial, like our legal system. Our system does not have an adversarial debate. It is designed to be quick, informal and evidence-based for each individual case.

The board uses a feedback system between the appeals decisions and the review members, so that they know why one of their decisions has been changed, when one of their decisions has been overturned. There is a collection of what we refer to as preferred-stance decisions dealing with a specific problem that, in general is systemic; this is at the disposal of all board members.

● (1830)

Mr. Marc Lemay: I must admit that I am much more familiar with RCMP files. I will be honest, I have not dealt much with veterans, except those who were in Montenegro. When I was a lawyer, I had such cases. What shocked me was that a decision was rendered, and out of nowhere, we were told that we could file for a review. However, we did not know on what grounds.

I'll explain my reasoning. The Library of Parliament has prepared a good question, number 6. It seems a decision was rendered in February concerning the criteria that should be applied when determining if a decision should be reviewed.

Mr. Victor Marchand: Yes, that is the interpretation decision. That is what you are alluding to. I gave you a copy of it.

Mr. Marc Lemay: I have not yet received it. However, I would like to have it.

Mr. Victor Marchand: In fact, the legislator has given us a mandate to interpret the Pension Act. When there is a debate on the interpretation of a provision of the act, the Veterans Review and Appeal Board has the jurisdiction to interpret the law. It is the first decision we have rendered in this regard.

Mr. Marc Lemay: I see. That completes the answer to my question.

I will go a little further now. If I wanted to find decisions concerning veterans, the only written decisions that I would be able to find would be those from the Federal Court.

Mr. Victor Marchand: No, sir. All of our decisions are written and the reasons for them are provided. They contain all the humanly reasonable and understandable explanations for why a person has the right to a pension or not.

Mr. Marc Lemay: Do we have access to that?

Mr. Victor Marchand: Yes, sir, unless there is a restriction under the protection of privacy regulations. Usually, if the matter is of a private nature, then you cannot have access to the individual's file. For all other cases, all our debates and our decisions are available.

Mr. Marc Lemay: Yes, I understand. I don't have access to the personal file of an individual. I am a lawyer and I know that. However, I am talking about the actual decision.

For example, I am just looking at the decision I have before me. What does VRAB - I-1 mean? Is this a decision that was rendered?

Mr. Victor Marchand: Yes, sir.

Mr. Marc Lemay: Are the others codified in the same way?

Mr. Victor Marchand: They are all numbered. Decisions which can have an impact on the system itself can be found within a collection that is available on our website.

Mr. Marc Lemay: Now, it is clear.

Mr. Victor Marchand: They are not all there, but the ones that are significant are. There is a written decision in the files of the 7,000 clients who have come to us.

Mr. Marc Lemay: Fine.

The Chair: Thank you.

[*English*]

Is it going to be very long, Larry?

Hon. Larry Bagnell: Yes.

The Chair: Just ask a quick question, and then we'll adjourn.

Hon. Larry Bagnell: I'll make it a two-part question then.

First, can you just give me a sense of the size of the operation, the number of employees you have, and administrative expenditures—not for pensions?

Second, I understand the war service veterans' proportion of your decision is down to 25.8%. Of that 25.8%, roughly how many are from the two world wars?

• (1835)

Mr. Victor Marchand: From World War I there are very few left. The rest are from the active force—1939 to 1945. Our budget is \$12.4 million, and we have 80 support staff. Our present member complement is 24.

Hon. Larry Bagnell: Sorry...there are 24 what?

Mr. Victor Marchand: There are 24 board members present.

Hon. Larry Bagnell: But there are 80 staff members.

On the \$12.4 million, does that include paying out pensions, or is it just for administration?

Mr. Victor Marchand: That's just for administration of the board.

There's a very low unit cost per decision. When you put out 6,500 decisions a year, that's pretty good. I'm pretty proud of that.

Hon. Larry Bagnell: Of those decisions, roughly what percentage were World War II veterans?

Mr. Victor Marchand: Client-based...it's 25%, as I recall. It's in the document.

Ms. Dale Sharkey: They would pretty well all be World War II and Korean War veterans. I don't have the breakdown between the Korean War and World War II veterans.

Hon. Larry Bagnell: That's fine, thank you.

The Chair: Very good.

I want to thank you, Ms. Sharkey, for coming out.

[*Translation*]

Mr. Marchand, thank you very much for coming.

[*English*]

It was a bit of a different meeting today. We got bumped and had a few awkward moments, but once again, thank you for coming.

For everyone who's here today, dinner was brought in and you're welcome to join us. Maybe there'll be a few informal questions on some points.

I'd like to adjourn this meeting and move on to a more laid-back basis.

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