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Chair

Mr. David Sweet

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•(1105)

[English]

The Chair (Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC)): Good morning, ladies and gentlemen. Welcome to the fifth meeting of the Standing Committee on Veterans Affairs.

I'm going to introduce our witnesses in a moment, but first I want to advise you that former minister Thompson will be coming to the committee at 12:30 today, and then we'll be proceeding up to the Parliamentary Restaurant.

At 12:10 we will have four what are, I hope, brief pieces of business, which we'll go in camera to deal with, and then we'll be prepared to receive Mr. Thompson at 12:30.

It's my hope as well that we'll proceed down the stairs and maybe briefly pop into room 112 north to see the new sculpting inlaid in the walls. This committee, four years ago, started the initiative to have them placed there. It would be nice to see those with former minister Thompson, after which we'll go directly to the New Zealand room in the restaurant and have a cordial lunch of celebration for the service that Mr. Thompson gave to the veterans of Canada.

Mr. Stoffer.

Mr. Peter Stoffer (Sackville—Eastern Shore, NDP): Sir, in lieu of the lunch that normally comes right here, I'd like to move a motion, if possible, that the New Zealand room lunch for the members can be taken by the committee as well.

The Chair: Could we hold that motion until we go into business?

Mr. Peter Stoffer: All right.

The Chair: Thank you very much, Mr. Stoffer. That's part of the business we'll handle then.

Without any other delay, I'll introduce you to the witnesses. We're pleased to have representatives here from—or actually, the leadership of—the Veterans Review and Appeal Board. We have John Larlee, who is the chair, as well as Dale Sharkey, the director general.

I understand, Mr. Larlee, that it will be only you giving opening remarks.

Mr. John D. Larlee (Chair, Veterans Review and Appeal Board): That's correct, Mr. Chair.

The Chair: Okay. Please go ahead with your opening remarks, and then we'll have our traditional rounds of questioning.

Mr. John D. Larlee: Thank you.

Good morning, Mr. Chair and honourable committee members. Thank you for this invitation to appear before you in the context of your review of the new veterans charter.

With me is Ms. Dale Sharkey, director general of the Veterans Review and Appeal Board.

As this is my first appearance here, I would like to tell you a bit about myself. My background is in law. I left practice last year to begin a six-year term as chair of the board. On a personal note, I am the proud son of a Second World War veteran and prisoner of war. My father taught me to remember and pay tribute to our veterans. I bring that perspective to my role as chair.

I know that many of you are new to the committee. I appreciate the opportunity to spend the next several minutes talking to you about the board and its mandate.

[Translation]

I also know that all of you have a keen interest and commitment in making sure that the veterans affairs portfolio is honouring and serving Canada's veterans well. We share that commitment at the board. Our objective is to ensure that our traditional veterans, Canadian Forces members and veterans, RCMP applicants and their families receive the disability benefits to which they are entitled under the law.

[English]

To achieve this, the board provides applicants with an independent appeal program for disability decisions made by the Department of Veterans Affairs. This mandate has remained constant since the board's establishment as an independent tribunal in 1995, even through the introduction of the new veterans charter.

The board continues to offer redress for disability decisions, but now has the authority to review both disability pension decisions made under the Pension Act and disability award decisions made under part 3 of the new veterans charter.

It is important to note that the board does not provide redress for any of the other programs introduced by the new veterans charter. Redress for the other programs is done internally by the department.

The board's specialized program includes two levels of redress—review and appeal—for disability pension and award applications dealing with matters of entitlement and assessment as well as the final level of appeal for war veterans allowance cases.

Since the introduction of the new veterans charter in 2006, the board has seen a steady increase in the volume of applications for review and appeal of disability award decisions. Today, 46% of our review decisions and 23% of our appeal decisions are related to disability award claims.

To be very clear, the role of the board is not to write nor to evaluate the legislation. Rather, it is to ensure its fair interpretation and application in every case.

As the appeal tribunal for Canada's disability compensation programs for veterans, the board operates at arm's length from the department and the minister. Our decision-making is not influenced by them.

● (1110)

[*Translation*]

Our members are appointed by the Governor in Council to fulfill the board's legislated mandate. They have the jurisdiction to affirm, vary or reverse the decision being reviewed or appealed; they are not bound by the previous decision. They are, however, bound by the laws enacted by Parliament to govern the disability pension and award programs provided to our veterans.

[*English*]

During the past year as chair, I have come to appreciate how the board's program is designed to give those who have served Canada every opportunity to establish their entitlement to benefits.

First and foremost, the laws enacted by Parliament require that veterans receive the benefit of doubt throughout the adjudicative process. This does not mean that every case will succeed.

The laws also require that applicants provide sufficient credible evidence of the existence of a permanent disability and of the relationship to service. The benefit of doubt provision ensures that the decision-makers consider this evidence in the best light possible.

Individuals need only be dissatisfied with their disability decision to request an independent hearing before the board. There are no time limits placed on this right of appeal.

After individuals have received a decision from the department, they have access to two levels of independent redress with the board.

The first level is the review hearing. This hearing provides applicants with the first and only opportunity in the process to appear before the decision-makers, along with any witnesses they choose, and to give their testimony. To make it easier for applicants to attend in person, we convene review hearings in more than 30 locations across Canada.

The value of the review hearing should not be underestimated. Oral testimony provided by applicants and their witnesses, along with new evidence, is largely responsible for the board's decision to vary the department's decision at review.

[*Translation*]

If an applicant remains dissatisfied after receiving the board's review decision, he or she can request an appeal hearing in front of a different panel. While individuals may certainly attend their appeal hearing, the legislation does not permit oral testimony at this level. Rather, the hearing provides the representative with a further opportunity to make arguments in support of the claim.

Throughout the board's hearing process, applicants have access to free legal assistance and representation. This is significant because the hearing process is nonadversarial: no one is arguing against the claim. Our members often ask questions—not to oppose the claim but to better understand it. After all, they are required to interpret and apply legislation based on the evidence presented and to render decisions that give clear reasons for their rulings.

[*English*]

Adjudication is no easy job. More often than not, the claims heard by the board involve complex medical issues and legal arguments. The cases of men and women who come before the board are often compelling. These people have served their country well and honourably in times of war and peace. We recognize this and we take our role very seriously.

In 2010 the board will continue to fulfill its mandate by delivering a program of independent redress for applicants. Our operating budget of \$9.9 million will be invested wisely in support of four strategic priorities. Our first strategic priority is to conduct review and appeal hearings and to render decisions based on evidence and legislation.

Currently there are 25 members on the board who hear and decide the claims. All of them were appointed or reappointed under a transparent and merit-based selection process. Half of the members are based out of cities across Canada to hear the reviews and the other half hear appeals at our head office in Charlottetown.

About 85 operational staff work in Charlottetown to support the hearing process. To the end of February, the board had finalized 5,000 review and appeal decisions since the beginning of the fiscal year. While this seems like a daunting number, it represents a manageable workload for our members and our staff.

Of course, we recognize that applicants expect and deserve timely hearings and fair decisions. For this reason, we are continually working to improve our program to better serve applicants. In 2010 we will work to communicate clearly about our program and to report regularly on our activities to you, our parliamentarians, and to Canadians.

For your information, the board began submitting quarterly reports about our program and performance to this committee in 2007. Our third quarterly report is included in an information kit for you to take away today. We will continue to provide you with this quarterly update and hope it proves useful to you.

Thank you for this opportunity to appear before you. I will be pleased to answer your questions.

● (1115)

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

We will go to questions now.

From the Liberal Party, Mr. Oliphant, for seven minutes.

Mr. Robert Oliphant (Don Valley West, Lib.): Thank you.

I have several short questions. I'd like some short answers, then get into some longer questions.

First of all, thank you for your decision to take up public service in this way.

You talk about the board selection procedure, and 25 members, each hearing, then, I guess 200 cases per year, or more than that if they're working in teams. So it's quite a heavy workload for a board member.

Do you consider this a quasi-judicial board?

Mr. John D. Larlee: Oh, most certainly; our legislation provides that.

Mr. Robert Oliphant: Do you compare your workload with other quasi-judicial boards at the federal level?

Mr. John D. Larlee: Yes, we do from time to time, although when I discuss, at the heads of federal agencies meetings, the number of decisions we produce, they're quite surprised, because we produce quite a volume of decisions in a year.

Mr. Robert Oliphant: How many of the board members are veterans of either the Canadian Forces or the RCMP?

Mr. John D. Larlee: We presently have five members who are Canadian Forces veterans.

Mr. Robert Oliphant: That's five out of twenty-five.

Is there specific training given to the board members, not about legal procedures but about, for instance, post-traumatic stress disorder?

Mr. John D. Larlee: Yes, there is, most definitely. Not only is there quite a lengthy training program when members are first appointed to the board, but we have continuing education for members. Most recently, we were in Vaudreuil, Quebec, near Sainte-Anne's, where the operational stress centre sent their experts to give us a conference on operational stress injuries and PTSD as recently as February.

Mr. Robert Oliphant: I'm glad to hear that.

As the chair of the board, are you consulted with respect to appointments or reappointments on the board?

Mr. John D. Larlee: I am consulted by the minister's office with respect to what our needs are within the board and what our requirements are throughout the country—what positions we need to

have filled, as far as capacity and bilingual needs are concerned—and we're always monitoring our workload to determine what our complement should be.

● (1120)

Mr. Robert Oliphant: Were you aware that in the last round of appointments, every single member was either a donor to the Conservative Party of Canada or a candidate for the Conservative Party of Canada?

Mr. John D. Larlee: Mr. Chair, I was not aware of that. I don't have any difficulty answering, but I don't know if—

Mr. Robert Oliphant: That information is available on public websites, and we were able to check every one. In fact, it was unanimous that every single one was either a donor to the Conservative Party or had been a candidate or in some position.

I am wondering whether that affects the arm's-length nature of your board.

Mr. John D. Larlee: No, it doesn't, because all our members, whether they come from military, legal, or medical backgrounds, had previous lives. But they make a commitment, when they are appointed to our board by Governor in Council appointment, that they are joining a quasi-judicial body and they have to comply with the conflict of interest and all regulations that go with the position and the code of ethics, and that includes giving up any affiliation with any political party.

Mr. Robert Oliphant: I know that is a requirement, having myself sat on quasi-judicial boards in the past.

I want to switch to public disclosure of your judgments and processes. What is the practice of public disclosure of your work?

Mr. John D. Larlee: With respect to individual cases?

Mr. Robert Oliphant: I mean the reporting of cases with either identifying or non-identifying information.

Mr. John D. Larlee: We do not publish our decisions, out of privacy considerations, and that is the present state. We provide on our website and through our reports, both to Parliament and in communications in our brochures, information about our process and our statistics on a regular basis.

Mr. Robert Oliphant: You say there has been a steady increase since 2006, with the new veterans charter, in the volume of applications. In the board's understanding, is that related primarily to the increase in the number of injuries that are being sustained by veterans coming from Afghanistan or is it related to the change to lump sum disability awards?

Mr. John D. Larlee: The change in volume in decisions, and I think you're referring to the number of operational stress....

Mr. Robert Oliphant: I'm quoting you:

Since the introduction of the New Veterans Charter in 2006, the Board has seen a steady increase in the volume of applications for review and appeal of disability award decisions. I'm trying to ask: has the board done a study? Is it simply that we have more people now in the system seeking awards because of increased injuries? We can't get details reporting on injuries—that is very easy—but are there more people, or is there more dissatisfaction with the lump sum award?

Mr. John D. Larlee: No. With respect to that question, Mr. Chair, it's the changing dynamics of the applicants to the redress system of our board. It's that there are fewer and fewer of the traditional veterans and more of the Canadian Forces members and veterans that has made that change in the number of review and appeal decisions.

Mr. Robert Oliphant: I'm still not getting it. I'll try to—

Mr. John D. Larlee: If you want short answers, sir, let me ask Ms. Sharkey, Mr. Chair, to address those numbers.

Ms. Dale Sharkey (Director General, Veterans Review and Appeal Board): I can explain very quickly. In 2006 there was a large increase in first applications with the department. Our workload is sometimes dependent on the increases that come in to the department and flow through, like a bubble that goes through the system.

Mr. Robert Oliphant: That's exactly what I'm asking. Was it a bubble of people or a dissatisfaction with the level of awards those people were getting?

Ms. Dale Sharkey: I would say it was a bubble of people that moved through the system. We've seen an increase go through the system. It resulted in an increase over about two years, and the increase is slightly going down now. We're seeing that in this current fiscal year.

• (1125)

The Chair: Thank you very much, Mr. Oliphant and Ms. Sharkey.

Now we go on to the *Bloc québécois pour sept minutes*.

Monsieur Vincent.

[Translation]

Mr. Robert Vincent (Shefford, BQ): What a coincidence, Mr. Chair, that it comes to me this way. I have a few questions, of course.

In your opening statement, towards the end of page 2, you mentioned the benefit of the doubt and presumption. In my view, when you talk about presumption or the benefit of the doubt... A little further on, it reads: "The laws also require that applicants provide sufficient credible evidence of the existence of a permanent disability and of the relationship to service."

If I understand correctly, there is no presumption. There is one, provided that the applicant establishes sufficient credible evidence. Furthermore, there has to be a relationship between the applicant's disability and his or her service, as well as medical evidence of that relationship. So there is no presumption. So, in order for a case to succeed at your level, it requires proof on a balance of probabilities, is that right?

Mr. John D. Larlee: Mr. Chair, I would like to talk briefly about the law, if I may. The presumption of doubt in favour of the client is always there; it is in the legislation and is applied in every case. But before the panel can apply that benefit of the doubt, the client has to provide evidence of his or her disability, on the one hand, and of the relationship between the disability and his or her service, on the other. Then, once the evidence is before the panel, our members, whether at the review or the appeal level, apply the legislation and the benefit of the doubt.

Our board does everything it can for our veterans, Canadian Forces members and RCMP members. It applies the legislation and the benefit of the doubt to try to achieve the best outcome for every client.

Mr. Robert Vincent: When you say that decisions are not published, that means there is no case law. That means that someone who has no connection to your board or its services or a lawyer who is paid by you to represent a veteran... If someone hired me to argue a case before your board, I would not be entitled to see the case law or have access to it, because it is not published. Is that right?

Mr. John D. Larlee: Mr. Chair, if I may, I would first like to explain to Mr. Vincent....

I want to correct you. It is the Department of Veterans Affairs that provides free legal services to individuals who apply to the department for disability pension benefits. Clients have the right to hire their own counsel, a representative. The Royal Canadian Legion and the War Amps also provide legal representation and assistance to individuals who apply to the board for it.

Mr. Robert Vincent: How do you access the case law? When you argue a case, you need the case law in order to know what the board decided or what line of thought or reasoning it used to reach its decision. Without access to the case law, the board can render whatever decision it wants. There is no line of authority. How do you know what line of authority was used in relation to a given decision without access to the case law?

You say it is an ethical issue, that you do not want to divulge people's names. You will see that all the other boards post their decisions on the Internet. Why does the Veterans Review and Appeal Board not provide access to decisions? I can understand the desire to protect clients. All over Canada, the decision in every file, every case, can be accessed on the Internet, but you do not post yours. How can someone know what line of authority your board uses?

• (1130)

[English]

Mr. John D. Larlee: Mr. Chair, to clarify, perhaps I'll note that we take our lead from the Federal Court. The Federal Court is always making rulings, on everything from the benefit of the doubt, and under judicial review sends cases back to us to rehear them. We have hundreds of cases from the...that give us the jurisprudence to lead us through our responses.

There are privacy issues. Pension awards, pension decisions, are so much related to individuals. Each individual case is treated on its merits, and the decision reflects that. Until a method is found to be able to provide decisions without that kind of information, for the time being we have to protect privacy matters. But as far as jurisprudence is concerned, there's much jurisprudence, not only for the Bureau of Pensions Advocates that represent but for private members who represent individuals at these hearings and on appeal.

[Translation]

Mr. Robert Vincent: When a decision is rendered, there are two avenues for redress: an administrative review, I imagine, and an appeal board. With appeal boards, it is always the same people hearing the case—you say you have 25 members. If the applicant has already been heard once, other members out of the 25 will hear the case the second time. The second time, there are no witnesses, just arguments.

Mr. John D. Larlee: Mr. Chair, I would point out that we have 25 members, and 12 of them are in Charlottetown. They work mostly on appeals.

I would point out to Mr. Vincent that the 3 members on the appeal panel are not the same individuals who sat on the review panel. We make sure that there is no conflict of interest, that it is not the same...

Mr. Robert Vincent: But it is still the same group of 12 people.

[English]

The Chair: Monsieur Vincent, that's time.

You can complete your answer, though, Mr. Larlee.

[Translation]

Mr. John D. Larlee: No, it is not the same group of 12 people. Most of the cases heard by the 12 people in Charlottetown are appeals. Most of the cases heard by the 13 other members, who are spread throughout the country, are reviews. That said, there is a lot of sharing. The members in Charlottetown also travel to hear cases, because we do reviews and appeals. What I want to make clear is that members who heard the case the first time are not on the panel when the case is heard the second time.

The Chair: Thank you, Mr. Larlee.

[English]

Now on to Mr. Stoffer for five minutes.

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

I thank all of you, including the folks behind you, for coming today. I greatly appreciate the information. And thanks to your father as well for his service. I appreciate that.

Sir, of the 5,000 review and appeal decisions, how many of them were successful for the client, what percentage?

Mr. John D. Larlee: Our approval rate is 59%, review, and 36% on appeal.

Mr. Peter Stoffer: Okay, so it's 59% at the first level.

Mr. John D. Larlee: That's to the end of February. It's not a complete fiscal year.

Mr. Peter Stoffer: Right.

So 59% of that 5,000, when it came to you, you folks looked at the information, and then approved it. Am I correct?

Mr. John D. Larlee: That's correct. They were successful.

Mr. Peter Stoffer: What that tells me, then, is that the people initially who received the claim said no, went to you, and you eventually said yes. My question is why can't the folks who initially get it make that initial approval?

What you're doing in many cases is this. The front line people are saying, "No, we can't do this. I don't have the authority to make this decision. No, it has to go to Charlottetown for review and appeal." And 59% of the cases are correct, so my question—and I'm thinking this for my Conservative counterparts, who like to reduce the size of government—is why can't those folks who initially get it make that initial approval on their own?

I speak to a lot of front line folks, and they're told they only have a certain level of responsibility that they can authorize. After that it has to go to a higher level. I'm thinking it drags out the process. I have a lot of older fellows, and they're being told this can take weeks, months, and in some cases a couple of years before you're finally heard out.

That's my first question.

Second, you provide legal expertise. I know most of these really great fellows and ladies across the country who provide legal assistance for veterans. My question to you is this. If a veteran wishes to seek legal advice outside of the DVA-appointed legal advisers, why wouldn't they be allowed to do that?

● (1135)

Mr. John D. Larlee: Mr. Chair, if I may, I'd like to answer Mr. Stoffer's second question first.

The Bureau of Pensions Advocates is a ministerial matter. That group of lawyers would come under the minister in veterans affairs, and we're separate and independent. So I think your question probably is not something that I can answer.

Mr. Peter Stoffer: Okay, that's fair. Thank you.

And the first one?

Mr. John D. Larlee: On the first one with respect to the percentages, I also have to underline that when we talk about approval rates, the clients, the veterans, RCMP and Canadian Forces serving members, when they apply under the Pension Act or under the new veterans charter to the department and they receive a decision, they may have been approved, when it comes to us, for entitlement, but are not satisfied with the assessment. So when we increase that assessment from 5% to 15% or 20%, that is recorded in those percentages. That's a favourable decision—of course it's a favourable decision—but that does things with the amount of cases that come before....

So they're not all necessarily immediately turned away at the first level, which is the department.

Mr. Peter Stoffer: The reason I ask that is in the customer service world, let's say you're checking in and you have extra baggage; I say I have to charge you for it; you say, no, you want to speak to my manager; and the manager says it's okay, I'll let you carry this one on for free. That makes the front line person look not very good.

If I'm a veteran and I go to you, the front line, let's say in Halifax, and you turn me down, saying, no, we can't do it, but then it goes to Charlottetown and they approve it, that makes the front line person look not very good, don't you think?

Mr. John D. Larlee: Well, that's a matter for the department. All I can speak for is the board.

Mr. Peter Stoffer: I know. Exactly.

Mr. John D. Larlee: I'd love to say we're the good guys....

Mr. Peter Stoffer: This is my last one for you, and this is the scenario: the benefit of the doubt. For the last six months of his life, an 87-year-old World War II veteran is having severe flashbacks and he's suffering from what the doctors diagnose as post-traumatic stress disorder. He goes to DVA; he makes a claim; he's denied because there's no proof he's suffering from wartime illnesses.

Where does the benefit of the doubt apply in this man's case? He's already dead, so it didn't work out for him, but how does the benefit of the doubt apply in that situation?

When I explain the benefit of the doubt to veterans and RCMP, I explain that it's like the tie goes to the runner, in baseball terms. In many cases that I've seen, we ask that the benefit of the doubt be applied. It comes back refused because it says they need more medical evidence.

For an aging World War II veteran, what more medical evidence does he need when he has a clinical analysis that he has post-traumatic stress disorder more than likely caused from his wartime activities? Yet he was denied.

Where would the benefit of the doubt apply in that particular case?

Mr. John D. Larlee: Again, Mr. Chair, when I talked about benefit of the doubt earlier, I talked about credible evidence, oral testimony, and that any other witnesses can be presented in favour. So when we hear cases on review and even on appeal, any additional evidence, whether it be witnesses or whatever, can be used.

I can't speak to specific cases for specific veterans. But in general it's not only the medical evidence that's looked at, it's all of the evidence taken together. And when that is placed before the sitting members at review, they apply the best method and the benefit of the doubt to favour the applicant.

Now when we talk about review, we have two members who sit at review. At review hearings if the members cannot agree, the most favourable decision for the client or the veteran or the RCMP or the Canadian Forces member or veteran goes in favour of the individual.

I bring that in because you mentioned a tie; it happens at review. On appeal it's a three-member panel, and of course it's the majority.

That does happen in cases, so we do our best to make sure that we apply all we can in the legislation to provide for our veterans to get all the benefits available to them.

• (1140)

The Chair: Thank you, Mr. Larlee.

Now we will move on to Mr. Kerr for seven minutes.

Mr. Greg Kerr (West Nova, CPC): Thank you very much, Mr. Chair.

Mr. Larlee and Ms. Sharkey, thank you very much for coming today.

I think our friend Peter Stoffer has pointed out that we know that this is a complicated area, a continuing challenging area. The questions are penetrating, and we realize you can't answer all of them because you're in a quasi-judicial role, so the issue continues for us.

I would like to start by just pointing out—Ms. Sgro and certainly the others over there would not have been part of that visit last year—that we certainly appreciated the briefing we got and the understanding of how the process works. And it's a compliment I gave the former government for setting this board up. I think you would find the family connection back then with the party of the day was rather obvious when it was set up. So when you look at that question, you realize that's not necessarily a new affiliation. It has happened.

The point I'd want to stress from all of us is that we understand and appreciate the fact that the board is independent from the government and has to do its own work. I think that's how it has to work.

I would like to ask...and I realize you're limited in what you can say. We are doing the charter, obviously looking for ways we can suggest changes or improvements to the process and how to make it a little better for the vets. With the new vets coming on board, we realize the challenges continue to change. But looking at it, how would you describe the differences since the charter has come in, and what should we be aware of and mindful of as parliamentarians as we're making suggestions? I know you can't make direct recommendations, but you have obviously run into changes since the charter has come into place. Maybe you can highlight what some of those are for us.

Mr. John D. Larlee: First of all, when the charter was implemented and we started rendering disability awards, it was business as usual for the board and the hearings in the sense that our board at review determines disability entitlement and disability assessments. With the charter coming online, our work continued the same.

Our work with respect to the charter is to determine the entitlement and the assessments. As I said in my opening remarks, we are not—and that's through the legislation—involved with, in our decisions, the additional services provided by the charter. We deal only with the disability awards.

Mr. Greg Kerr: I appreciate that. I'm not trying to put you in an awkward spot, but we're trying to find ways we can suggest how we can streamline or make things work better together. There's no question that starting from a veteran's first day of trying to get something done within the department and ending up at the end of the day with you folks, it could be months and months later.

The minister has made the comment that we'd like to streamline where we can. We'd like to become more efficient. We think a lot of improvements have taken place over the years, a lot of positive things, but in this case there still seems to be a level of frustration, not necessarily pointed in one direction.

I'm just wondering, in that sense, have you seen any change in timing or in how an approach is done or in the kinds of questions you're faced with that perhaps weren't there earlier on?

• (1145)

Mr. John D. Larlee: Our work is evolving quite rapidly with more complicated medical conditions as a result of the PTSD cases and those of operational stress issues. We're always working towards educating our members to keep up to date. But with respect to the charter and how we've changed matters, I guess we're working all the time to make sure our members are fully informed on all issues—medical, administrative, law, dealing with hearings, military—to make sure that we can address these issues that come before us.

As I said earlier, we do not evaluate or recommend on preparing legislation. That is for the parliamentarians. For us at the board, it's business as usual, whether we're under the Pension Act or under the new veterans charter.

Mr. Greg Kerr: I appreciate that. I realize that you're in a bit of a bind trying to respond to the question, but we have to make the effort to try to find out where we can offer advice on improvements and the relationship because we can't interfere directly. I think it's probably important for us to pick up on at least the nuances and allow those who are allowed to ask you directly to ask the question.

When you talked about the 30 locations across the country, again, as the population changes and the new vets come on board, one of the things we hear—whether it's a Sainte-Anne's issue or others—is how much the newer veterans are looking forward to getting as much done as close to home as they possibly can, whether it's for long-term service or rehabilitation, education, and so on.

Are you finding that 30 locations is a satisfactory number? Is it done by formula somehow? Is it restricted by numbers? Can you comment on that?

Mr. John D. Larlee: We monitor from the previous year where the requirements were. We set our schedule a year ahead of time—not that it can't be changed. We have identified that those centres are close to where the requirement is. But we've also invested greatly in teleconference facilities, and that option is available to them in some areas—not the 30 centres, but other areas that we have also—where we, with the representative of your pension advocates, make arrangements for the most feasible way to have the review hearing as close as possible to the veteran or the client, as the case may be.

The short answer to your question is that the 30 centres are working quite well, but as I stated earlier, we're always working to improve and deliver our services more efficiently and to render the part of the process over which we have control as quickly as possible.

The Chair: Thank you, Mr. Larlee, and thank you, Mr. Kerr.

That concludes our first round of questions.

We'll now go to the second round of questions for five minutes, with Madam Crombie of the Liberal Party.

Mrs. Bonnie Crombie (Mississauga—Streetsville, Lib.): Thank you.

Thank you, Mr. Larlee. There are a couple of things, but I think I want to pursue Mr. Stoffer's line of questioning, that in six out of ten

cases there are mistakes made that are changed later. Is it concerning to you that the number is so high?

• (1150)

Mr. John D. Larlee: Mr. Chairman, in addressing my response to the honourable member, I would point out that appeals are almost a fresh look at a case. The appeal panel is not necessarily bound by the previous decision, and neither are the revision hearings. So it is not a matter of their having to find an error in the previous decision; it's that they receive more evidence and information, and with that comes the ability of the reviewing panel to make a change in the previous award.

Mrs. Bonnie Crombie: Do you think there is too much subjectivity on the front lines in the regional offices?

Mr. John D. Larlee: Again, Mr. Chair, I don't think that is an answer for me to give, because we receive the file and the decision from the department. In our quasi-judicial capacity of being independent, we take the statement of case from that point and it comes into our schedule and we work on it from there.

Mrs. Bonnie Crombie: Thank you.

When decisions are overturned, do we take the information that's been learned and incorporate it into a decision-making process going forward? Is there a formal process in the bureaucracy to make changes as a result of what's been learned?

Mr. John D. Larlee: Are you talking about changes that we make at the board?

Mrs. Bonnie Crombie: No, at the regional level. When these decisions are made and later overturned, are the lessons learned in the appeal process later incorporated into the decision-making process at the regional level?

Mr. John D. Larlee: Again, Mr. Chairman, I can't speak for the department. I can only speak for our board, and we speak through our decisions. Therefore, once the department's initial decision has been overturned, our decisions are sent back to the department, and they're dealt with accordingly. How they deal with them can only be in the manner in which they deal...in the future.

Mrs. Bonnie Crombie: Do you expect there will again be 5,000 decisions or cases next year? I mean, there has to be some learning that is incorporated, some best practices.

Okay, let's just move on from that. You said there were 5,000 decisions made last year and 46% of them were reviewed and 23% on appeal, so that is almost 2,500 cases. I know that Mr. Oliphant asked you specifically whether that was a volume issue or related to dissatisfaction with the lump sum payment. I wasn't clear as to your response.

Mr. John D. Larlee: Mr. Chair, it was a volume issue. There was a bubble. The reason I asked my director general to answer was that it was before I arrived at the board. I realize that I answer for the board now and previously. There was a movement put forward in 2006 to bring the board membership up to full capacity of 29 members, because there had been a backlog. That is now gone.

Mrs. Bonnie Crombie: How many claimants actually receive the maximum allowable lump sum payment of \$276,000? What percentage of claimants receive the maximum lump sum payment?

Mr. John D. Larlee: That information could be obtained, I believe, but I don't have it with me.

Again, that would be something for the department.

Mrs. Bonnie Crombie: Is there any recourse following your appeal process? Is there an opportunity for dissatisfied claimants to go to Federal Court?

Mr. John D. Larlee: That's correct, yes. They can go for judicial review and they also have the opportunity to request a reconsideration before the board prior to going to Federal Court. That reconsideration involves their case coming back before the board to determine whether there has been an error of fact or law.

Mrs. Bonnie Crombie: What are the most common reasons a case would be declined or denied?

Mr. John D. Larlee: Each case, Mr. Chair, has to be determined on its merits. Therefore, each case is looked at very carefully in order to provide the maximum available benefit to the veteran, and that's how we proceed. We will continue in the future to provide the veteran with the maximum we can.

• (1155)

The Chair: Thank you very much, Madam Crombie and Mr. Larlee.

Just to confirm for members, because we've had a lot of questions about this, a veteran can make three attempts—review, appeal, and reconsideration—prior to Federal Court. Is that correct?

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

The Chair: Thank you.

We'll go on to the Conservative Party for five minutes.

Go ahead, Mr. McColeman.

Mr. Phil McColeman (Brant, CPC): Thank you, Mr. Chair.

I would like to thank both you, Mr. Larlee, and Ms. Sharkey, for being here today to answer our questions about this arm's-length organization.

You mentioned in the previous answer, and I want to pick up on it, that there was a backlog. I would just note that prior to the Conservative government taking office in 2006, there were many vacancies on this board. This was an irresponsible policy of the Liberal government prior to us. It was corrected by us. We took the lead and made sure that these positions were filled.

Can you discuss for the committee the strides you've made in decreasing this backlog?

Mr. John D. Larlee: The backlog addressed in 2006-07 was a result of a buildup of cases. The full complement of 29 board members, as permitted under the legislation, took the task of crossing the country and making sure that those cases were addressed.

Not only were numerous cases heard, I believe as many as 7,000 decisions or more were rendered in the fiscal year 2007-08. So an

effort was made to bring the number of cases to a manageable workload, which is what we have now. We have no backlog.

Mr. Phil McColeman: I'd like to comment on that. I really appreciate, first of all, the work your committee members do for the veterans and for the process of making sure that we get it right for veterans.

Not always is it an easy task for an individual who is appointed to fill these responsibilities, because they are heavy responsibilities. I want to thank your members for the work they've done, especially in clearing up that large backlog, and for taking the time to do what they've done, which was go across the country and make sure that veterans were taken care of.

I also want to pick up on a comment—I like the road Mr. Stoffer was going down—about efficiencies and what I would call red tape. So often we experience, at least in my riding, people being frustrated by the process of dealing with government programs that seemingly tend to grow, become more complex, and become more laden with requirements and forms that need to be filled out. We hear it every day of the week in my constituency office. It is, to a large extent, my staff simplifying issues for people.

I'm sure this has been an issue all along the line. I think that streamlining administrative red tape is an area for future governments to concentrate on; I'll put it like that.

From your vantage point on this board, have you been directly or indirectly involved in how this issue—reducing red tape, if you will, and making sure that issues are handled on a timely basis—is being addressed in your area of dealing with veterans?

• (1200)

Mr. John D. Larlee: Yes. What the board has done, and I think it has taken the lead, is that when we deal with cases as they come to the board at the first level, we have gone to technology to make the documentation for the parties. Those would be the pension advocate and the board members that hear the case. We've used technology to speed up that process by making that all available, in real time, to everyone.

We've made great strides in decreasing the amount of time it takes from the time they file and it enters the board, over which we have control, to the time of the review hearing and the decision being rendered.

Mr. Phil McColeman: That's excellent.

Do I have more time?

The Chair: You'll have to be very brief.

Mr. Phil McColeman: I've finished, then, Mr. Chair.

The Chair: Okay. Thank you.

Monsieur André, vous avez cinq minutes.

[Translation]

Mr. Guy André (Berthier—Maskinongé, BQ): Good morning. I am glad you are here.

I was reading a report by the ombudsman, whom you no doubt know and whom we met with in Prince Edward Island. In that report, some clients said they experienced undue delays in receiving their review or appeal decisions. These are complaints that were identified. Decision letters are often complicated, and clients did not necessarily understand the content or the reasons why their applications were denied or the reasons why they were not entitled to the full amount of the claim. There was a lack of understanding. In addition, clients had questions about—of course, this was mentioned by my colleague and others here—the benefit of reasonable doubt. You did not convince me with the points you made. I think that more questions still need to be asked about this.

I would also like you to briefly explain in more detail the selection process for board members. On average, how many ministerial decisions end up before the Veterans Review and Appeal Board? I was also quite surprised to learn how many cases are not resolved in the client's favour. I would have expected more decisions in the client's favour.

Briefly, what is the most common type of legal situation you see under the New Veterans Charter?

Mr. John D. Larlee: The most common?

[English]

Mr. Chair, if the member is asking what disability conditions are brought most before the board, those will be the back, the knees, the neck, hearing, and lastly, psychological conditions.

[Translation]

If I recall correctly, one part of your question had to do with the criteria for appointments. I think that in 2005-2006, a new system to identify the best candidates was established. We have a system of applications that have been received. They are examined in order to hire someone in human resources who is independent from the department and even our board. Next, we look for people with medical, legal or military experience. Then, interested applicants must complete a rather detailed exam. The third part of the process involves interviews. Last week, we completed another cycle of individuals who applied to be on our board.

● (1205)

Mr. Guy André: In terms of the undue delays in some decisions, as per the ombudsman's report, people do not necessarily understand the whys and wherefores. Is it possible to adapt procedures to better reflect the reality of veterans?

Mr. John D. Larlee: To answer the question, Mr. Chair, I would first like to say that our members receive training courses. When they start, they do not necessarily always have expertise in medicine, legislation or in writing decisions. There is a three-month training period for new members. But even while they are on the board, they take courses on how to simplify decisions and make sure they are written in language that can be understood. That needs to be in line with what the Federal Court is doing and how decisions are written so they can be easily understood by clients. We work hard to do that and to adhere to the guidelines we receive from the Federal Court.

Mr. Guy André: It is clearly not enough because the ombudsman's report identifies it as a fairly big problem right now.

I have one last question about the New Veterans Charter. We are all talking about a lump sum payment or lifetime payments. Do you see many cases like that? What types of situations go before the court, the board?

Mr. John D. Larlee: Do you mean many cases of post-traumatic stress disorder?

Mr. Guy André: I mean complaints or situations that arise as a result of that type of compensation, lump sum payments.

[English]

Mr. John D. Larlee: Mr. Chairman, our caseload continues as it has in the past, and we deal with all applications for disability. It's not identified whether it's because of the charter, it's the situation of doing what we can to make sure our veterans, the military, as well as the RCMP, receive the best services we can provide.

The Chair: Thank you, Mr. Larlee.

We'll now move on to Mr. Mayes for five minutes.

Mr. Colin Mayes (Okanagan—Shuswap, CPC): Mr. Chair, I'll be sharing my time with Mr. Lobb.

I have just a quick question. You see so many cases, and I'm sure there are some trends. Is there an opportunity for the board to report back to the ministry with best practices or trends that you see so that they can maybe change the guiding processes for their front line people?

You see particular cases coming forward all the time. Perhaps some of the policies with regard to processing the applicants could be changed so that you don't see those coming through as much.

Do you have that opportunity to communicate with the department on some of what I would call “best practices”, or trends?

Mr. John D. Larlee: As a body that reports to Parliament through the minister, we in our quasi-judicial role are providing the minister's office with our statistics, as we do this committee. In that aspect we're showing trends, I suppose, of not only our workload, but where we are in the country and the kinds of hearings.

So in that sense, that would be the manner in which we are responding or providing information about what the board does and where our efforts are needed with respect to where in the country there's a need as far as our membership having a presence or being able to do our hearings.

● (1210)

Mr. Colin Mayes: I'll turn it over to Mr. Lobb.

Mr. Ben Lobb (Huron—Bruce, CPC): Thanks again, Mr. Larlee.

In your “Strategic Priorities 2010-11” document, you talk about improved program delivery. I wonder if you or Ms. Sharkey could comment briefly on a couple of your top priorities for improved program delivery.

Mr. John D. Larlee: With respect to our program delivery, we are very conscious of the anxiety on the part of the veterans or the clients, whether serving in the military or the RCMP, to have their decisions or to have their cases dealt with. From the time the file enters until we render a decision, we work continually to reduce that time period. In addressing that issue, our priorities are to deal with the systems that are available to us. We've introduced video conferencing to assist us, for example. It's not only that the parties agree to it in order to have their hearing dealt with more quickly, but it's a trend that we're investigating all the time, because as technology improves, it becomes more readily acceptable to everyone. We can all remember when there were delays in video conferencing, but now everything seems to have improved, and we're looking towards using that as one example.

Another example is talking with clients and their representatives in non-central areas in order to make other arrangements to bring them easily to appear for their review hearings. We're very flexible in that aspect.

Our priorities over the future are to maintain our service standards and also to improve on them.

Mr. Ben Lobb: Do I have more time?

The Chair: You have 30 seconds.

Mr. Ben Lobb: On page two of your presentation, you talk about how the law requires the applicants to provide sufficient credible evidence in their case.

I can imagine some of the people who come before you; they're probably in various levels of fractured psyches or levels of self-esteem. There could be a great variety. Do you find there is insufficient evidence in many of the cases brought before the board, or that people are unable to bring forth a solid case? If so, what's their next step?

Maybe you could describe to the committee how that's dealt with, because I'm sure it happens from time to time.

Mr. John D. Larlee: It happens, and I think that all our tribunal members want the veterans not only to receive as much benefit as possible from all the information they are given, but also, if things are lacking when they leave, to understand what they require and that they do have the time to go out and find other evidence. It doesn't necessarily have to be a better medical report; it could be a witness's testimony or any number of things. The role of the adjudicator is to then take all that information and use it to apply the law and the benefit of the doubt as much as possible in favour of the applicant, and I think we do that very well.

What's also important for the benefit of the veterans and the clients who come before us is that there is no limitation period. As I said earlier, when they are not satisfied with a review and bring the case on appeal, they have a representative and they have time to gather additional information. Some information from our traditional veterans is very difficult to find, but that is often brought forward by testimony from members of the family or by statements from friends who were present with them if it was an activity in the service and there's little record of it. All that information is gathered and taken up, so when we talk about credible evidence, it can be in many forms.

• (1215)

The Chair: Thank you very much, Mr. Larlee and Madam Sharkey.

I regret the fact that because we have some business to do, we don't have an opportunity for you to make closing comments, but we appreciate your testimony.

Right now we'll pause and go in camera and deal with business. Normally people would like to say greetings to you on the way out.

Mr. John D. Larlee: Thank you for allowing us the time to appear here. We look forward to coming back again and discussing how our priorities are proceeding.

The Chair: Thank you.

[Proceedings continue in camera]

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