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# **Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities**

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**EVIDENCE**

**Thursday, March 3, 2011**

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**Chair**

**Ms. Candice Hooppner**



## Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities

Thursday, March 3, 2011

● (1105)

[English]

**The Chair (Ms. Candice Hooppner (Portage—Lisgar, CPC)):**

Good morning, everyone. I would like to call to order meeting number 47 of the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities. Pursuant to orders of the day, we are studying procedures and practices of the Employment Insurance Board of Referees.

We are very pleased to have with us four witnesses who will be testifying. Each one of you will have approximately seven minutes to present, and then we'll go around the table and have questions and answers from the committee members.

So we have with us today—and forgive me if I mispronounce your names—Mr. Bertrand Desrosiers, Guy Martin, Réal Labarre, and Catherine Gendron.

I welcome all of you here. What I will have you do is also just let us know which organization you're representing or if you're here as an individual.

**Mr. Ed Komarnicki (Souris—Moose Mountain, CPC):** Madam Chair, there is perhaps a point of order I wanted to raise. Before the witnesses testify, I'd like to just clarify some things. As you mentioned today, it was pursuant to the standing order: we're studying the procedures and practices of the Employment Insurance Board of Referees.

But the motion—and I'm reading the English translation that Monsieur Lessard presented to this committee—states: “That...the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities study the procedures and practices for appealing a decision by the Employment Insurance Board of Referees, and that it report its findings...”.

What we're looking at is talking about the procedures and practices for appealing, so the testimony should be around that issue, and not a whole bunch of other issues. I think that needs to be clear. Those are the perimeters of what this testimony should be. I read the Library of Parliament analysis of what some of the parties might be standing for, and of course they may not be speaking exactly along these lines. It was very general in nature, and not to do specifically with the motion. I think the witnesses should be cautioned that this is what we're dealing with.

Then, I noted that as one of the witnesses—and I've raised the matter sort of indirectly with Mr. Savage and with Mr. Martin, who

is not here but is being replaced by Mr. Godin—perhaps somewhat unusually, we have Bertrand Desrosiers, who is a senior assistant to a member of Parliament, Ève-Mary Thériault Thi Lac, who would be actually questioning her own assistant, which might provide some discomfort in itself. If it doesn't to her, it may to others, simply because the witness works for the MP, and of course I'm not sure whether there would be any biases or not in terms of how the testimony may go. But that's a matter of concern.

The other thing I would like to mention is that if this particular witness intends to relate to any specific cases, there may be some issues with confidentiality and other matters like that. And if this particular witness were to testify, it would have to be on matters that were directly related to the procedure and practices for appealing and nothing else.

So first of all, I guess I'd like to raise for the chair and others the question of whether or not it is appropriate that Mr. Bertrand testify, and then, if it is thought as a committee that he ought to, that it needs to have perimeters, somehow, or to be delineated to be sure that it is in that narrow area, and not beyond.

**The Chair:** Thank you, Mr. Komarnicki.

Before I go to you, Madame Thériault Thi Lac, I would just ask Mr. Desrosiers a question.

Were you going to be testifying on your direct dealing? You have your own individual case where you went to the board of referees, is that correct?

[Translation]

**Mr. Bertrand Desrosiers (Senior Assistant, Ève-Mary Thériault Thi Lac, M.P., As an Individual):** Today I'm testifying based on my experience as an MP's assistant. I was the assistant to Mr. Yvan Loubier for 10 years, and I have been back with Ms. Thi Lac since 2008. I've had to deal with various files concerning appeals to the board of referees and sometimes to the umpire. Consequently, my testimony is based on my personal experience as a constituency office assistant with proceedings before the board of referees. Ms. Thi Lac will not be questioning me when I answer members' questions.

[English]

**The Chair:** I'm sorry. I'll just ask you my further question, because I think the member will respond to this intervention.

Did you personally appeal for your own EI case to the board of referees, or are you speaking in reference to cases—

**An hon. member:** *J'invoque le Règlement.*

**The Chair:** I'm sorry. Just one moment. I'll just finish my question.

**Mr. Yvon Godin (Acadie—Bathurst, NDP):** I have a point of order. A point of order goes before anything else.

**The Chair:** I'm sorry—

**Mr. Yvon Godin:** A point of order.

**The Chair:** I'll finish my question. Thank you.

**Mr. Yvon Godin:** No, a point of order goes before—

**The Chair:** Just to clarify, is it your own personal experience or is it work that you've done with case work? Just so I'm clear on it....

[*Translation*]

**Mr. Bertrand Desrosiers:** I'll be talking to you about two things. I'll be talking about the experience I acquired defending workers who asked to be represented before the board of referees. I'll also be talking mainly about the experience of two businesses, involving a number of workers, that appeared before the board of referees. The presidents of those businesses, including the president of Olymel in Saint-Simon, who is here today, asked me to intervene with respect to decisions that had been rendered and to intervene on the interpretation made by the boards of referees.

• (1110)

[*English*]

**The Chair:** Point of order, Mr. Godin.

[*Translation*]

**Mr. Yvon Godin:** Madam Chair, I honestly don't see where you're headed with your questions. I don't believe the Chair has to know in advance what the witness will or will not say. Furthermore, every Canadian has a right to testify before the parliamentary committees; that's not for us to decide.

If the government doesn't want its employees to testify before the parliamentary committees, that's one thing, and we're dealing with that. However, I don't believe you can stop us, as political parties, if we want to have someone testify.

[*English*]

**The Chair:** Order. I will adjourn this meeting if I don't have order, so please....

No, I'm sorry, Mr. Godin, this is not a point of order that you're raising, that we're now debating. I want to allow Madame Thaï Thi Lac to have her intervention and then I want to proceed with the witnesses.

You're not raising a point of order. I'm sorry, Mr. Godin, turn off your mike, because I will adjourn this meeting if I don't have order, and—

**Mr. Yvon Godin:** That is the way the Conservative Party—

**The Chair:** —then, unfortunately, the study will not continue.

**An hon. member:** [*Inaudible—Editor*]

**The Chair:** Mr. Vellacott, can I have order? Thank you.

Did you wish to intervene, Madame Thaï Thi Lac?

[*Translation*]

**Mrs. Ève-Mary Thaï Thi Lac (Saint-Hyacinthe—Bagot, BQ):** I'd like to respond to what Mr. Komarnicki said. First, I'm proud to be a member of the Bloc Québécois. We definitely will not be doing anything that is not ethical.

I'm not here to question my own assistant. I'm also here for all the witnesses as a whole. I only have five minutes to speak with the witnesses, and I believe I can find relevant questions for the committee and for all the other witnesses.

I asked to be here, on an exceptional basis, to question the witnesses over the two hours of the meeting. I can act very well. It was not my intention to question Mr. Desrosiers, but I am proud that Mr. Desrosiers has agreed to testify because it is often said that political staff may not testify.

The Conservatives engage in systematic obstruction when we ask the people around them to come and testify. I am proud to say that my assistant has come today and you will have all the leeway to ask him any questions you want to ask him.

[*English*]

**The Chair:** Thank you.

For both members who are here as substitutes for our regular members, we really get along very well in this committee. We don't raise our voices. We're very respectful and we have a good study we're looking forward to doing in the next two hours.

I thank you all for your interventions. I thank every one of the witnesses for being here. I look forward to hearing the testimony that Mr. Desrosiers has to bring on his direct dealings with the board of referees.

I think we're in agreement. I think we just needed to clarify this, so let's just continue in a respectful manner as I think Canadians would expect us to do.

Mr. Desrosiers, you—

Do you have another point of order?

**Mr. Yvon Godin:** Well, I feel that I was respectful, and as a Canadian, I have the right to speak—

**The Chair:** Yes, you were.

**Mr. Yvon Godin:** —and you will not turn off the volume when I speak, if I speak loud or not. This is Yvon Godin and you have to live with it.

**The Chair:** All right. Thank you.

Now we'll begin the testimony with Mr. Desrosiers.

I do keep a pretty tight time schedule, so if you go over the seven minutes, I will have to let you know. Just keep an eye on me and I'll let you know when your time is complete. Thank you.

[Translation]

**Mr. Bertrand Desrosiers:** Good morning, everyone. It is an honour and a pleasure to come and testify today. This testimony will focus on two specific cases of businesses that have had to deal with the board of referees following a closing, a lock-out and the end of a labour dispute.

First, I will talk about Olymel in Saint-Simon, which shut down on April 20, 2007. On September 24 following, 18 employees were called back to work, eight of whom were to resume their duties immediately, while the other 10 were on a recall list. The company, on the other hand, wanted to negotiate a new collective agreement for a distribution centre, whereas the business was a cutting plant. The union obviously refused. In response to that refusal, the company declared a lock-out on October 16, 2007. However, the plant had been considered officially closed since April 20, 2007.

The lock-out had serious consequences for the workers called back to work. When they applied for employment insurance, they were deemed ineligible because they were locked out. It must be said that, prior to being recalled to work by the company, these workers were either receiving employment insurance benefits or were working. This decision also applied to the 10 workers who had not yet returned to work but who were on the company's recall list. The union appealed the decision, and the board of referees unanimously allowed the claimants' appeal on July 18, 2008.

The problem arose when the Employment Insurance Commission subsequently appealed the decision. The case was to be heard on October 10, 2008, but, while preparing the workers' defence, the union lawyer realized that the cassette recording was inaudible and even that there was nothing on the B side of the cassette.

Furthermore, the commission informed the umpire that it could provide only a partial transcript. Consequently, the umpire asked for a new hearing with the board of referees to restart the whole process. The hearing took place on April 21, 2009. A request for a new hearing was made to the umpire. Then, without giving a reason, the commission told the umpire that it was withdrawing its action.

In the context of the appeals, what is most frustrating and most disappointing for the workers is when the board appeals when a decision is unanimous and well substantiated. It used its discretionary authority to appeal, whereas the workers involved in the dispute had between 15 and 20 years' experience.

These workers are the ones paying for these decisions. They are without any benefits and have been financially hurt by the commission's decision to interfere with the labour dispute by challenging the board of referees' unanimous decision and requiring the workers' representative to return before the board of referees due to obsolete and faulty equipment.

The second case was a back-to-work case. On October 9, 2009, a strike began at the Olymel plant in Saint-Hyacinthe. The dispute ended on December 18, 2009 and the return to work was to take place on December 21, 2009.

When production resumed, obviously not all employees returned to work. Those not working went to Service Canada to complete an employment insurance application. They were surprised to learn that, according to section 53(1) of the regulations and section 36 of the

Employment Insurance Act, which concerns labour disputes, they were not eligible.

More than 30 workers were thus deprived of employment insurance benefits. In this case, when they learned of the situation, both the union and the employer decided to challenge the decision before the board of referees. Service Canada has a somewhat esoteric interpretation of what constitutes the end of a labour dispute. For that agency, a labour dispute ends when 85% of workers have returned to work. I don't know who set that standard, but it has nothing to do with the end of a labour dispute.

As a result, the union and the employer challenged the decision before the board of referees. On September 28, 2010, the board of referees unanimously allowed the union and the company's appeal, which set January 25, 2010 as the official date for the return to work, in accordance with the criteria of the Act. On October 15 following, the commission filed an appeal with the umpire. In early January 2011, the commission withdrew its appeal.

What is debatable about this case is that regulations were made for the application of section 36 regarding labour disputes. However, what is even more debatable is the discretionary authority of the commission, which in both cases, despite a unanimous decision by the board of referees and well substantiated decisions rendered by lawyers specialized in employment insurance, decided first to challenge the decision and, second, to withdraw the challenge.

But what compensation is there for the workers? What compensation is there for those who came to defend themselves? There is none. The commission alone decides arbitrarily what it has to do in this type of case.

● (1115)

There are costs associated with this kind of research: there are costs to the union and even costs to the Employment Insurance Commission. It abuses its rights by appealing to the umpire and subsequently withdrawing its appeal. These are costs that could be avoided and the amounts of which could be allocated to their rightful owners, that is to say the workers.

To complete my remarks, I will say that the commission could adopt the philosophy of one umpire, who drew on a Supreme Court judgement in CUB 61301. He held:

Since the Act is intended to provide the unemployed with benefits, it is justifiable to give a liberal interpretation of provisions pertaining to the re-eligibility for benefits, seeing that the Act was not designed to take away benefits it extends to the innocent victims of a labour dispute and that the employees contribute to the unemployment insurance fund.

And in the second case, the one in Saint-Hyacinthe—

● (1120)

[English]

**The Chair:** I'm sorry. You have less than one minute.

[Translation]

**Mr. Bertrand Desrosiers:** All right. In both of the cases I have discussed, unanimous decisions were rendered by three members of the board of referees. The commission interfered in the process without being accountable to anyone.

It appeals decisions and subsequently withdraws its appeals. We want this abuse by the commission to cease because it is the workers who must bear the costs of that practice.

[English]

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

We'll now go to Mr. Martin for seven minutes, please.

Could you please let us know which organization you're from?

[Translation]

**Mr. Guy Martin (Coordinator, Legal Department, Confédération des syndicats nationaux (CSN)):** Good morning. My name is Guy Martin, and I am coordinator of the CSN's legal department.

First let's talk about the issue of procedure and rules of practice before the Employment Insurance Board of Referees. We have no criticism to make of the procedure as it is established by law or its application in general. Our criticisms focus mainly on administrative practices, of both the staff of the boards of referees and the commission itself, relating to appeals pending before the board of referees.

Subsection 78(2) of the Employment Insurance Act provides that no member of the board of referees may sit in conflict of interest in the case he or she is required to hear. We do not question this. However, the appeal cases before the board of referees are often assigned to board members on the morning of the hearing. Consequently, people who have a connection find out at that time that they cannot sit to hear the case. It may be an employer representative who has a relationship with the employer, or vice versa. Consequently, one of the members cannot sit. In those cases, as the act provides that a board of referees is validly constituted where the chair of the board is present along with one of the members of the board, the claimant is asked whether he or she agrees to proceed before only two members of the board rather than three.

The problem is relatively simple in the big regions where there are a number of boards of referees. Postponement in those cases has no impact on claimants since they can easily be summoned again the following week or the week after that. However, in more remote regions, where there are few members on the boards of referees, this may result in a hearing postponement of several days, several weeks or indeed several months. Significant prejudice can then be caused to claimants wishing to be heard.

Given this choice, which is not really a choice, people often agree to proceed before two board members, which may have quite a significant impact on the decision. Board decisions are rendered by three members. In some cases, a dissenting opinion can be rendered in an appeal case. Often the dissenting view, where there is one, is more substantiated, more supported by evidence and analysis of the docket than the decision itself. Consequently, when claimants are deprived of that opportunity, this may undermine their right to potential benefits where there is dissent on the board of referees.

Measures should be taken to ensure that boards systematically consist of three members. Ideally, they should be assigned earlier to enable members to determine whether they can or cannot proceed in a case and to ensure that other board members can subsequently sit if one of the three members is in conflict of interest. The member in

conflict of interest can then be replaced by another. We believe this would be one way of making the process before the board more effective.

The second component concerns the representation of appellants before the board of referees. People may be represented by a lawyer or by a representative who is not a lawyer. In any case, very competent people who are not lawyers represent appellants before the board. However, a problem arises with regard to the respect that is shown by the commission or those surrounding the board of referees' staff.

In some cases, it would be preferable to communicate with the designated representative, or the lawyer assigned to the case, before setting the date. That would be quite effective, since it would prevent a number of needless postponements. If there had been communication, the hearing could perhaps have been held one day earlier or one day later, but it would at least have been held. That would be one way to make matters more effective.

• (1125)

In some instances, the hearing is held despite a request for postponement by counsel sent to the board of referees by fax. The board sees that the claimant is not present and renders the decision. This requires everyone to go before the umpire, even if the request for postponement is pending. Once the decision is rendered, it cannot be touched until an appeal is filed with the umpire. The parties then go before the umpire and then back before the board a number of months later because they have not been heard. Ultimately, the outcome of the case is delayed by several months.

Similarly, it occurs that the commission or the clerk of the board of referees contacts the claimant directly without communicating with the claimant's representative or counsel. In our view, this behaviour is unacceptable. There should be no communication without first contacting the person representing an individual.

In one quite revealing example, as a result of an error in the handling of his case, one worker was assessed an overpayment in the context of the closing of a paper mill. The overpayment resulted from an initial bad decision by the commission. The worker's case was awaiting hearing and a lawyer had appeared concerning the matter. An officer of the commission contacted the employee and, unknown to the lawyer, put pressure on him to withdraw his appeal to the board of referees, saying that, if he withdrew the appeal, the amount of the overpayment that he would have to repay would be reduced and everything would be fine. The lawyer then tried to have the matter set down for hearing before the board of referees and learned that the person he was representing had withdrawn. It's incredible.

Two points concerning the communication of appeal dockets and the lack of resources. Appeal dockets are often forwarded to the lawyer one or two days in advance, which makes no sense. This should be done at least one week before the hearing.

In addition, there's often a shortage of resources in certain regions where the people at the board of referees, the clerks, work part time and work in a number of offices. So they share their time. A request for postponement, for example, from a lawyer or representative is consequently left in a voice mail box or sent by fax, but there is no acknowledgement of receipt or any follow-up. This obviously poses a problem. As a result, people may not know exactly what will be happening before the morning of the hearing.

[English]

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

I know you have a little more to present, so I hope you will be able to complete your presentation during questions and answers.

Monsieur Labarre and Madame Gendron are from the same group.

Madame Gendron.

[Translation]

**Ms. Catherine Gendron (Coordinator, Mouvement Action-Chômage de Trois-Rivières):** We are the Mouvement Action-Chômage de Trois-Rivières, a group representing not only the unemployed workers of Trois-Rivières, but also those of the greater Mauricie region.

Our testimony today will focus on our own observations. Mr. Labarre has been a representative before the board of referees for 20 years. In my case, I've been in the field for six years.

We were looking at the process for appointing board of referees chairs, which we believe is particularly unclear. In fact, it would be interesting to examine the selection criteria and also to see the criteria for determining whether or not their terms are renewed. In fact, we have questions about the current process and wonder whether political interference plays a role in this regard.

[English]

**The Chair:** I'm sorry.

Mr. Komarnicki, on a point of order?

**Mr. Ed Komarnicki:** The member is trying to give evidence on the selection process, as I hear it, of umpires or board members. This study is related to the study of the procedures and practices for appealing a decision, not with appointments, so I think it's inappropriate to get into that area. If she wants to talk about practices and procedures relating to the appeal, that's fine; it's the process of what's involved in hearing the appeal, what's involved in getting the appeal done. As the previous two witnesses testified, they dealt with the issues relating to that.

As I hear her, she is starting to talk about appointments and who is sitting on there. That is not the issue we're studying. That could be an issue at another hearing, but not here, so I make the point of order that the witness should steer clear of that and go to what we're studying.

• (1130)

**The Chair:** Thank you for that intervention.

What we are studying is fairly narrow in scope, so I would just ask you, Madame Gendron, if you could, with as much as you have

prepared, to stay within the scope of the actual procedures and practices of the EI board.

Thank you very much.

[Translation]

**Ms. Catherine Gendron:** For example, we can talk about appeal dockets, which are part of the process itself. We have observed a lack of neutrality. In fact, we see that claimants are often hurt by the manner in which the docket is prepared. There is already a prejudice in favour of the commission before a claimant even appears before the board of referees. We find that the board should be as neutral as possible so that claimants can really present their viewpoints. In fact, the board of referees should not already be prejudiced in favour of the commission before a witness is even heard.

Over the years, we have also realized that chairs and members of the board of referees have tried to make the process much more formal than it should be. It is supposed to be less official in nature so that people are comfortable giving their testimony.

In a number of cases, we've seen that members wanted proceedings to be conducted as in a court house and to be something very official. For example, in one misconduct case, an individual who was testifying, providing his version of the facts and describing his employer's comments, used swear words, but that was really what the employer had told him. However, the chair interrupted the individual to say that swear words could not be used before the board of referees. In one sense, what the chair in fact wanted was for that person to change his version of the facts, which, in our view vastly skews individuals' testimony and version of the facts. And that is obviously taken into account in the decision.

We therefore want the board of referees to return to its original mandate and not to become formal so that people really feel comfortable there. Claimants are often under considerable stress before they appear, even when they are being represented. They therefore do not know what to expect, even if an attempt is made to explain to them what is happening.

Over the years, we have also seen that the case law we submit to boards of referees is not considered. It is simply disregarded because the board states that that is part of our argument. The case law cited is obviously in the claimant's favour. We believe this should not be done. All the case law submitted should be considered because it is on the basis of that case law that the decisions are rendered.

In addition, evidence such as medical certificates, letters and the testimony of individuals who cannot appear even if sworn in is at times set aside because it is ruled to be immaterial. We wonder why some members of the board of referees do not take note of this evidence and enter it in the docket. This evidence is simply set aside. We wonder whether the idea is not simply to shorten the board sitting as much as possible, as they have a very large volume of cases to hear in a day, or to catch up on the backlog of hearings that have previously taken more time.

We have also noted signs of impatience in certain board members when testimony goes on too long, even though it concerns relevant testimony about relevant issues. Board members do not want sessions to go on too long. However, decisions are based on testimony and case law. All this puts pressure on people. Witnesses often are unable to give their entire version of the facts. The facts are thus summarized, which will obviously have a very significant impact on the decisions rendered.

In closing, I am going to focus my remarks back on the board of referees and appeals. When we meet the people we defend, they often find it curious that the hearings are held right in the offices of Service Canada. In their opinion, it's as though the board of referees had already sided with the commission because they feel this is not a neutral location. They wonder whether the members of the board of referees work for the commission or are really from the commission. What we tell them is that they are neutral, impartial and objective. Perhaps some consideration should be given to the possibility of holding hearings in a more neutral locations to ensure objectivity and impartiality for claimants.

[English]

**The Chair:** Thank you very much for those presentations.

We'll begin our round of questions. Instead of a seven-minute round, I think we'll have a six-minute round, because probably that's all we'll have time for.

I'll remind the witnesses that the questions and answers are included in that time allotment, so if you're going over, I will have to let you know just so that every member can have a chance.

We'll begin with the Liberals.

Mr. Savage, you have six minutes, please.

• (1135)

**Mr. Michael Savage (Dartmouth—Cole Harbour, Lib.):** Thank you, Chair.

Thank you all very much for being here with us today to look at this issue. I appreciate your testimony.

I want to begin with Madame Gendron and Monsieur Labarre.

As I understand it, your organization sort of works with and provides counsel for people who are recently or perhaps not so recently unemployed. Is that what you are? You're a community organization that works with the unemployed.

[Translation]

**Ms. Catherine Gendron:** Our group sees certain people before they are unemployed and gives them preventive information. We also help them when they are unemployed. We inform them and we supervise them. We also appear with them before the board of referees.

[English]

**Mr. Michael Savage:** Obviously you work with people who are unemployed, so a lot of these people.... But you provide support for people. I guess Mr. Labarre provides support for people who are going before a board of referees.

[Translation]

**Ms. Catherine Gendron:** We explain to them how the board of referees operates. We accompany them and help them put their case before the board of referees and the umpire.

[English]

**Mr. Michael Savage:** Do you keep statistics on how many of your visits with the board of referees are successful? How often are you successful with the board of referees when you appeal a claim?

[Translation]

**Ms. Catherine Gendron:** We've noted all that year after year. I can send you the figures, if you wish.

[English]

**Mr. Michael Savage:** Could you give me a sense of what the numbers are? Approximately how often is somebody successful?

[Translation]

**Mr. Réal Labarre (Advisor, Mouvement Action-Chômage de Trois-Rivières):** That depends on the years. On average, I would say that our success rate is between 85% and 93% before the board of referees.

[English]

**Mr. Michael Savage:** That's a pretty high statistic, so congratulations to you.

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

**Mr. Michael Savage:** I don't know how this works in the rest of the country.

**An. hon. member:** Not as well.

**Mr. Michael Savage:** I didn't hit that mark very often in high school, I can tell you. That's pretty good.

Here's what I want to get a sense of. You mentioned the issue of a formal hearing versus an informal hearing. These hearings are really meant to be informal, to provide some kind of comfort level for the people who are claiming.

One of the things we want to do here is come up with some recommendations on how we can improve the process. I want to ask Monsieur Martin a question, but I think what I'm hearing from you is that there should be more informality, more comfort for the workers, so that we can get that number up to 98%.

[Translation]

**Ms. Catherine Gendron:** That could be possible. We have individual cases as well. In the case of certain boards of referees, everything works well and the chair ensures that the board remains informal. Over the years, however, we've seen some become very official, as in the example I gave you.

We hope the board of referees will stay the way it should be. We would like it to remain unofficial so that claimants are comfortable giving their testimony. In some cases, involving voluntary leaving as a result of psychological harassment, that can be difficult. Individuals must be in an environment and context that make them as comfortable as possible. So the board must stay the way it should be.



[English]

**Mr. Michael Savage:** Thank you very much.

Monsieur Martin, I wasn't going to ask you this, but I am now: would your numbers be approximately the same in your experience of how successful people are when they go before the board of referees?

[Translation]

**Mr. Guy Martin:** I would say that always depends on the boards of referees. Generally the success rates are quite high and can easily reach over 50%. That obviously depends on the regions and the boards of referees. It should also be said that people appeal much less than they used to. In other words, when people appeal it's because they generally have quite a good case. That's what explains the success rates before the boards of referees.

[English]

**Mr. Michael Savage:** Very well.

One of the things you mentioned was that there have been a lot of occasions where, instead of having three members, one for perhaps conflict of interest or for some other reasons—

You're okay for translation?

**Mr. Guy Martin:** It's okay.

**Mr. Michael Savage:** Okay.

You mentioned that in a lot of cases hearings are delayed, particularly outside the major centres, because one of the board of referees can't make the hearing. Do you have a specific recommendation as to how we could fix that?

[Translation]

**Mr. Guy Martin:** The hearings aren't held outside the centre; they take place in the same location. However, a board member may not be able to sit because he is in conflict of interest in the case. The individual may come from the same union as the claimant or the employer representative, or employer's assessor to the board of referees may come from the same company as the employer involved in the case. We simply suggest that the cases be assigned in advance, not the day of the hearing or two days earlier. If they are assigned one week in advance, that enables people to determine whether there is a problem, whether they can sit on such and such a case and, if necessary, whether they should be replaced because they are in conflict of interest.

• (1140)

[English]

**Mr. Michael Savage:** That makes a lot of sense. I understand that. I think it's very sensible.

Chair, are we hearing from the department in this study?

**The Chair:** We are, the next time that we meet on this.

**Mr. Michael Savage:** Okay. I wonder whether we could ask the department to come with some statistics on the percentage of success of appeals and things like that.

**The Chair:** Yes, let's see whether the department can bring some statistics on the level of success, according to their records.

**Mr. Michael Savage:** Thank you.

**The Chair:** Thank you, Mr. Savage.

Madame Beaudin, you have six minutes.

[Translation]

**Mrs. Josée Beaudin (Saint-Lambert, BQ):** Thank you very much, Madam Chair.

Thank you, madam and gentlemen, for being here to discuss this important issue.

First, I have a few questions in order to put everything you've said in context. This may seem clear, but there are nevertheless a lot of details. I'd like us all to be in agreement.

My questions will focus first on the operation side. The board of referees reports to the Employment Insurance Commission. If a decision is made by the board of referees, can an employee or an employer go before the umpire? Have I understood that so far?

Without saying who appoints the chair, I believe it's important to know who sits on the board of referees. Are they lawyers? In general, who makes up the board of referees? Where do those people come from?

**Mr. Réal Labarre:** There's one union member. He may be an accountant or a lawyer from the chamber of commerce. These are people from the general public.

**Mrs. Josée Beaudin:** There's one union member, one member who represents the employer.

**Mr. Réal Labarre:** And the chair who represents the government.

**Mrs. Josée Beaudin:** Do these people receive training?

**Mr. Réal Labarre:** Yes, they receive it from the Employment Insurance Commission.

**Mrs. Josée Beaudin:** How long does their training last?

[English]

**The Chair:** I think this goes to the procedures. Madame Beaudin, I think—

Mr. Komarnicki has a point of order.

**Mr. Ed Komarnicki:** Let me make my point of order and you can rule however you wish on it.

The study is with respect to the procedures and practices for appealing a decision. It's not how the board is composed or what goes on inside a hearing; that's not the scope of the report. It's with respect to the process for appealing: what the procedures and the practices are for appealing a decision— by the employment insurance board. That's how narrow it is, and that's how narrow Mr. Lessard had it.

This witness is going beyond that in talking about the inner workings of people in terms of how they are appointed, how they are educated. That's not part of the study. Now, it could potentially be part of the study, but it's not part of this study, and I just want to raise that again.

**The Chair:** That's fair enough. Let us try to remain within the scope; it is very narrow.

Thank you so much.

[Translation]

**Mrs. Josée Beaudin:** All right. Have you adjusted my speaking time, Madam Chair?

[English]

**The Chair:** You will have your full time.

[Translation]

**Mrs. Josée Beaudin:** I understand what Mr. Komarnicki is telling me. However, even if someone appeals, that will be before the board of referees or an umpire. We'll come back to that because it's important to know who decides in the context of that kind of conflict.

What are the main reasons why employees go before the board of referees?

Ms. Gendron, earlier you talked about problems of—

**Ms. Catherine Gendron:** I talked about problems of voluntary leaving and harassment

**Mrs. Josée Beaudin:** What are the main reasons?

**Mr. Réal Labarre:** It can be a dismissal, leaving, antedate, a proceeding after a time period has expired, an overpayment, a fraudulent statement, unavailability.

**Mrs. Josée Beaudin:** Is there any particular reason that stands out more than others?

**Mr. Réal Labarre:** No. Once the commission has rendered a decision, it's up to the claimant to appeal that decision.

**Mrs. Josée Beaudin:** All right.

**Mr. Réal Labarre:** As an organization, we are there to determine whether he has the power to appeal. We determine whether the appeal has any chance of succeeding, and whether there are arguments to put forward. If we believe that, we also check to see whether the commission has made an error of law or misinterpreted the facts. From there we make a decision with regard to the appeal.

**Mrs. Josée Beaudin:** Three members constitute the board of referees. Do they have to agree unanimously in order to issue a decision, or does there have to be a majority of two out of the three members?

**Mr. Réal Labarre:** It takes a majority.

**Mrs. Josée Beaudin:** So if only two members are in favour, that's a majority—I don't know how they reach it. Do the two members have to agree?

• (1145)

**Mr. Guy Martin:** Yes.

**Mrs. Josée Beaudin:** You mentioned deadlines. We're talking about appealing deadlines.

Unless I'm mistaken, sometimes an employee is given one day's notice or told the day before that his appeal case will be heard.

**Mr. Guy Martin:** No, it's not that way.

**Mrs. Josée Beaudin:** Please elaborate on that.

**Mr. Guy Martin:** To put it briefly, a hearing notice is sent to the employee, generally 15 days in advance. However, the date is

announced orally at first and then confirmed in writing. That's not a problem as such.

The problem mainly concerns the appeal docket. The person knows that he or she is appealing but does not have the docket. So that person may receive the evidence that the commission has one week in advance. The person can then submit the docket to the board of referees, which is fine. However, when the representative has only two days before the hearing, we often see that the representative is missing various things. It's done at the last minute. So obviously, that's—

**Mrs. Josée Beaudin:** Thank you, I have my answer.

I want to make sure I've clearly understood the situation. Some decisions are made, an employee wins his case, and, in spite of everything, the Employment Insurance Commission appeals the decision. If it does so before the twenty-first day, the employee does not receive employment insurance benefits during that time. In spite of everything, the commission withdraws its case before the final decision is reached. So the employee wins his case and the Employment Insurance Commission nevertheless appeals. Am I mistaken about that?

**Mr. Bertrand Desrosiers:** That's correct.

**Mrs. Josée Beaudin:** What costs does that represent for an employee when you look at the majority of cases you handle? Does appealing involve legal fees? I'd like to have an idea of the costs that entails.

**Mr. Bertrand Desrosiers:** This kind of situation results in various costs. First of all, there is the worker who has no income. At that point, he goes into debt because his rent and various payments are due. Then, if that person has to appear before the umpire and isn't represented by a lawyer from his union, he has to bear certain costs. In fact, before the umpire, it's legal rules that are studied. Very few people will appear there alone. They also won't appear before the board of referees because they need specialized people such as the representatives of the Mouvement Action-Chômage. Incidentally, in the Saint-Hyacinthe region, they have an efficiency rate of 85% to 90%. That may be why the commission often appeals.

However, there is a psychological cost for the person concerned. I know that, when people call us at the member's office and at Mouvement Action-Chômage, they're often hard pressed and aggressive. We can understand the frustration at not receiving benefits when a unanimous decision has been rendered, was well supported and entitled them to receive benefits. That decision is being questioned by the commission, which is going before the umpire. In some instances, it can take up to a year to get a hearing before the umpire.

So when someone from the commission decides to withdraw a few weeks before the day of the appearance before the umpire, it's even more frustrating. The commission will call the person back and ask when he or she is going to be available, what they are doing and whether they have a job. They exercise a kind of harassment against the person who has become very frustrated.

**Mrs. Josée Beaudin:** Thank you very much, Mr. Desrosiers.

[English]

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

Madam Charlton, please, for six minutes.

**Ms. Chris Charlton (Hamilton Mountain, NDP):** Thank you very much.

I apologize that I wasn't here for the earlier part, so if I'm asking questions that have already been asked, humour me, or tell me to just read the transcript later, please.

I think the board of referees used to transcribe decisions, right? First of all, let me just ask if that is still available uniformly? Transcription services are still there...?

So if you have a number of people from a workplace coming to the referees, trying to appeal an initial decision.... Let's say there are 30 workers from a workplace. They would all come one at a time, potentially. They're not necessarily heard at the same time and they may get different outcomes.

Let me start at the beginning. How do you deal with 30 people from the same workplace? How do we ensure they all get the same outcome in a similar situation in the same workplace?

[Translation]

**Mr. Réal Labarre:** Personally, I've never dealt with joint or collective cases. Usually, when a number of people are involved in the same case at the same time, we submit a joint case, that is to say we take a case and the decision by the board of referees must be rendered in respect of those 30 cases, specifying the individual cases. However, I have not handled any joint cases.

**Mr. Bertrand Desrosiers:** In joint cases, we take a case and we know that the scales are the same for each one. The reason is the same for all of them. So we go to court and the decision rendered will be applicable to everyone since it becomes case law for the others. It will automatically apply to everyone because even the commission decides that all those persons may be represented at the same time because the parameters are the same. If 30 or more workers are represented by lawyers, the decision rendered will be applicable to everyone. Obviously, if the decision has been appealed, that applies to all those people.

• (1150)

[English]

**Ms. Chris Charlton:** We've had a number of people going as individuals to the board of referees on the same issue, from the same plant, and they have received different decisions, depending on who was hearing their case.

Let me ask a different question. I know there is a requirement, at least in theory, that three people have to be present for any kind of hearing. How often does it happen, in your experience, that there are only two?

[Translation]

**Mr. Guy Martin:** It varies. It's more frequent in some regions. At the biggest office, the one in Montreal, it's very rare. In this specific case, people will often request hearing postponements so that they can be heard by three members. There is quite a sustained frequency of hearings before the board of referees.

In the regions, for example, I've heard of a number of cases in Gaspé and Abitibi in which people agreed to be heard before

two persons, or else the hearing date would have been postponed unduly. You don't necessarily get bad results, but that is a contributing factor to reducing the make-up of the panel. Incidentally, and with all due respect for Mr. Komarnicki, I think this is a matter related to the procedure and practices of the board of referees. In a way, the make-up of the panel is an integral part of our ability to have an effective appeal mechanism to achieve the objectives for which it was constituted.

[English]

**Ms. Chris Charlton:** If I'm understanding you right, then not only is it desirable, but it should actually be mandated that three people hear every appeal. How many times does it happen, if only two people are hearing an appeal, that there's actually no unanimity in terms of arriving at a decision? And how much does that prolong the process for an appellant?

[Translation]

**Mr. Réal Labarre:** The clerks of the board of referees comply with administrative regulations that provide that, when a hearing is postponed, the case must be set down for hearing within the following 45 days. Frequently, if the claimant is represented, the representative is not always available within that 45-day time period, as a result of which the hearing of the case is delayed a little more and beyond the deadline.

There may also be a problem as a result of a scheduling conflict. Another postponement is then required until, if there are too many scheduling conflicts and the problem is repeated too often, there will simply change regions. They'll ask that the board hearing be held in another region. Depending on the regions, that entails additional costs for the individual's transportation. I'm talking about my region, Trois-Rivières and Drummondville, where we do both. We've previously sat in Shawinigan, beyond Trois-Rivières. There were too many scheduling conflicts and the board hearings had been postponed twice. At one point, we had to demand that a hearing be held in Drummondville. Apart from that, in other cases, it was an employer who appealed the decision. He was from Shawinigan and wanted the board of referees to meet in Drummondville.

For example, when an individual leaves La Tuque because there's no board of referees office in that town, that entails enormous transportation costs for him. It takes him almost an hour and a half or two hours to go to Shawinigan. If he has to go to Drummondville, that's three-quarters of an hour more. So that means more costs for him.

[English]

**The Chair:** *Merci.*

Thank you so much.

Mr. Komarnicki, six minutes.

**Mr. Ed Komarnicki:** Thank you, Madam Chair.

I have a comment on some questions. Certainly, the success percentages at 83%, in my view, are pretty good, but if only one party could appeal, and that's the loser, I would suspect that the percentages would go up. Now, normally both sides of decision can appeal, simply because there could be an error, and you want either side to have that opportunity.

But my first question is, what's the percentage of unanimous decisions that are overturned, if anyone knows? Just for that specific answer to that specific question, what's the percentage of unanimous decisions that are overturned? Does anyone know the answer?

• (1155)

[Translation]

**Mr. Bertrand Desrosiers:** The commission could provide you with those figures. We don't have them. When we request them, it rarely provides them to us.

[English]

**Mr. Ed Komarnicki:** If you don't know, that's fine. If you do know, tell me.

If you don't, that's fine. We'll go from there. In legal practice, generally when you have a trial there's a pretrial management process, which tries to eliminate a lot of the issues that you've raised: like making sure the counsel is aware, making sure they're available on the date appointed, and making sure there aren't any conflicts of interest.

Is there a pre-appeal management process? If there isn't—I'm speaking to Mr. Martin—might there be some advantage to having a mechanism, or a procedure, or a process that would directly deal with the concerns you've raised?

[Translation]

**Mr. Guy Martin:** In the document we submitted to you, it's quite easy if we follow the procedure. That avoids a number of these situations. Similarly, if, before setting a date, they call the representative of record or the lawyer, there's a chance that, if we agree on a date with the government lawyer, he will be available, whereas if they simply send a notice of hearing stating that the meeting has been set for the following week—

[English]

**Mr. Ed Komarnicki:** I appreciate that. Are you agreeing with me that a process can be instituted that would directly address some of the issues you've raised, that could actually resolve most of them?

[Translation]

**Mr. Guy Martin:** It doesn't just depend on the board of referees people, particularly the board of referees' clerk. I would say that we have no problems in a number of places.

[English]

**Mr. Ed Komarnicki:** As parliamentarians, we can amend laws and regulations and we can pass legislation. Is that something that would be helpful?

[Translation]

**Mr. Guy Martin:** I don't think so. I think that's more the responsibility of the administration, of the board organization, but that's part of the practices.

[English]

**Mr. Ed Komarnicki:** All right.

So it's not a legislative but an administrative matter that the boards themselves could do if they wanted to? Your answer, Mr. Martin.

[Translation]

**Mr. Guy Martin:** Can you repeat your question?

[English]

**Mr. Ed Komarnicki:** You are saying that it doesn't need any legislative fixes, that it's an administrative matter that the board of referees or the clerks could put in place?

[Translation]

**Mr. Guy Martin:** That's correct.

[English]

**Mr. Ed Komarnicki:** Okay.

You also raised the issue of representation. You had some issues about the fact of who could represent someone at the appeal process. Could you clarify what you meant by that, Mr. Martin?

[Translation]

**Mr. Guy Martin:** I didn't understand your question.

[English]

**Mr. Ed Komarnicki:** You said that workers could be represented by others. I have a note here that you thought the type of person who could represent them at the appeal process should be expanded. That's what I thought you were saying.

Were you saying that or was I misunderstanding you?

[Translation]

**Mr. Guy Martin:** No, I said that people were often represented by a lawyer, but that they could also be represented by a person who is not a lawyer. The representatives who are not lawyers do a job that is as valid as, if not better than, that of the lawyers, in some cases.

[English]

**Mr. Ed Komarnicki:** So what do you mean by that? What are you saying should be done because of that? What would you do differently or what would you suggest we should recommend to be done differently?

[Translation]

**Mr. Guy Martin:** Here's essentially what I wanted to say. If you're represented by a lawyer before a board, are you going to allow the other party, or the administration, to communicate directly with you? No. Normally, you have to respect the fact that there is a lawyer or a representative. All we're raising are examples of cases in which board of referees personnel, that is the person who is the clerk—

[English]

**Mr. Ed Komarnicki:** All right. I appreciate where you're coming from. I think my first question would address that. As a lawyer, I know that if you had the opportunity to appeal only if you lost, I'd find that very favourable to someone like me who is practising, for sure.

Anyhow, those are all the questions and comments I have, Madam Chair.

• (1200)

**The Chair:** All right.

Thank you very much.

I will suspend for two minutes.

Thank you very much to the witnesses for being here.

You're dismissed.

I will ask the other witnesses to come in for the second hour.

- \_\_\_\_\_ (Pause) \_\_\_\_\_
- 
- (1205)

**The Chair:** We will now begin the second hour of our meeting. May I have everyone's attention, please?

We have just two of the witnesses who were to appear. Two of the four are here. During the next 45 minutes, hopefully the other two will arrive.

If not, we're very pleased to have Monsieur Bélanger and Monsieur Bergeron with us today.

Each one of you has seven minutes to make a presentation. I would just ask you to watch me, and I'll let you know when your seven minutes has come to an end.

We'll begin with Monsieur Bélanger, please.

[Translation]

**Mr. Yvon Bélanger (Spokesperson, Conseil national des chômeurs et chômeuses):** Madam Chair, first I would like to thank you for inviting me to testify.

I represent the Conseil national des chômeurs et chômeuses, which has designated one of its base groups to appear before you as a result of its experience with the boards of referees. I work for the Mouvement Action-Chômage de Saint-Hyacinthe. We belong to one of the base groups of the Conseil national des chômeurs et chômeuses de Montréal.

I would like to divide my presentation into three parts. First, I would like to talk about representation.

The Mouvement Action-Chômage de Saint-Hyacinthe covers a large area: part of the riding of Chambly—Borduas, the constituencies of Saint-Hyacinthe—Bagot and Shefford as well as the constituency of Johnson. Since 2008, 2009 and 2010, there has been a much larger volume of employment insurance claims. Consequently, there's been a larger number of denials and disqualifications of claimants. That has resulted in an increasing workload for our counsel in the past two or three years.

When we meet with people, we divide them into three categories. First are those who were informed at the time, or almost at the time, when the decision was made that it could be appealed. In the case of a disqualification decision, the people have often been informed at the start of the process by the commission's officers that the decision could be appealed. They also know that they can appeal a decision through the website of the Department of Human Resources and Skills Development or through groups, lawyers and so on who can represent them.

Then there is the category of people who have a little more information. First we try to inform them or to train and guide them

so that they can defend themselves alone before the board of referees. We even conduct follow-up, but these individuals are able to do a good part of the work. This usually corresponds to the objectives, criteria and procedures of the board with regard to its practices.

Another group includes the people who have been informed a little late. The time period for appealing is almost up. From time to time, people also come to our offices when they already have their appeal docket in their hands and the hearing is scheduled for a few days later.

We're increasingly seeing more people 50 years of age and over and young drop-outs who do not have that much education. Our task is not to judge them, but this is a situation that we can see in the field. These people are often more uninformed about procedures when they come to meet with us. They have comprehension, cognitive or other problems.

This automatically results in a first request for postponement until we can properly prepare the docket and see whether we have a case that can be defended. Then we have to find the necessary evidence to justify whether or not to follow or guide the person before the board of referees.

As for the third group, regardless of whether its members belong to the first or second group, we make a selection among all the people who come to meet with us to give priority to those who are not entitled to legal aid for representation before the board of referees or to those who cannot afford a lawyer. So we give priority to those kinds of people. As for the others, we redirect them to legal aid where they are entitled to a lawyer.

People may legitimately have a representative. The commission permits that and the act does as well. So these people have a right to take the necessary time and to look for evidence with which they can present their case to the board of referees. This frequently causes problems in our region as a result of the volume and delays we have to absorb as a result of legal aid. Many people who use legal aid get appointments after 30 or 45 days. If we know the time frames set by the board of referees when we receive the appeal docket, our organization has a common practice that works quite well following a few adjustments. The hearing date is usually set 10 days after receipt of the appeal docket.

- (1210)

After the first postponement, the clerk always tries to set a date within 45 days, but even in those conditions, if we refer people to legal aid, once again we will be unable to meet the time frames. This causes more hearing postponements. At some point, the chair may legitimately say that it will be accepted one last time on a peremptory basis, which causes further problems, whether we like it or not. We nevertheless attend the hearing in view of the fact that it is peremptory, to request another postponement of the hearing in person. The request is often denied, and the board of referees nevertheless reaches a decision on the case. Since this constitutes a denial of justice, we automatically appeal to the umpire, which penalizes the worker, since the procedure is too limited. There are cases in which the process has taken 14 months. Lastly, we appear once again before the board of referees to present the case and, in the majority of cases, win it.

I believe there's an important problem that should be raised with regard to representation. The volume is heavy, legal aid delays are long and there's a high demand for lawyers, who are overworked. They are unable to deal with the dates proposed by the clerks. That results in a lot of postponements of hearing dates, which results in serious denial of justice problems and needless expense for the commission. As the gentleman mentioned earlier regarding representation, the officers frequently go around the representatives. We often face this problem in our organization, but we recently made a readjustment after meeting with the regional chief, Suzette Perreault. That stabilized the situation somewhat, but there is still work to be done on this matter.

Since I only have one minute left, I'm going to address the most important point—

[English]

**The Chair:** Actually, your time is up. You've gone over the seven minutes, but we would like to hear your suggestions, so hopefully during the question and answer time, that would be a great time to finish your presentation.

Thank you so much.

Mr. Bergeron, seven minutes, please.

[Translation]

**Mr. Sylvain Bergeron (Coordinator, LASTUSE du Saguenay):** Thank you, Madam Chair.

Thank you for inviting us to state our opinion on the board of referees and its procedures. First I want to tell you that a number of points that we're going to raise about the procedures are peripheral. So I may hear a few points of order being raised during my presentation.

The issue of appointments has been raised, and I won't go back over it. I say it's peripheral because it can have an impact. In the brief I sent you, I cite the example of one chair of a board of referees—and I won't tell you the name I give him in everyday life—who is completely lost. We tell him what page we're on and he turns over the pages for half an hour. He's utterly unable to follow, to the point where the other members of the board have to get up and show him the page. When we tell him it's time to focus on the case in view of the fact that we've been in the room for an hour and a half, he becomes aggressive. As I mentioned in the brief, the other members of the board of referees had to request an adjournment on two occasions because I was about to crawl across the table. The appointment criteria have been mentioned, but I believe that the cognitive faculties of one board chair should also be assessed.

I would also like to talk about the rare cases that I do not win. One board chair was appointed, but, curiously, that gentleman was a Conservative Party candidate in the last election campaign—

• (1215)

[English]

**The Chair:** Same point of order...?

**Mr. Ed Komarnicki:** It's the same point of order. I haven't objected when he's travelled and traversed in various ways, including how the board functions inside and whether someone shows someone the page they're on. It happens in committee perhaps

at times, but that's not relevant to this study. So I think the witness should not go straying beyond at least some reasonable limits of the confines of the study.

**The Chair:** Thank you for your intervention.

We do have a very narrow scope of this study, so if you could, please remain with the actual procedures of the referee committee. Thank you.

**Mr. Sylvain Bergeron:** I'll stop there. I'll just say that in the procedures, you have to respect some rules of justice. The impartiality is a rule. If you say in the newspaper, "I am against the employment insurance system", you are not impartial.

[Translation]

Pardon me, but I'm going to go back to my first language.

Earlier, we briefly mentioned the way information is manipulated in certain cases we defend. The commission prepares the docket and the board of referees reviews it. We appeal, but it's the commission that prepares the docket.

In the case of one person who went back to part-time studies while receiving employment insurance benefits, the commission held that, according to case law, unavailability could not be rebutted except in exceptional circumstances. However, that's false. In fact, the case law states that it can be rebutted "by proof of exceptional circumstances". An entire list of circumstances has been established in case law. The dockets are very often manipulated.

I cite case law in all cases involving misconduct issues. The commission and the board of referees stated, because it was written in the docket, that the judge had dismissed the case. However, in the well-known decision in CUB 28711, the judge wrote that the claimant's appeal was allowed and the decision to disqualify him from receiving benefits was rescinded. So this was a procedural matter. When a board of referees relies on incorrect information, you're certain to lose. This is another issue related to the commission's influence.

Earlier it was mentioned that people sometimes try to get in touch with us. And yet, the opposite is the case. The commission people never try to call me. In 26 years of practice, I have never received a phone call from an officer. They don't want to speak to me. I addressed the issue of influence. When the chair of one board of referees told me at a hearing that a commission representative had come to see him and that I would have to submit more recent case law, that's illegal. That's written in the role of the board of referees and in the Employment Insurance Act. The commission must not interfere in cases. If these people could show that the case law I submit to a board of referees has been overturned by a superior body, they could do it in the context of their docket, but they shouldn't call the chair of a board of referees. That's undue influence.

As for the EI compassionate care benefit, I find it hard to understand how a board of referees can act when a case involving the code of ethics of the physicians of Quebec is submitted to it. According to a letter written by the head of the order of physicians, no one is entitled to use a document stating that a person will die within 26 weeks. The commission stated that, if it was not proven that that individual would die within the next 26 weeks, he would not be entitled to benefits. The physician does not even have a legal right to do that. Rules are imposed and the board does not take the evidence into account.

You have my brief, which contains recommendations. The idea is to make the board of referees system independent from the commission. In closing, I'm going to read you a sentence from a document that I use a lot when I defend my cases. Entitled *Introduction to Tribunal Proceedings in Employment Insurance*, this document is used to train members of the board of referees. It is written by Philippe Garant and his brother, two experts on tribunal proceedings.

• (1220)

[English]

**The Chair:** Thank you very much. You're right in the time slot. Thank you for that.

This is good. Our third witness has just arrived.

We'll just give you a moment, as I know you just came into the room, and then we'd be very pleased to hear your presentation.

Madame Arruda, thank you for being here. We're glad you made it. We'll have you give us a seven-minute presentation, and we do keep time on the presentations, so if you watch me I'll let you know when you're down to one minute. Following that, we'll have questions and answers.

If you're ready, could you please give us your presentation?

[Translation]

**Ms. Marie-Hélène Arruda (Coordinator, Mouvement autonome et solidaire des sans-emploi (réseau québécois)):** First of all, I would like to apologize for being late. I had a little problem. I got lost.

I am the coordinator of the Mouvement autonome et solidaire des sans-emploi, a Quebec network of groups representing the unemployed in Quebec. We have some 15 members in Quebec. They are called upon to represent citizens and claimants before the boards of referees.

One of my colleagues was supposed to be here with me today. Unfortunately, he was unable to come. So I will be passing on what he wanted to tell you today.

There are problems with the boards of referees. However, I would first like to emphasize that our members appreciate the quite informal nature of the board of referees and the fact that the procedure does not involve too much red tape and is thus more readily accessible to citizens.

With regard to the problems, there is the issue of training for members of the boards of referees. We wonder about the fact that training is given by the Employment Insurance Commission. For

that reason, there may be a lack of neutrality or impartiality among members of the boards of referees. We also wonder how the members are appointed to those boards, on what basis and in accordance with what criteria.

There are also concerns regarding the decisions rendered. They are usually rendered the same day. We wonder whether enough time is devoted to writing the decisions. In fact, we often feel that the reports are incomplete. For example, following a decision, the board often does not say in its written report why a certain item of evidence was not considered. Ultimately, the decisions are not sufficiently substantiated or clear enough. There is a lack of evidence. That is what I have been told.

Our member groups also see a high turnover among staff of the boards of referees and they wonder why. In Montreal, among other places, there is really continuous staff turnover. Terms are not renewed. That may result in problems because it's often experienced people who leave. Their terms are not renewed and we therefore may wind up with people who have less experience. We wonder why these positions are not renewed.

We also suspect a lack of objectivity and impartiality on the part of certain members of the boards of referees. Some of our member organizations have told me on a number of occasions that they could predict who was going to win or lose a case before the board of referees based on the individuals sitting on it. For example, if such and such a person chairs the board, they know there will be virtually nothing to do. In certain cases as well—for example, in challenging a dismissal for misconduct—some know that, if such and such a member sits on the board of referees, the case will be lost because all misconduct cases are lost before those persons in particular. So some questions arise concerning the neutrality of members of the board of referees.

• (1225)

That's virtually all I had to say.

[English]

**The Chair:** Thank you. You did a very good job in coming in quickly and without notes, so thank you for that. I'm sure the members will have questions, so you can add to your presentation.

**Mrs. Marie-Hélène Arruda:** Thank you.

**The Chair:** We will have time for a seven-minute round. If any of the members would like to share their time with their colleagues, they're open to do that. If not, the questions and answers are included in that time allotment, so I'll let you know if you're reaching the end of the question and answer time.

We'll begin with the Liberals.

Mr. Savage, seven minutes, please.

**Mr. Michael Savage:** Thanks very much.

Thank you all for coming, and especially Madame Arruda, for coming in cold, out of the cold, and giving us your views on this.

I want to try to narrow down specific recommendations.

Monsieur Bergeron, you gave us some very good recommendations here. Some of them are more general, but some are quite specific.

I want to go to an issue that was raised by at least two of you. This is the idea of who provides the training to the boards of referees.

One of your recommendations, Monsieur Bergeron, is that the training should be given by an independent body.

Madame Arruda, you mentioned the issue of training either in the case of existing members or specifically when an experienced member leaves and a new one comes in.

I'll leave aside for now the issue of how they're appointed so that we don't upset Mr. Komarnicki, but I do want to just ask you, who should be doing the training? How should the training be done, in your view, for boards of referees?

[Translation]

**Mr. Sylvain Bergeron:** I couldn't exactly say. It might seem like a lack of objectivity. However, the legal representatives of the union parties are trained by a law firm in Montreal. They are trained entirely outside the system. They receive legal training.

As I say in my document, three parties are involved in a hearing: the worker, the employer and the commission. If the members of the board of referees are trained by one of the three parties, that is to say the commission, there is an appearance of conflict of interest. Consequently, law firms should really provide the training. Some firms are specialized in unemployment issues. They are the ones that could provide the best training. The existing documents are very good; they are even excellent. I have them all. However, a person who offers training can influence future opinions and interpretations.

• (1230)

[English]

**Mr. Michael Savage:** Madame Arruda.

[Translation]

**Ms. Marie-Hélène Arruda:** In fact, I believe that what Mr. Bergeron is proposing is a good idea. It's true that it's hard to determine who should provide the training. If it's not the commission, perhaps independent lawyers could do it. There might perhaps be a way to develop a joint training plan by bring together the commission, representatives of unemployed workers groups and lawyers to ensure that the training is a little more impartial or that it reflects both viewpoints.

[English]

**Mr. Michael Savage:** Thank you.

You made a comment that was interesting. You indicated that these sessions are quite informal and that by and large workers are quite comfortable. We heard in the previous panel from Monsieur Labarre or Madame Gendron that they thought it wasn't quite as formal as it should be. Is it your experience and the experience of other members that in terms of the hearings themselves with the boards of referees they are sufficiently comfortable?

[Translation]

**Ms. Marie-Hélène Arruda:** In fact, I couldn't really answer you because I've never attended a board of referees session. I'm reporting

to you what our members have told me. I was told the procedure wasn't too rigid compared to that of a court or a legal body. It's easier for a claimant to appear before a board of referees. However, I don't know what other witnesses have said. I'm sorry. I was told that the procedure was quite flexible.

[English]

**Mr. Michael Savage:** Thank you.

Monsieur Bergeron.

[Translation]

**Mr. Sylvain Bergeron:** As I said earlier, I've been representing unemployed workers for 26 years this year, and it always depends on the person who chairs the board. Some chairpersons can overdo their role. That can happen, but it's generally very informal.

[English]

**Mr. Michael Savage:** That never happens here in Ottawa, I can assure you. People never take themselves too seriously.

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

**Mr. Michael Savage:** Mr. Bélanger, you didn't have quite enough time at the end. I think there was another minute or so. I was wondering whether you had any specific recommendations or if there was something you wanted to add that you didn't have time for in your presentation.

[Translation]

**Mr. Yvon Bélanger:** My first comment concerned people's ability to be represented.

Now I would like to emphasize that, when a worker asks to be represented, a more meticulous job has to be done. A person who represents himself will do his work when he receives the appeal docket and has to go and pick up his documents. Normally, that's suitable and we also guide them a little.

However, when there are submissions, there are firm deadlines, for both the representative and the claimant. If we go and pick up medical documents, testimony, have an appointment with legal aid or whatever, that becomes involuntary for all the parties. If the claimant himself requests a postponement, that's legitimate. If he wants to delay the hearing, that's his choice.

It's legitimate for the commission to want to have people proceed as soon as possible so that they can be heard. That's a good thing. However, if the person is prepared to delay the hearing in order to mount a better defence and secure better representation, that's legitimate as well. If there are unavoidable factors because we want to do a good job of defence, we're responsible for that. When the chairs make a peremptory decision, we have to appear. We nevertheless ask for another postponement, even though that's perhaps being a little stubborn. If it's a decision that concerns the decision, we'll challenge everything before the umpire, which results in needless costs for the commission.

I would recommend slightly more flexible time periods in this regard when claimants are being represented.



[English]

**Mr. Michael Savage:** Mr. Bélanger, thank you very much for that.

I just have about 30 seconds left, and my colleague from Newfoundland and Labrador, who does a lot of work on EI, has a point of clarification.

**Mr. Scott Simms (Bonavista—Gander—Grand Falls—Windsor, Lib.):** What kind of welcome is that?

It's just a point of clarification. Did I hear correctly earlier when it was suggested at this committee that the commission or the department has no right to appeal if a board of referees says yes to a particular person who appeals? Does that make sense?

• (1235)

**The Chair:** Your question or your point of clarification is whether the commission has the right to appeal the decision?

**Mr. Scott Simms:** Yes, the department, Service Canada.

**The Chair:** Well, the commission.... I think there are three, right?

**Mr. Scott Simms:** Sure, but—

**The Chair:** So they do have the right to appeal.

Is that correct?

[Translation]

**Mr. Yvon Bélanger:** Yes.

[English]

**Mr. Scott Simms:** I'm not sure if you have that impression or not.

**Mr. Ed Komarnicki:** I do, but there was a suggestion that only if a worker loses, he should be allowed to appeal, and not the commission. That's not the way it is, but—

**Mr. Scott Simms:** There was a suggestion of that, you're saying.

**A voice:** Yes.

**Mr. Scott Simms:** I apologize. Because I know they do appeal quite often.

**Mr. Ed Komarnicki:** Of course, and that's why the percentages would go up if only the loser could appeal. Otherwise—

**The Chair:** All right. Take it outside, gentlemen. There we go.

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

**Mr. Scott Simms:** I get that a lot.

**The Chair:** Thank you, everyone. I think that's a good clarification.

Madame Thāi Thi Lac, you have seven minutes, please.

[Translation]

**Mrs. Ève-Mary Thāi Thi Lac:** Thank you.

I'm very pleased to be here with you today. I want to thank my colleague for agreeing to allow me to question witnesses from my region. I'm also pleased to meet with other organizations whose mission is to work for people who are in need and who are waiting for their employment insurance benefits.

I'm going to ask you a question to which I'd like to get a brief answer. My other questions will be asked one after the other.

As an organization whose main mandate is to assist people who are deprived of employment insurance or who have problems with the employment insurance system, do you receive any funding from the federal government, apart from the summer student programs?

**Mr. Sylvain Bergeron:** No.

**Mrs. Ève-Mary Thāi Thi Lac:** Even though your one and only mission is to defend unemployed workers, it's quite surprising that you don't receive any money from the federal government in order to defend them, unlike the commission people. Thank you very much.

I'm going to ask you three questions. Then I'll invite you to answer them.

The first question concerns a question that Mr. Komarnicki raised. Unless I'm mistaken, the statistics on unanimous judgments are not forwarded to your organizations despite the fact that your request them. Is that true? Would it be desirable for you to be able to obtain them? Would you make that recommendation to us?

Second, when someone agrees to have his case heard before only two board members, if one rules in his favour and the other against him, will the case automatically go to the other tribunal? Once again, that would be distinctly to the worker's disadvantage.

I believe that employment insurance was designed first and foremost to enable unemployed workers to acquire the means to go back and look for work. However, the time that a worker spends preparing his appeal is not devoted to looking for work. That's quite counter-productive and it goes against the primary mission of the employment insurance system, which is to ask a worker to look for work. Instead they're being asked to prepare cases that will be presented at a hearing.

Are there any cases in which, after waiting 14 months, a worker has won his case when he had already found employment? In those cases, since he would have been back at work for some time, has he had to repay employment insurance benefits to which he was entitled? Has this scenario occurred in cases that you have defended?

**Mr. Sylvain Bergeron:** We really would like to have the statistics. In my work, I represent workers before the board of referees and before the umpire. I also prepare dockets for the Federal Court of Appeal. However, we also have a political component. We're calling for improvements. That would enable us to show that what we're advancing is true. Ultimately, we would have support.

In our region, we don't have this problem of representation by two members of a board of referees. However, it is true that a situation can arise in which there are only two persons. Earlier I cited the example of a chairperson and an employer representative who are often there. If those two individuals are still together, the third always dissents. We know we always lose when those two are there. We know we'll then have to go before another body, in that case the umpire.

It's true that preparation requires time on the claimant's part. I was surprised earlier to hear that there were people who had 10 or 15 days. I never have more than seven days before the hearing. When I receive the notice and the docket, I have seven days to meet the claimant. If he's found a job, we forget that. We find it hard to meet. I work day and night.

I can tell you about 14-month waiting times. I'll briefly give you an example that I had to deal with. It was the case of a forest worker. We had appeared four times before the board of referees, four times before the umpire and once before the Federal Court of Appeal, and, in spite of everything, the commission will be appealing again. That person has to pay.

• (1240)

**Mrs. Ève-Mary Thaï Thi Lac:** Thank you, Mr. Bergeron.

Mr. Bélanger, could you give us some—

**Mr. Yvon Bélanger:** It would definitely be good to have access to the statistics. They would supplement our own statistics that we keep locally. We nevertheless have good local statistical tables concerning situations in our area.

As regards the assessors, if there are only two, generally we'll automatically recommend that people wait and file a postponement request, particularly if the assessor representing the worker is absent. In our view, it's to no one's benefit to appear before only two assessors.

**Mrs. Ève-Mary Thaï Thi Lac:** All right.

**Mr. Yvon Bélanger:** As for the umpires, it's very long. Even if the claimant has found work, the period they want to recover is a period when he was in any case unemployed. There is a benefit period to be recovered, even if it's been 14 months.

**Mrs. Ève-Mary Thaï Thi Lac:** You can't go 14 months without a job. If the person has found a job during that period, the Employment Insurance Commission will say that the individual was employed during that period and that he has to repay it.

**Mr. Yvon Bélanger:** If the individual goes back to work and is no longer eligible for benefits, it is possible to recover the hours accumulated. Some people have banked hours. If the person's claim is denied because of misconduct or that person loses the 2,000 hours accumulated, that's quite significant.

**Mrs. Ève-Mary Thaï Thi Lac:** I'll close by thanking you for the good work you're doing for unemployed workers. Your role is essential. You are often the first people these individuals consult when they have a problem. You submit contentious cases to MPs' offices, but I want to tip my hat to you, especially since you receive no assistance from the federal government to support your organizations. Moreover, there might be a recommendation that the federal government provide financial encouragement for your organizations.

Thank you very much.

[English]

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

Madam Charlton, you have seven minutes, please.

**Ms. Chris Charlton:** Thank you for being here with us today.

I want to pick up where Mr. Savage left off and perhaps take it in a slightly different way, and that is to address the relative formality or informality of the hearings process. You commented on some people having representation and others not having it and said that some rely on legal aid to get that representation.

I always appreciated the fact that you could in fact make representations without any representation and I felt that this made the process incredibly accessible. To me, that's a really important part of the process. I understand, of course, that there are times when representation is hugely beneficial to the process.

Could you comment on how, if you were to rewrite the system, you would maintain accessibility and still make sure that people are represented in such a way that they receive a fair outcome?

[Translation]

**Ms. Marie-Hélène Arruda:** There is a problem with the way the appeal docket is established. The commission prepares the docket and uses the case law that is more consistent with its point of view. The claimant reads that, sees that the case law is against him and against his right to benefits. If he isn't represented, that is to say if he represents himself, he becomes discouraged and abandons the appeal.

Perhaps it could be a role of the commission or Service Canada to provide people with better information. An assistance service might perhaps be appropriate. At least they should show more neutrality and permit appeals. With regard to the appeal docket, we sense that a single point of view is defended, and it's that of the commission. The claimant finds himself isolated. Whatever the case may be, I believe your groups are doing good work with representation.

• (1245)

**Mr. Yvon Bélanger:** Of course, it would be preferable for a body independent of the board of referees and the commission to prepare the appeal docket. For the moment, it's the commission people who do it. The claimants or individuals appealing a decision thus automatically have some doubt.

Furthermore, the hearing is normally held in the commission's offices, which casts even more doubt on the board of referees' impartiality. People have to be reassured every time, even when we meet them. We tell them that this is the board of referees and that they are people from the general public. We explain the entire situation to them, but even when they trust us, they nevertheless have to go to the commission's offices and the docket is prepared by it. It's difficult. There's still a little doubt in people's minds.

I'd also like to talk about the decisions made by the board of referees, particularly in overpayment cases. In those circumstances, if the appeal is denied, the commission automatically proceeds with recovery. It receives the information and the recovery is set in motion internally within a period of two or three days. We've seen some cases of this kind in our area. However, the person doesn't receive the decision from the board of referees for five to seven days. When they're informed of the decision, they have 60 days to appeal it, but the fact remains that the recovery process has already been triggered by the commission. People don't have the time to think or to go and meet with people to determine whether it's worth the trouble to appeal the decision to the umpire. The commission has already started the repayment process. When the person goes to appeal, 15 days or three weeks later, that person will already have received notices of debt that in any case will be payable. At that stage, those people have already been dealing with financial problems for some time. They have lost their jobs. They have had to take time to appeal the decision and appear before the board of referees. All that adds to their problems and can have a snowball effect at some point. These people may be suffering from anxiety, may become sick and, in many cases, ultimately claim EI sickness benefits.

Within the 60-day period during which appeals are possible, the commission may first take 21 days to issue its notice. Claimants should at least be informed of the decision at the same time as the commission, that is within the seven- to 10-day period during which the commission must render its decision. Like the commission, they should have time to analyze the situation before deciding whether to appeal the decision. Then, if it is determined that there is a 21-day period, as for the commission, and if the commission wants to proceed with recovery, it could implement the process. That would at least enable people to check with an accountant, a lawyer, an advisor or someone else to see whether it's worthwhile to keep going, potentially as far as the umpire and, if so, how to go about that.

**Mr. Sylvain Bergeron:** I have a few comments to make. Ultimately, they have to comply with the board of referees' training document, which is entitled Tribunal Proceedings in Employment Insurance, which is supported by judgments of the Supreme Court of Canada.

The government isn't doing what it should be doing. It should tell commission people that they have to stop putting pressure on the board. As for the dockets, I repeat what I said earlier, that the appeal is filed by the claimant, but that the commission prepares the appeal docket in accordance with its own viewpoint. In my brief, you'll see that, in some cases, it even changes the grounds of appeal.

[English]

**The Chair:** Thank you.

**Ms. Chris Charlton:** Do I have time left?

**The Chair:** You have about 30 seconds, if you want a final comment.

**Ms. Chris Charlton:** I rather wanted to go to a place that Mr. Komarnicki didn't want us to go, and now that he has left, I want to take advantage.

**The Chair:** You probably won't have time. Now you're down to 20 seconds.

**Ms. Chris Charlton:** It's with respect to the appointment process. I think it is tied into practice and procedure, because it is about fairness, and for the process to be perceived to be fair is really important. That is part of practice and procedure, and I hope we get a chance to explore that a little more later.

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

Before I go to Mr. Vellacott, let me tell committee members that the analyst was able to clarify something for us with regard to Mr. Simms' question.

The commission, the employer, and the worker all can appeal the decision of the board of referees. Each one of the parties can make an appeal, not just one or the other. I just wanted to clarify that. Thank you very much.

Mr. Vellacott, you have seven minutes.

• (1250)

**Mr. Maurice Vellacott (Saskatoon—Wanuskewin, CPC):** My quick question may be a little bit for the committee members around here as well. The first panel seemed to imply that it was maybe too formal a process. I'm hearing from the group now presenting that it's about right, that they don't figure that it's overly formal, for the most part.

The other thing we heard from the first panel in the earlier hour was that a number of them said the process was too slow. I think you're saying, if we are hearing you correctly, that it's too fast, and that sometimes you'd like to slow it down. Am I understanding correctly or not? You don't have enough time to prepare...?

[Translation]

**Mr. Sylvain Bergeron:** I'm going to clarify that point.

[English]

**Mr. Maurice Vellacott:** So it's too fast?

[Translation]

**Mr. Sylvain Bergeron:** That's too fast. There are seven days between the moment I receive the appeal docket and the appearance. Before the appeal is filed, that can drag on because the board has 30 days to set the case down for hearing and it has to do so within 30 days of receipt of the docket by the clerk. If the commission keeps the docket at its office for 15 days, that's 45 days. If it keeps it for 30 days, that's 60 days. That's part of the procedure. I can't speak for all the regions, but this is systematic in our area.

[English]

**Mr. Maurice Vellacott:** Okay. Let me understand this. So you are saying as well that it is too slow, then, is that correct? The process is often too slow, even though sometimes you want to slow it down a bit because you need a little more time at some phase of it. Would that be correct to say?

**Mr. Sylvain Bergeron:** Yes.

**Mr. Maurice Vellacott:** Sometimes you want to slow it down a bit because you need a little more time...?

[Translation]

**Mr. Sylvain Bergeron:** Yes.

You're mixing up two different things. There's the moment when the individual files his appeal and the time that elapses before that person can be heard before the employment insurance board of referees. Very often that time is really too long because the commission hangs on to the dockets. It should be shortened, but we must also be given more time and we should avoid allowing the clerk to have only seven days of notice to give us. We receive the appeal docket at the same time as the clerk—in our area, at least—that is seven days before the hearing date.

It's unfortunate that I have to do that quickly. I work with the CSST in the areas of social assistance and industrial and automobile accidents and with the victims of criminal acts. So there's a good chance that those seven notice days are already being devoted to another tribunal.

[English]

**Mr. Maurice Vellacott:** Okay. Good. I appreciate the clarification and just getting really specific on that here.

So I wonder in view of that if we have any intent to have the clerks in who actually.... Maybe there are reasons—maybe there are not—why they take so long in giving only a seven-day notice. We are having department people in. Are we having in any people who work on the ground out there, from out in the regions and so on?

**The Chair:** Do you mean actual members of the referee boards?

**Mr. Maurice Vellacott:** Well, the clerks and the administrative people. I'm not talking just the high-level bureaucrats who we'll have here. Are we having any of those other people who can explain why or what the glitches are?

**The Chair:** Well, at this point, they haven't been on the witness list, but if that's who the committee would like to hear from, we can certainly see if we can—

**Mr. Maurice Vellacott:** Yes. Maybe the bureaucrats can answer that question, but it does seem to be a bit of a problem, obviously, and—

**The Chair:** So you think it might be useful to have the actual—

**Mr. Maurice Vellacott:** Yes, a clerk, an administrative person, if the bureaucrats allow it, or if we can have them in.

**The Chair:** We'll make note of that, Mr. Vellacott, and see if we can do that.

**Mr. Maurice Vellacott:** Thank you very much.

**The Chair:** You still have three minutes.

**Mr. Maurice Vellacott:** I'm done.

**The Chair:** Is there anyone from the government side?

Mr. Casson.

**Hon. Rick Casson (Lethbridge, CPC):** I would just like to ask a question. I don't think it was this panel. I think it was the one previous to this that indicated that the actual people who sit on the board, one of the three, calls the client before the meeting, talks to him, and tries to influence their decision to go ahead. Has it been your experience that the people on these appeal boards have done that type of thing?

[Translation]

**Mr. Yvon Bélanger:** Please repeat your question. I don't understand the question.

[English]

**Hon. Rick Casson:** What we heard earlier was that one of the referees actually called one of the people who was going to be there to appeal, before the meeting took place, to try to dissuade them from appealing. I believe that's what the blues will say.

**Mr. Maurice Vellacott:** It was either that or the commission. I'm not sure.

**Hon. Rick Casson:** Or maybe the commission. But have you ever experienced that in your dealings?

[Translation]

**Mr. Yvon Bélanger:** I've never had any knowledge of that.

**Mr. Sylvain Bergeron:** No, not the members of the board. It also seems to me that that's not what I heard the people in the first panel of witnesses say.

Perhaps the commission people try to call them. I always warn the claimants. I know their interview techniques since I've received the same training as they have. I know we can say what we want to someone. People therefore don't have a right to speak to the commission people, but they sometimes try.

• (1255)

[English]

**Hon. Rick Casson:** Well, I appreciate your clarifying that.

[Translation]

**Mr. Yvon Bélanger:** We often ask the officers or the commission to talk to us first from the moment a representative is assigned to a case. Unfortunately, it has previously happened that an officer who needed additional information after the appeal—he was doing a second check after the appeal—directly called the claimant. They redid some checks together to see whether they could change the first negative decision. That's not what I prefer. I prefer the officer to call me and ask me questions. I check with the claimant and I subsequently call back the officer responsible for the case.

In some cases, in making checks regarding a decision of this kind after winning before the board of referees, I've seen the applicant obtain a new unfavourable decision or a disqualification as a result of the discussion we had to resolve the period recovered. So the worker was penalized once again as a result of a statutory technicality.

After the second meeting at the board of referees, while once again checking the period that had been recovered, we found that the worker had been disqualified again on another technicality. Throughout the procedure, the worker had an underlying psychological health problem. So the officer could tell him virtually anything without wanting to. In all instances, we won the three cases using the same basic argument. The problem was a major depression. That's why we ask that representation be respected by the officers handling the docket.

[English]

**Hon. Rick Casson:** Thank you, both of you, for clarifying that.

Thank you, Madam Chair.

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

I have a quick question I want to ask the witnesses. You referred to the location where the hearings are being held at Service Canada and you identified that as a problem.

Where you do suggest these hearings take place, if not at Service Canada centres, and who would be paying for these spaces? Would it still be something that would be provided by the federal government's budget? But would that still give an impartial impression...? I'm just wondering where you would suggest they be held, if not at Service Canada centres.

Also, is it the same throughout Canada? Is every one of the hearings held at the Service Canada centre? Is that correct?

[Translation]

**Mr. Yvon Bélanger:** Consider the example of the Saint-Hyacinthe region. There are a large number of locations. The former CSST offices have small hearing rooms. There are those of the court house and offices in other buildings in the region that could be available to hold these hearings. They have the required equipment, recording devices, telephones, etc. There are rooms in certain restaurants and hotels in the region. It's not very costly. A lot of community meetings are held in those kinds of rooms. You know there aren't a lot of full pockets in the community sector. So I believe that would be a solution. That would genuinely reassure the claimants.

[English]

**The Chair:** Is it across Canada that they're held in Service Canada centres? That's the standard? Okay. Thank you very much.

Madame Folco has a very quick comment.

[Translation]

**Ms. Raymonde Folco (Laval—Les Îles, Lib.):** Thank you, Madam Chair.

Mr. Bergeron and Mr. Bélanger, based on the comments you've made, I understand that the time allocated to the commission to review the dockets is approximately 30 days. However, the applicant

receives seven days' notice. That constitutes an injustice toward the applicant. The commission has all the time it wants to examine the docket and the applicant has only seven days.

In addition, Mr. Bergeron, you emphasized that you weren't always available on the day the commission selected for the hearing. There has to be some real thinking on this question because this results in serious prejudice to the case. I simply wanted to emphasize that aspect.

[English]

**The Chair:** Thank you, Madame Folco.

Thank you to the witnesses.

Do you have an intervention or just a very quick comment, Madame Beaudin?

[Translation]

**Mrs. Josée Beaudin:** I want to emphasize that I'm a bit disappointed to see that three of our colleagues have left the committee room. Out of respect for the witnesses here and for the subject we're discussing, it would have been good for them to stay until the end since this concerns Service Canada.

I simply wanted to point that out.

[English]

**Hon. Rick Casson:** [*Inaudible—Editor*]...four.

**The Chair:** There were four, yes—

[Translation]

**Mrs. Josée Beaudin:** Yes, he's still here.

[English]

**The Chair:** Yes, it's too bad that Monsieur Lessard wasn't able to be here as well, but it has been very good. I think we had a good study.

Thank you all so much for being here.

The meeting is adjourned.

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