

SVAC (ACVA) Presentation
13 June 2006
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A Powerful, Independent and Impartial Ombudsman
For Veterans Affairs Canada

Good Afternoon Chairman and other Committee Members. I thank you all for inviting me here today. More importantly, I congratulate all of you on the creation of a standing committee for Veterans Affairs. I am Sean Bruyea and joining me today are Perry Gray and Tom Hoppe. Mr. Hoppe presently sits on the Advisory Committee to the DND/CF Ombudsman and has done so for the past four years. He is also Canada's most decorated soldier for bravery since Korea. Mr. Hoppe and Mr. Gray are both veterans of the conflict in the former Yugoslavia and both are very passionate advocates for the rights of veterans and their families.

Chairman and Committee members, I also congratulate Prime Minister Harper for taking the first steps to fulfill his promise to immediately create an Ombudsman for Veterans Affairs Canada and a Veterans' Bill of Rights. I would also like to thank Minister Thompson for making the Ombudsman and the Bill of Rights his highest priorities. These initiatives are very long overdue. An Ombudsman for Veterans was first recommended by the Woods Commission in 1972. It also follows years after Australia and the United States have created similar bodies to ensure the fair, just and equal treatment of veterans and a confidential recourse for all, should the system fail.

We all recognize that what we are trying to achieve here today, from whatever viewpoint, directly affects the men and women who - as we speak - are putting their lives on the line for us in Afghanistan. We are not talking abstracts. We are talking real flesh and blood

I will focus on the issue of an Ombudsman for VAC including the role, vision and mandate as well as emphasizing the reasons for creating an Ombudsman sooner rather than later. Indeed it has never been more urgent to create an Independent VAC ombudsman. The first wave of young Afghanistan Veterans is coming home to face the yet-untested provisions of the New Veterans Charter.

Many of you know that the Veterans Charter was created in great haste and passed the House of Commons in a single day (May 10, 2005), based on the tacit support of groups who primarily represent veterans of Korea and the 2nd World War, and for whom its provisions do NOT apply!

As a result, the current Minister of Veterans Affairs is concerned about the New Charter.

A perfect storm is brewing and it has 7 unlucky coinciding components

1. A quarter of a million aging War Veterans plus their families and survivors are putting increasing demands on the current healthcare system;
2. Hastily-passed, untested legislation (C-45);
3. Over-worked, under-resourced VAC front-line staff trying to maintain old programs while implementing new ones;
4. The inability or unwillingness to keep previous Minister's promises to review the Veterans Charter every 4 months;
5. VAC bureaucratic opposition to creation of an Ombudsman, especially with real powers;
6. Repeated Ministerial and government statements "recognizing the debt owed to all our veterans";
7. Young wounded veterans returning from Afghanistan at a time the federal government is trying to increase the head-count of the Canadian forces.

I suspect that the Prime Minister's recognition of the significant possibility for error with potentially tragic consequences is one of the reasons he encourage the creation of this committee and proposed the creation of an Ombudsman as one of its first priorities.

While I applaud the government's support for the creation of an Ombudsman, it is important that the office be powerful, independent and impartial. The current process is unlikely to produce that result.

When the DND/CF Ombudsman was first created, the process was initially given to a General who wrote up plans for the most ineffective and weak form of an ombudsman, the organizational ombudsman which has no powers of reporting or investigation and was far from independent. Andre Marin and his team then spent the next year fighting to create an independent office with true powers of investigation. Currently, an Assistant Deputy Minister from Veterans Affairs has been assigned the task of carrying out consultations and to draw up a plan for a Bill of Rights and an Ombudsman.

Frankly, allowing Veterans Affairs to design the office that will have power over them is like asking the Railways to redesign the Canadian Transportation Agency or allowing the Banks to decide how to best restructure the Office of the Superintendent of Financial Institutions. It is potentially scandalous and it is certainly neither accountable nor transparent.

As the saying goes, justice must not only be done, it must also be seen to be done. In order for an Ombudsman and a Bill of Rights to be created properly and 'immediately', either an individual outside the process or an independent and

competent committee could be promptly appointed to have 10 weeks or so to prepare the model of an ombudsman.

Vision

The VAC Ombudsman should be a neutral third party. It should be an independent and impartial office, ensuring fairness *to all*, including VAC employees, involved in the process for the care, treatment, or re-establishment to civil life of any veteran or RCMP member and the care of their dependants or survivors. The VAC Ombudsman must strive to bring positive change to the entire community involved or affected in this process.

Role

Often times there is no reason to reinvent the wheel. Andre Marin's 1998 action plan, *The Way Forward* provides groundwork which applies to a VAC Ombudsman as well. An Ombudsman for VAC would provide... "ongoing opportunity to address complaints and concerns and to foster change when any injustice and unfairness exists." The VAC Ombudsman's role would be to "work with existing mechanisms in an impartial and independent manner." The VAC Ombudsman would "not only respect the existence and role of available avenues but reinforces them by allowing every reasonable opportunity..." for VAC to resolve its own issues before the VAC Ombudsman would *formally intervene*.

There are two basic roles that a VAC Ombudsman would need to assume: Individual Representation and Systemic Monitoring and Reporting.

Individual Representation could come about if a veteran falls through the cracks. As the website for the Ontario Ombudsman states

"...if you feel a provincial government organization has treated you in a way that is unfair, illegal, unreasonable, mistaken, or just plain wrong, you should bring your matter forward to the Ombudsman."

Feeling of injustice is crucial here. Perhaps the problem can be resolved with information or a quick telephone call to the department or a referral to request an administrative review. The goal is to provide assistance, not to worry about offending the mandate of the bureaucracy. We are often dealing with suffering individuals, not players in a chess tournament.

One of the roles of the VAC ombudsman would be to track the pattern of individual complaints, hence the role of systemic monitoring. If a critical mass is reached in number of complaints or seriousness and magnitude of the issue in any particular area, then the Ombudsman could initiate a systemic investigation. This is perhaps the greatest value to the stakeholders as such systemic

monitoring and reporting can articulate the problem and recommend timely changes so that no further veterans or other stakeholders drive over the same pothole, let alone fall in.

Constituents: Who would have access to the Ombudsman's Office? [Part D]

Those able to access the Ombudsman's office include but are not limited to veterans, serving CF and RCMP members, the families of all, their practitioners, VAC employees and contract providers.

Scope

The scope of the mandate should be relatively simple: all programs, policies, regulations and legislation related to and/or handled by Veterans Affairs Canada.

This is a view publicly supported by the Ontario Command of the Canadian Legion:

*"While it is true that [Legion] members have access to representation at no cost and that there are multiple levels of redress within the disability pension and award system, [Ontario Command] support[s] an Ombudsman in **all** [my emphasis] affairs related to veterans."*

Many observers have testified in the past that it is precisely the injustices and inefficiencies in the disability pension decision, review and appeal process which is the most problematic of all of VAC's programs. According to one of Canada's leading experts in veterans' legislation, Harold Leduc, who now sits on the Veterans Review and Appeal Board:

"Veterans Affairs Canada has a tried and tested pension adjudication system, which includes a review and appeal process. Currently this system is broken, as far too many files are being appealed through the Veterans Review and Appeal Board. The current broken system needs to be fixed if it is to be credible and if the programs of the new bill [C-45] are to build on this administrative process. Although [VAC] agree that the status quo is problematic, Veterans Affairs Canada will not fix the problem. Resolving this step in the process will result in fewer files being forwarded to VRAB ... and would make the process more efficient, saving money, pain, and suffering. An ombudsman review could motivate Veterans Affairs to repair this broken process."

You will find in the reference materials that we provide, the first-ever Independent VOICE Ombudsman Report on Veterans Affairs that we released last fall. Its hundreds of contributors agree with both Ontario Command of the Legion and others that, amongst other programmes, the pension system is indeed broken. Even the Auditor General "found inconsistencies *in the level and nature of the*

*services provided by the Department in counseling applicants... This is a serious problem because the quality and completeness of the application is important in obtaining the right pension decision **the first time.**"*

Considerations for ensuring Independence, Impartiality and Effectiveness

In order for a VAC Ombudsman to be truly independent, impartial and effective, I have included a list of fourteen considerations **[Part E]**, most of which are the minimum required to create a real Ombudsman rather than an impotent, neutered office with largely illusory powers.

Most notable are the necessary powers of investigation, the power to report publicly on the Ombudsman's own initiative, and the power to initiate investigations on the Ombudsman's own motions. It is the power of accountability to the public that brings about change as evidenced by recent scandals here in Ottawa and in the corporate world. If the Ombudsman cannot rely on the power of moral suasion from the public, then the power to bring about change diminishes greatly.

Other mandatory considerations are protection for persons coming forward. This protection should be similar to the philosophy behind the current "Whistleblower" legislation. Confidentiality is a given but the resolution of individual cases often requires that names be revealed. Most veterans are reluctant to come forward for fear of losing the benefits from VAC upon which the veteran and the family may be totally dependent. I can personally tell you that the bureaucracy has a myriad of subtle and not so subtle ways of threatening or removing that security for those who have spoken out. Disabled veterans have to know that they will be free from review, audit or reprisal of any form by VAC should they come forward.

Resources

In order for the Ombudsman to be truly independent, impartial and effective, the office must have the necessary resources in both funding and manpower. I have included a list of the required resources, mostly from an organizational perspective to make a VAC Ombudsman with teeth **[Part F]**. A sufficient pool of skilled investigators is crucial here. You will also note that an independent office requires a number of integrated sections such as finance, admin, record retrieval and, one of the more important, an integrated communications cell to coordinate with the media and public in accessing the necessary power of public opinion to bring about change.

Office of Last Resort

There has been much talk of the Ombudsman being an Office of Last Resort. In principle this is true. However, considering that the "last resort" in many cases has not been reached for some World War II veterans and many veterans of the

conflicts of and service in the 1990's are still being run through the system, a true last resort in VAC may never come. Therefore, a much more flexible approach must be taken. Should the complainant feel there is an injustice, there is no reason why he/she cannot talk with the Ombudsman's office. The office can make referrals for effective review mechanisms or perhaps a telephone call or letter to the appropriate directorate which could save the complainant months if not years of review and appeal.

For example, the Ontario Ombudsman is also called an office of last resort but it received more than 23,000 complaints last year. Ninety nine per cent were resolved by referral, provision of information, ombudsman third party intervention, or even a quick telephone call to the department concerned. Only 7-8 major investigations occurred and there were between 100-200 field investigations.

There is no doubt that the details in setting up an Office of a VAC Ombudsman can be complicated. However, as Andre Marin stated :

“Access to the Office of the Ombudsman could be granted simply by the Minister of Veterans Affairs signing a Ministerial Directive. Or, more appropriately, a Canadian Forces/Veterans Affairs Ombudsman's office having co-ordinate jurisdiction could be entrenched in statute, with the Ombudsman reporting to the Minister of National Defence on DND/CF issues, and to the Minister of Veterans Affairs on issues related to Veterans Affairs Canada. The truth is that departmental organization is a technical obstacle, not an impediment to doing the right thing, and it is a maxim of good government that technical obstacles never be allowed to impede doing the right thing. Instead, technical obstacles should be managed and overcome.”

For the Ombudsman, doing it right means letting the right people do it. Giving this process to more study than necessary or leaving it in the hands of the very bureaucracy which requires oversight is unjust and wrong. Independent agents can be brought on board with the stroke of the Minister's pen. Timelines can be declared and made public and faith of the veterans and their families can be restored. Election promises for the 'immediate creation of an Ombudsman' can be fulfilled. The creation of the Ombudsman *is* an urgent matter. Yet, we must learn from the missteps of the New Veterans Charter by taking the steps to ensure that our new VAC Ombudsman is powerful, independent and impartial. We must ensure that our new VAC ombudsman is created right and created right away.

Thank you Mr. Chairman and Honourable Members of the Standing Committee on Veterans Affairs. We look forward to your questions.