

OUR ROLE IS TO CONTRIBUTE TO THE INTEGRITY OF THE CANADIAN FORCES GRIEVANCE PROCESS.



THE CFGB IS AN INDEPENDENT ADMINISTRATIVE TRIBUNAL THAT IS EMPOWERED TO CARRY OUT

AN IMPARTIAL AND INDEPENDENT REVIEW OF GRIEVANCES THAT ARE BEING REFERRED TO THE BOARD UNDER THE LAW.

THE CREATION OF THE BOARD IS THE RESULT OF THE GOVERNMENT OF CANADA'S DESIRE TO PUT IN PLACE THE MOST

EFFICIENT, TRANSPARENT AND HUMANE GRIEVANCE PROCESS THAT WILL CONTRIBUTE TO IMPROVED CONDITIONS OF WORK

CANADIAN FORCES

IN THE CANADIAN FORCES.

GRIEVANCE BOARD

WHILE THE BOARD IS A NON DECISION-MAKING BODY, IT POSSESSES IMPORTANT POWERS OF AN ADMINISTRATIVE

ANNUAL REPORT 2001

TRIBUNAL. THESE POWERS PERMIT THE BOARD TO ORDER THE PRODUCTION OF DOCUMENTS, HOLD HEARINGS AND

SUMMON WITNESSES TO GIVE SWORN TESTIMONY IN THE COURSE OF REVIEWING GRIEVANCES REFERRED TO IT BY THE

CHIEF OF THE DEFENCE STAFF (CDS). FINALLY, THE BOARD HAS THE POWER TO MAKE RECOMMENDATIONS TO THE CDS.



CFIB

Canada

March 20, 2002

The Honourable Art Eggleton, P.C., M.P.
Minister of National Defence
National Defence Headquarters
MGen George R. Pearkes Building
101 Colonel By Drive
Ottawa, Canada
K1A 0K2

Dear Minister:

Pursuant to section 29.28 (1) of the *National Defence Act*, I hereby submit the 2001 annual report on the activities of the Canadian Forces Grievance Board for tabling in Parliament.

Yours truly,

A handwritten signature in black ink, reading "Paul-André Massé". The signature is written in a cursive style with a large initial "P" and "M".

Paul-André Massé
Chairperson



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GETTING IN TOUCH WITH THE CFGB



Message from the Chairperson

Reflecting on our first full year of operations as an Administrative Tribunal, the challenge that stands out, above all others, is that posed by the exigencies of the Board's mandate. In the words of the *National Defence Act*, "The Grievance Board shall deal with all matters before it as informally and expeditiously as the circumstances and the considerations of fairness permit".

Individuals file grievances when they are discontent about a particular issue, therefore the quicker grievances are resolved, the better for everyone concerned. However, in spite of this reality, it would be expedient to trade-off the principle of fairness in order to act expeditiously. At all times fairness, not expediency, must guide the Board's work.

It is incumbent on us that the necessary rigour and in-depth analysis of each grievance case take place in order for the Members of the Board to submit their findings and recommendations to the Chief of the Defence Staff. We are always conscious that the Board's work could go beyond the individual grievances we treat, resulting in long-term impacts on the Canadian Forces.

As a quasi-judicial body, our findings and recommendations are based on law. Sound legal arguments are not constructed overnight. We realize that there are many eyes upon us, watching what we do and judging the benefit of this new organization called the Canadian Forces Grievance Board. If grievors see that the full weight of Canadian labour law has been brought to bear in treating their grievances, they will be more confident that their grievances were treated in a truly just, fair and impartial manner.

This last year has given me the opportunity to conclude that the organization model we chose to review grievances is the appropriate one. I held a strong view that the staff complement should be comprised of individuals with backgrounds in labour relations, human resources and law. The work produced in the last year, through the synergies of Grievance Officers, working together with Legal Counsel, has confirmed to me that this mix of expertise does, indeed, provide the desired grievance review results.

In my reflections on the past year, I am also aware of the equal responsibility placed upon me, as the Chief Executive Officer of the Board, to manage wisely. Holding stewardship over public funds, in a completely independent public service organization, is a solemn obligation. I rely on strong leadership and good management throughout the organization to effectively deliver against our mission, while respecting the principles of modern comptrollership.

Attending to all of our management obligations takes time and energy, however, I think we were fortunate to be entering the Public Service as a new organization, just as the government's modernization reforms were underway. We have been able to take advantage of the various initiatives launched by the central agencies, allowing us to establish a solid management framework from the outset.

My objective for the coming year is to have a well-functioning organization and to reach a steady state of operations. By this I mean staffing all the Board's positions as planned, completing the myriad tasks we had to undertake to establish a new organization and fully implementing our planned performance management system. Achieving this desired degree of stability will allow us to review grievances with the highest degree of efficiency.

I began this message with a statement to the effect that while we will always strive to review grievances in a timely fashion, we cannot compromise the quality of the Board's grievance review process to do so.

Going into the new year, this belief will be reflected by maintaining quality at the forefront of our performance management indicators. We will establish standard criteria against which to assess the quality of our outputs, i.e., to ensure that the analysis performed in each and every grievance case consistently meets the high standards expected by Board Members.

I have been speaking of endeavours in support of the Board's mandate; however, there is a saying, maybe overused but nonetheless true, that "actions speak louder than words". When the members of the Canadian Forces see that the work of the Board has a positive impact on the conditions of work for military personnel, part of the Board's vision will have been met.

However, this vision will be attained a step at a time and the first is through the review and settlement of individual grievances. Through this first step we contribute to an improved grievance resolution process. This, in turn, can be expected to contribute to improved confidence in the military justice system. Finally, as systemic changes take place, this should result in a positive impact on the conditions of work for members of the Canadian Forces.

Paul-André Massé
Chairperson, Canadian Forces Grievance Board

Acknowledgements

The Members of the Board would not be able to effectively carry out their obligations without the support of the dedicated staff who work at the Canadian Forces Grievance Board (CFGB).

In this respect, all of the Board's employees are to be congratulated for working diligently, as a team, to deliver results this past year.

The CFGB would like to especially thank the Grievance Officers, who were operating with only half of the staff complement necessary to carry out their particular responsibilities. In spite of this fact, they managed to research, analyze and produce reports, maintaining overall quality, on a significant number of grievances in 2001. They achieved these respectable results during a time when the Board was still in its infancy, facing the challenges associated with being a new organization.

Special mention also goes to the Board's Director, Legal Services and General Counsel, Mr. Jacques Lavoie, and his team of Counsel, who established the legal framework for the Board; Mr. Denis Labrie, who assumed the responsibilities of the Executive Director position, in addition to his duties as Director of Grievance Analysis and Operations; and Ms. Danielle Réthier (Chief, Human Resources), who developed a comprehensive human resources strategy and plan for the Board. All worked tirelessly and with enthusiasm to advance the work of the Board in 2001.



CHAPTER 1

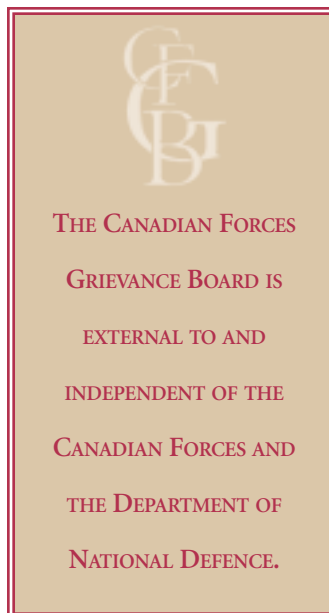
Foundation, Role and Work of the Board

CREATION OF THE CANADIAN FORCES GRIEVANCE BOARD

The creation of the Canadian Forces Grievance Board is a direct result of amendments that were made to the *National Defence Act* aimed at modernizing and strengthening the military justice system, making the whole grievance review process simpler and shorter for members of the Canadian Forces.

Prior to the amendments the grievance process involved too many levels of review, leaving the perception that it was slow and unresponsive. In addition, the process was seen as being too closely linked to the chain of command and lacking any external input.

The new legislation, introduced by the Government of Canada in December 1998, contained amendments that would:



- Remove the Minister's involvement in individual grievances.
- Create an external Canadian Forces Grievance Board with jurisdiction to deal with grievances related to the administration of the affairs of the Canadian Forces with the following major features:
 - The Board would make findings and provide recommendations in relation to grievances submitted to the Chief of the Defence Staff.
 - The Chief of the Defence Staff would not be bound by the findings and recommendations of the Board but would be required to provide reasons in writing for not following the Board's findings and recommendations.
 - The Board would have the authority to conduct hearings and compel the attendance of witnesses and the production of documents.
 - The Board's annual report would be tabled in each House of Parliament.

In November 1999, through Order in Council appointments, Paul-André Massé was named Chairperson of the Board and Diane Laurin was named as the full time Vice-Chairperson. In March 2000, Naomi Z. Levine and Wendy Wadden were appointed as part time Members. The most recent Order in Council appointment was that of Kenneth Maxted, who joined the Board as part time Vice-Chairperson on May 31, 2001.

The Board came into force on March 1, 2000, but did not begin its actual work until June 15, 2000 when it received its regulatory authority. The first six months of that year were spent on establishing a functioning organization, while conceiving and implementing a structure to receive, review and make findings and recommendations on grievances.

ADVANTAGES OF AN ADMINISTRATIVE TRIBUNAL

The goal of an administrative tribunal is to achieve justice for all parties concerned. Administrative tribunals provide a mechanism outside the court system for the speedy resolution of complex matters. Acting independently of the government, administrative tribunals, such as the Canadian Forces Grievance Board, have the power to make recommendations or decisions through enabling statutes of Parliament. Such powers permit the tribunal to determine the scope of rights and obligations in a particular field of expertise. Further, these powers must be exercised in accordance with the public interest and the specific circumstances prevailing in the tribunal's area of activity.

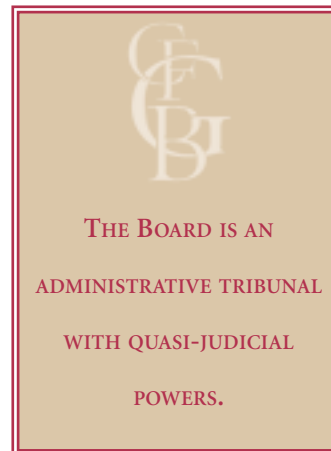
Many decisions of administrative tribunals involve more than just the application of legal principles. Public policy choices are taken into account that may have a significant impact on the government and on the rights and obligations of individuals.

JUSTICE BASED ON LAW

Labour law in the military context is entirely different from what experts in labour law would normally face in the civilian world. The legal principles that normally apply to an employer-employee relationship cannot always be used to resolve a military grievance. The conditions of employment in the Canadian Forces are unilaterally set by regulations and subject to the authority of the Chief of the Defence Staff (CDS) and, to a certain extent, may involve the exercise of Royal Prerogative.

Since members of the military are subject to conditions of work where the rules of employment are essentially regulated and not negotiated, this makes the legal environment surrounding labour relations in the military a much more complex one.

The expertise needed to understand and make findings and recommendations on grievances involves the many legal areas of military, labour, administrative, tort and crown law. Board staff and Members must be aware of the *National Defence Act*, past and current *Queen's Regulations and Orders (QR&O)* for the Canadian Forces, the *Canadian Forces Administrative Orders (CFAO)*, the *Defence Administrative Orders and Directives (DAOD)* and a plethora of other Canadian Forces administrative policies, directives and internal orders. In addition, Canadian courts have rendered a number of decisions on a wide range of labour related subjects that need to be researched and carefully considered.



The Board must ensure that its recommendations comply with the Rule of Law and can be implemented in accordance with the enabling legislation, relevant human rights principles and the *Canadian Charter of Rights and Freedoms*.

Thus, the Board brings to bear the full weight of related laws and jurisprudence when submitting its findings and recommendations on grievances to the CDS. These findings and recommendations will, at times, lead to amendments to existing regulations or other systemic changes affecting many individuals in the Canadian Forces.

IMPROVING RELATIONS IN THE FORCES

The creation of the Board is the result of the Government of Canada's desire to put in place the most efficient, transparent and humane grievance process possible in order to contribute to improved conditions of work in the Canadian Forces.

While the Board's day-to-day role is to review individual grievances and submit findings and recommendations to the CDS, its role in support of the public good is much broader in scope.

When Mr. Paul-André Massé made a presentation in June, 2001 to members of the Canadian Forces at bases in Wainwright, Suffield and Edmonton, Alberta, he said, "We will know we're doing a good job when a climate of confidence exists; members of the Forces view the Board's findings as being objective, timely, fair and impartial and the work of the Board has a positive impact on the conditions of work for military personnel."

The Board plays a unique role with regard to the Canadian Forces' grievance review process. There are no unions or employee associations in the military. The Board, however, ensures that the rights of military personnel are considered fairly. Its legal counsel and grievance officers act independently of the Canadian Forces, in the best interests of both parties concerned, balancing and protecting the rights of both the grievor and the Canadian Forces.

At the launch of the Canadian Forces Grievance Board on June 14, 2000 the Chairperson declared that, "The establishment of the Grievance Board demonstrates the importance both the Government and people of Canada place on justice and respect for the honour and rights of the men and women of the Canadian Forces who carry out their duties courageously and faithfully, helping Canadians in times of domestic crisis and contributing to international peace and security."

Whereas the Board's role is to review individual grievances, it is expected that, with time, the legal precedents it establishes will have a positive impact on the conditions of work for all military personnel, enhancing their pride in the work that they do on behalf of their fellow Canadians.

"THE WORK OF THE BOARD HAS A
POSITIVE IMPACT ON THE CONDITIONS
OF WORK FOR MILITARY PERSONNEL"



TYPES OF GRIEVANCES REFERRED TO THE BOARD

Under Chapter 7.12 of the *Queen's Regulations and Orders* for the Canadian Forces, the Board shall review grievances related to the following matters:

- Administrative action resulting in the forfeiture of, or deductions from, pay and allowances, reversion to a lower rank or release from the Canadian Forces;
- The application or interpretation of Canadian Forces policies relating to expression of personal opinions, political activities and candidature for office, civil employment, conflict of interest and post-employment compliance measures, harassment or racist conduct;
- Pay, allowances and other financial benefits; and
- The entitlement to medical care or dental treatment

In addition, the CDS shall refer to the Board any grievance in which he is personally involved. The CDS also has the discretionary power to refer any other type of grievance to the Board for review.

SECOND LEVEL REVIEW

Prior to the amendments to modernize the *National Defence Act* (NDA), there could have been up to seven levels of review in a grievance process. The Act now provides for only two levels of authority in reviewing grievances, thus making the whole process simpler. The first level is the initial authority, who is in a position to review the grievance and grant redress. Any grievor who is not satisfied with this initial decision may submit an application for review to the CDS, who represents the second and final level in the grievance procedure. It is at this point that the Board becomes involved.

DETERMINING GRIEVANCE PRIORITIES

When it receives grievances, the Canadian Forces Grievance Board generally gives priority to the longest outstanding ones. However, some cases may require a review without delay. The Board may review grievance files that involve for example:

- A grievor about to be released from the Forces, or a case involving a critical health situation;
- A situation that may have a major impact on a person's career or reputation;
- A situation resulting in financial hardship for the grievor or;
- A situation deemed to merit the Board's special consideration.

As a result, the Board would have to ensure that, in the interest of the grievor and all concerned, such cases are considered in light of the circumstances that may warrant a more expeditious review.

HOW GRIEVANCES ARE REVIEWED

- Once the Board receives a grievance from the Canadian Forces the grievor is sent a letter advising that the grievance is at the Board and the information contained in the grievance file is disclosed to the grievor according to the rules of disclosure.
- The grievor is invited to submit additional comments regarding his/her case and the grievor's consent is sought, in accordance with the *Privacy Act*, to obtain additional personal information needed to review the case.
 - Throughout the course of the review, both the grievor and the Canadian Forces can provide further clarification or forward new information to the Board. Normally, all documents that will be considered through the review process are disclosed, in accordance with the rules of natural justice.
 - The Board obtains advice from its own Legal Counsel and other expert advice may be sought during the review. Grievance Officers conduct extensive research to gather the details and facts surrounding the case. They then write a report stating the facts, summarizing the events and presenting an in-depth analysis that objectively represents both parties.
- One or more Members of the Board review the report and the grievance file. The Members may require supplementary information or legal advice before making recommendations. Once the Board has completed its final review of the case, it sends its findings and recommendations to the CDS and the grievor.



OTHER MEANS OF RESOLUTION

There are instances when an administrative solution to a grievance is in the best interests of both parties concerned. This means that a settlement is reached without the requirement for the CDS to decide on the dispute. The Board, however, still sends its findings and recommendations to the CDS in these instances. At other times, a grievor may decide to use an alternate dispute resolution process, such as mediation, to resolve the matter at issue. The Board is supportive of a grievor's decision when this occurs and will put the grievance file on hold, at the grievor's request, until further notice.

CRITERIA TO HOLD A HEARING

In accordance with the NDA, a hearing of the Grievance Board would usually be held in private, unless the Chairperson, having regard to the interests of the persons participating in the hearing and the interest of the public, directs that the hearing, or any part of it, be held in public. The following list of criteria is not exhaustive, but is representative of factors that the Board may consider in their decision to hold a hearing:

- A hearing appears to be the only way, or the most effective and expeditious way, of making findings with respect to the grievance, having regard to such matters as the number of witnesses to be heard, and the actual or probable difficulty of an administrative inquiry to produce evidence;
- The grievance raises questions about the credibility of witness testimony and/or of the various versions of the incident and the circumstances that prompted the grievance;
- The grievance raises a systemic problem;
- The grievance involves or affects a number of people;
- Important questions could be resolved only at a hearing at which witnesses would testify under oath, and may be cross-examined;
- Both parties have sought to have a hearing or may have requested a hearing.

The following list of criteria is not exhaustive, but is representative of the factors that the Board's Chairperson may consider, in addition to the above criteria, in deciding to hold a public versus a private hearing:

- The public interest warrants a broader discussion of the facts of the grievance where other interested parties or members of the public could attend;
- The public image and credibility of the Canadian Forces, the Grievance Board, or both, may be questioned;
- The issue raised by the grievance is such that it has been, or may become, the subject of public debates;
- The Board may wish to show greater transparency in the review of a particular grievance.

CHAPTER 2

Year 2001 Highlights

Part One – Building the Organization

In the year 2000, the Canadian Forces Grievance Board spent the better part of its first six months of existence in setting up the essential requirements to operate as an administrative tribunal. During the last twelve months, the Board's first full year of operations, the organization structure was fully defined and major organization development initiatives were launched.

In February, the Board tabled its first Report on Plans and Priorities. The plans, priorities and expected results were based on five strategic thrusts: leadership, communications, knowledge management, professional development and sound performance management.

Before pursuing the latter three of the above in any depth, exercising effective leadership meant that certain preliminary organizational imperatives had to be dealt with first. Key among these was the adoption of the Board's mission, vision and values, which were developed in full consultation with employees.

DEFINING THE STRUCTURE

An essential first task accomplished by the Board was to define its operating structure; determine the types of jobs needed to perform both line and staff functions; write all the job descriptions, classify them and establish the number of positions needed in the short, medium and longer term. By May 2001 this task had been completed and the Board's staffing action plan was approved.

Another important achievement was the adoption of an integrated, competency-based human resource management framework, linked to the Board's mission, vision and values. Through a process involving employee participation, the first task completed in this regard was the identification of the corporate competencies needed by all employees at the Board. This was the initial step in developing comprehensive competency profiles that will be used to select employees to meet both current and future human resource needs. The profiles will also be used to establish training and development requirements and to identify any gaps in employee performance. In addition, they will be utilized to establish performance agreements with employees.

Mission, Vision and Values of the Canadian Forces Grievance Board

Mission

To review grievances fairly, impartially, in a timely manner, and as informally as possible, in order to contribute to an improved grievance resolution process in the Canadian forces.

VISION

The Board's grievance review skills and expertise will be recognized through the quality of its findings and recommendations.

This will be realized when:

- The principles of integrity and fairness guiding the Board create a climate of confidence in members of the Canadian Forces;
- Members of the Canadian Forces are confident that the Board's findings and recommendations are objective, timely, fair and impartial;
- The work of the Board has a positive impact on the conditions of work for military personnel and contributes to a better understanding and application of regulations, policies, and guidelines;
- Other public agencies, in Canada and abroad, consult the Board regarding their own grievance management and review processes.

ORGANIZATIONAL VALUES

- Provide efficient quality service that is impartial and fair;
- Treat individuals with respect and professionalism;
- Establish a learning environment while ensuring accountability and creativity;
- Value its personnel;
- Promote open communication, teamwork and a spirit of collegiality with a view to achieving a common goal;
- Respect the role and contribution of the military to Canadian society.

INDIVIDUAL VALUES

- Carry out work with integrity, professionalism, and loyalty;
- Promote communication, teamwork and respect for others;
- Respect the principles regarding confidentiality and absence of conflict of interest;
- Seek to develop knowledge and skills.

MANAGING PROJECTS

Developing a new organization entails the planning and execution of a significant number of both one-time initiatives and others that will continue as ongoing requirements. These endeavors by the Board are in accordance with the principles of modern comptrollership, which features prominently in the service-wide reforms presently underway in the Public Service. Entering the last quarter of the calendar year, it became apparent that the various corporate initiatives, numbering in excess of 40, needed to be systematically managed, monitored and controlled. In addition, interdependencies between these projects needed to be clearly identified so that they could be managed accordingly. In the fall, corporate services staff were trained in the use of a project management system, consisting of a common methodology and tools, which is now used by all concerned.

FINANCE AND SYSTEMS

On April 1, 2001, the Board assumed full responsibility and accountability for its own financial management and the Common Departmental Financial System was implemented. This system is modeled on the financial reporting principles used in the private sector. In addition, the complete architecture for the Board's computer support system was improved, thereby increasing capacity, speed, security and troubleshooting capability. Furthermore, software applications were introduced to improve the Board's performance management capabilities.

INTERNAL COMMUNICATIONS

Communications underpin everything that needs to be achieved in organizations. Board management recognizes the importance of internal communications: trust and commitment are built through continuous, open and transparent communications. In June and September two major sessions for employees were held where the primary objective was the two-way exchange of views and information. In addition, Public Service union representatives were consulted and informed of the Board's activities affecting the welfare of its employees.

Part Two – Actualizing Our Mission

INTRODUCTION BY THE VICE-CHAIRPERSON

The Board was created, as part of the modernization of the military justice system, to help improve the conditions of work for members of the Canadian Forces.

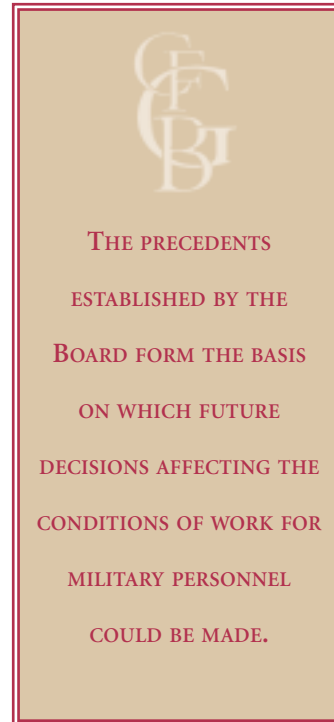
When the Board researches Canadian labour jurisprudence to recommend appropriate courses of action, at heart we are harmonizing the conditions of work for military personnel with those enjoyed by other Canadians in the labour force. We recognize the importance of the precedent setting work we are doing. Like other administrative tribunals, precedents created by the Board form the basis on which future decisions could be made.

Recommendations based on jurisprudence and proposed by a quasi-judicial body demonstrate impartiality and fairness to both the grievors and their leaders within the Canadian Forces. This is made transparent when both parties receive the Board's findings and recommendations. The Board is thus on solid footing when it sends its recommendations to the Chief of the Defence Staff.

When we do our work, we have to look at the underlying causes of grievances in order to propose changes aimed at preventing the recurrence of similar grievances in future. In the past year, the Chief of the Defence Staff acknowledged that broader issues merited further consideration within the Canadian Forces, as a result of the Board's findings and recommendations. The recommendations calling for systemic change were on matters such as relocation entitlements, financial benefits and transfers from the reserve force to the regular force.

The Board sees itself as an instrument of change in bettering the lives of the men and women of the Canadian Forces and our first full year's work has confirmed to us the contribution we can make in this regard.

Diane Laurin
Vice-Chairperson, Operations,
Canadian Forces Grievance Board



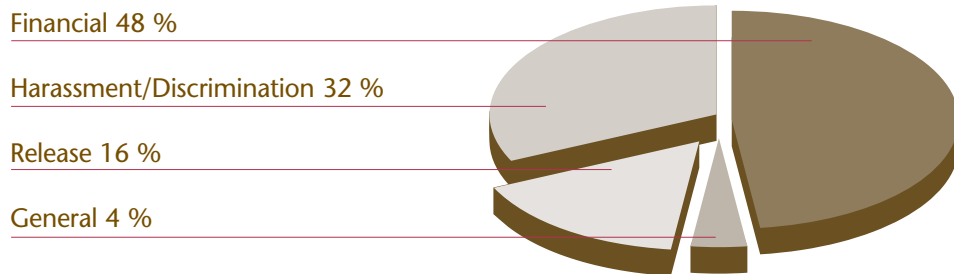
GRIEVANCES REVIEWED IN 2001

Between January 1, 2001 and December 31, 2001, the Board made 204 recommendations and over 300 findings related to 100 grievance cases. At year-end, 182 grievance cases were still under review at the Board. The total number of grievances at the Board, in various stages of the review process during the year, was 282.

Of that total, 136 deal with financial matters; 91 with harassment and/or discrimination; 44 with releases; and 11 with general matters (medical/dental, reversion in rank, etc.).

More specific detail on the nature of these grievances can be found in Appendix 1 and a representative sampling of cases, findings and recommendations made by the Board is contained in Appendix 2.

Grievances by Category January 1, 2001 to December 31, 2001



IMPROVING PERFORMANCE

Several of the components required to establish a comprehensive performance measurement and management system were instituted at the Board. A workflow chart of the grievance review process was completed, allowing staff to clearly identify where it could be streamlined and refined. Consequently, the Board's grievance review process is now more efficient. A software-based case management and tracking system was implemented that allows the Board to monitor the workload and see where a grievance file is at any given time. In addition, with a view to implementing activity-based cost management and performance monitoring, employees are required to record the time that they spend on each of the various activities when working on grievance files. Finally, Quality Assurance Guidelines for grievances have also been drafted. Thus, important elements of the performance measurement trio of cost, time and quality were initiated.

CONTINUOUS LEARNING

The Canadian Forces Grievance Board is comprised of professionals whose work requires them to read and comprehend complex material. They need to have highly developed analytical and problem-solving skills, in addition to being able to write coherently and communicate verbally with clarity. They must also remain current with the growing body of knowledge in their field of work. Recognizing that the quality of work produced by the Board is dependent on the acquisition, sharing and use of knowledge, a member of the Executive was appointed to champion continuous learning in the organization.

Several learning initiatives were launched in the past year. Regular meetings are held where line staff discuss and share their experiences concerning grievances, thus augmenting the level of knowledge throughout the organization. A database of internal and external precedents is currently being developed and a library of primarily electronic legal reference documents, related to the Board's mandate, is being constructed.



DEVELOPING EXPERTISE

The opening sentence of the Board's vision statement acknowledges that its grievance review skills and expertise will be recognized through the quality of its findings and recommendations. Taking the workload into consideration, the Board ensured that as many professional development opportunities as possible were provided to employees. Participating at seminars and conferences, on topics related to the Board's mandate, is one of the most effective ways for employees to remain abreast of developments in the fields of labour relations, military and administrative law.

In October 2001, the Judge Advocate General invited a member of the executive to make a presentation at a national forum attended by more than a hundred lawyers and judges. The forum was sponsored by the Military Law Section of the Canadian Bar Association. The presentation was on the topic of the Canadian Forces members' right to grieve and the Board's role in the grievance review process. It is expected that the expertise being developed at the Board will result in increased speaking engagements of this kind.

CHAPTER 3

First Year Challenges

In the early optimism of building a new organization in the Public Service, from the ground up, the time and effort required to do so is often not fully appreciated and largely underestimated at the outset. It is not simply a matter of executing a mandate; in parallel, important organization development work needs to be accomplished. Management cannot focus on any one part of their obligations at the expense of another.

For instance, in order to obtain the best that employees have to offer, they have to be involved in matters affecting them, and their views on matters concerning different aspects of the organization have to be sought. In the knowledge-based environment that exists at the Board, the contribution of employees is an essential part of the building process.

Three different areas of involvement this year consumed more time and effort than had been originally envisaged. These were: building the organization, that is, attending to everything that surrounds and supports the actual delivery of the mandate; public service-wide initiatives and obligations and the challenges of grievance case management.

Attending to all of the above proved to be an organizational challenge requiring creativity, flexibility and time on the part of the Board Members, management and staff.

RECRUITMENT AND RETENTION OF STAFF

When the Board began operations, interim-staffing measures had to be put in place to ensure that it could begin its work without delay. As of January 1, 2001, the organization remained yet to be fully defined, jobs properly described and actual resourcing needs determined. During the course of the last year, a number of recruitment initiatives were launched to staff the organization on a more permanent basis. These initiatives took time and cost money yet the results were less than had been hoped for. Finding qualified, experienced personnel for both line operations and staff support positions was a challenge. Not unlike the rest of the Public Service, the Board was faced with a limited pool of available human resources. Some competitions yielded no qualified candidates. For others, very few candidates were qualified and, of those, some rapidly moved on to other jobs outside the organization.

ORGANIZATION DEVELOPMENT

One of the greatest challenges this year was to accommodate the competing demands of working on grievances while developing the organization. As staff went about setting up every aspect of the Board's operations, from financial and case management systems to processes for reviewing grievances, each of these accomplishments represented a significant investment of time and effort on behalf of both Board management and staff.

Added to these demands was the fact that, as a new organization, the Canadian Forces Grievance Board as a whole was on a steep learning curve. Organizational learning was impeded when departing employees were replaced and/or other new employees joined the organization. This meant that more time had to be spent on training and learning anew, thereby having an impact on productivity. It also presented an additional challenge to Board management to ensure throughout that the synergy and effectiveness of the employee group were maintained.

Over the course of the year, through a number of committees and focus groups, the input of employees was sought on various aspects of the Board's operations. Employees contributed to a range of tasks, from defining the Board's operating structure, to developing a statement of its mission, vision and values. Their participation also resulted in a streamlined process for reviewing grievances at the Board. This investment in time, while substantial, has helped to significantly shape and will ultimately expedite the Board's work.

PUBLIC SERVICE INITIATIVES AND REPORTING OBLIGATIONS

Like any other federal government department or agency, the Canadian Forces Grievance Board is called upon to take part in service-wide initiatives. For small organizations like the Board, with limited resources, this can be particularly challenging. The government's present focus on modernizing the public service has involved many inter-departmental committees and sub-committees dealing with a range of reforms, from human resources management and modern comptrollership to values and ethics. While the Board is appreciative of the benefits to be gained from these reforms, the requirements nonetheless place a strain on the Board's resources and have repercussions on other areas of its work. This is particularly true given that the reforms are being carried out over a very compressed timeline.



Chantal Alarie, employee of the Board, receives award for raising funds to help victims of September 11 tragedy.

The demands of regular federal public service reporting obligations can be similarly onerous for a small organization like the Canadian Forces Grievance Board. The requirement to produce a range of reports throughout the year means that energies have to be diverted from work that directly supports the mandate.

BREAKING NEW GROUND

The Canadian Forces Grievance Board is conscious of the importance of its findings and recommendations at this early stage of its existence and the necessity to ensure that they are solid and credible. Since the very notion of applying general principles of labour relations within the military context is a new one, there was little existing jurisprudence on which to base its findings. Therefore the Board has had to undertake original research into the law set by courts and the precedents established by other quasi-judicial bodies across Canada, as well as the practices of other organizations, with a view to adapting these to the unique military context. Board Members recognize the enormity of the responsibility that has been placed upon them to harmonize the conditions of work for military personnel with the hard won labour rights of their civilian counterparts in Canadian society.

When the Board reviews a particular grievance, it must also consider any broader implications that may call for systemic changes. It bears in mind that future decisions affecting the Canadian Forces may very well take into account the precedents now being established by the Board. This makes it essential that the Board take the time necessary to ensure that its findings and recommendations regarding each grievance are fully explained in writing and understandable to all parties.

The Canadian Forces is committed to improving the conditions of work for its members and the Board believes it can make an important contribution toward this aim. Strong and convincing reasoning in the Board's findings and recommendations can lead to institutional changes that will help improve labour relations within the military.

“THE PRINCIPLES OF INTEGRITY AND
FAIRNESS GUIDING THE BOARD CREATE
A CLIMATE OF CONFIDENCE IN MEMBERS
OF THE CANADIAN FORCES”

vision

FACTORS IMPACTING ON THE REVIEW OF GRIEVANCES

The Canadian Forces Grievance Board's grievance caseload is, of course, at the core of its work and its first full year of dealing with grievance files has illustrated to the Board that a variety of factors affect the level of effort involved in reviewing grievances.

Unlike many other bodies that deal with staff relations' matters, the Board has to assume multiple roles in the grievance review process. Because its objective is to seek a resolution that is fair to all parties, and military personnel are not represented by a union or employee association, the Board must ensure that it carries out thorough and balanced research and analysis for both sides of a grievance. In order to make impartial findings and recommendations on the issues, the Board's expertise in labour relations and military law is applied equally to both sides. These different roles place demands on the Board that substantially increase the level of effort required, as compared to other organizations doing similar work inside and outside government.

The cases received by the Board at the second grievance level are complex and rarely easy to resolve. For Board staff, whether they are Grievance Officers, Legal Advisors or Board Members, this means that the research, analysis and deliberation required to reach a conclusion on complicated issues are significant. These steps are particularly important in the Board's early stages where principles are being established and precedents are being set.

Grievance cases are frequently more complex than they initially appear. Questions that seem to be straightforward involve other complicating factors that only come to light during the process of analyzing the grievance. And cases that begin as one type of grievance often evolve into something different. It is, for example, not at all uncommon for a grievor to perceive deterioration in the work environment after a grievance has been filed, leading to additional grievances on other issues. The complexity of the case has an impact on the research and analysis required, and the scope of factors to be considered in developing fair findings and recommendations.

The Board has found that some cases place high demands on staff's time. The age of a grievance file can make it especially difficult to gather information, verify facts and reach findings. The Board's current caseload includes outstanding grievance files that were transferred from the Canadian Forces, some of which originated nearly ten years ago.



IN 2001 THE BOARD MADE
204 RECOMMENDATIONS
AND OVER 300 FINDINGS
ON 100 GRIEVANCE CASES.

In other cases the magnitude of the documentation provided by the parties demands more than the usual resources. For example, harassment cases, which account for approximately thirty per cent of the Board's caseload, often require more than one Grievance Officer to review the associated voluminous amounts of documentation before preparing an in-depth analysis of the case.

The time required to review a grievance also depends on the promptness of the parties in providing relevant information. The Board must allow reasonable timeframes for this to occur. It may, in addition, rely on other sources for clarification of questions raised in a grievance. The challenge for the Board is to respect the principles of procedural fairness, allowing all parties

the opportunity to submit their views on the matters in question, while at the same time attempting to complete a review as expeditiously as possible.

The Board is always mindful that, overriding all of the above factors, the Canadian Forces is an institution made up of people and grievances are related to human issues. The fair and impartial resolution of grievances should have a positive impact on the morale of members at all levels in the Canadian Forces. In turn, this could go a long way to improving confidence in the military justice system.

It is a reflection of the dedication of Board members and staff that the Canadian Forces Grievance Board generated 204 recommendations and over 300 findings regarding 100 grievances in 2001, notwithstanding the challenges it has faced.

CHAPTER 4

Future Directions

The modernization of the military justice system began with amendments to the *National Defence Act*, but it did not end there. The Board believes it can contribute to the modernization process in a way that is tangible and meaningful to members of the Canadian Forces. This will be achieved by directing its on-going and future efforts in support of its primary goal, which is to carry out objective, impartial and expeditious reviews of the grievances referred to it under the Act.

In the year 2002, the Canadian Forces Grievance Board will be consolidating its efforts on two fronts. One will be to complete the transition from being a new organization toward one that has reached a steady state of operations and the other is to continue the pursuit of its strategic plan, with a particular emphasis on performance management and professional development.

COMPLETING THE ORGANIZATION TRANSITION

The Board plans to achieve a desired degree of organization stability in the coming year. In addition to completing the staffing of its organization, all personnel will be co-located under one roof for the first time since the creation of the Board. Feedback, provided to management during a June 2001 forum for employees, indicates that both these actions should have a positive impact on the organization as a whole.

In addition, the many corporate initiatives currently underway, that were essential to establishing a new organization in the Public Service, will be mostly completed. This includes the finalization and promulgation of a number of administrative policies and the completion of other various corporate undertakings, consistent with modern comptrollership, which is part of the government's Results for Canadians agenda.

“PROVIDE EFFICIENT QUALITY
SERVICE THAT IS IMPARTIAL AND FAIR”
value



FINALIZING THE PERFORMANCE MANAGEMENT SYSTEM

The Board strives to produce quality findings and recommendations on the grievances it reviews and to execute its duties in the most cost-efficient and timeliest manner possible, without compromising the principle of fairness. In order to abide by the foregoing, the Board's performance will be assessed against the quality of the analyses it performs to produce findings and recommendations, established procedural standards and efficiency indicators. In this regard, component parts of a sound performance management system have already been introduced.

In the coming year, the Board will finalize the implementation of a system that will allow management to monitor the effectiveness and efficiency of its grievance review operations. This will include activity-based cost management and formalized procedural standards for treating grievances, as well as a mechanism for the regular monitoring of grievances.

FUTURE APPLICATION OF PRECEDENTS

Each time the Canadian Forces Grievance Board makes findings and recommendations, it creates a new precedent that may have an impact on future decisions regarding similar issues in the Canadian Forces. It is likely that the Board will benefit from its own precedents, as it may well take them into consideration in the review of subsequent grievances, consequently saving valuable time in research and analysis. Furthermore, despite the fact that each case is treated individually, a degree of consistency will be maintained in the making of future findings and recommendations. Precedents created by the Board become part of the body of Canadian jurisprudence covering labour relations, within the context of the military, that is available to the Board and the Chief of the Defence Staff. It is anticipated that these precedents will result in long-term advantages to the benefit of the Canadian Forces and its members.

PROFESSIONAL DEVELOPMENT

In order to ensure that employees are provided with the training and development they need, so that they can carry out their duties with the highest degree of professionalism, a training and development curriculum will be developed for the various employee groups. The first priority in this respect will be the positions dedicated to mission related work. The curriculum will be derived from the competency-based, human resource management framework which has been adopted by the Board.

In addition, the sharing of acquired knowledge will continue as a key thrust in the organization's development. It is imperative that the growing body of information in the fields of labour relations, military and administrative law be acquired, organized and shared by all employees at the Board. A knowledge management process will be developed to accomplish this on a systematic basis throughout the organization.

An important facet of this endeavour will be to ensure that the corporate history that the Board is now amassing, whether it be on paper, in computer files, or in the memories of its employees, is retained and utilized for the lasting benefit of the organization.

Continual organizational learning is a dynamic reinforcing process, which will strengthen the Board's capabilities in actualizing its mission.

INTEGRATING TOWARDS OUR VISION

With its mission, vision and values always in mind, each of the planned actions by the Board, outlined above, interrelate to form a cohesive strategy. Board management is committed to having a qualified workforce in place; to ensuring that its employees are properly trained and inspired to continually learn and to improving employee and organization performance through the application of appropriate performance criteria.

In last year's annual report, the Chairperson's message ended with these words: "Though we are still in our early days, our long-term goal is clear: to be a champion of change within the military and its justice system, contributing to improved staff relations throughout the Canadian Forces." The implementation of the Board's strategy is aimed at achieving the vision it has set for itself in support of this long-term goal, which is to create a climate of confidence in members of the Canadian Forces that the Board's findings and recommendations are objective, timely, fair and impartial. The Board can thus make an important contribution to strengthening the military justice system, since its grievance review process is designed to achieve justice based on law.



APPENDIX 1

Breakdown of Grievance Files by Category

<i>CATEGORY</i>	<i>SUB-CATEGORY</i>	<i>COUNT OF OUR FILES</i>
Financial		
	Allowances	39
	Benefits	50
	Pay	9
	Pension	6
	Various (e.g., severance pay, reimbursement of tuition fees, etc.)	32
Financial Total		136
General		
	Reversion to lower rank	1
	Termination of an appointment	1
	Medical/Dental	2
	Various (e.g., career action, smoking in Mess, etc.)	7
General Total		11
Release		
	Medical	3
	Universality of service	12
	Unsatisfactory service	8
	Wrongful dismissal	1
	Service completed	5
	Medical and abuse of authority	1
	Unsatisfactory service and abuse of authority	1
	Misconduct	1
	Various other reasons	12
Release Total		44

<i>CATEGORY</i>	<i>SUB-CATEGORY</i>	<i>COUNT OF OUR FILES</i>
Harassment/Discrimination		
	Age discrimination	1
	Racial discrimination	1
	Discrimination against sexual orientation	1
	Abuse of authority	24
	Cases with multiple instances	28
	Handling of a harassment complaint	1
	Various (e.g., promotion deferral, denied promotion, etc.)	35
Harassment/Discrimination Total		91
Grand Total		282

APPENDIX 2

A Sample of Case Summaries and Board Findings and Recommendations

Case Summary

1

Recognition of Service in the Reserve Force

The grievor had been a Master Seaman (MS) in the Naval Reserve for about six and a half years, including more than two years of Class B service, before being transferred to the Regular Force as an Officer Cadet (OCdt) under the Officer Candidate Training Plan (OCTP).

Recognizing prior service on transfers to the Regular Force.

The grievor claimed that his pay was significantly reduced as a result of this transfer because his salary level in the Regular Force did not take into account his years of service in the Reserve. He was paid under QR&O 204.2113(2) at the level of an OCdt with no prior military service. The grievor asked that his prior service be recognized, and that he be paid at his previous level as a Master Seaman.

There was some support for part of the grievance in the chain of command¹. It was noted that there was no policy guidance on how to take into account a reserve non-commissioned member's previous qualifying service when that member transferred to the Regular Force under the OCTP. A recommendation was made to resolve the grievance by reassessing the grievor's time credit toward promotion.

¹ *In the interest of brevity, the positions taken by CF management in response to the individual grievances are referred to as those of the "chain of command."*

One grievance level, however, argued that the grievor had no vested right to his Master Seaman salary since the QR&O provision on vested rights to pay applied only to Regular Force personnel. He also felt that the grievor had accepted the terms of the transfer offered and as a result had not suffered an injustice.

The Board did not agree that the grievor's previous service could not be considered. It pointed out that QR&O 204.2113 and 204.21135 apply to members who are "appointed to the rank of officer cadet directly from a non-commissioned member's rank". In the Board's view, the grievor met the definition of non-commissioned member in his previous rank as Master Seaman, even though he was enrolled in the Reserves component of the CF at the time. QR&O 204.21135, which governs the pay of officers of the OCTP with former service, therefore applied to his case.

The Board recommended that the CDS issue appropriate directives to pay the grievor as an OCdt under QR&O 204.21135 at a rate at least equal to his former salary as an MS in the Reserve Force. The Board also recommended that the CF develop a more detailed policy on recognizing reserve service, encompassing all transfers from the Reserve Force to the Regular Force and clarifying those issues that can currently be left open to differing interpretations.

Entitlement to a Posting Allowance

*Grievor
entitled
to posting
allowance.*

After accepting a component transfer from the Reserve Force to the Regular Force and a related posting, the grievor was told that she was not entitled to the Posting Allowance (PA) for which she had been told she qualified, nor the first half of the allowance which she had received. Following her transfer, a Ministerial Order was signed setting out new definitions and limitations with regard to the PA, including a limitation which related to a member's first posting after being transferred into the Regular Force. The Order was made retroactive and disqualified those in the grievor's circumstances from eligibility for the PA. She was advised that she was not entitled to the PA and that the portion of the allowance she had already received would be recovered from her pay.

The grievor contested the CF's determination that she was disqualified from eligibility for the PA. She stated that she had researched policies and orders when she was offered the component transfer, had conferred with authorities to confirm what her entitlements would be upon transfer and posting and had been told that she would get the PA. The grievor submitted that it was unfair to disqualify her retroactively, and that the decision had disregarded her previous service with the Reserve Force, contrary to the CF's Total Force concept.

The grievance was not supported on the basis that the grievor would not have been entitled to the PA even before the Ministerial Order changed the policy. According to the CF, a member's liability to move was the decisive determinant of eligibility for the PA and, as a component transferee, the grievor did not meet the prerequisite of having to move. Since Reservists joining the Regular Force had to seek release from the Reserve Force and then enrol in the Regular Force, the grievor would not have attained the career status required for the PA even under the old policy.

The Board did not agree. It found that the grievor had been properly determined to be eligible for the PA before the changes resulting from the Ministerial Order, having attained career status and having met the terms of the policy. It also pointed out that a component transfer was not release from the Reserve Force and enrolment in the Regular Force. But under the explicit terms of the Ministerial Order, which addressed for the first time a component transfer, the grievor would no longer be entitled to the PA. In this case, however, since the grievor had taken steps toward realizing her right to the PA by accepting the component transfer and relocating, the Board concluded that it would violate her vested right to the PA to apply the Ministerial Order in such a way as to reclaim the first half of the allowance and deny her the second portion. It recommended that the grievor be reimbursed the portion of the PA that had been recovered from her pay and that she be paid the rest of the allowance.

Publication of Court Martial Information on the Internet

Policy needed regarding Internet publication.

The grievor was charged with two violations of the *National Defence Act*. Information regarding the charges and the upcoming court martial was published on the Court Martial Calendar on the web page of the Office of the Chief Military Judge (CMJ), which was on the Department of National Defence Internet web site (D-NET).

At his court martial, the grievor was acquitted of both charges. Six to seven weeks later, this fact was posted for a period of time on the Courts Martial Results web page, on the web page of the Judge Advocate General (JAG). However, even when the acquittals were no longer posted, the charge sheet and scheduling information remained on the Court Martial Calendar web page for several months thereafter.

The grievor submitted that his right to be presumed innocent and his right to a fair trial had been compromised when his name and the charges against him were published on the CMJ web page. He asserted that a reasonable observer reading the charge sheet would conclude that the charges were likely true. In addition, the grievor asserted that, if the charges against him were going to be published, then the disposition of the proceeding should also be published, and in a timely fashion. In the grievor's view, it was not unreasonable to wonder whether there was an ulterior motive for the failure to post the results of his trial, given the Military Judge's unequivocal findings in the grievor's favour.

There was some support in the chain of command for the grievor's contention that the web pages should be administered in a more timely manner, but the CF did not find that Internet publication *per se* was inappropriate. From the CF's perspective, this type of publication was a legitimate means by which to show transparency in the military justice system.

Because information regarding outstanding criminal charges and court dockets is public information, the Board found that the grievor's right to be presumed innocent had not been affected by the publication of the charges on the web page of the CMJ. It also recognized that the Internet publication of courts martial and their outcomes was a justifiable part of the CF's efforts to demonstrate transparency. Nonetheless, the Board found that the inevitable effect of such publication on the reputation of an accused, even before charges are tried, must be recognized, and it called on the CF to bear its responsibility to its members and to the public by ensuring that the information provided was accurate and timely.

The Board found that the delay in posting the grievor's acquittal to the Internet had been too long and arguably unnecessary and that the grievor suffered additional harm when the charges against him continued to be posted on the Internet after the acquittal information had been removed. However, the Board did not find that there was a basis on which to reasonably conclude that the delay was intentional. Rather, the Board was satisfied that the most reasonable explanation for the problems with the timing of the publication was the lack of a coherent written policy for Internet publication and time lines governing the process.

The Board recommended that the CDS deny the grievor's claim for an acknowledgment that the CF's use of the Internet to publish court martial information was unnecessarily damaging to his reputation and prejudicial to his right to the presumption of innocence. However, it recommended that the grievance be upheld to the extent of recognizing that the grievor had suffered a delay in having complete information posted, and that the CDS ensure that an apology was extended to the grievor in recognition of the damage this caused to his reputation.

It also recommended that a policy on Internet publication of court martial information be developed, taking into account the effect of the publication on an accused's reputation and the need to ensure that there are no unnecessary delays between the time of a court martial and the posting of its results.

Reimbursement of a Mortgage Interest Penalty

After being told by CF career managers not to expect a posting out of his location for several more years, and after renewing the mortgage on his house as a result of this advice, the grievor was posted outside Canada. He incurred a penalty of \$4,454.35 to terminate his mortgage when he sold the house.

The grievor sought reimbursement from the CF for the penalty charged by the bank. He alleged that he had taken all reasonable precautions to avoid paying an interest penalty on his mortgage, including negotiating a transfer clause allowing him to transfer his mortgage in the event of a posting within Canada. Unexpected cuts to a training program in which he would have participated led to the CF's decision to post him to the USA for his training. The mortgage could not be transferred to outside Canada.

Two levels of the chain of command supported the grievance on the basis that the posting outside Canada precluded transferring the grievor's mortgage, and that the bank's intent in levying the charge was to penalize the grievor for closing his mortgage early. Another grievance level, however, held the position that the amount was not a penalty but a Mortgage Interest Rate Differential (MIRD) charge, which was not reimbursable in whole or in part. Guidelines developed, as a result of discussions with Treasury Board, considered MIRD charges to represent the fulfillment of a contractual agreement between the bank and the homeowner. It was therefore concluded that the grievor had been treated fairly and equitably in accordance with the regulations in place at the time.

Recommendation

*made to
reimburse
penalty
charged
by the bank.*

In the view of the Board, the circumstances of this case clearly placed a moral obligation on the CF to support the grievor. In order to assess whether there was also a legal obligation to reimburse the sum paid by the grievor, the Board examined the nature of the interest differential charge and found that in reality the grievor had indeed paid a penalty to dispose early of his mortgage when he was obliged to sell his residence because of a posting imposed on him by the CF.

The Board therefore recommended that the grievor be reimbursed the full sum charged by his bank.

Coverage for Home Equity Loss

The grievor lost equity on the sale of his house when he was posted to Kingston from Ottawa. His 1995 application for assistance under the Home Equity Assistance Plan (HEAP) was denied on the basis that the market for similar homes in the grievor's immediate neighbourhood had not decreased by 10 percent between the time of purchase and the time the property was sold, as required by regulation in order to receive coverage.

Application for assistance had been correctly rejected.

The grievor became aware that other CF members in the same situation, who also did not meet the eligibility criteria set out in paragraphs 1 to 5 of QR&O 209.97, were partially reimbursed for their financial losses on a case-by-case basis. He submitted additional information to substantiate his earlier claim, including the fact that he had to move to a small Permanent Married Quarter (PMQ), lost many years of savings as well as the family's second income, and could not provide financial assistance to his elderly mother. In contesting the decision to deny him coverage under the HEAP, the grievor alleged that he had suffered undue financial hardship as a result of the sale of his principal residence. He requested that his equity loss of \$14,635 be reimbursed in accordance with QR&O paragraph 209.97(7).

The CF denied the grievor's claim because he had not provided evidence of a market decline of at least 10 percent for similar homes in his neighbourhood, and because the chain of command did not find his argument that the home sale had caused him undue financial hardship to be compelling. It was also noted that the application for redress of grievance had been submitted beyond the time limits imposed by QR&O 7.02.

The Board noted that QR&O 7.02(3) allowed the Initial Authority (IA) to accept a grievance after expiration of the time limit if to do so would be in the interests of justice. Evidence on file indicated that the time limit issue was considered before the IA responded to the grievance. The Board found that by replying to the grievance on the matter of undue financial hardship, the IA implicitly exercised discretion to waive the expiration of the time limit. Furthermore, the Board found that by submitting the grievance to the Board for findings and recommendations, the CDS implicitly waived that regulatory preclusion.

The Board found that the grievor's HEAP application was correctly rejected in 1995 because it neither conformed to CF policy regarding appraisals, nor established a 10 percent market decline. It also found that the grievor's submissions pertaining to his specific circumstances on the issue of undue financial hardship were insufficient to justify a recommendation to the CDS that he exercise his discretion in favour of the grievor. The grievor did, in the Board's view, suffer some financial hardship, but it cannot be considered as unreasonable or excessive to the point of constituting undue financial hardship. Consequently, the Board recommended that the grievance be denied.

Entitlement to Free Rations for Single Members

Method of posting for training purposes results in a prima facie case of discrimination.

The grievor contested the CF's refusal to compensate the grievor for meal costs incurred while attending a four-month training course. The grievor was sent on training on Restricted Posting rather than on Temporary Duty. The rules governing the allocation of benefits to those on Restricted Posting make a distinction between single members and members who are either married or who have dependants, in order to help defray the costs for the latter of feeding their families. As a result, the grievor, a single member, was not entitled to rations, had to buy food at the cafeteria and thus spent more than would have been the case on regular duties. Members who were married or who had dependants and who were on training were entitled to receive free rations. The grievor alleged that the CF's policy discriminated against single members.

The chain of command did not support the grievance on the basis that it would be unfair not to provide free rations to members with dependants, and because the grievor had received those entitlements that were due. It was acknowledged during the grievance process that there could be a problem with the entitlements resulting from the method of posting members on training, and that there could be discrimination against single members in this instance.

The Board found that there was in fact a *prima facie* case of discrimination: single members did not receive rations at public expense when members who were married or who had dependants did. But there was a rational connection between the financial benefit given to members with dependants and the efficient administration of CF personnel, and the CF's policy seemed to have been adopted in good faith.

The Board determined, however, that the CF could have sent its members on training on Temporary Duty, which would have ensured that single members were treated the same as married members or members with dependants. Only Restricted Posting allowed one group of members to receive rations to which another group was not entitled. Furthermore, there was no evidence that using Temporary Duty rather than Restricted Posting for training would cause the CF undue hardship.

The Board recommended that this grievance be accepted and that the grievor be reimbursed for the cost of rations while on training.

Eligibility for Pilots' Allowance

In June 1998, Treasury Board (TB) approved a monetary allowance for pilots who committed themselves to serve as pilots for a minimum of five years. This allowance was a short-term measure intended to provide trained pilots with an incentive to remain in the CF for a period of time.

In order to be eligible for the Pilot Terminable Allowance (PTA), pilots have to be qualified as aircraft captains and have completed a certain number of years of service in the CF. Pilots also have to complete, within five months of applying for the PTA, any period of obligatory service to which they have already agreed.

The grievor – a skilled and experienced pilot – re-enrolled in the CF in July 1997 after having served several years in the past and then having left the CF. When re-enrolling, members are normally required to commit to serving for a three-year period before they can be released from service. This is referred to as "restricted release." In the grievor's case, this period of obligatory service would only have ended in July 2000. The deadline for the PTA (with the extension of five months for those completing obligatory service) was December 31, 1998. The grievor could not complete that period in time to apply for the PTA and was therefore ineligible to receive it.

However, the grievor claimed to have been misinformed about the obligatory period of service after re-enrolment, and argued that it was not part of the contract with the CF. In fact, the grievor's enrolment form had the clause of restricted release deleted from it.

*Grievor's
relationship
with CF not
governed
by contract law.*

The first grievance level supported the grievance, citing CANFOR-GEN 102/97 to the effect that members should not have to suffer from any bad advice given to them about the restricted release policy of the CF, and pointing out that the grievor was a great asset to the CF.

The other levels in the chain of command did not support the grievance. They argued that the rule on restricted release was in effect when the grievor re-enrolled and that the grievor simply did not meet the eligibility criteria for the PTA. They added that the grievor signed the CF 92 form that included a clause on a three-year period of obligatory service after officer training. They said that the CF had no authority to exempt the grievor from restricted release and no authority to expand the eligibility criteria for the PTA.

The Board recommended that redress of the grievance be denied. It found that the grievor's relationship with the CF was not governed by contract law and that any information provided to the grievor about not being subject to restricted release was not pertinent, nor was the fact that the clause on restricted release was deleted from the grievor's enrolment form. In any case, even if the Recruitment Centre makes a wrong interpretation of a regulation and misrepresents it to a member, the correct regulation stands. CANFORGEN 102/97, which was cited by the grievor, was not applicable in this case.

The Board also recommended that the CF 92 form be amended to make it clearer that restricted release is in fact applicable to people who re-enroll in the CF.

Contesting a Counselling & Probation Order

Summary Investigation into an onboard altercation between the grievor and a fellow crew member concluded that the altercation was not the grievor's fault, but recommended that he be placed on Counselling & Probation (C&P) for "abuse of authority and inappropriate actions towards subordinates". He was placed on C&P for six months and advised that a posting had been timed to coincide with the C&P.

Grievor had not been given meaningful opportunity to be heard.

The grievor submitted a grievance seeking to have the C&P quashed and alleged that his right to procedural fairness and natural justice had been violated in the investigation process. He emphasized the serious personal and professional impact that the ordeal surrounding the C&P and subsequent grievance had had on him, his career and his family. He sought to have the C&P expunged from his record, to be credited with leave he had been ordered to take, and to have a review conducted into the effect the C&P had had on his career progression, followed by any action necessary to correct that effect.

When his grievance was denied at one level, the grievor applied for judicial review of the decision. This caused the grievance process to be suspended. The CF asked the Court to strike out the grievor's application, and it ultimately did so on the basis that the grievance process was an adequate alternative remedy and that the grievor's application was premature. The grievance process was then reactivated.

Staff reviews concluded that the Summary Investigation had been flawed. As a result, the CF offered to reach an administrative resolution of the grievance. It would quash the C&P and remove any reference to it from the grievor's service records. However, the CF's position was that the C&P had not had a negative effect on the grievor's career, nor did it agree to the grievor's claim for payment of the legal fees he had incurred on the judicial review application. The grievor did not accept the CF's offer.

The Board found that the results of the Summary Investigation were not reliable since the investigation had been carried out without respect for the grievor's right to procedural fairness. The evidence showed that the grievor had been denied the right to know the case against him and was not given a meaningful opportunity to be heard, to defend himself or to answer the case against him. The Board also found that the C&P had likely had a negative effect on the grievor's career.

The Board recommended that the grievance be upheld, and that the CF act on the grievor's requests to expunge the C&P from his service records, restore his annual leave, and conduct an in-depth review to determine, as accurately as possible, any negative effects of the C&P on his career aspirations. The Board concluded that details of this review should be shared with the grievor, and any corrective measures found to be required should be carried out in a timely manner. It also recommended that the relevant authorities address the grievor's request to be compensated for his legal fees, noting that, were it not for the grievor having sought counsel and having pursued the court application, he might very well have been unable to gather the significant evidence that was contained in record, which enabled the Board and the CDS to get a clearer picture of the events at issue.

APPENDIX 3

ANTICIPATED EXPENDITURES TO MARCH 31, 2002

<i>ANTICIPATED TOTAL EXPENDITURES TO MARCH 31, 2002</i>	
	Forecast (Total Expenditures)
Salaries	2,948,000
Employee Benefit Plans	568,000
Travel & Transportation	88,910
Telecommunication services	324,160
Postage & Freight	16,720
Communications & printing	44,400
*Professional and special services	2,082,870
Training & professional dues	187,600
Rentals	206,400
Office rent & Fit-up	300,000
Materials & Supplies	80,700
Computer & EDP equipment	161,700
Office Furniture	33,400
	7,042,860

*Costs to cover contract workers directly in support of grievances review, along with one time start up costs for various corporate initiatives

APPENDIX 4

CFGB Organization and Structure

Mr. Paul-André Massé is the Chairperson and Chief Executive Officer of the Board; Ms. Diane Laurin is the full time Vice-Chairperson, responsible for Operations; Mr. Ken Maxted (Toronto, Ontario) is the part time Vice-Chairperson and Ms. Naomi Z. Levine (Headingley, Manitoba) and Ms. Wendy E. Wadden (Sydney, Nova Scotia) are part time Members. All Members are Order in Council appointees. The role of the Board Members is to provide findings and recommendations on grievances to the Chief of the Defence Staff.

Ms. Laurin is responsible for assigning the grievance cases to the Board Members, as well as overseeing the Board's grievance review operations, i.e. research and analyses, legal services, and the recommendation process concerning CF members' grievances.

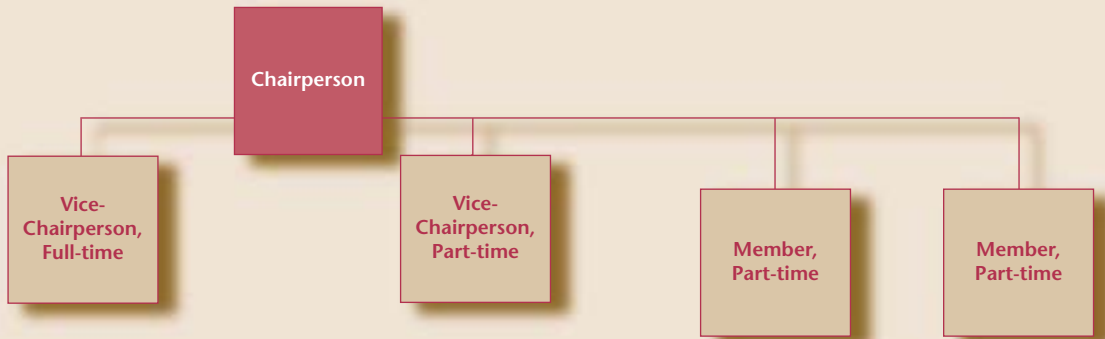
In their executive duties, the Chairperson and Vice-Chairperson are supported by an Executive Director, a Director of Legal Services and General Counsel and a Director of Grievance Analysis and Operations.

The Executive Director is responsible for the provision of corporate services in the areas of Strategic Planning and Administration, Human Resources, Communications, Finance, Information Management and Technology and Health and Safety.

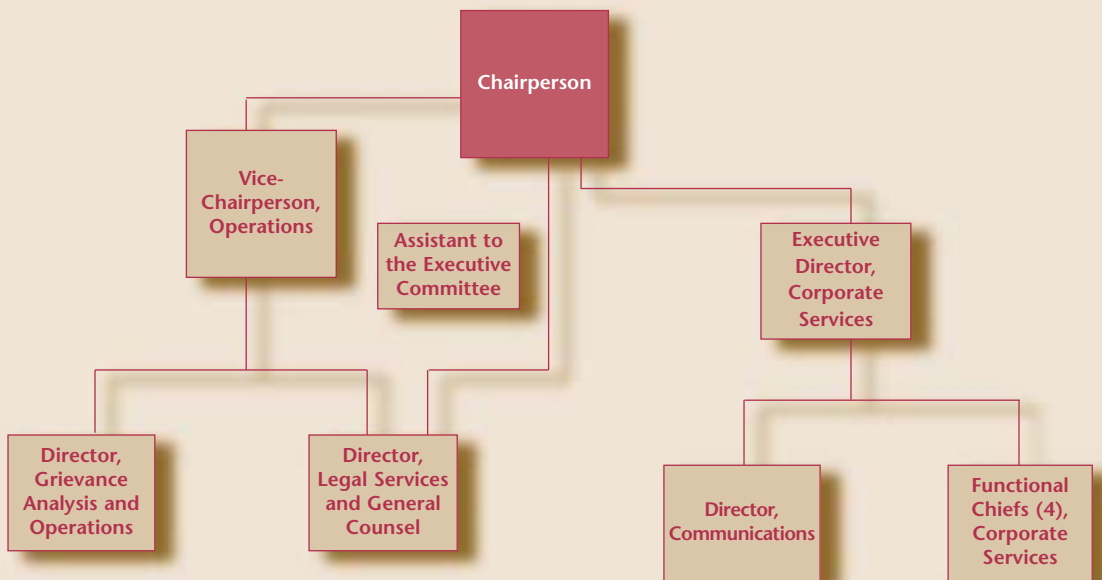
A team of Legal Counsel is employed in the Legal Services Directorate, which is headed by a Director, who also acts as General Counsel to the Board. This Directorate houses the Registrar function for grievances.

The Grievance Analysis and Operations Directorate consists of a core group of Grievance Officers, supplemented by either term, casual or contract employees, as warranted by the workload.

BOARD MEMBERS



THE MANAGEMENT TEAM



APPENDIX 5

BIOGRAPHIES

Mr. Paul-André Massé was appointed as the Board's first Chairperson on November 1, 1999. He holds this position on a full time basis.

Mr. Massé is responsible for setting up the Canadian Forces Grievance Board, the first quasi-judicial body mandated to review military grievances referred to it by the Chief of the Defence Staff.

Born in Saint-Jean-sur-Richelieu, Paul-André Massé is a graduate of l'Université de Montréal where he obtained a Master of Science degree (Political Science) and of the University of Ottawa where he pursued undergraduate studies in Public Administration, Political Science and Labour Relations.

Member of the Canadian Armed Forces (Regular and Reserves) from 1964 to 1973, he then held positions in Members of Parliament and Ministers' Offices.

Member of Parliament for Saint-Jean from 1979 to 1984, he was Vice-Chairperson of the Labour, Manpower and Immigration Committee and a member of the Standing Committees on External Affairs and National Defence; Agriculture; Public Accounts and Miscellaneous Estimates.

Paul-André Massé was actively involved with Sub-Committees reviewing the NORAD Agreement and the development of the Armed Forces Reserves. He was also involved, at the legislative level, in the implementation of the Canadian Security Intelligence Service that became the subject of his thesis.



*Chairperson
Paul-André Massé*

In 1983, he was appointed by the Prime Minister as Parliamentary Secretary to the Minister of Supply and Services.

On many occasions, as a member of Parliamentary Delegations, he has represented Canada abroad particularly at NATO, SHAPE and NORAD.

As part of a management development program with the Public Service, Mr. Massé held various positions of increasing responsibilities within the federal administration.

From 1992 to 1994, Mr. Massé was a member of the Board of Directors of the “Cégep de Saint-Jean-sur-Richelieu” and a member of its Executive Committee and Finance Committee.

Prior to his appointment as the Canadian Forces Grievance Board’s Chairperson in November 1999, Paul-André Massé managed his own consulting firm in the field of government relations.

Ms. Diane Laurin was appointed as the Canadian Forces Grievance Board’s full time Vice-Chairperson on November 1, 1999.

Ms. Laurin is the co-founder of the Canadian Forces Grievance Board; the first quasi-judicial body mandated to review military grievances referred to it by the Chief of the Defence staff.

In the capacity of Vice-Chairperson, Ms. Laurin has full authority and accountability for all of the Board’s affairs, in the absence of the Chairperson.

In addition, she holds executive responsibilities, as Vice-Chairperson of Operations. In this capacity, she is responsible for managing all facets of the Board’s operations related to the grievance review process, including assigning the grievance cases to the Board Members.



Vice-Chairperson
Diane Laurin

Prior to joining the Grievance Board, Ms. Laurin worked at the Montreal Urban Community (MUC), as a member of senior management for eleven years, four of which were spent at the Montreal Urban Community Police Service (MUCPS).

Ms. Laurin was Assistant Director and Chief of Staff to the Director of the Police Services from 1995 to 1998. She participated in major files involving citizen security, public morality and criminal activity, as well as intercultural and race relations. Some examples are the ice storm, the Stanley Cup riots, the motorcycle gang wars and the Barnabé Case.

Ms. Laurin also took part in projects touching upon collective agreement negotiation, work relations and professional ethics.

She participated in a project called “Towards Neighbourhood Policing” which necessitated the reengineering of the MUCPS and led this police department to thoroughly review its mission and work practices.

From 1987 to 1995, Ms. Laurin acted as communications and planning advisor to the MUC President. She planned communications strategies that furthered the implementation of metropolitan policies in matters of public safety, air and water purification, public transit and economic development. She also contributed to articles on crime prevention and law reform in the police environment.

Before joining the MUC, Ms. Laurin practiced immigration and civil law. She began her career as a nurse, a profession she practiced for six years.

Ms. Laurin has a Bachelor of Law degree from the University of Montreal (1982) and has been a member of the Québec Bar Association since 1983.

In addition, Ms. Laurin holds memberships in the Canadian Bar Association, the National Association of Administrative Law Judges, the Council of Canadian Administrative Tribunals and the Association of Labour Relations Agencies.



**Part Time
Vice Chairperson**
Kenneth E. Maxted

Kenneth E. Maxted was appointed as part time Vice-Chairperson of the Board on May 31, 2001

Kenneth E. Maxted, from Toronto, Ontario, has 30 years experience as a Parish Priest and 38 years of military service. During his military career, the Reverend Canon Maxted served for 10 years as a Regular Force Infantry Officer and 28 years in the Reserves, of which 15 were served as Chaplain to the Canadian Forces. He also acted as Aide-de-Camp to four Lieutenant Governors of Ontario, and has served as Chaplain to several veterans' organizations. Mr. Maxted, a former member of the Canadian Pension Commission and the Veterans Review and Appeal Board, is an Officer of the Order of Military Merit and the recipient of, among others, the United Nations Service Medal (Korea), the Centennial Medal, the Queen's Jubilee Medal and, more recently, the Canadian Peacekeeping Service Medal.



Part Time Member
Naomi Z. Levine

Naomi Z. Levine was appointed as part time Member of the Board on March 21, 2000

Naomi Z. Levine, from Headingley, Manitoba, is a lawyer, ethicist, chartered mediator and workplace dispute consultant with extensive experience in conducting inquiries. She is also a harassment consultant for the University of Winnipeg, Red River College and the City of Winnipeg. As a lawyer, Ms. Levine has specialized in, among others, the areas of criminal, labour and corporate law. She obtained a Bachelor of Arts from the University of Winnipeg and a Masters of Arts and a Bachelor of Law, from the University of Manitoba. She has a weekly radio column on Ethics and Law on CBC Winnipeg.



Part Time Member
Wendy E. Wadden

Wendy E. Wadden was appointed as part time Member of the Board on March 31, 2000.

Wendy E. Wadden, from Sydney, Nova Scotia, is a lawyer in private practice. She is the head instructor in the Paralegal Program, an instructor in the School of Business and the School of Science and Technology at the University College of Cape Breton. She is a member of the Nova Scotia Barristers' Society, the Cape Breton Barristers' Society, and the Regional Assessment Appeals Court (Eastern Division). She is also a member of the board for a community organization known as "Second Chance", a program designed to assist in responding to family violence by helping the batterer. She obtained a Bachelor of Commerce (Honours) and a Bachelor of Law from Dalhousie University.

MANAGEMENT STAFF

Executive Director and Director, Grievance Analysis and Operations

Denis Labrie

In January 2001, Mr. Denis Labrie joined the Canadian Forces Grievance Board, assuming the duties of Director, Grievance Analysis and Operations. Since March 2001, he has also performed the duties of the Executive Director position, with primary responsibility for overseeing the fulfillment of the Board's corporate strategies and operations.

From August 1998 to December 2000, Mr. Labrie occupied the position of Chief of Language Operations and Renewal (NCR), Language Training Canada, where he played a key role in the strategic reorientation of the organization. Prior to that, he was recruited by the Public Service Commission in June 1997 to manage processes related to the pre-qualification program for Assistant Deputy Ministers and accelerated senior executive development.

Denis Labrie was a member of the Canadian Forces from 1975 to 1997, where he held a number of senior management positions. Among them were the positions of Director of Administration for the Canadian Forces Base in Saint-Jean and Director of Administration for the Royal Military College, at the same base. During this period, he was intimately involved in the strategic realignment of these two organizations, as part of the Canadian Forces' staff reduction program.

Director, Legal Services and General Counsel

Jacques Lavoie

Jacques Lavoie started his career with the federal government in 1982 when he joined the Royal Canadian Mounted Police (RCMP) and was first posted to the Greater Vancouver Area in British Columbia. Later, he practised law in the private and public sectors where he held positions as Counsel for the Department of Justice, Treasury Board, the Canadian Firearms Centre and the RCMP. He also worked for the Canadian Security Intelligence Service and the Provincial Minister of Public Security in Quebec. He has legal experience in Crown law, criminal law, labour law, administrative law and human rights law, and has appeared before various courts and administrative tribunals. He holds a civil law degree and a common law accreditation and is a member of the British Columbia and Quebec Law Societies. He studied criminology at Simon Fraser University.



GETTING IN TOUCH WITH THE CFGB

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Toll Free: 1 (877) 276-4193

Email: cfgb-cgfc@cfgb-cgfc.gc.ca

Internet: www.cfgb-cgfc.gc.ca

Tentative move date: September 2002

New address: 60 Queen Street 10th Floor
Ottawa, Ontario K1P 5Y7



