

# ANNUAL REPORT OF THE SERVICE PENSION BOARD

2001 - 2002

1. On 14 May 1998, the Service Pension Board (SPB) adopted, as a means whereby trends and problems in pension matters could be brought to the attention of CF authorities, a recommendation to prepare on an annual basis, a report on the annual operations of the SPB. This fourth report covers the period 1 April 2001 to 31 March 2002.

## GENERAL

2. The SPB is created under the *Canadian Forces Superannuation Act (CFSA)*. Section 49 of the CFSA constitutes the Board and determines its duties in the following terms:

*"49. (1) The Minister shall appoint a board, to be known as the Service Pension Board, consisting of a chairman and two other members, one to represent the Canadian Forces and one to represent the Minister.*

*(2) It is the duty of the Service Pension Board to determine, in the case of any contributor who is retired from the regular force, the reason for the retirement, and the Board shall, on the making of the determination, certify in writing the reason for that retirement as determined by the Board.*

*(3) No payment shall be made of any annuity or other benefit under this Act to a contributor who is retired from the regular force except on certification in writing by the Service Pension Board of the reason for the retirement as determined by the Board, and on the certification thereof the contributor shall be presumed, in the absence of evidence to the contrary, to have been retired from the regular force for that reason.*

*(4) Subsections (2) and (3) do not apply to any case or class of cases specified by the Treasury Board."*

3. To understand the purpose of the SPB, the reader must understand the difference between release and retirement. Authorities within the Canadian Forces (CF) decide on all aspects of the release of a CF member, including the item of release as set out in the table to QR&O art. 15.01. The release involves the severing of the member from the institution (the regular force), and requires that a determination be made of the legal obligations of each, the member and the CF as an institution and organization.

4. After a member has been released, the retirement benefit to which the member is entitled must be ascertained. The CFSA determines various benefits not only on the basis

of years of service, but also most importantly on the basis of reasons for retirement. As these reasons for retirement do not always perfectly match the CF items of release, the SPB must determine the reason for retirement on the basis of the circumstances leading to the release.

5. Certain circumstances lead directly to obvious retirement benefits, for example release upon reaching retirement age, or upon disability as certified by the CF medical authorities. A Treasury Board directive made pursuant to ss. 49(4) of the CFSA exempts these obvious cases from being submitted to the SPB for its review and decision. The more difficult cases require that the SPB exercise its discretion within the limits of the law to arrive at the appropriate reason for retirement, and thus the appropriate retirement benefit under the CFSA. This is in particular the case with the "economy or efficiency" retirement benefit.

## **RESPONSIBILITIES OF THE SERVICE PENSION BOARD**

6. As stated in ss. 49(2) of the CFSA, *"It is the duty of the Service Pension Board to determine, in the case of any contributor who is retired from the regular force, the reason for retirement..."*

7. Determining the reason for retirement involves an analysis of the circumstances which lead to the release from the regular force, in order to attribute to each individual the reason most appropriate to his circumstances from amongst the list of reasons stipulated in ss. 16 to 22 of the CFSA.

8. The circumstances are disclosed in a form prepared by the Director Military Careers Administration Resource Management 3-2-3 (DMCARM 3-2-3), a directorate within ADM (HR-Mil). Sometimes, the SPB wishes to go beyond the material prepared by DMCARM 3-2-3 to better analyse and understand nuances of a case. The SPB then requests additional information, which it obtains either through reading relevant parts of an individual's personal file, or through requesting specialist advice, such as requesting an opinion from the Director Medical Policy (DMedPol).

9. When faced with a difficulty of interpretation of the CFSA, the SPB can request a legal opinion; which then serves to establish additional guidelines for future cases and for the use of DMCARM 3-2-3 in preparing the summary for each case. Precedents are thus developed over the years, which serve to guide not only the SPB but also the CF.

10. While the SPB enjoys a certain measure of discretion, it must use this discretion legally. The SPB could not award a specific retirement benefit merely because someone requests it or because it appears more generous than another. The SPB must ensure that the circumstances of each individual released meet the criteria set out by the CFSA. When a doubt occurs between two specific benefits, the SPB looks for additional facts if they exist, for expert advice when warranted, and sometimes for a legal interpretation of the CFSA provisions involved. It then determines the reason for retirement, and in so

doing, will be sympathetic to the person whose benefit is at stake, but always within the confines of the Act.

## **OBJECTIVITY**

11. The task imposed upon the SPB arises from an Act of Parliament. The duty of the SPB is to determine reasons for retirement on the basis of criteria established by Parliament through the CFSA. The members of the SPB are appointed by the Minister of National Defence (MND) and consist of a neutral chairman, a representative of the MND and a representative of the CF. The SPB thus has an important duty to fulfill as a neutral and objective body tasked with implementing the benefits set out by Parliament in the CFSA.

## **MEMBERSHIP**

12. The last appointment made by the MND pursuant to ss. 49(1) of the CFSA was made on 22 September 2000.

13. The MND reappointed as the Chairman the Judge Advocate General (JAG), or in his absence, the Deputy Judge Advocate General/Chief of Staff.

14. The MND reappointed as his representative the officer holding the position of Director General Compensation and Benefits (DGCB) or, in the absence of DGCB, the Director of Pensions and Social Programs (DPSP).

15. The MND reappointed as the CF representative the officer holding the position of Director General Military Careers (DGMC), or, in the absence of DGMC the Director of Senior Appointments (DSA).

16. A legal officer from Pension and Finance Legal Services (P&FLS) is the secretary of the SPB.

17. The list of members of the SPB for the year 2001 - 2002 is attached as Annex A.

## **HISTORICAL BACKGROUND**

18. The history of the SPB goes back to 1901, when the *Militia Pension Act* was adopted. The SPB's purpose was then quite differently focused, as disclosed by s. 11 of the then *Militia Pension Act*:

*"11. No pension shall be granted to any militiaman unless a board composed of three officers, the rank of one of whom shall not be lower than that of major, has certified to his length of service and conduct, and that evidence has been adduced before it which justifies the granting of a pension under this Act."*

19. This older provision remained in effect through the *Defence Services Pension Act* and the *Defence Services Pension Continuation Act*, until the CFSA as it is now known came into effect in 1959. Section 20 of the first version of the CFSA in 1959 is the same as the current version of s. 49 CFSA, quoted in para 2 above. The SPB as it is now known has thus been with us for forty-three years.

20. To reduce the number of cases that require a determination by the SPB, the Treasury Board has exempted the majority of routine cases from the necessary review by the SPB. These cases are dealt with by DMCARM 3-2-3 pursuant to a TB Minute dated 28 May 1969. The cases enumerated in the TB Minute consist of those cases where the reason for retirement and the pension benefit payable are prescribed by statute and do not require the exercise of discretion by the SPB.

## **PROCEDURE**

21. When members are released from the regular force, their personal file is referred to DMCARM 3-2-3; whose staff prepares, on the basis of the information contained in it, a document titled "CANADIAN FORCES SUPERANNUATION ACT RECOMMENDATION FOR BENEFIT." The Recommendation for Benefit summary prepared by DMCARM 3-2-3 is written in the official language of the concerned member. This allows more openness should this individual wish to consult his record. The summary is sent to P&FLS, whose staff administers the SPB secretariat.

22. The SPB meets approximately once every five to six weeks and met nine times in the reporting year (see Annex B). The secretary prepares the agenda for each meeting of the SPB, consisting on average of 75 cases per meeting, and distributes the cases to each member of the SPB approximately one week prior to the SPB meeting. Members thus have the recommendations with which they may disagree, or those, which require in depth discussion at the meeting. There are on average six to eight cases, which require such discussions at each meeting.

23. To ensure the tracking of cases and the keeping of reliable records, cases are numbered and registered on a computer-listing program specific to the SPB. After each meeting, the secretary produces the SPB certificates, which certify the reason for retirement (see Annex C) and then forwards them to the Director Accounts Processing, Pay and Pensions (DAPPP) for action.

24. Realizing time was critical for individuals waiting to receive their benefits, the SPB introduced in 1999 two changes to streamline and expedite the process. First, where scheduling permitted, the SPB increased its meetings to once a month, and second, introduced the requirement that it see all cases within six months of a member's release date. In addition, DMCARM 3-2-3 was tasked with providing to the SPB written reasons explaining why any case was not submitted within the six-month time limit.

25. The SPB normally considers individual cases on the basis of the documentation received through DMCARM 3-2-3. In addition to the information contained in the

recommendation summary the SPB has also considered arguments or pleas submitted by released members. These individual concerns may come to the attention of SPB members or the secretary directly through phone calls or letters or through the chain of command.

26. While there are no written rules or regulations pertaining to the SPB meetings, the evolution of the law, particularly in the last few years with an emphasis on procedural fairness, may lead to situations where certain individuals may request to be heard in person to argue their case. This occurred at least once in the past. While the CFSA is currently silent on such a possibility, the SPB has directed the secretary to the SPB to canvass other federal tribunals on their procedures and to prepare suggested procedural guidelines for the SPB.

27. At the other extreme, given the time constraints imposed upon each member of the SPB, when it is impossible to reconcile the agendas of the members and the nature of the cases to be considered is such that the recommendations submitted by DMCARM 3-2-3 are easily concurred with by the members, the SPB may hold a Secretarial Meeting. When the meeting is held secretarially, members of the SPB review independently the recommendations submitted, and send their opinions to the secretary in writing. When all members agree with the recommendation and there is no requirement to discuss a case in depth, then the cases agreed with by all members are approved. Those cases requiring discussion are deferred until the next opportunity when the members can meet. Since the changes, discussed in para 24 to expedite the process were implemented, there has been only one requirement to hold a Secretarial Meeting. This occurred as a result of the tragedy of 11 Sep 2001.

#### **REASON FOR RETIREMENT**

28. With the removal in 1999 of "misconduct" as a reason for retirement, there are now seven different reasons for retirement under the CFSA:

- a) having reached compulsory retirement age (CRA) and having been released for any reason other than disability (s. 16 CFSA);
- b) having completed an Intermediate Engagement (IE) with at least 20 years of service, not having reached retirement age and not serving on an Indefinite Period of Service (IPS) (ss. 17(1) CFSA);
- c) having completed a Short Engagement (SE) with less than 20 years service, and not serving on an IE or IPS (ss. 17(2) CFSA);
- d) compulsory retirement due to having become disabled (ss. 18(1) CFSA);
- e) compulsory retirement to promote economy or efficiency (EorE) before having reached retirement age (ss. 18 (2) CFSA); and

f) any other reason (OR) than described above (ss. 19(1) CFSA).

29. Depending on the reason for retirement, the following different pension benefits are applicable:

a) Having reached compulsory retirement age (s. 16 CFSA) entitles a member with:

i) 3 years or less service, to a return of contributions,

ii) more than 3 years, but less than 10 years service, to the greater of a return of contributions or a cash termination allowance, or

iii) more than 10 years service, to an immediate annuity.

b) Having completed an IE, (s. 17(1) CFSA) entitles a member to an immediate annuity on the basis of 20 or more years of service.

c) Having completed a SE (s. 17 (2) CFSA) entitles a member with:

i) 10 or more years of commissioned service, at the member's choice to a return of contributions or a deferred annuity, or

ii) a return of contributions in all other cases.

d) Having been compulsorily retired due to having become disabled entitles a member with:

i) less than 10 years service, the greater of a return of contributions or a cash termination allowance, or

ii) 10 or more years service, to an immediate annuity.

e) Having been compulsorily retired to promote economy or efficiency (s. 18(2) CFSA) entitles a member with:

i) 3 years or less service, to a return of contributions,

ii) more than 3 years, but less than 10 years service, the greater of a return of contributions or a cash termination allowance, or

iii) more than 10 years, but less than 20 years service, a choice between a return of contributions or a deferred annuity, or, with the consent of the MND, an immediate annuity penalized up to 30% depending on years of service, the penalty applying until age 65, or

iv) more than 20 years of service, to an immediate annuity;

f) Having retired for any other reason (this category usually applies to voluntary releases, or to personnel released under items 2(a), and 5(d) or (f) of the table to QR&O art. 15.01) entitles a member with:

i) less than 10 years service, to a return of contributions;

ii) more than 10, but less than 20 years service, to a choice between a return of contributions or a deferred annuity, or

iii) more than 20, but less than 25 years service.

A) if an officer, to an immediate annuity reduced by 5% for each full year by which his age at the time of retirement is less than the retirement age applicable to his rank, or

B) if an NCM, to an immediate annuity reduced by 5% for the lesser of either each full year less than 25 years of service, or each full year by which his age at the time of retirement is less than the retirement age applicable to his rank.

iv) more than 25 years service,

A) if an officer, to an immediate annuity reduced by 5% for each full year by which his age at the time of retirement is less than the retirement age applicable to his rank, or

B) if a NCM, to an immediate annuity.

g) Having retired after having completed an IE and while serving on an IPS (s. 20 CFSA) entitles a member to receive upon retirement the benefit to which he was entitled after having completed his IE, increased to a certain extent as provided for in regulation 16 of the *Canadian Forces Superannuation Regulations* (CFSR). An example of the calculation is found in Appendix 1 of Annex A to CFAO 212-1.

## **IMPORTANT ISSUES ENCOUNTERED BY THE SPB DURING THE REPORTING YEAR**

30. An issue that had been of concern to the SPB for a number of years was finally put to rest. Section 21 of the CFSA had the potential to negatively affect the annuity entitlement of officers released after having completed a fixed period of service, other than SE or an IE. An amendment to the definition of SE in the Canadian Forces Superannuation Regulations in Feb 01 precluded the application of s. 21 to commissioned officers on periods of fixed service of nine years or less. The amendment, together with a

change to a member's TOS to an SE from a FPS, will ensure that s. 21 will not adversely affect a contributor's pension benefit.

31. A special meeting of the SPB, with ADM (HR-Mil) and DG Fin in attendance, was held on 1 May 01, to provide a better understanding of the consequences of the amendment and to determine whether recovery action would be taken in respect of any possible overpayments made contrary to s. 21. ADM (HR-Mil) concluded, based on a legal opinion from P&FLS and advice from DG Fin, that recovery action was not warranted. ADM (HR-Mil) also directed, since the pension program policy was within his area of responsibility, that DPSP would be responsible for determining the applicable pension benefit payable to the contributor.

32. The SPB had the opportunity to consider under what circumstances they had the authority to rehear a case where they had previously made a determination. The contributor had been released under item 5c, FRP and the reason for retirement was determined to be ss.18 (2). Unbeknown to the Board, the contributor had been, prior to release, under investigation for a serious offence and subsequently charged, before the SPB determination. As the result of an Administrative Review, the contributor's release item was changed to item 2a and his case was re-submitted to the SPB; with a recommendation that the reason for retirement be changed to ss.19 (1). This would have meant the contributor's entitlement to pension benefits would have drastically decreased and he would have been subject to recovery action for an over payment of benefits.

33. The SPB had the applicable law reviewed and concluded that in this case, there was no authority to rehear the case. However, the Board did conclude there would be occasions on which previous decisions could be revisited. There was authority in case law to rehear a decision to correct a clerical error or accidental error or omission or to redress a matter in the interest of justice or equity. Accordingly, the Board determined that there was authority to revisit cases where a new decision, based on evidence not previously available, would result in a more equitable and just decision.

34. The practical ramifications of this decision are:

a) when a contributor's pension benefits would be adversely affected by a change to the reason for retirement, resulting from a change in the contributor's release item, the SPB will not rehear the case. The pension benefit will remain the same.

b) When a contributor's pension benefits could be advantageously affected by a change in the reason for retirement, resulting from a change in the contributor's release item, the SPB will rehear the case. However, this does not guarantee a positive change in the pension benefits, as it would be dependent on the determination of the SPB.

35. A contributor, originally released pursuant to item 5f, was determined by the SPB to have retired for other reasons in accordance with ss.19 (1). As the result of his



complaint to the Canadian Human Rights Commission, concerning his release item, the member's release item was changed to item 3b. Service authorities and the contributor were in agreement that the case be resubmitted to the SPB. The Board, on rehearing the case and having received additional information, determined that the most appropriate reason for retirement was compulsorily to promote economy or efficiency pursuant to ss.18 (2).

36. The SPB, in reviewing cases where the contributor had completed a BE but was released under item 5f for unacceptable conduct, determined that where the CF had initiated action to release the individual, prior to completion of the BE, the reason for retirement was for other reasons, ss.19 (1). This meant that the contributor was only entitled to a return of contributions and did not have the option of receiving a cash termination allowance in lieu.

37. The Board had the opportunity to revisit the situation where officers who, as a result of various factors, were training failures. The Board had previously found that if the training failure resulted from aptitude problems and not attitude problems, the reason for retirement was ss.18 (2). This entitled the contributor to receive a gratuity pursuant to CBI 206.2. On revisiting this area, the Board determined that if the contributor who was the training failure was offered another MOC for which he was suitable, the refusal to accept the offer would result in a ss.19 (1) reason for retirement. However, if the contributor accepted the new MOC and was still found unsuitable, the reason for retirement would be ss.18 (2).

38. The Board again confirmed that ss.18 (2) was the most appropriate reason for retirement where the factors that lead to release were not within the contributor's control, be they compassionate, character disorder, or training failure. In situations where the factors leading to release were within the member's control, (attitude not aptitude) i.e., alcohol, drug involvement, financial mismanagement or training failure, the most appropriate reason for retirement was ss.19 (1).

## **OTHER MATTERS**

39. As the result of statutory revisions to the CFSA since 1969, the TB Minute of 28 May 1969, which specified that certain classes of cases required no determination or certification by the SPB, required updating and amending. A submission is being made to the Treasury Board seeking the necessary amendments. Also, since approximately 70% of the cases presently submitted to the SPB for determination are contributors released under item 5c on completion of an IE, entitling the contributor to an immediate annuity and do not require exercise of discretion by the SPB, it will be recommended to the Treasury Board that these cases no longer come before the SPB.

40. The Annual Report has been placed on the JAG Website on both the Intranet and Internet. This will allow greater access to both serving members and the public.

41. Mr. John Grenon, who had ably assisted the SPB for more than ten years, left the Board in August and was replaced by Ms. Johanne Penney. Mr. Grenon, as DMCARM 3-2-3, had been responsible for preparing the synopsis and recommendations to the Board.

## CONCLUSION

42. The SPB has had another challenging and productive year. The requirement to address challenging issues and cases continue to be dealt with in a timely manner.

43. This is the fourth annual report and it is hoped that the promulgation of annual reports will be of assistance in understanding the nature of the role played by the SPB under the CFSA.

44. Dated this        day of        2002 at Ottawa.

J.S.T. Pitzul  
MGen  
JAG

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L.J. Colwell  
Col  
DGCB

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J.M.J. Leclerc  
BGen  
DGMC

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## ANNEX A

### LIST OF SPB MEMBERS FROM 01 APRIL 2001 TO 31 MARCH 2002

#### Chairman

MGen J.S.T. Pitzul, JAG (May 1998 to present)

#### Representing the Minister

Col L.J. Colwell, DGCB (July 2000 to present)

#### Representing the Canadian Forces

BGen J.M.J. Leclerc, DGMC (September 2000 to March 2002)

**ANNEX B**

**SERVICE PENSION BOARD MEETINGS  
FOR PERIOD 01 APRIL 2001 TO 31 MARCH 2002**

<b><u>Pension Board No.</u></b>	<b><u>Number of Cases</u></b>
<b>12 April</b>	<b>65</b>
<b>29 May</b>	<b>90</b>
<b>28 June</b>	<b>31</b>
<b>22 August</b>	<b>108</b>
<b>04 October</b>	<b>96</b>
<b>15 November</b>	<b>115</b>
<b>19 December</b>	<b>79</b>
<b>12 February</b>	<b>50</b>
<b>12 March</b>	<b>60</b>
<b>Total</b>	<b>695</b>

**\* Please note the discrepancy between the Grand Total on the Certificates Report and the total Number of Cases stated above is due to deferred cases, which are examined at more than one (1) SPB meeting.**

**ANNEX C**

**SPB CERTIFICATES REPORT**

Reporting from 30 April 2001 to 31 March 2002

<b>Certificate</b>	<b>CFSA Reason for Retirement</b>	<b>Item of Release</b>	<b>Total</b>	<b>Percent</b>
CRR	16(c)	5(c)	1	0.14%
CRR	16(c)	5(f)	1	0.14%
EorE	18(2)	4(b)	7	1.01%
EorE	18(2)	5(c)	81	11.74%
EorE	18(2)	5(d)	34	4.93%
EorE	18(2)	5(f)	1	0.14%
I/E	17(1)	5(c)	471	68.26%
I/E	17(1)	5(d)	2	0.43%
I/E	17(1)	5(f)	3	0.29%
I/E w/o IPS	20	5(d)	1	0.14%
I/E w/o IPS	20	5(f)	2	0.29%
OR	19	1(c)	3	0.43%
OR	19	2(a)	9	1.30%
OR	19	5(d)	22	3.19%
OR	19	5(f)	46	6.67%
S/E	17(2)	5(c)	5	0.72%
S/E	17(2)	5(d)	1	0.14%
<b>Grand Total</b>			<b>690</b>	