

“OUR MISSION 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 WORKING CONDITIONS

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 2000

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 VALIDATING GRIEVANCES REFERRED TO IT BY THE

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



CFBI

Canada

March 30, 2001

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 first annual report on the activities of the Canadian Forces Grievance Board for the year 2000 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
Chair



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GETTING IN TOUCH WITH THE CFGB



Message from the Chair

“I FEEL THAT THE BOARD HAS AN IMPORTANT ROLE TO PLAY IN RESOLVING THE GRIEVANCES OF SERVICE PERSONNEL, NOT ONLY IN TERMS OF ITS OBLIGATIONS UNDER THE LAW BUT ALSO BY SHOWING COMPASSION AND RESPECT FOR SERVICE PERSONNEL ...”

Paul-André Massé, Chair

The first report on the first year of a new organization is always a challenge. We at the Canadian Forces Grievance Board (CFGB) do not have a long history to draw on or previous performance outside the Canadian Forces (CF) to use as a comparison. In many ways, we are breaking new ground in an important area for Canada’s military community.

The CFGB began on March 1, 2000 but it was not until June 15 of the same year, with the coming into force of Chapter 7 of the *Queen’s Regulations and Orders for the Canadian Forces* (QR&O), dealing with the regulatory aspects of the grievance process, that the Board was able to officially begin its work. Before this date our efforts were focussed on putting the CFGB on a solid footing. Considerations included office space, staffing and budgetary requirements.

Also during this period, CFGB members and staff were preparing for their new duties. Training sessions for all personnel were held over a two-week period between May 23 and June 2 to prepare us for the big challenge ahead.

The transition from an internal grievance process to an external review body such as the Board is a one-time challenge that dominated our work in the past year.

Our first duty was to receive the grievances filed under the previous process as well as new grievances under the modernized reforms that established the CFGB and its mandate.

At the launch of the CFGB, I spoke of the impetus behind the founding of the Board. “The establishment of the Grievance Board demonstrates the importance both the Government and the 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.”

Now that the Board has begun its first year of operation, those words resonate even louder. Our role is just one component in modernizing the military justice system and in contributing to the efficiency and transparency of the grievance process in order to better serve CF members, thus enhancing Canadians’ esteem for the Canadian Forces in their work here, at home and abroad.

Our obligation is to carry out an objective, impartial, and expeditious review of the grievances referred to us under the *National Defence Act (NDA)*. The Board makes recommendations to the Chief of the Defence Staff (CDS) with the goal of helping him redress grievances.

This first report of the Board covers the calendar year ending December 31, 2000.

The Board is grateful to the Minister of National Defence, the Honourable Art Eggleton, PC, MP, the Chief of the Defence Staff, General Maurice Baril, CMM, MSM, CD and Deputy Minister Jim Judd for providing the initial means that assisted the Board to carry out its mandate of reviewing grievances and to act as a totally independent administrative tribunal.

In the coming months our goal is to completely clear the grievances filed under the previous process and move forward with new grievances referred to us by the CDS. Under the new two-stage process, new cases will come quickly to the Board to be dealt with in the most efficient, impartial and humane manner by treating the grievances and the grievors¹ in the spirit of fairness, compassion and respect for the individual rights of CF members.

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 Forces.

Paul-André Massé
Chair, Canadian Forces Grievance Board

¹ The Board has adopted the spelling, “grievor”, of the *National Defence Act*. In the *Oxford Dictionary* it is spelled “griever”.

Acknowledgements

Building an organization, from the ground up, can only be achieved through the concerted efforts of many individuals. Teamwork, dedication and goodwill are essential ingredients in such an undertaking.

The CFGB would like to acknowledge, in this first annual report, the contribution of the Department of National Defence and the Canadian Forces. Until the Board obtained its own authorities, the Department made available temporary facilities and staff. In addition, they imparted expertise and professional services to the Board pertaining to the legal and administrative aspects of military grievances, financial management, as well as human resources services. These services were provided in the spirit of allowing the Board to act as an independent organization, shielded from any outside interference.

Special mention and thanks go to: Mr. Robert M. Émond, Assistant Deputy Minister (Finance and Corporate Services); Mrs. Monique Boudrias, Assistant Deputy Minister (Human Resources – Civilian); Lieutenant-General Christian Couture, CMM, CD, Assistant Deputy Minister (Human Resources – Military); Lieutenant-Colonel Dave Belovich, CD, Director, Canadian Forces Grievance Administration, and Mr. Jacques LaRose, CFGB's first employee and Chief, Administrative Services.

The Chairperson wishes to use this opportunity to publicly express his gratitude to Vice-Chair Diane Laurin. Her professionalism and dedication were invaluable in guiding the Board's work throughout 2000, from its initial start up to fulfilling its legislative mandate.

CHAPTER 1

About the Canadian Forces Grievance Board (CFGB)

HISTORY

The CFGB is the product of a number of inquiries and study groups that dealt with, among other things, issues of military justice in the Canadian Forces. The Special Advisory Group, chaired by the Right Honourable Brian Dickson, former Chief Justice of the Supreme Court of Canada, submitted two reports on March 14, 1997 and on July 25, 1997. The Somalia Commission of Inquiry, chaired by the Honourable Justice Gilles Létourneau, submitted its report to the Government on June 30, 1997. In response to the recommendations from the special Advisory Group and the Somalia Commission of Inquiry, the government introduced amendments to the *National Defence Act* aimed at modernizing and strengthening the military justice system.

Included in those amendments was the grievance process. Prior to reforming the military justice system, the grievance process was perceived as involving too many levels of review that left the perception 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.

In December 1998, the Government of Canada introduced legislation that contained comprehensive amendments to the *National Defence Act* that would²:

- “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.

² Amendments to the *National Defence Act*, Background and Amendment Highlights, p. 14, Department of National Defence, December 1997.

MISSION AND MANDATE

“OUR MISSION IS TO CONTRIBUTE TO THE INTEGRITY OF THE CANADIAN FORCES GRIEVANCE PROCESS. TO THIS END, THE BOARD CONDUCTS AN INDEPENDENT EXTERNAL REVIEW OF THE GRIEVANCES REFERRED TO IT UNDER THE LAW AND SUBMITS ITS RECOMMENDATIONS AND FINDINGS TO THE CHIEF OF THE DEFENCE STAFF.”

Paul-André Massé, Chair

- 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 for not following the Board’s findings and recommendations.
- The Board would have the authority to conduct oral hearings and compel the attendance of witnesses and the production of documents.
- The Board would report annually to the Minister and the report would be tabled in each House of Parliament.”

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.

CHRONOLOGY OF EVENTS

- **DECEMBER 1998** – The Government of Canada introduces legislation to amend and modernize the *National Defence Act*
- **NOVEMBER 1, 1999** – Chair, Paul-André Massé and Vice-Chair, Diane Laurin are appointed by Order in Council
- **MARCH 1, 2000** – CFGB comes into force



- **MARCH 1, 2000**
The Chair and the Vice-Chair take their oath of office at the Federal Court.

- **MARCH 21, 2000** – Ms. Naomi Z. Levine is appointed as Part-Time Member of the Board by Order in Council.
- **MARCH 31, 2000** – Ms. Wendy E. Wadden is appointed as Part-Time Member of the Board by Order in Council.
- **JUNE 2, 2000** – The Chair administers the oath of office to Ms. Naomi Z. Levine and Ms. Wendy E. Wadden, Part-Time Members of the Board.
- **JUNE 14, 2000** – The Chair, Mr. Paul-André Massé, and the Vice-Chair, Ms. Diane Laurin, officially launch CFGB at a news conference in Ottawa.
- **JUNE 15, 2000** – Chapter 7 of the QR&O, dealing with the regulatory aspects of the grievance process, comes into force.
- **JUNE 15 – SEPTEMBER 1, 2000** – Approximately 160 grievances filed under the previous process are transmitted to the CFGB.
- **JULY 1, 2000** – CFGB moves to permanent headquarters.
- **AUGUST 2000** – Treasury Board spending authority and classification delegation received.
- **SEPTEMBER AND NOVEMBER 2000** – CFGB strategic planning session.
- **DECEMBER 6, 2000** – Staffing Authority granted by the Public Service Commission.
- **DECEMBER 2000** – CFGB delivers first recommendations to the CDS.

CHAPTER 2

Quasi-Judicial Framework

THE ROLE OF ADMINISTRATIVE TRIBUNALS

In Canadian society where increasingly higher value is being placed on human rights and freedom, as well as improved quality of life and work, the need for administrative tribunals such as the CFGB is apparent. Administrative tribunals provide a mechanism outside the courts for the speedy resolution of complex matters.

Acting independently of the government, administrative tribunals have the power to make recommendations or decisions through enabling statutes of Parliament. Such powers permit the tribunal itself to determine the scope of rights and obligations in a particular field of expertise. Further, these powers are intended to 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, as public policy choices are taken into account that may have a significant impact on individual rights and obligations.

THE CFGB CONTEXT

The CFGB's mandate is to make recommendations on grievance and labour law issues in the context of military law. Labour relations in the military are regulated by the *National Defence Act* and related regulations. The expertise needed to understand and make decisions in the complex environment of the Canadian Forces involves many legal areas such as military, labour, tort and crown law.

It is important to understand that Board members are faced with issues that previously have never been submitted to an external review process. 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.

“AS IT ASSUMES ITS LEGAL OBLIGATIONS WITH COMPLETE OBJECTIVITY AND IMPARTIALITY, THE CANADIAN FORCES GRIEVANCE BOARD MUST ALSO OFFER CONSTRUCTIVE SOLUTIONS THAT MAKE IT POSSIBLE TO RIGHT WRONGS AND THE HARM SUFFERED BY FORCES PERSONNEL AND THEIR FAMILIES.”

Paul-André Massé, Chair

ance, as the conditions of employment in the Canadian Forces are unilaterally set by regulations. The grievance process within the military is entirely regulated and subject to the authority of the Chief of the Defence Staff and, to a certain extent, may involve the exercise of Royal Prerogative.

The Board must ensure that its findings and 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*. Since members of the military are subject to conditions of work and rules of employment that are essentially regulated and not negotiated, the Board must consider this complex environment and any legal issues before making a final recommendation.

The Board's findings and recommendations may have an impact on legislation as they may influence changes or amendments. The Board members must also be aware of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O), the *Canadian Forces Administrative Orders* (CFAO) and Treasury Board policies, when interpreting legislation and regulations. Canadian courts have also rendered a number of decisions on a wide range of related subjects, that should be considered when the Board conducts its work. In conclusion, the CFGB operates in the very challenging environment of an administrative tribunal in Canada.

REFORM OF THE MILITARY GRIEVANCE PROCESS

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 working conditions in the Canadian Forces.

Prior to the amendments to modernize the *National Defence Act*, 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 and shorter. The first level is the Commanding Officer of the grievor, or the initial authority, who is in a position to review the grievance and grant redress. Any grievor who is not satisfied with the 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.

TYPES OF GRIEVANCES REFERRED TO THE BOARD UNDER THE LAW

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 other types of grievances to the Board for review.

GRIEVANCE REVIEW PROCESS

The Board reviews grievances using a variety of means including analysis, investigation and hearings. Below are the steps followed by the Board when it receives a grievance file from the CDS:

Analysis and Investigation

- The grievor's file, provided by the Canadian Forces, is disclosed to the grievor according to applicable laws. The Board asks the grievor's consent to obtain personal information needed to review the case in accordance with the *Privacy Act*.
- The grievor or his/her representative is invited to submit comments or revisions to the file, as well as being provided with the name of the Grievance Officer in charge of reviewing the case.
- The Grievance Officer reviews the complete case and any additional information provided by the parties. The Officer obtains legal advice to assist in the investigation. Other expert advice may also be sought.

“THE BOARD FULFILLS ITS LEGAL OBLIGATIONS WITH COMPASSION AND AT THE SAME TIME WITH DUE RESPECT FOR THE PRIVACY AND INDIVIDUAL RIGHTS OF CF PERSONNEL.”

Paul-André Massé, Chair

- The Grievance Officer writes a report on the case that summarizes the events, states the facts, and presents an in-depth analysis of the case.
- The Grievance Officer’s report is submitted to, and studied by, one or more members of the Board. The members may ask questions and/or undertake a more in-depth analysis before making recommendations. Once the Board has completed its final review of the case, it presents findings and recommendations to the CDS and the grievor.

Grievance Reviews – Priorities

When reviewing grievances, the 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.

Grievance Reviews – Hearings

A hearing of the Grievance Board would usually be held in private, unless the Chair, having regard to the interests of the persons participating in the hearing and the interest of the public, directed 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 adjudicating 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 Chair 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 3

The Year in Review

GETTING STARTED

The first step was the appointment of the Chair and Vice-Chair on November 1, 1999. Their first task was to set up the Board by defining its operational structure in conformity with its legal mandate. To assist in developing an organizational structure and determining personnel needs, existing models of a similar nature were studied. All the organization requirements that had to be established, and that are described in this Chapter, resulted in a myriad of high-level tasks that had to be juggled in parallel, within a short timeframe.

On the practical side, office space was acquired and configured and then equipped with furnishings, computers, telecommunications and other infrastructure.

Human Resources

The Board received its classification delegation in August and its staffing authority from the Public Service Commission in December. Thanks to the earlier efforts of the Department of National Defence, the Board was able to recruit personnel, especially through secondments. The staff came from other agencies and federal departments and shared related investigation and analysis skills in many diverse areas of experience. These areas included official languages, access to information, military grievances processing, compensation and benefits, revenue, duties and excise. The Board also recruited staff with administrative experience. Finding experienced personnel was a challenge, not only at the analysis level but also at the level of corporate management.

Training

Most of the Board's personnel came from areas with no direct connection to the Canadian Forces and appropriate training was required. The CFGB developed an intensive training program covering such areas as military culture, law and administration. Michel Crowe, a former Assistant Judge Advocate General (Eastern Region), set up the program. In addition, other military experts from the Canadian Forces and the Department of National Defence assisted in the training. The Board is grateful for sharing their time and experience.

Members and staff from the Military Police Complaints Commission were invited to attend those parts of the program that were appropriate to their needs.

In addition, the Chair, Vice-Chair and part-time members of the Board took part in a training program for administrative tribunal members, provided by the Canadian Centre for Management Development.

Budget

Another priority task was the securing of funds for the Board's operation. The Board was provided a unique opportunity to prepare a zero-based budget, using activity-based budgeting. The complete analysis that was conducted to arrive at required funding was appended to the Treasury Board submission requesting funds. Consequently, the Board secured a budget of \$9,065K for fiscal year 2001-2002 and \$6,134K for its on-going operations in future years. While awaiting funding from Parliament, the Board operated on existing allocations from the Department of National Defence.

The Board's estimated budget for its first year of operations was \$8.4 million, however the anticipated expenditure to March 31, 2001, is \$5.2 million. The variance is due mainly to payroll savings because of lower than expected staffing levels. It was difficult to adjust staff requirements to operational needs since the first year's workload could not be easily predicted. Furthermore, the grievance regulations did not come into effect until mid-June, therefore the treatment of grievances could only commence at that point. In addition, no hearings took place between June and December. The anticipated total expenditures budget to March 31, 2001 is presented at Appendix 1.

A memorandum of understanding with Public Works and Government Services enabled the Board to employ tested financial practices that will prepare the Board to adopt the Common Departmental Financial System that will be widely used throughout the federal government as of April 1, 2001.

Shared Services

As a fiscally responsible organisation, the Board entered into a memorandum of understanding with the Military Police Complaints Commission for shared services. As a result, the two organizations share common facilities: a multi-function room used for meetings and hearings, a server room for the computer services network and a reading room to accommodate persons filing a request under the *Access to Information Act*. They also share the cost of a common library service. In addition, the two agencies contracted out the development of a common computer network.

MISSION RELATED ACCOMPLISHMENTS

In addition to establishing a functioning operation, with staff and budget, the most critical requirement was a structure to receive, review and make recommendations regarding grievances the Board would be handling. Without a solid foundation on which to operate, the future of the new organization would be in jeopardy.

Several essential components had to be designed and implemented and doing so was both challenging and time consuming.

In designing the structure, it was necessary to take into consideration the fact that there existed the potential of dealing with approximately 400 outstanding grievances from the previous system, in addition to a yearly number of between 250 and 350 new grievances.

Complicating matters further was the fact that it was not known at what rate the grievances from the former system would be received at the Board. Therefore, it was necessary to think of two modes of operation, one to deal with the grievances from the previous system and one to deal with the normally expected workflow, under the new system. This impacted greatly on staffing decisions.

The components that needed to be established in order to carry out the Board's mandate were: a central receipt and registry; a research and analysis function; legal services and a comprehensive database and tracking system. The first three are each described briefly below. Linking all of these components together was the requirement for a systematic workflow process and procedures so that all grievances could be handled in an expeditious and orderly manner.

The Registry

The registry function ensures the integrity of the process by monitoring and tracking all documents and information contained in a grievance file. The Registrar established the registry and administers its activities and services in accordance with the Board's rules of procedure, which are consistent with other administrative tribunals.

The Registrar plays a key role by also providing the registry's expertise to the Board during hearings; drafting, editing and issuing legal documents such as notices and subpoenas on behalf of the Board. The registry is an essential part of the Board and an integral part of the grievance review process, as all grievance files are initially processed and registered by the Registrar.

Research and Analysis

After conceptualising and establishing the research and analysis framework, it was necessary to hire grievance officers. It was essential that they be properly trained to understand not only the rules and procedures governing grievances in the Canadian Forces but also the military culture. Those hired came from multidisciplinary backgrounds in areas such as human rights, industrial relations, legal and finance.

In June, with seven grievance officers on staff, 107 grievances from the former system were received, many of them dating back to the mid-nineties. They were distributed among the officers, according to individual areas of expertise, however, teamwork and exchange of ideas were encouraged. Such an approach favours consistency and coherence in the treatment of like grievances.

From June to December, the number of grievances received from the previous system increased by an additional 84, bringing the total to 191. This necessitated the hiring and training of additional grievance officers. Only a few of the grievances received were from the new, two-level review system.

Legal Services

A Director of Legal Services and four lawyers were hired to provide the Board with legal advice regarding the interpretation of the legislation and regulations, thus ensuring appropriate implementation of the legislation in the grievance review process. The lawyers had to be provided the necessary training and tools to provide legal advice, taking into consideration the military context.

Legal services are involved during the review process where counsel identifies legal issues and provides advice to the grievance officers and Board management.

In this regard, Counsel is responsible for providing relevant jurisprudence and legal literature for the Board's use. To this end, a shared law library has been established, in cooperation with the Military Police Complaints Commission. The lawyers also have access to the library serving the Judge Advocate General in Ottawa.

Among implementation activities, the Vice-Chair and General Counsel met with the Judge Advocate General, officials from the Department of Justice and representatives from other administrative tribunals.

In addition, rules and procedures were developed in accordance with the *National Defence Act* and a database, containing jurisprudence relating to subjects such as military, administrative and civil law, was created.

It is noteworthy that counsel has been called upon to examine questions of law that often have never been the subject of a judicial decision by the Canadian courts.

Status of Grievances

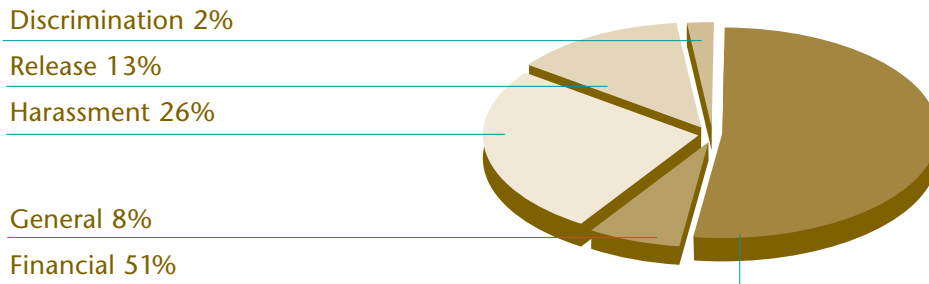
As of December 31, 2000, of the total 191 grievances referred to the CFGB for review, 97 deal with financial matters; 50 with harassment; 25 with releases; 15 with general matters (medical/dental, reversion in rank, termination of service) and 4 deal with discrimination. A distribution diagram is presented on the following page. More specific detail on the nature of these grievances can be found in Appendix 2.

THE CFGB IS CURRENTLY OPERATING UNDER TWO SYSTEMS: THE CURRENT SYSTEM, WHICH REFERS TO THE REVIEW OF GRIEVANCES THAT WERE FILED AFTER THE AMENDMENTS TO THE *NATIONAL DEFENCE ACT* CAME INTO FORCE; AND THE FORMER SYSTEM, WHICH REFERS TO GRIEVANCES THAT WERE BEING REVIEWED AT DIFFERENT LEVELS IN THE CANADIAN FORCES OR WERE AWAITING A DECISION BY THE CDS AT THE TIME THE AMENDMENTS TO THE *NATIONAL DEFENCE ACT* CAME INTO FORCE.

By year-end, thirteen recommendations had been sent to the CDS. In an additional case, it was determined the Board had no jurisdiction. Twenty-two cases were at the Members' review stage and one hundred and fifty-five were at the analysis phase. A representative sampling of cases and recommendations made by the Board are contained in Appendix 3.

The Board anticipates that it will finish reviewing grievances from the former system by the end of fiscal year 2001-2002, provided they are all received by April 1, 2001. It is expected that the CFGB will normally review about 285 grievances a year, which represents between 60% and 80% of all the grievances received by the CDS.

Grievances by Categories



COMMUNICATING AND RELATIONSHIP BUILDING

Outreach Activities

An important part of the Board’s activities in the first year of operation has been to meet the men and women of the Canadian Forces. Members of the Board and senior staff took advantage of as many opportunities as possible, to listen to the concerns of CF personnel, as well as to explain the function of the CFGB and how the grievance process has changed dramatically. Listed below are some of the dates and locations of Board visits.

Orientation Tours

MAY 2000 ■ Canadian Forces Base (CFB) Petawawa

JUNE 2000 ■ CFB Bagotville
 ■ CFB Gagetown
 ■ CFB Halifax

Speaking Engagements and Presentations

JUNE 2000 ■ CFB Cold Lake – two presentations

JULY 2000 ■ Canadian Forces Station (CFS) Leitrim

SEPTEMBER 2000 ■ Conference of the Wing Administrators at DND Headquarters in Ottawa; and
 ■ Staff of the Director General – Land Equipment Program Management, Ottawa

“THE BOARD IS DESIGNED TO ENSURE THAT THE INTEGRITY OF THE PROCESS IS PROTECTED AND THAT MEMBERS ARE TREATED FAIRLY”

*Diane Laurin, Vice-Chair
 visit to CFB Esquimalt*

- SEPTEMBER 2000 ■ Maritime Forces Pacific and Canadian Forces Base Esquimalt
– 6 presentations
- OCTOBER 2000 ■ Royal 22^e Régiment Association, Iberville, QC
- Warrant Officers and Sergeant Mess, Presentation to
the Resource Management Support Clerks, Ottawa
- NOVEMBER 2000 ■ Base Commanders' Forum, Ottawa

Forging Relationships

In support of its mission, the Board also attended the following meetings and conferences:

MAY 2000

Meeting with the Deputy Assistant Secretary, US Army Review Boards

JUNE 2000

Annual Meeting of the Canadian Council of Administrative Tribunals

SEPTEMBER AND OCTOBER 2000

Presentations by the Board to staff of the Ombudsman's Office

OCTOBER 2000

Meeting with the MPCC and the President of the Public Service Commission

NOVEMBER 2000

Meeting with the MPCC and officials of the Privacy Commissioner's Office

Messaging

In order to reach all CF members, a CFGB information leaflet was inserted into the pay statement envelopes of every member in November, explaining the Board's mandate and the new grievance process. Approximately 107,000 were distributed to all members of the Regular Force and Officers of the Cadet Instructor Cadre (CIC). Reserve Units across Canada will also be receiving the leaflet.

Board members have also discussed the Board's role and activities through interviews with military and civilian news media. Articles describing the activities of the Board appeared in the CF Newsletter, *The Maple Leaf*, *The Personnel Newsletter*, and the CFB Esquimalt newspaper, *Lookout*. A general message was issued by the CDS throughout the Canadian Forces, (CANFORGEN 070/00, 151205Z JUN 00) explaining the new grievance process and the creation of the CFGB, as an "independent body."

Another military-related journal cited the creation of the CFGB as the "one major improvement" in the Canadian Forces Grievance Process: "Its [the Board's] independence is enhanced by three factors: it has its own investigative staff [...]; it has its own legal counsel [...]; and it can hold hearings, compel testimony by witnesses, and order the production of documents."

The Board's Web site was launched in October. The site offers information ranging from Board reports and publications to biographical information on its members. This site also provides helpful links to other sites of interest, such as the Canadian Forces Grievance Administration, other administrative tribunals and the provincial Bar Associations. There were 31, 516 visits to the CFGB Web site up to December 31, 2000.

THE BOARD'S WEB SITE WAS LAUNCHED
IN OCTOBER, ALLOWING MEMBERS
OF THE CANADIAN FORCES AND THE
CANADIAN PUBLIC TO RESEARCH
INFORMATION ON THE NEW GRIEVANCE
PROCESS. THERE WERE 31, 516 VISITS
TO THE CFGB WEB SITE UP TO
DECEMBER 31, 2000.

WEB SITE: WWW.CFGB-CGFC.GC.CA
CONTACT INFORMATION:
TOLL FREE NUMBER IN CANADA
AND THE US 1-877-276-4193

CHAPTER 4

A Look Ahead

REINFORCING THE BOARD'S MANDATE

In the coming year the CFGB will be fully functional as an administrative tribunal, with a well-documented grievance review process in place, that can be readily understood by everyone. The Board will follow its five-point strategic plan consisting of sound performance management, knowledge management, effective leadership, communications and professional development. In tandem together, they will support the issuing of fair, equitable, expeditious and objective findings and recommendations. Some examples of the activities to be undertaken are provided below.

SOUND PERFORMANCE MANAGEMENT

Control measures will ensure that the findings and recommendations of the Board are consistent and coherent and that grievances are treated expeditiously. In addition, a feedback mechanism will be implemented, to measure the Board's effectiveness in issuing findings and recommendations. A trend chart will be developed to help identify gaps between anticipated and actual performance, in relation to key factors for success.

KNOWLEDGE MANAGEMENT

The Board will become finely attuned to public and private sector trends in the handling of grievances by participating in and contributing to forums involving administrative tribunals or other forums on matters of labour law and industrial relations. A comparative analysis will be made with similar organizations to define and adopt best practices. A database, containing internal and external precedents in jurisprudence related to the Board's work, will be developed. Keeping up with the body of knowledge of similar work being done in other levels of government and the private sector will be paramount to the Board becoming a national leader with respect to the review of grievances.

LEADERSHIP

The Board will demonstrate organizational leadership, encouraging effective decision making throughout the organization, by adopting a flexible management system. A member of the executive will be designated as a “champion of learning” to ensure that processes are established so that acquired knowledge can be shared by everyone. An organizational values system, consistent with desired results, will be adopted, as well as a code of ethics to guide Board members and employees in their actions. A feedback system will be adopted to ensure continuing improvement of the Board’s practices and processes. These initiatives will not only contribute to improved performance, they will also contribute to quality of life within the organization for all employees.

COMMUNICATIONS

In 2001, the Board will attempt to further reach out to the Canadian Forces and the Canadian public, to tell them about the Board’s existence, role, mandate and how it operates. A comprehensive communications strategy will be developed, however, in the interim, every opportunity will be seized to raise awareness of the Board among military personnel and other stakeholders. Interim activities include tours of the CF bases and establishments, the maintenance of a useful and constantly updated Website and the production of appropriate and effective information materials.

PROFESSIONAL DEVELOPMENT

Inside the Board, a climate of learning and growth will be fostered. As a fundamental underpinning of such a climate, the Board will complete its study of required skills and abilities to be used in its hiring and in the development of training programs. A monitoring system will be established to ensure that corrective measures are taken if gaps are identified between position requirements and actual work performance. Every effort will be made to ensure that staff benefit from developmental opportunities and that they receive the required on-going training, so they can fulfill their obligations with the highest degree of professionalism and commitment.

Conclusion

Establishing the Board in a short timeframe proved to be a daunting task. However, in spite of the many challenges that were presented along the way, six months after its official launch on June 15, 2000, the Board was fully operational. Having established a solid structure for the review and analysis of cases and having acquired the requisite expertise to do so, by December 2000 the CFGB was in the process of actively treating the majority of grievance files that had been received between June and December of that year.

“IT’S NOT JUST A GRIEVOR ON A PIECE OF PAPER; THERE’S A PERSON BEHIND IT WITH A FAMILY, WITH RIGHTS.”

Diane Laurin, Vice-Chair

The task ahead is for the Board to build upon this solid foundation and to eliminate all cases from the previous system by the end of fiscal year 2001-2002, provided they are received at the Board prior to April 1st, 2001. This is an ambitious objective that the Board has set for itself but it is proof that the Board intends to carry out its mission in demonstrable ways.

APPENDIX 1

ANTICIPATED EXPENDITURES TO MARCH 31, 2001

ANTICIPATED TOTAL EXPENDITURES TO MARCH 31, 2001	
	Forecast (Total Expenditures)
Salaries	2,100,000
Employee Benefit Plans	376,004
Travel & Transportation	102,799
Telecommunication services	151,808
Postage & Freight	5,612
Communications & printing	27,703
Professional and special services	816,464
Training & professional dues	62,345
Rentals	16,602
Office rent & Fit-up	695,412
Materials & Supplies	255,563
Computer & EDP equipment	367,887
Office Furniture	276,000
Grand Total	5,254,200

APPENDIX 2

BREAKDOWN OF GRIEVANCE FILES BY CATEGORY

CATEGORY	SUB-CATEGORY	COUNT OF OUR FILES
Discrimination		4
	Age	1
	Benefits and discrimination against sexual orientation	1
	Denied Promotion	1
	Racial	1
Financial		97
	Allowances	37
	Benefits	41
	Denial of reimbursement of legal fees	1
	Pay	10
	Pension	5
	Other – Entitlement to leave on posting	1
	Other – Reimbursement for purchase of computer equipment	1
	Other – Claim adjustment for damages to personal property	1
General		15
	Medical	1
	Medical/Dental	2
	Other – Promotion deferral	1
	Other – career action	2
	Reversion to lower rank	2
	Termination of an appointment	1
	Award of Medal	1
	Course failure	1
	Pre and post-trial publication of Grievor's Court Martial	1
	Handling of Summary Investigation into the member's injuries	1
	Denied access to Summary Investigation	1
	Handling of member's request for interview with Commander	1

<i>CATEGORY</i>	<i>SUB-CATEGORY</i>	<i>COUNT OF OUR FILES</i>
Harassment		50
	Abuse – authority	18
	Handling of a harassment complaint	1
	Multiple forms of harassment	29
	Other – Dismissal of harassment complaint	1
	Other – Investigation of handling of a harassment complaint	1
Release		25
	Medical	2
	Medical & Universality of Service	1
	Service completed	2
	Universality of Service	9
	Unsatisfactory service	7
	Wrongful dismissal	1
	Other – not advantageously employable	2
	Other – Forces Reduction Program (FRP)	1
Grand Total		191

APPENDIX 3

A SAMPLE OF CASE SUMMARIES AND BOARD RECOMMENDATIONS

Reversion to a lower rank

The grievor contested the reversion to lower rank decision that had been made on the basis the grievor had not succeeded in a course to meet the prerequisite qualification level to hold the rank.

The grievor contended that, pursuant to the terms of a settlement of a human rights complaint that was filed after being released from the CF, the grievor was re-enrolled in a substantive rank. The grievor argued that the terms of the settlement, brokered by the Canadian Human Rights Commission and agreed to by all parties, were clear in providing that the rank was substantive and not conditional, and that it was only the qualification level that was provisional. The grievor had held that substantive rank for over four years before being released and re-enrolling.

The grievance was not supported on the basis that the grievor did not have a qualification that was required for the rank. It was indicated that the settlement under which the grievor had been re-enrolled in the CF had not been intended to grant the grievor an advantage over his or her peers who had to meet the required qualifications for the rank.

The CFGB found that the grievor's initial promotion to the rank was not made in accordance with the relevant CFAO. The Board was of the view that the grievor had been promoted to the rank in order to fulfill an operational requirement of the CF, notwithstanding the fact that the grievor did not have the required qualification. The grievor held that substantive rank for over four years before being released, during which time the promotion was never put in question.

The Board found that the grievor had been re-enrolled at a substantive rank. None of the documentation regarding the re-enrolment contained any conditional language regarding the grievor's rank. There was no time period set within which the grievor had to achieve the prerequisite qualification status. The terms of the settlement also indicated that the grievor would be eligible for promotion immediately upon re-enrolment. In its dealings with the grievor, in negotiating the settlement of the human rights complaint, the CF gave no indication that the rank into which the

grievor was re-enrolled was not substantive, and this is what the grievor accepted in settlement of the complaint. If there had been a clear indication in the offer of settlement that the rank would be provisional for a certain time, during which the grievor would have to attain the qualification, then there would have been no question that the rank was a provisional one.

The Board found that the Career Review Board (CRB), in making the decision to revert the grievor in rank, did not fully appreciate the terms of the re-enrolment and its decision was based on an erroneous understanding that the grievor's rank was provisional. Reverting the grievor in rank would have been reasonable if the re-enrolment had been to a provisional rank and, therefore, Annex E of CFAO 49-4 was applicable. However, there was not a question of the grievor's being promoted from an acting status to a substantive status. It was rather a question of the grievor having a substantive rank, but failing to achieve the qualification level that is normally required for that rank.

The Board was satisfied that, in light of those circumstances, the grievor should not have been reverted in rank. The position taken by the CRB was based on the erroneous premise that the grievor had been re-enrolled in a provisional rank. This not being the case, the decision to revert the grievor in rank should not stand.

The Board recommended that the grievance be upheld. The Board also recommended that the decision to revert the grievor in rank be set aside. Consequently, the Board recommended that the grievor's pay be adjusted accordingly to reflect the correct rate of pay between the time of the reversion and the date the grievor was voluntarily released from the CF, and that the corresponding pension adjustments be made.

Allowances

This grievance related to whether QR&O 209.96(6) on the reimbursement of the cost of structural inspection of a replacement residence was discriminatory and whether the grievor had been led to believe that there would be reimbursement of these costs.

The grievor alleged that QR&O 209.96(6) was illegal because it discriminated between members who bought new homes with warranties and those who bought older homes not covered by a warranty. While the purchase was of a new home, the grievor felt reimbursement for a home inspection was still merited.

The chain of command³ supported the grievance on the basis that QR&O 209.96(6) was discriminatory and that the member had a legitimate expectation of reimbursement for the costs of a structural inspection. The chain of command also indicated that members needed expert advice because they had to report all defects to take advantage of the warranty. NDHQ disagreed, finding that the policy was not discriminatory and arguing that supporting the grievance would be unfair to those who had not been reimbursed the same costs.

The CFGB found that QR&O 209.96(6) was not discriminatory. The grievor's home was under warranty and this ensured that the buyer benefited from a certain number of protections. However, the Board noted certain concerns about provincial home warranty programs. It was established that the grievor had been misinformed by the Support Unit about entitlement to a home structural inspection. However, the Board's analysis revealed that the grievor would have made the same decision to have a home inspection even if the grievor had known that such a reimbursement was not forthcoming. Compensable damage was thus not established according to the applicable criteria set out in the leading jurisprudence.

The Board recommended that the grievance be denied. The Board also recommended that the policy be revisited as a Quality of Life issue. Finally, the Board recommended that a study be carried out by the Quality of Life section as to whether provincial home warranty schemes were equivalent, in fact, to the benefit of a professional building inspection of new as well as older homes, and that subject to the findings of the study, an amendment to QR&O 209.96(6) be considered.

Allowances

The grievor was employed in a position for which the grievor received a Casual Aircrew Allowance (CASAIRCRA), whereas the grievor was seeking a different allowance, an Aircrew Allowance (AIRCRA).

The grievor contended that the primary duties for a certain period of continuous employment should have entitled receipt of the AIRCRA. The grievor also submitted what the grievor considered to be a precedent, a copy of a similar grievance from another member who had been granted AIRCRA.

The chain of command supported the grievor's contentions. The grievance was submitted for adjudication to the CDS at NDHQ. Before adjudicating the grievance, NDHQ consulted various directorates for their comments on the grievance. None of the directorates consulted supported the grievance.

³ In the interest of brevity, the positions taken by CF management, in response to the individual grievances, are variously referred to as those of the 'chain of command' or of 'National Defence Headquarters'.

The CFGB found that CFAO 205-25 outlined three criteria to be met to be eligible for AIRCRA: (1) to be Flight Crew Badge qualified; (2) to be continuously and substantially flying at an annual rate that meets Command defined criteria that is set at an average of 60 hours annually; and (3) to be posted, attached posted or ordered on temporary duty to a designated flying position. Although the grievor met the first criterion, the Board found that the grievor did not meet criteria 2 and 3. Furthermore, the Board did not consider itself bound by the “precedent” set by a decision from the lower echelons of the chain of command.

The Board recommended that the grievance be denied. The Board further recommended that the regulations pertaining to “continuous, substantial and sporadic exposure” to the flying environment be reviewed to ensure that clear-cut criteria are established to reflect more accurately the actual flying duties being performed, as opposed to the organizational technicality of occupying a designated position.

Allowances

The grievor sought reimbursement for kindergarten tuition fees. The grievor’s child had been enrolled in kindergarten. The grievor had received advice from unit staff about being entitled to reimbursement, since CF members had received the same benefit for their children. The grievor was of the view that CFAO 54-5 and the Canadian Forces Supplementary Order (CFSO) 25/94 did not contain any age restriction for kindergarten attendance and that the grievor should be entitled to the same benefits afforded to other members.

During the grievance process, the chain of command supported the grievance and believed an injustice had been done: (1) the grievor had acted on the basis of advice received from the unit, (2) there was no age parameter set out in the CFAO, and (3) other applications had previously been approved.

NDHQ did not support the grievance, on the basis that the grievor's child was younger than the age limit that had been set, which was derived from the Ontario age limit for admittance to kindergarten. The Ontario age limit is the most generous of all the provinces.

The Board found that the grievor was not entitled to be reimbursed the child’s kindergarten tuition fees. Despite the discussion found on file about the age factor, and the fact that the denial of reimbursement had been based on the age of the grievor’s child, the Board concluded that age was not an issue that needed to be addressed in the grievance. The applicable Order in Council, as repeated in CFAO 54-5, provided for an educational allowance only in those circumstances where education to provincial standards was not available. In the province in

question, there was no provision and no standard for kindergarten education at public expense. It followed that the grievor was not entitled to reimbursement pursuant to the Order in Council.

However, the Board found that the error committed by NDHQ in approving and reimbursing kindergarten tuition fees in the province in question had led to erroneous advice being given to the grievor. This erroneous advice had led the grievor to believe that reimbursement would be granted.

The Board recommended that the grievor be partially reimbursed, on the basis of an ex gratia payment because of the errors committed by NDHQ and the resulting confusion in the grievor's mind.

Benefits

This grievance contested a decision that was made denying the grievor coverage under Home Equity Assistance (HEA). The grievor had lost equity on the house sale that was precipitated by a new posting. The grievor's HEA application was denied on the basis that the market for similar homes in the immediate neighbourhood had not decreased by 10% between the time of purchase and sale of the property. Such a decrease is required to be covered under HEA.

The grievor maintained that there had been a market decline of at least 10% in the neighbourhood and submitted that the appraisals that had been done were flawed. The grievor questioned the accuracy of the calculations in the appraisals, arguing that the houses used were not similar to the property in question and that the condition of the house at time of purchase had not been considered. The grievor also alleged undue financial hardship had been suffered, including equity loss, as a result of the move.

The grievor's chain of command supported the grievance, finding generally that HEA was intended to protect CF personnel against undue financial hardship attributable to military relocations and fearing that the spirit of HEA had been lost over the years. However, NDHQ did not support the grievance, finding that the grievor's application had been properly denied on the basis of appraisals that indicated less than a 10% market decline. NDHQ was also of the view that the grievor's personal circumstances did not meet the criteria for undue financial hardship consideration.

The CFGB found that two independent professional appraisers had concluded that there was a 7% decline in the market for homes similar to the grievor's in the grievor's neighbourhood during the relevant period. In light of the fact that both

appraisals concluded that the relevant market had declined less than 10% during the time the grievor owned the house, the Board found that the grievor had been properly excluded from coverage under HEA.

The Board also found that the grievor's submissions 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 Board recommended that the grievance be denied. The Board recommended to the CDS that the decline in the relevant market was less than 10% and that, therefore, the grievor did not qualify for coverage under HEA.

Benefits

This grievance related to a request for a cash payment equivalent to a gratuity pursuant to QR&O 206.20 on the basis of years of service until release, arising out of wrong information that was provided to the grievor.

The grievor was serving on exchange duties with a foreign unit. Further to receiving an offer to serve on an Intermediate Engagement (IE), the grievor requested information from the Canadian Forces Support Unit (CFSU) as to the financial benefits that might be expected in three different retirement scenarios.

Based on the information given by the CFSU and having no access to any of the CF publications, the grievor decided to be released from the Canadian Forces. While completing release procedures, the grievor discovered that insufficient information had been provided as no mention had ever been made about any entitlement to a gratuity following the grievor's Short Engagement (SE) in 2001. Had the grievor known this prior to starting release procedures, the grievor's decision would have been to remain in the CF until completion of the SE, according to the grievor's claim. Based on the new information received, the grievor submitted a grievance requesting a payment equivalent to the gratuity, on account of the incomplete information that had been provided.

The chain of command found that the grievor had not been aggrieved by being singled out and was not entitled to the gratuity, having not completed the SE.

The CFGB found that the grievor had not been provided with all relevant information. While the Board recognized that no wrong or false information was provided, the grievor was nonetheless not given all the pertinent information. Thus, this omission constituted erroneous advice and negligent misrepresentation by CF personnel.

However, the Board found that there was no direct relation between the erroneous advice and the amount requested. The Board found that the fact that the grievor had relied on the erroneous advice did not lead to a detrimental situation that would justify compensation with damages. This would have been different had the grievor had a change of mind upon learning the correct information while still in the CF at a CF Base, and had the grievor chosen to pursue a military career, thus incurring extra moving expenses. Such moving expenses would then have been linked directly to the erroneous information.

The Board recommended that the grievance be denied. The Board further recommended that appropriate steps be taken to ensure that personnel providing advice on retirement benefits had sufficient knowledge to be able to provide full information on all issues raised.

Benefits

For fourteen years, the CF administration's records regarding the grievor's leave entitlements appeared to match the grievor's own records. Then, as a result of an audit performed on the grievor's leave record in 1998, it was discovered that an entry indicating that the grievor had taken 5 days of accumulated leave in March 1984 had not been carried over in subsequent calculations and that leave forms did not reflect the five days' leave. The grievor's leave entitlement was reduced by five days. At issue was the decision to reduce the leave entitlement by five days.

The grievor disputed the five-day difference, and indicated that it was not fair to make the grievor prove in 1998, fourteen years after the relevant time, that leave was not taken for the five days in 1984. The grievor argued that the disputed entry was a clerical error.

The chain of command was not supportive of the grievor's position. The entry in the leave record was relied upon as evidence of the leave taken, and the grievor was found to be unable to dispute that evidence.

The CFGB found that the evidence provided by the grievor was to be preferred over the entry in the leave record. Therefore, it found, on a balance of probabilities, that the grievor had not taken the five days of accumulated leave. Alternatively, the Board found the CF administration to be estopped from recovering the leave. Due to the questionable reliability of the audits that were done, and the undue delay in discovering the error in the grievor's leave record fourteen years after the fact, the error was no longer capable of simple verification. Under the circumstances, it would be unfair to take back the disputed five days' leave.

The Board recommended that the grievance be upheld and that the CDS order the five days' accumulated leave be credited to the grievor.

Pay

The grievor, a reservist on Class B service, complained that payment was being provided as a Corporal (Cpl) while being called out on Class C service in a Sergeant (Sgt) position. The grievor sought fair and proper financial compensation for Class C service. The grievor argued that being paid as a Cpl violated the principle of equal pay for equal work. The grievor stated that the work carried out filled a Regular Force Sgt position and performed the same duties and had the same responsibilities as those of a Sgt. The grievor had held a substantive Sgt rank, as a Class B reservist, prior to being called out on Class C service.

The chain of command supported the grievance. NDHQ supported the grievance and stated that the grievor had not received fair and proper compensation for the work performed. NDHQ then recommended a compromise: to pay the grievor at the rank of Master Corporal (MCpl) plus another pay increase with the removal of the 1996 wage restraint. Another directorate of NDHQ recommended three options to the CDS: (1) to deny the grievance while awarding the grievor pay as a Cpl at Incentive Pay Category 2 (IPC 2); (2) to grant redress, which might lead to a large influx of grievances; or (3) to pay the grievor as a MCpl with a specific IPC level.

On the basis of the evidence on file, the CFGB found that the grievor met the qualifications and requirements for employment in a Sgt position. The Board found that all factors to determine rank and pay during the grievor's Class C service had been ignored except the time equivalency, and that this was despite the clear intent of NDHQ Instruction ADM (Per) 2/93.

The Board further found that this disregard of all relevant factors but one had created an injustice towards the grievor who had lived in an inequitable situation for four years, such that it required redress. In order to redress this inequitable situation, the Board recommended that the grievor be retroactively authorized to be employed and paid as a Sergeant for four years of Class C service.

The Board also recommended that the grievor be authorized for pay increases to be effective at the same time and in the same amount or percentage as authorized for other Regular Force and Class C serving members.

Pay

The grievor claimed to have lost pay because after being transferred from the Reserve Force to the Regular Force, the grievor was paid as a Lieutenant (Lt) under the Officer Candidate Training Plan (OCTP) with no former service as opposed to a Lt under the OCTP with former service. The grievor asked that prior Regular and Reserve Force service be recognized for pay purposes and that payment be made pursuant to QR&O 204.21535 as of the date of the grievor's transfer into the Regular Force. The grievor also asked to be paid interest.

The chain of command supported the grievance. The review by NDHQ did not support the grievance, on the ground that QR&O 204.21535 applied only to Regular Force prior service. The possibility was suggested that the CDS could use his discretion in applying QR&O 204.015 to grant a higher incentive pay on enrolment.

The Board found, on the basis of the facts disclosed by the grievor and supported by the grievor's unit and superiors, that the grievor had been commissioned from the ranks to Officer Cadet and had successfully completed Basic Flying training, multi-engine and Basic Pilot, prior to being transferred from the Reserve Force to the Regular Force, and had been employed on a full-time basis since 1991 as a Class B reservist.

The Board found that the CDS had the authority and discretion, pursuant to QR&O 204.015, to award a higher pay incentive to the grievor in light of the circumstances of the grievor's previous Reserve service. The Board recommended that the CDS exercise this authority and grant the grievor a pay incentive level within the table to QR&O 204.2153 (effective retroactively), that was not lower than the pay the grievor was receiving immediately prior to being transferred from the Reserve Force into the Regular Force and that was commensurate with the pay of a Regular Force pilot of the same rank, qualifications (academic, civil and military), and experience. In the absence of a legal authority, the Board did not recommend that interest be paid.

The Board further recommended that the grievance be addressed immediately, without waiting for the outcome of the forthcoming study and review forecast to start in 2001. They are, the Reserve Force Employment Project, sponsored by the Director General Military Human Resource Policy and Planning, and the detailed review of the CF pay structure being initiated by the Director General Compensation and Benefits. The Board recommended that a single entry pay regulation with a broader scope and more flexibility, and better adapted to past qualifications and experience or merit, be considered.

APPENDIX 4

CFGB ORGANIZATION AND STRUCTURE

Mr. Paul-André Massé is the Chair and Chief Executive Officer of the Board, Ms. Diane Laurin is the Vice-Chair and Ms. Naomi Z. Levine (Headingley, Manitoba) and Ms. Wendy E. Wadden (Sydney, Nova Scotia) are Part-Time Members. The Chair has delegated to the Vice-Chair responsibility for assigning the grievance cases to the Board members as well as responsibility for managing the operations of the Board, i.e., analyses and investigations, judicial review, and the recommendation process concerning CF members' grievances.

The Board is supported in its work by staff members appointed under the Public Service Employment Act. An Executive Director and Chief of Staff, a Director of Legal Services and General Counsel and a Director of Grievance Analysis and Operations are part of the Executive Committee of the Board.

The Executive Director is responsible for Corporate Strategic Planning and Policy, Finance, Personnel, Administration, Information Technology and Communications Services, as well as the Registry for grievances.

The Legal Services Branch is composed of four Legal Counsel, headed by a Director who also acts as General Counsel to the Board.

The Operations and Grievance Analysis Branch consists of a core group of Grievance Officers, supplemented by term employees as warranted by the case workload.

APPENDIX 5

BIOGRAPHIES

Mr. Paul-André Massé was appointed as the Board's first Chair on November 1, 1999.

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-Chair 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, which later became the subject of his thesis.

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



Chair
Paul-André Massé

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

As part of the Public Service Commission development program with the Canadian Centre for Management Development, 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 Chair in November 1999, Paul-André Massé managed his own consulting firm in the field of government relations.

“WE INTEND TO RESOLVE THE GRIEVANCES IN THE MOST
EFFICIENT, IMPARTIAL AND HUMANE WAY BY TREATING THE
GRIEVANCES AND GRIEVORS WITH COMPASSION AND RESPECT.”

Diane Laurin, Vice-Chair



Vice-Chairperson
Diane Laurin

Ms. Diane Laurin, LL.L, was appointed as the Canadian Forces Grievance Board’s first 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.

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. She started her career as a nurse, a profession she practised for six years.

Prior to joining the CFGB, 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 of the Director of the Police Service 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 were the ice storm, the Stanley Cup riots, the motorcycle gang wars, the Barnabé Case, etc.

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. For example, she planned communications strategies that furthered the implementation of metropolitan policies in matters such as public safety, air and water purification, public transit and economic development. She also participated in the preparation of many papers on issues such as prevention and law reform in the police environment.

Before joining the MUC, Ms. Laurin, among other things, practiced immigration and civil law.



Part-Time Member
Naomi Z. Levine

Naomi Z. Levine was appointed by Order in Council as part-time member of the Board on March 21, 2000.

Naomi Z. Levine, from Headingley, Manitoba, is a lawyer, 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 Assiniboine Community College. As a lawyer, Ms. Levine has specialized in, among others, the areas of criminal 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.

Wendy E. Wadden was appointed by Order in Council as a 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). Ms. Wadden serves on the University College of Cape Breton Presidential Committee for the 2002 International Conference on the University College Model. 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.



Part-Time Member
Wendy E. Wadden

MANAGEMENT STAFF

Executive Director

Pierre Beaudry

Prior to joining the CFGB as its Executive Director, Pierre Beaudry held senior positions at the Canada Information Office, Consulting and Audit Canada, Environment Canada and the then Department of Supply and Services Canada. Earlier he was a senior officer in the Department of National Defence. He has a Master's Degree in Public Administration (M.A.P.) from l'École nationale d'administration publique (ÉNAP), and a Bachelor's Degree (B.Péd.) from l'Université de Montréal.

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 practiced 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 Ministry of Public Security in Québec. 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.

Director, Grievance Analysis and Operations

Denis Labrie

Denis Labrie previously worked for the Public Service Commission where he managed the operations of a program designed to evaluate pre-selection criteria and professional development programs for senior executives, as well as the linguistic training programs of the federal public service in the National Capital Region. Prior to joining the Public Service Commission, he held various managerial and administrative positions. He gained extensive knowledge of the grievance process as a Personnel Administration Officer with the Canadian Forces.

APPENDIX 6

LIST OF ACRONYMS

AIRCRA	Aircrew Allowance
CASAIRCRA	Casual Aircrew Allowance
CDS	Chief of the Defence Staff
CFAO	<i>Canadian Forces Administrative Orders</i>
CF	Canadian Forces
CFB	Canadian Forces Base
CFGB	Canadian Forces Grievance Board
CFS	Canadian Forces Station
CFSO	<i>Canadian Forces Supplementary Orders</i>
CFSU	Canadian Forces Support Unit
CIC	Cadet Instructor Cadre
CRB	Career Review Board
Cpl	Corporal
DND	Department of National Defence
FRP	Forces Reduction Program
FOA	Field Operations Allowance
HEA	Home Equity Assistance
IE	Intermediate Engagement

IPC	Incentive Pay Category
Lt	Lieutenant
MCpl	Master Corporal
MPCC	Military Police Complaints Commission
NDA	<i>National Defence Act</i>
NDHQ	National Defence Headquarters
OCTP	Officer Candidate Training Plan
QR&O	<i>Queen's Regulations and Orders for the Canadian Forces</i>
RCMP	Royal Canadian Mounted Police
SE	Short Engagement
Sgt	Sergeant



GETTING IN TOUCH WITH THE CFGB

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