Military Grievances External Review Committee

Comité externe d'examen des griefs militaires

2017 ANNUAL REPORT

A SUCCESSFUL TRANSITION

Canada

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2017 ANNUAL REPORT

26 February 2018

The Honourable Harjit Sajjan
Minister of National Defence

National Defence Headquarters
MGen Georges R. Pearkes Building
101 Colonel By Drive
Ottawa, Ontario
K1A 0K2

Dear Minister,

Pursuant to section 29.28(1) of the *National Defence Act*, I hereby submit the 2017 annual report on the activities of the Military Grievances External Review Committee for tabling in Parliament.

Yours truly,

Caroline Maynard
Interim Chairperson and Chief Executive Officer

ACRONYMS

Most commonly used administrative terms, titles, organizations, laws, regulations, policies, and programs.

AR	Administrative Review
C&P	Counselling and Probation
CAF	Canadian Armed Forces
CANAIRGEN	Canadian Air Force General Message
CANFORGEN	Canadian Forces General Message
CBI	Compensation and Benefits Instructions
CDS	Chief of the Defence Staff
CFAO	Canadian Forces Administrative Orders
CFAT	Canadian Forces Aptitude Test
CF IRP	Canadian Forces Integrated Relocation Program
CFR	Commissioning from the ranks
CFSA	Canadian Forces Superannuation Act
CF Mil Pers Instr	Canadian Forces Military Personnel Instruction
CFTDTI	Canadian Forces Temporary Duty Travel Instructions
CMP	Chief of Military Personnel
CO	Commanding Officer
CoC	Chain of Command
DAOD	Defence Administrative Orders and Directives
DCBA	Director of Compensation and Benefits Administration
DCCL	Director Claims and Civil Litigation
DCSM	Director Casualty Support Management
DGCB	Director General of Compensation and Benefits
DGCFGA	Director General Canadian Forces Grievance Authority
(D) HG&E	(Dependants) Household Goods and Effects
DMCA	Director of Military Careers Administration
D Med Pol	Director Medical Policy
FA	Final Authority
F&R	Findings and Recommendations
GIC	Governor in Council
HEA	Home Equity Assistance
IA	Initial Authority
IC	Initial Counselling
IE	Intermediate Engagement
IR	Imposed Restriction
MEL	Medical Employment Limitations
MGERC	Military Grievances External Review Committee
MO	Medical Officer
NDA	National Defence Act
P Res	Primary Reserve
QR&O	Queen's Regulations and Orders for the Canadian Forces
Reg F	Regular Force
RW	Recorded Warning
SDA	Special Duty Area
SE	Separation Expense
SQ	Single Quarters

TABLE OF CONTENTS

MESSAGE FROM THE CHAIRPERSON AND CHIEF EXECUTIVE OFFICER **2**

ABOUT THE COMMITTEE **4**

THE GRIEVANCE CONTEXT 5

COMMITTEE STRUCTURE 5

THE GRIEVANCE PROCESS 6

WHEN THE COMMITTEE RECEIVES A GRIEVANCE 7

IN FOCUS **8**

REQUESTS FOR FINANCIAL COMPENSATION AND RECOVERY OF OVERPAYMENTS 9

SYSTEMIC RECOMMENDATIONS **12**

PROGRAM STATISTICS **22**

A TIMELY REVIEW 22

AN INDEPENDENT REVIEW 23

KEY RESULTS 24

ANNUAL WORKLOAD 25

CASE SUMMARIES **28**

ANNEXES **40**

LOGIC MODEL 40

FINANCIAL TABLE 41

COMMITTEE MEMBERS AND EMPLOYEES **42**

CONTACT US **44**

MESSAGE FROM THE CHAIRPERSON AND CHIEF EXECUTIVE OFFICER

I am pleased to submit the Military Grievances External Review Committee's (MGERC or the Committee) 2017 Annual Report, as the interim Chairperson and Chief Executive Officer (CEO) of the Committee.

Last year was challenging for the Committee. With the departure of most of its members, including its Chairperson and CEO for the last eight years, the Committee was left by June with only the interim Chairperson to issue findings and recommendations (F&R). The Operations and Corporate Services branches combined their efforts to deal with two priorities resulting from this situation: ensuring that program delivery continued uninterrupted, within our standards of quality and efficiency, and preparing for the arrival of a new complement of Committee members, including a new Chairperson and CEO. I am pleased to report that the Committee, both leadership and staff, successfully managed this transition, and ended the year on a positive note, as appointments of new Committee members were announced in December.

The Committee's leadership and staff successfully managed a challenging year of transition and ensured program delivery continued uninterrupted.

You will find in this report detailed summaries of F&R issued by the Committee in 2017, as well as a number of recommendations of a systemic nature that we think are of particular interest. In the *In Focus* section we examine a recurrent issue: the lack of authority of the Chief of Defence Staff (CDS), within the military grievance system, to award financial compensation to correct mistakes that led to financial loss for grievors. Although the CDS was delegated the authority to grant *ex-gratia* payments six years ago, his authority remains limited, and analysis of related cases that were reviewed since shows that the CDS is still unable to provide the remedies sought through the grievance process.

The report also includes key statistics related to the Committee's Independent Review of Military Grievances Program.

On the Corporate Services side, 2017 was a year of transformation. As the Committee developed a new Logic Model for its Independent Review of Military Grievances Program, it was required to implement a new government-wide *Policy on Results,* which sets out management requirements, such as accountability and performance. To support these changes, the Corporate Services branch articulated and acted on a vision based on breaking down bureaucratic silos and implementing fluid and flexible processes. For example, a new organizational structure was adopted and included reviewing and updating all positions. While transitioning to Workplace 2.0, with a construction project aimed at reducing its office space, the Committee seized the opportunity to invest in new servers and innovative technology. The paperless office initiative also advanced, including the use of tablets in meetings and the implementation of electronic signatures. In a time of change and risks, Corporate Services provided crucial support which allowed the Committee's program to continue functioning with, I believe, no impact on its quality or credibility.

Finally, in 2017, the Committee began preparing for the implementation, in the coming months, of a new case management system, which is crucial for its program in matters of timeliness, efficiency and accuracy.

The year ahead will mark a new beginning for the Committee. It will be welcoming a new Chairperson and CEO, and will continue to support the newly appointed Committee members. The MGERC will ensure that the coming year is an enriching one in which new Committee members are able to share their perspectives while benefiting from the experience and corporate knowledge of the Committee's grievance review teams.

I have had the honour of serving as the interim Chairperson and CEO during the whole year covered by this report. It has been an exceptional experience thanks to our dedicated and knowledgeable employees. Without them we could not have achieved the results you will find within the pages of this report.

Caroline Maynard

In a time of change and risks, the Corporate Services branch provided crucial support which allowed the Committee's program to continue functioning, with no impact on its quality.

ABOUT THE COMMITTEE

MISSION

The Military Grievances External Review Committee provides an independent and external review of military grievances. In doing so, the Committee strengthens confidence in, and adds to the fairness of, the Canadian Armed Forces grievance process.

MANDATE

The Military Grievances External Review Committee is an independent administrative tribunal reporting to Parliament through the Minister of National Defence.

The Committee reviews military grievances referred to it pursuant to section 29 of the *National Defence Act* and provides findings and recommendations to the Chief of the Defence Staff and the Canadian Armed Forces member who submitted the grievance.

THE GRIEVANCE CONTEXT

Section 29 of the *National Defence Act* (NDA) provides a statutory right for an officer or a non-commissioned member who felt that he/she has been aggrieved to grieve a decision, an act or an omission in the administration of the affairs of the Canadian Armed Forces (CAF). The importance of this broad right cannot be overstated since it is, with certain narrow exceptions, the only formal complaint process available to CAF members.

Since it began operations in 2000, the Committee has acted as the external and independent component of the CAF grievance process.

The Committee reviews all military grievances referred to it by the CDS, as stipulated in the NDA and article 7.21 of the *Queen's Regulations and Orders for the Canadian Forces* (QR&Os). Following its review, the Committee submits its F&R to the CDS, at the same time forwarding a copy to the grievor; the CDS is the final decision-maker. The CDS is not bound by the Committee's report, but must provide reasons, in writing, in any case where the Committee's F&R are not accepted. The Committee also has the statutory obligation to deal with all matters as informally and expeditiously as the circumstances and the considerations of fairness permit.

The types[1] of grievances that must be referred to the Committee (mandatory referrals) are those involving administrative actions resulting in deductions from pay and allowances, reversion to a lower rank or release from the CAF; application or interpretation of certain CAF policies, including those relating to conflict of interest, harassment or racist conduct; pay, allowances and other financial benefits; and entitlement to medical care or dental treatment.

The CDS must also refer to the Committee grievances concerning a decision or an act of the CDS in respect of a particular officer or non-commissioned member. Furthermore, the CDS has discretion to refer any other grievance to the Committee (discretionary referrals).

COMMITTEE STRUCTURE

The Committee consists of Governor in Council[2] (GIC) appointees who, alone or in panel, are responsible for reviewing grievances and issuing F&R.

Under the NDA, the GIC must appoint a full-time Chairperson and at least two Vice-Chairpersons. In addition, the GIC may appoint any other members the Committee may require to carry out its functions. Appointments may be for up to four years and may be renewed.

Grievance officers, team leaders and legal counsel work directly with Committee members to provide analyses and legal opinions on a wide range of issues. The responsibilities of the Committee's internal services include administrative services, strategic planning, performance evaluation and reporting, human resources, finance, information management, information technology, and communications.

"MGERC's staff were always very courteous and accommodating… which is very much appreciated. The entire time I went through this ordeal, no other organization… treated me with the least bit of respect or dignity with the exception of the MGERC. For that I am eternally grateful."

A grievor answering a survey question about the Committee's review of his grievance

1 Article 7.21 of the QR&Os sets out the types of grievances that must be referred to the Committee once they reach the final authority level.
2 www.appointments-nominations.ca

THE GRIEVANCE PROCESS

The CAF grievance process consists of two levels and begins with the grievor's commanding officer (CO).

LEVEL I: REVIEW BY THE INITIAL AUTHORITY (IA)

Step 1: The grievor submits a grievance in writing to his or her CO.

Step 2: The CO acts as the IA if he or she can grant the redress sought. If not, the CO forwards the grievance to the senior officer responsible for dealing with the subject matter. Should the grievance relate to a personal action or decision of an officer who would otherwise be the IA, the grievance is forwarded directly to the next superior officer who is able to act as IA.

Step 3: The IA renders a decision and, if the grievor is satisfied, the grievance process ends.

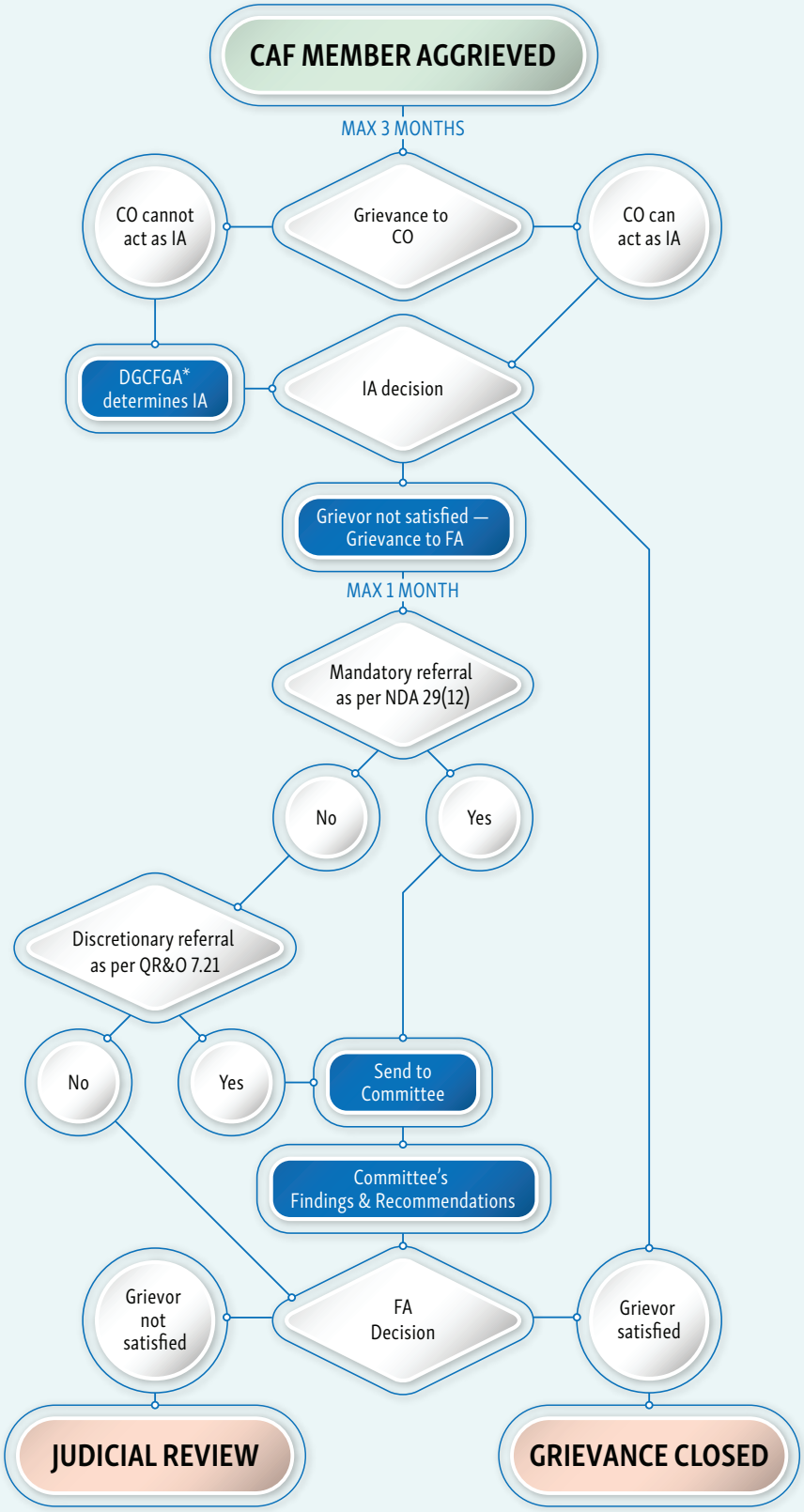
LEVEL II: REVIEW BY THE FINAL AUTHORITY (FA)

A grievor who is dissatisfied with the IA's decision is entitled to have his or her grievance reviewed by the FA, which is the CDS or his/her delegate.

Step 1: The grievor submits his or her grievance to the CDS for FA level consideration and determination.

Step 2: Depending on the subject matter of the grievance, the CDS may be obligated to, or may, at his or her discretion, refer it to the Committee. If the grievance is referred for consideration, the Committee conducts a review and provides its findings and recommendations to the CDS and the grievor. Ultimately, the FA makes the final decision on the grievance.

GRIEVANCE PROCESS FLOWCHART



* The Director General Canadian Forces Grievance Authority (DGCFGA) is the CAF organization responsible for the administration of the grievance system and is currently delegated decision-making authority related to time limits and discretionary referrals to the Committee. DGCFGA also provides support staff to the FA.

WHEN THE COMMITTEE RECEIVES A GRIEVANCE

The Committee's internal review process consists of three steps: grievance reception, review, and the submission of F&R.

1

GRIEVANCE RECEPTION

Upon receipt of a grievance, the grievor is contacted and invited to submit additional comments or other documents relevant to his/her case.

2

REVIEW

The assigned Committee member holds a case conference where the grievance is reviewed and the issues are identified. The Committee member is assisted by a team leader, a grievance officer and legal counsel. If necessary, additional documentation is obtained and added to the file and subsequently disclosed to the grievor. Although rare, it is possible a hearing may be held.

3

FINDINGS AND RECOMMENDATIONS

The Committee member issues F&R which are then sent simultaneously to both the CDS and the grievor. At this point, the Committee no longer retains jurisdiction over the grievance. The grievor receives a decision directly from the final authority, which is the CDS or his/her delegate.

RECOGNITION

On December 8, 2017, former Chairperson and CEO, Mr. Bruno Hamel, was awarded the Canadian Forces Medallion for Distinguished Service. The CDS, General Jonathan H. Vance, presented the award to Mr. Hamel in recognition of his contribution to the CAF grievance process and his constant efforts to improve the process for the benefit of CAF members. The Medallion is awarded by the CDS on behalf of the CAF to recognize distinguished or outstanding service performed by persons other than active military personnel or by civilian groups. Mr. Hamel headed the Committee for eight years, from March 2009 to January 2017. He is a retired CAF officer who had worked for many years in the military complaint resolution, in the Office of the Ombudsman for the Department of National Defence and the CAF, as well as within the DGCFGA.

IN FOCUS

In this section, the Committee discusses issues deemed of interest to our primary stakeholders either because they expand on certain aspects of the grievance process, or because they are cause for concern. This year, we discuss a recurrent issue: the lack of authority of the CDS, within the military grievance system, to award financial compensation to correct mistakes that led to financial loss for grievors.

REQUESTS FOR FINANCIAL COMPENSATION AND RECOVERY OF OVERPAYMENTS

In its 2006 and 2012 annual reports, the Committee raised an issue that remains relevant today: the lack of authority of the CDS, within the military grievance system, to award financial compensation in cases where a mistake leads to the recovery of an overpayment or causes a financial loss. Although the CDS was delegated the authority to grant *ex-gratia* payments of up to $100,000 in June 2012, this authority is very limited and does not provide the remedies that may have been anticipated in the grievance process.

In 2017, the Committee received a number of grievances related to claims for financial compensation, damages, or overpayments being recovered by the CAF as a result of payments or pledges made in error. An analysis of the FA's decisions on these grievances shows that these decisions were inconsistent or the circumstances of the grievors were not fully addressed in the grievance process.

CONTEXT

An analysis of the decisions rendered in the grievances containing requests for financial compensation shows that the CDS rarely uses his authority to award *ex-gratia* payments. This was observed even in cases where grievors alleged financial losses as a result of errors committed and admitted by the CAF, and where the Federal Court found that the CDS had an obligation to rule on these grievance claims (*Lafrenière* v *Canada (Canadian Forces Grievance Authority)*, 2016 FC 767). The Committee's view is that the conditions set by the Treasury Board for the exercise of the *ex-gratia* authority limit the CDS's ability to compensate grievors. For example, the authority to make such a payment is subject to a determination by the CAF regarding their potential civil liability. An *ex-gratia* payment cannot be awarded where CAF legal representatives are of the opinion that the Crown may be found to be liable. Unfortunately, the question of liability remains within the jurisdiction of the civil courts (*Crown Liability and Proceedings Act*, R.S.C., 1985, c C-50, sections 3, 8 and 21), and there is essentially no probing jurisprudence establishing specific criteria for CAF's extra-contractual civil liability towards their members.

The Committee has also noted that the CDS's authority regarding *ex-gratia* payments is not exercised consistently. Indeed, some claims for financial compensation are granted, sometimes without justification, while other applications of the same nature are rejected because of what appears to be a more stringent application of the same criteria. Other claims for financial compensation are sometimes settled by the Director Civil Claims and Litigation (DCCL), who is not under the authority of the CDS, as part of a procedure external to the grievance process. In some decisions, the CDS merely states that a settlement has been made in the grievance file, without explaining the reasons for this settlement or its terms. Finally, in the majority of cases, claims for financial compensation are dismissed, with the CDS declaring that he has no authority to forward such requests for review and consideration by the DCCL, because that would be tantamount to admitting the Crown's liability.

Although the CDS was delegated the authority to grant ex-gratia *payments six years ago, his authority remains limited and analysis of related cases that were reviewed since shows that the CDS is still unable to provide the remedies sought through the grievance process.*

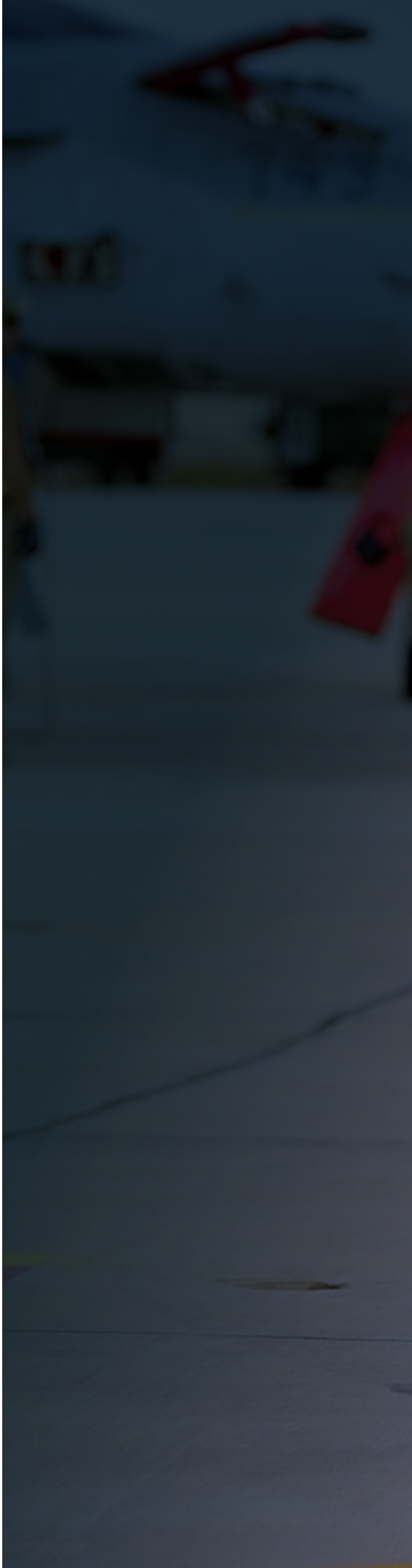
EXAMPLES OF CASES

Among the decisions received in 2017, there was one case in which the *ex-gratia* payment requested by the grievor was denied by the CDS on the basis that the grievor was not harmed by the breach of procedural fairness and the disclosure of unauthorized information (2011-001/088). The CDS added that he did not have the authority to accept civil liability or to assess damages on behalf of the Crown. In another case, where the grievor sought damages, the CDS considered the issue of CAF liability, and concluded that there was no liability as the situation did not meet one of the essential criteria, negligence, and the mistake had not been made in bad faith. The CDS, however, invited the grievor to submit a new request for financial compensation to the DCCL (2014-079). Thus, in the former case, the CDS limited himself to stating that he did not have the authority to award damages or to establish them, while in the second case he proceeded to the analysis of the merits of the application before indicating to the complainant that he could submit his application to the DCCL and attempt to negotiate a settlement through this process, which is external to the grievance

system (*Pearson v Canada*, 2016 CF 679). No *ex-gratia* payment was granted nor considered in either case.

CONCLUSION

The Committee recognizes the difficulties faced by the CAF or the CDS when asked to unilaterally determine the issue of Crown liability. The Committee also observes that grievances raising claims for financial compensation sometimes involve damages and recoveries of overpayments going up to tens of thousands of dollars. It is unfortunate that despite the authority to make *ex-gratia* payments, the CDS has very little discretion to compensate CAF members affected by errors committed by the CAF, even in cases where these errors are admitted and/or proven. Despite numerous recommendations, since the release of the Lamer Report[1] in 2003, it is clear that the CDS does not have real authority to resolve these claims and that the grievance process still does not compensate CAF members who have unjustly suffered significant pecuniary losses.



1 The Lamer Report or the "First Independent Review by the Right Honorable Antonio Lamer of the Provisions and Operation of Bill C-25, *An Act to amend the National Defense Act and to make consequential amendments to other Acts, pursuant to section 96 of the Statutes of Canada (1998)*." In this report, presented in September 2003, the late Chief Justice Lamer made several recommendations for improving the grievance process, some of which have not yet been implemented.

It is unfortunate that despite the authority to make ex-gratia *payments, the CDS has very little discretion to compensate CAF members affected by errors committed by the CAF, even in cases where these errors are admitted and/or proven.*

SYSTEMIC RECOMMENDATIONS

The grievance process is to some degree a barometer of current issues of concern to CAF members. Several grievances on the same issue may indicate a poor policy, the unfair application of a policy or a policy that is misunderstood. In some cases, the underlying law or regulation may be out of date or otherwise unfair. The Committee considers it has a particular obligation to identify issues of widespread concern and, where appropriate, provides recommendations for remedial action to the CDS.

The following section presents a sample of systemic recommendations issued by the Committee in 2017.

OUTDATED POLICY ON PROMOTION FOR MEDICAL OFFICERS

CASE 2016-164

ISSUE

Canadian Forces Administrative Order (CFAO) 11-6 has long been the principal policy instrument for the promotion of Medical Officers (MO). However, it is clear that CFAO 11-6 is no longer congruent with the way in which MOs train and become licensed.

More recent promotion policy guidance for MOs is found in the 15 June 2009 version of the Canadian Forces Manual of Military Employment Structure, Volume 2 Part 1, Officer Job Based Specifications (JBS). This policy is being used as the authority for the promotion of MOs, and contains more specific requirements for the promotion of MOs than those found in the CFAO.

Although various CAF authorities rely on the JBS provisions, the outdated CFAO 11-6 continues to be cited as the CAF promotion authority leading to confusion. For example, in the present grievance case the advisor for the MO occupation supported the grievor's view that the provisions of the CFAO 11-6 took priority over the relevant JBS policy. Such confusion is clearly problematic for the occupation and should be resolved.

RECOMMENDATION(S)

The Committee recommended, for clarity purposes, that the CDS issue a [Canadian Forces General Message] CANFORGEN confirming that the JBS, and not CFAO 11-6, is the proper authority for the promotion of MOs.

STAFFING OF CADET ORGANIZATIONS

CASES 2016-183 and 2016-195

ISSUE

The Committee currently has several files before it concerning the staffing of positions under the National Cadet and Junior Canadian Rangers Support Group (Natl CJCR Sp Gp - formerly Director of Cadets), a Reserve group. In each of these cases, the Committee found that the Natl CJCR Sp Gp had disregarded the hiring practices specified in the Canadian Forces Military Personnel Instruction (CF Mil Pers Instr) 20/04, the governing Reserve employment policy.

In a 2010 grievance decision addressing this very same issue, the FA clearly advised the Natl CJCR Sp Gp that their staffing practices contravened the applicable CAF policy. The Natl CJCR Sp Gp acknowledged the FA's decision but failed to discontinue the incorrect practice. More recently, the Commander (Comd) Natl CJCR Sp Gp reiterated the same errant practice in his Human Resources Implementation Directive dated 7 December 2015.

The Comd Natl CJCR Sp Gp explained that amendments to the CF Mil Pers Instr 20/04 will help address the issue. However, no such amendments have yet been put in place.

The Committee recognized the requirement for the CAF policy to be reviewed to determine whether the changes sought by the Natl CJCR Sp Gp were justified. The Committee could not however condone the Natl CJCR Sp Gp's unauthorized deviations from the current CF Mil Pers Instr 20/04 policy.

RECOMMENDATION(S)

The Committee recommended that the CDS:

- Direct a review of all Natl CJCR Sp Gp hiring processes (both Reserve Employment Opportunities and Competency Based Appointments) conducted since the 2015/2016 reorganization to ensure compliance with the provisions of the CF Mil Pers Instr 20/04. Those found to not be in compliance should be re-done properly;
- Direct a review of the unique policy requirements expressed by the Comd Natl CJCR Sp Gp to determine whether changes to the provisions of CF Mil Pers Instr 20/04 are justified and, if so, what those changes should be;
- Direct the Comd Natl CJCR Sp Gp, and all under his authority, to fully comply with the CF Mil Pers Instr 20/04 until such time as the aforementioned policy review has been completed and any authorized changes have been properly implemented.

POSSIBLE IMPACT ON PENSION OF NEW TERMS OF SERVICE

CASE 2016-224

ISSUE

While reviewing a grievance, the Committee noted that there could be several military members whose Terms of Service (ToS) were not administered as per the applicable policy, consequently rendering those CAF members ineligible for an immediate unreduced pension annuity, in accordance with the protection clause of the Canadian Forces Superannuation Act (CFSA). This issue affected military members with ToS of an Intermediate Engagement of 20 Years (IE20), who did not have 10 years of continuous service, as of 1 March 2007, and who were offered ToS (other than an IE of 25 years or an Indefinite Period of Service) that took effect immediately. For example, this could be the case of CAF members who needed to prolong their ToS due to new service obligations resulting from their admission to subsidized education. As a consequence, they will not complete an IE20, as defined under the CFSA. Those CAF members' eligibility for an unreduced immediate pension annuity under the CFSA is protected only if the IE20 remains in effect and is completed before any other ToS come into effect. Therefore, the competent CAF authorities must be vigilant when administering ToS and ensure that any subsequent ToS become effective the day after the IE20 is completed in order to avoid disqualifying CAF members, as set out specifically in Assistant Deputy Minister (Human Resources – Military) Instruction 05/05.

RECOMMENDATION(S)

The Committee recommended that:

- The Director of Military Careers Administration (DMCA) rigorously apply the policy for administering ToS, as prescribed by Instruction 05/05, in other words, that subsequent ToS become effective the day after the IE20 is completed and do not replace it on the date the offer is accepted;
- All military members in this situation be informed, via a CANFORGEN or other formal correspondence, of the implications of accepting additional ToS to their IE20;
- The DMCA be authorized to take the necessary administrative measures to immediately resolve all similar cases involving the revocation or replacement of an IE20 by other ToS in the same spirit and with the same intention as the FA's determination in the case that raised this issue.

DISCRIMINATION AGAINST SAME-SEX COUPLES

CASE 2017-006

ISSUE

The Spectrum of Care (SoC) Supplemental Health Care, Section 3 – Miscellaneous Benefits, states under Infertility that "eligible persons are entitled to investigation of infertility." It does not define "eligible persons." However, elsewhere in the policy documentation under Eligibility it is clear that "eligible persons" includes all Regular Force (Reg F) members. The Director Medical Policy (D Med Pol), as the administrator of the SoC, has interpreted the SoC wording as meaning that, for this particular procedure, infertility must be established by the Reg F member as a precondition to eligibility for an investigation of infertility. Therefore, a CAF member in a same-sex relationship would have to spend several thousand dollars to demonstrate infertility through therapeutic donor insemination.

The burden imposed by D Med Pol on same sex-couples is not imposed on heterosexual couples and is discriminatory in the Committee's view.

RECOMMENDATION(S)

For the purpose of the investigation procedures, the Committee recommended that the CDS direct D Med Pol to deem same sex-couples as meeting the definition of eligible persons under the current SoC, as they cannot biologically conceive and therefore these couples are *de facto* infertile.

MOVE AT PUBLIC EXPENSE WHILE ON BASIC OCCUPATIONAL TRAINING

CASE 2017-020

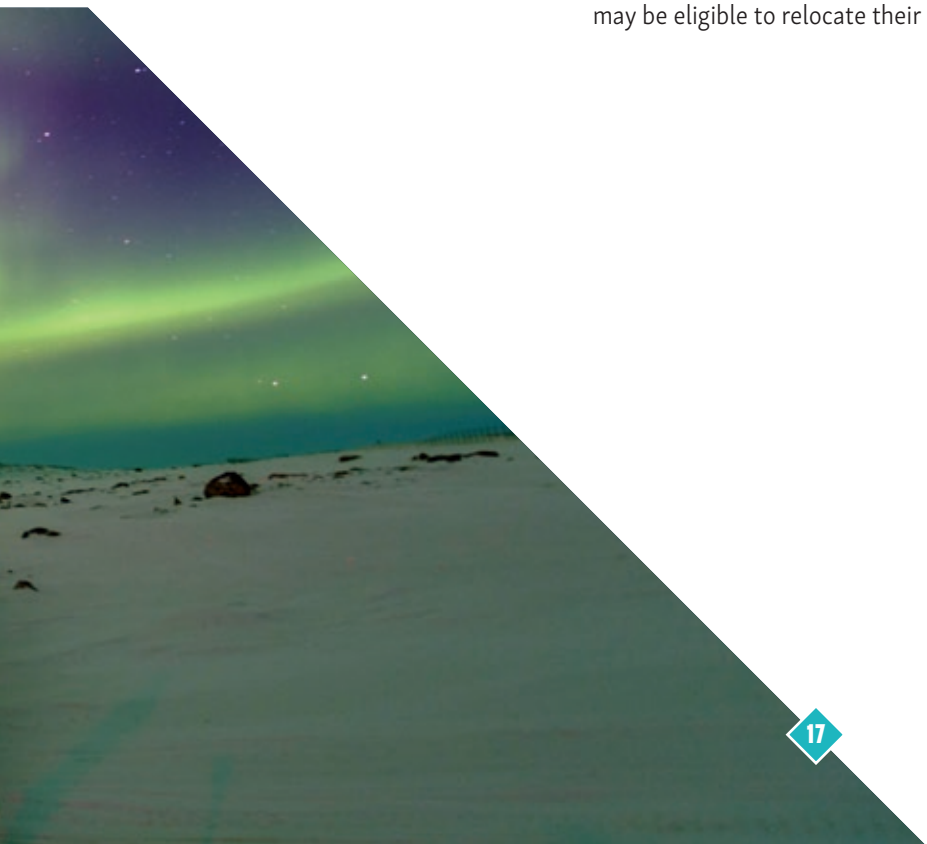
ISSUE

New CAF members undergoing basic occupational training for extended periods of time were being denied moves at public expense on the basis that they were not trade qualified. The CAF explained that for these military members to be eligible for a paid move under Compensation and Benefits Instruction (CBI) 208.82, the CDS has to consider their move to be in the public interest. Prior to 2016, some training units had issued policy direction stating that CAF members whose basic occupational training was greater than a year could be authorized to move their Dependants, Household Goods and Effects ((D) HG&E) to the training location. However, in 2016, staff within the Chief of Military Personnel (CMP) organization directed an end to this practice, as it was felt that since these CAF members were not trade qualified, authorization to move at public expense was not in the public interest.

The Committee found the CMP staff interpretation of "public interest" very restrictive as it failed to take into consideration the interests of CAF members who were separated from their families or had to maintain two residences for more than one year. Further, it appears that not all commands are applying this restrictive interpretation as some training establishments outside of CMP have developed their own practices/policies in this regard.

RECOMMENDATION(S)

The Committee recommended that the Commander Military Personnel Generation conduct a review of the policy of posting CAF members while undergoing basic occupational training, and issue clear direction and authority outlining the circumstances when personnel attending training for a considerable period of time (one year or more) may be eligible to relocate their (D) HG&E.



ARMY OPERATIONS COURSE GRADING SYSTEM

CASE 2017-053

ISSUE

Defence Administrative Orders and Directives (DAOD) 5031-9 sets the approved letter grading system for the CAF. It states that training establishments should use a three-interval letter grading composed of A, B and C. The Army Operations Course (AOC) Qualification Standard (QS) and Training Plan (TP) provides for a five-interval grading system of A, B, C+, C and C-. In other words, the AOC's QS and TP incorporate two additional levels of success, C- and C+ and draws distinctions between a weak but adequate performance (C-), a good performance (C) and a very good performance (C+). The Committee found that the QS and TP for the AOC do not reflect the grading scheme prescribed in the DOAD.

RECOMMENDATION(S)

The Committee recommended that the CDS direct that the QS and TP for the AOC be corrected to reflect the approved grading system of A, B and C set by DAOD 5031-9.

DE-LINKING OF RATIONS AND QUARTERS

CASE 2017-066

ISSUE

The de-linking of rations and quarters (R&Q) has been a long-standing policy issue of concern and the subject of several grievances received by the Committee. It was first brought to the Committee's attention in file 2011-076, when a CAF member grieved the denial of his request to de-link R&Q based on [Canadian Air Force General Order] CANAIRGEN 012/09 – Linking of Rations and Quarters.

In the aforementioned case, the Committee found that R&Q policies lacked criteria against which to consider de-linking requests and issued a systemic recommendation advising the initiation of an R&Q policy review.

The CDS personally adjudicated this grievance and, through his decision of 26 October 2012, asserted that the linking of R&Q should be optional unless there are exceptional circumstances that make de-linking impracticable. The CDS also directed the CMP to lead the development of a new R&Q policy in consultation with other CAF authorities.

In a recent case, the Committee concluded that the CMP has not properly implemented the CDS decision in file 2011-076. Although the CMP issued a new interim direction, this interim policy actually maintained the mandatory linking of R&Q for the majority of CAF members living in single quarters (SQ) and provided very little exception. Unfortunately, this interim direction from four years ago continues to be applied at the Base/Wing level today.

RECOMMENDATION(S)

Given the continuing absence of a current policy on de-linking R&Q that properly reflects the direction issued by the CDS in file 2011-076, the Committee recommended that the CDS direct that a new interim direction be issued, followed by a permanent R&Q policy that emphasizes the optional nature of linking R&Q, and that clearly outlines the exceptional circumstances required to substantiate the mandatory linking of R&Q.

DENIAL OF IMPOSED RESTRICTION STATUS

CASE 2017-071

ISSUE

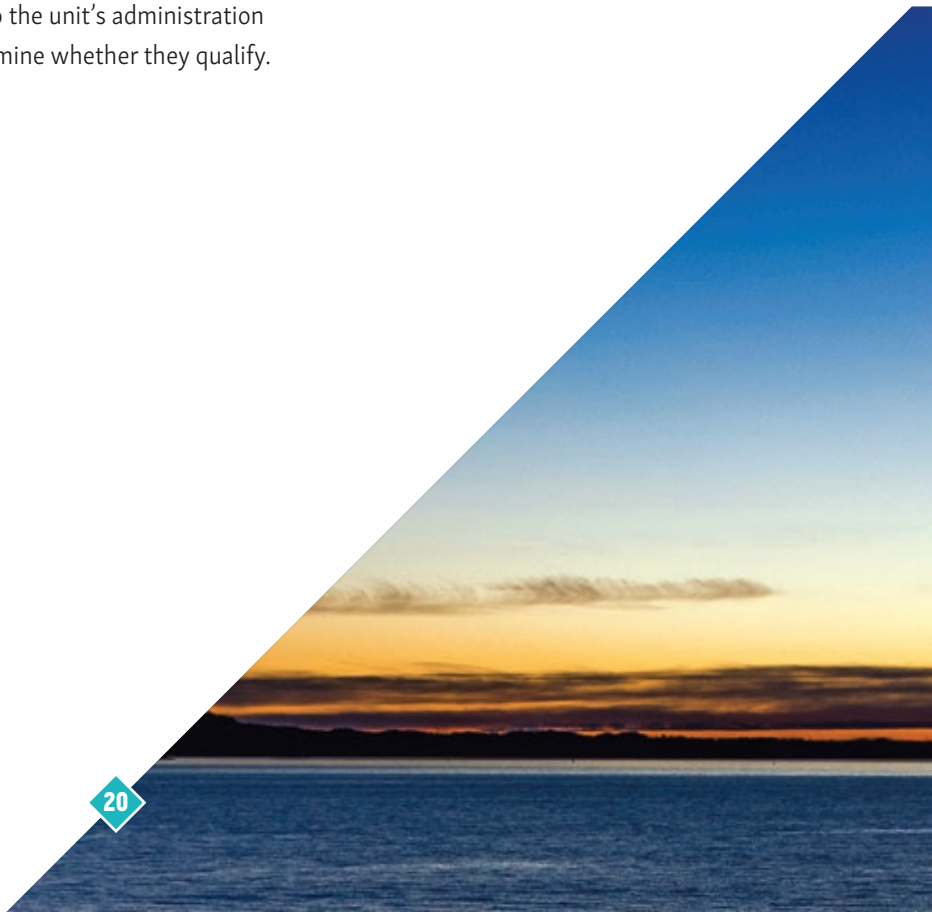
The denial of imposed restriction (IR) status based on subparagraph 7(d) of CANFORGEN 184/12 for CAF members who were already occupationally qualified (when they re-enrolled or transferred into the Reg F) has been the subject of several grievances received by the Committee. Although this issue first arose in 2012, recent FA grievance decisions have changed the way that subparagraph 7(d) of CANFORGEN 184/12 is being viewed and applied. IR is an approved delay in moving ((D)HG&E) for a specific period of time.

The FA, through his grievance decisions, has recognized the ambiguity of subparagraph 7(d) that existed prior to the clarification issued in CANFORGEN 034/15. Based on that observed ambiguity, in Committee file 2016-127, the FA approved an IR request for a grievor who was previously denied IR.

Although few in number, it is possible that other CAF members were also denied IR status between 2012 and 2015 on the basis of subparagraph 7(d), and who nonetheless proceeded to their first posting unaccompanied at their own expense. In light of the position that the FA has adopted on this matter, it is only right that all such files should receive the same consideration and treatment as that afforded to the grievor in file 2016-127.

RECOMMENDATION(S)

Given the difficulty involved in trying to identify affected CAF members after the fact, the Committee recommended that the CAF issue a CANFORGEN inviting CAF members who were denied IR between 15 October 2012 and 23 February 2015, on the basis of subparagraph 7(d) of CANFORGEN 184/12, to report to the unit's administration authorities to have their cases re-examined and to determine whether they qualify.



PRIVATE VEHICLE USE FOR MILITARY TRAVEL WHILE ON TEMPORARY DUTY

CASE 2017-094

ISSUE

In October 2015, the Director Compensation and Benefits Administration (DCBA), on behalf of the Director General Compensation and Benefits (DGCB), began to reinterpret the Canadian Forces Temporary Duty Travel Instruction (CFTDTI) Section 7 and modified the Cost Comparison Form so as to limit the number of kilometers to be reimbursed when a CAF member uses a private motor vehicle (PMV) for military travel instead of the most economical means of travel. The reinterpretation set out that a CAF member would only be reimbursed for 500 km each way for a total of 1,000 km round-trip. Prior to October 2015, the PMV calculation for comparison used the total number of kilometres for the direct distance between locations.

The CFTDI however makes no mention of a limit of 1,000 km round-trip. The Treasury Board has sole authority to regulate the reimbursement of travel and associated expenses. The artificial limit was placed upon the calculation through the Cost Comparison Form by DGCB, without authorization.

RECOMMENDATION(S)

The Committee recommended that CAF members who have been authorized to travel using their PMV since October 2015 should have their claims reassessed to ensure that they were not incorrectly limited to 1,000 km.

PROGRAM STATISTICS

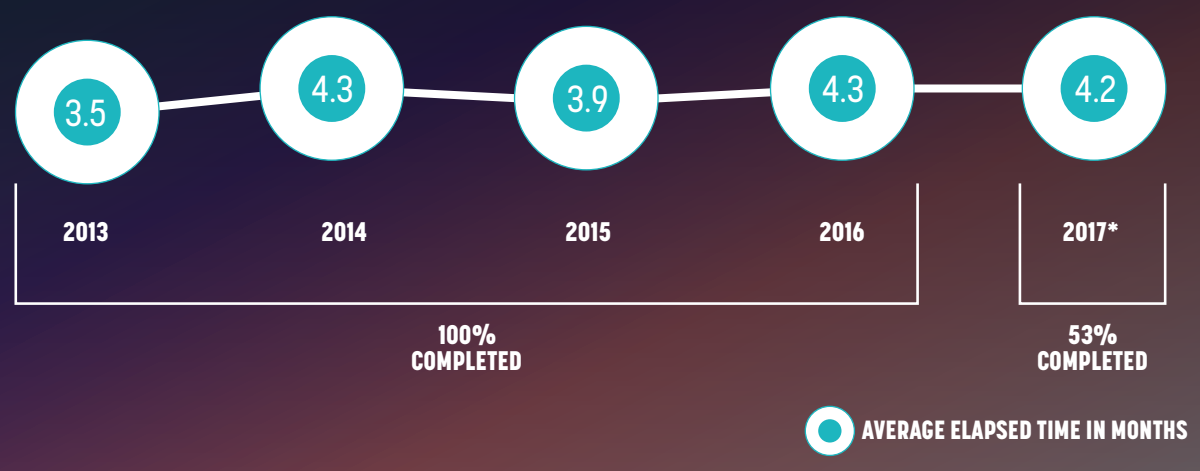
This section contains an overview of the Committee's operations, as related to the average time used to complete the review of a grievance, the types of grievances received, the annual workload, and the CDS responses to the Committee's F&R. For comparison purposes and added perspective, the statistics in some cases cover the last few years, but their main focus is 2017 data.

A TIMELY REVIEW

For cases completed in 2017, the Committee closed those files in slightly over its performance standard of four months, despite the fact that - due to delays in GIC appointments - for most of the year, only one Committee member was issuing F&R. As of 31 December 2017, the Committee received 169 cases and issued F&R reports for 140 cases.

Note: *To simplify the reading of this section, we use CDS to refer to the FA which includes the CDS and his/her delegate.*

Figure 1 illustrates the average elapsed time taken on cases completed over the last five years, as of 31 December 2017.



* Not all cases received in 2017 have been completed to date. These statistics will be adjusted in future reports to include the balance of the cases received in 2017.

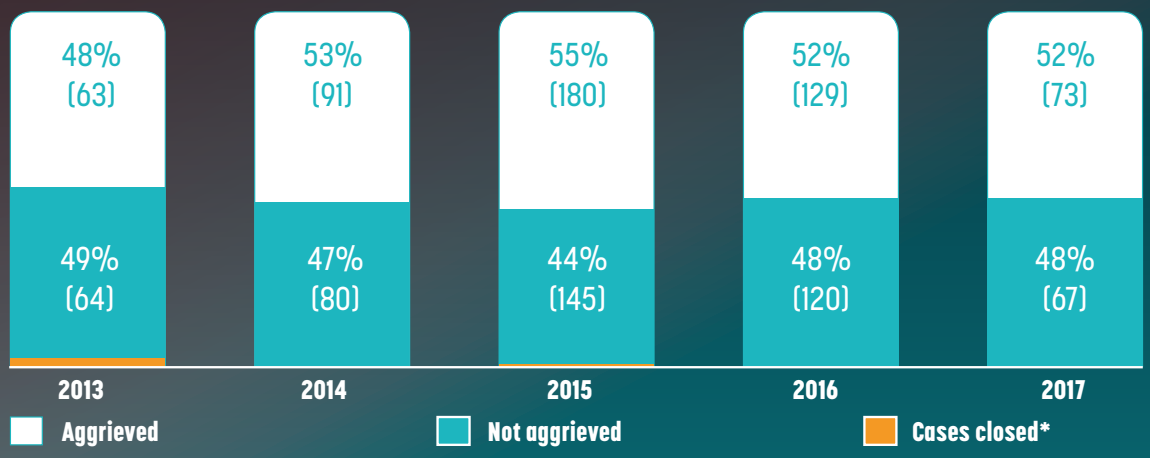
AN INDEPENDENT REVIEW

As an administrative tribunal, the Committee has the obligation to review every case fairly and impartially. Each file is reviewed carefully and on its own merits, while taking into consideration the issues raised by the complaint, the relevant evidence, and the submissions of both the grievor and CAF authorities.

Between 2013 and 2017, the Committee issued F&R on 1,019 grievances, of which 52.6% (536 cases) found that the grievor had been aggrieved by a decision, act or omission in the administration of the affairs of the CAF. In the remaining 46.7% (476 cases), the Committee recommended that the grievance be denied.

Starting in 2014, the Committee made changes to the way it captures its statistics where it had determined that a CAF member has been aggrieved. In the 53.2% (473 cases) where the grievor was found to have been aggrieved, the Committee had recommended to grant full or partial remedy in 93.4% (442 cases); in 4.7% (22 cases), the Committee recommended that a remedy be obtained outside of the grievance process, rather than be granted by the CDS; in 1.9% (9 cases) a remedy could no longer be recommended (i.e., the grievor was no longer a CAF member or the issue of the grievance was moot).

Figure 2 sets out the distribution in percentage and numbers of the Committee's recommendations issued between 2013 and 2017 (1,019 cases), as of 31 December 2017.



Note: Totals may not add to 100% due to rounding.

* Cases for which the Committee concluded that the matter was not grievable or the party had no right to grieve (e.g., a retired CAF member).

KEY RESULTS

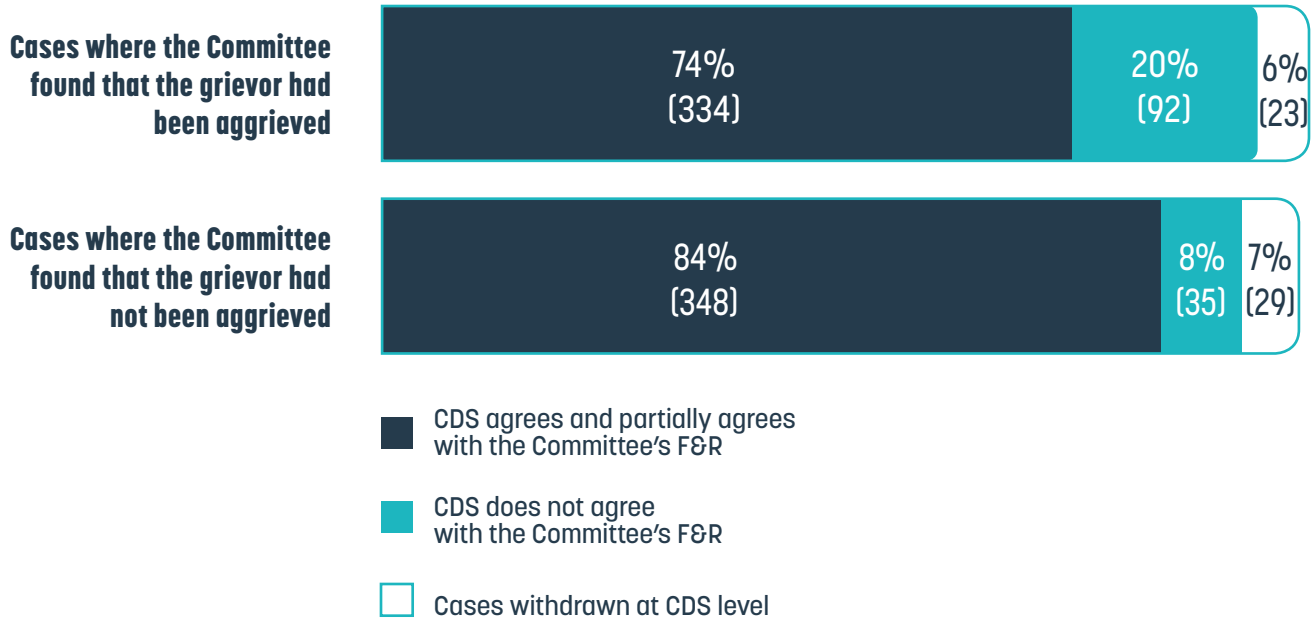
In the last five years, the CDS rendered decisions on 861 cases out of 1,019 reviewed by the Committee. A total of 449 of these decisions addressed cases where the Committee recommended that redress be upheld or partially upheld. The remaining 412 decisions addressed cases where the Committee recommended that redress be denied.

In the 449 grievances where the Committee recommended redress be upheld or partially upheld, the CDS agreed in 74% of the cases (334 files). For the remaining 412 grievances for which the Committee recommended that redress be denied, the CDS agreed in 84% of the cases (348 files).

"I fully support having a neutral third party conduct a review independent of CAF review. This type of review provides a more balanced approach to the matter grieved."

A grievor answering a survey questions about the Committee's role in the military grievance process

Figure 3 illustrates the distribution of the CDS decisions issued between 2013 and 2017 for these two categories as of 31 December 2017.



Note: Totals may not add to 100% due to rounding.

ANNUAL WORKLOAD

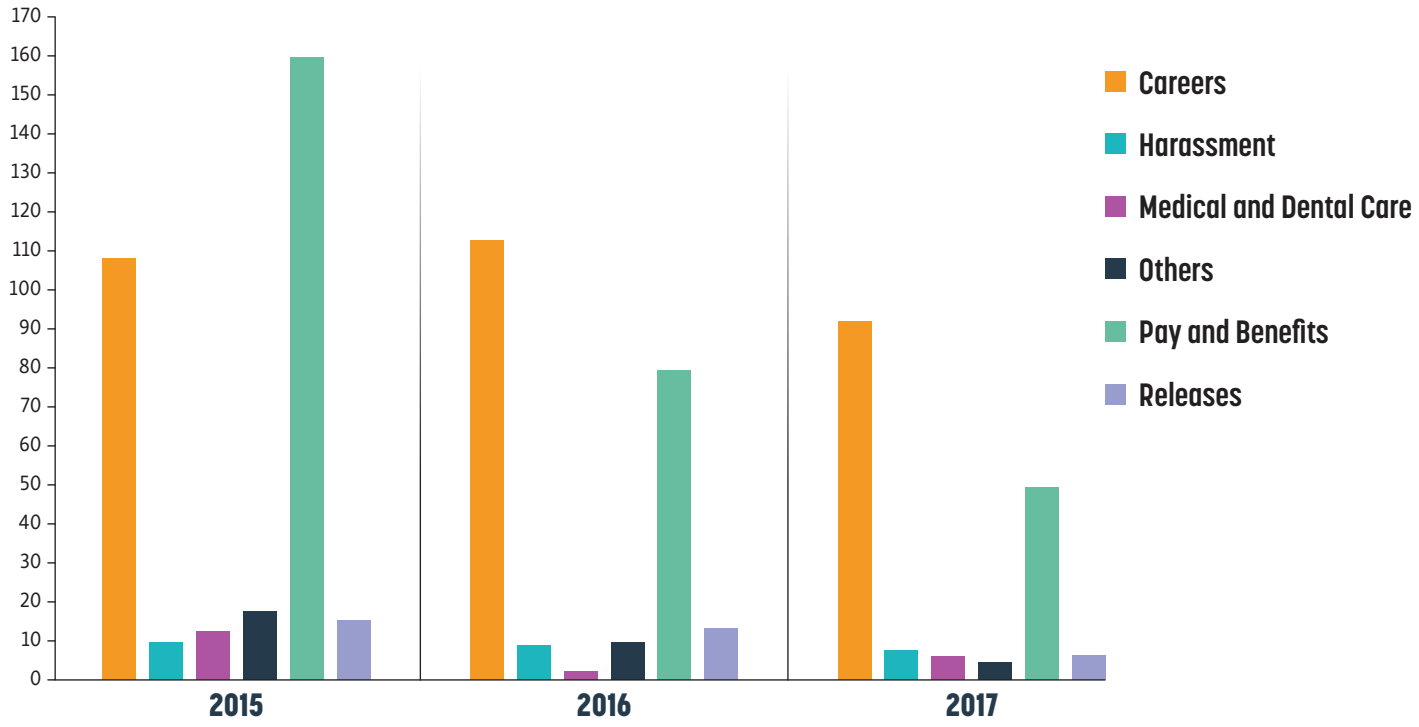
COMPLETED GRIEVANCE REVIEWS

The following table outlines the distribution by recommended outcomes of the 140 cases completed by the Committee in 2017.

	Careers	*Harassment*	*Medical and Dental Care*	*Others*	*Pay and Benefits*	*Releases*	*Total*
AGGRIEVED	**46**	**1**	**1**	**3**	**19**	**3**	**73**
Recommend No Remedy	2	0	0	0	0	0	2
Recommend Remedy	44	1	1	3	19	3	71
NOT AGGRIEVED	**41**	**2**	**4**	**2**	**14**	**4**	**67**
GRAND TOTAL	**87**	**3**	**5**	**5**	**33**	**7**	**140**

CATEGORY OF GRIEVANCES RECEIVED

Figure 4 shows the breakdown by category of the grievances received by the Committee in the last three years.



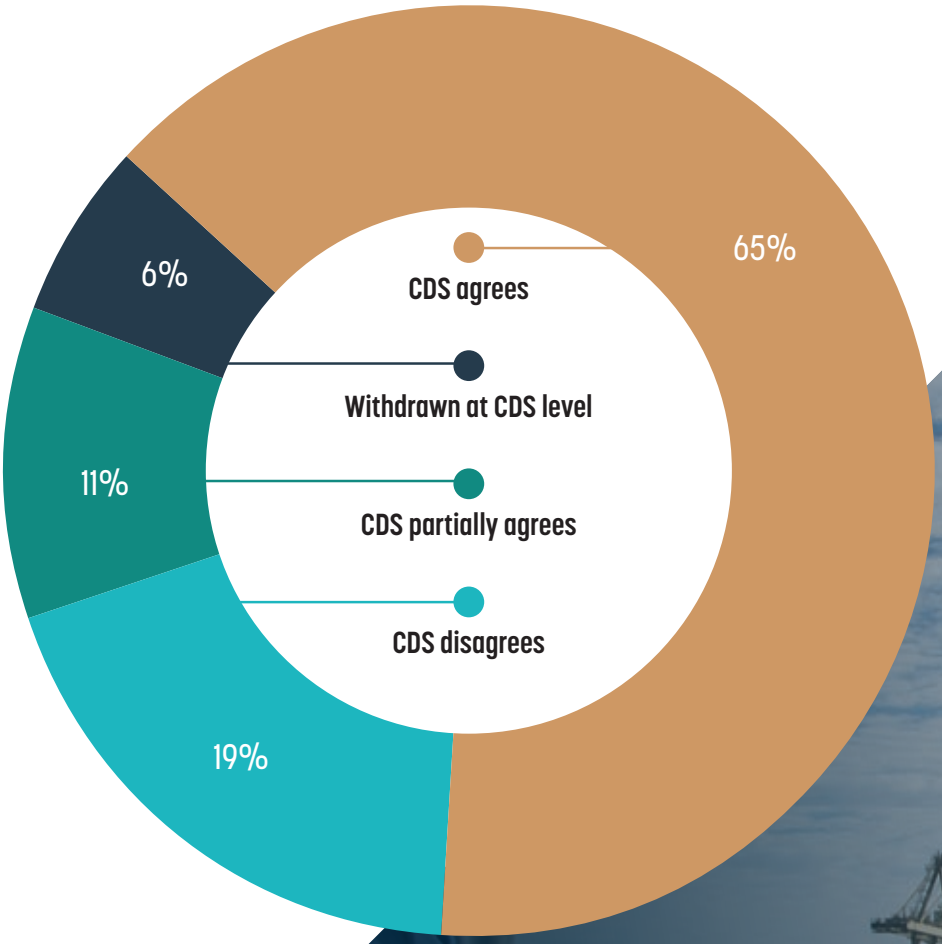
CDS DECISIONS RECEIVED IN 2017

The Committee received CDS decisions in response to 245 grievances for the period between 1 January and 31 December 2017. The CDS:

- agreed with the Committee's recommended remedies in 65% of these cases;
- partially agreed with the Committee's recommended remedies in 11% of these cases;
- did not agree with the Committee's recommended remedies in 19% of these cases.

6% were resolved through the CAF informal resolution mechanism after the Committee issued its F&R.

Figure 5



Note: Totals may not add to 100% due to rounding.

CANADA

CASE SUMMARIES

In 2017, the Committee issued 140 F&R. For the purpose of this annual report, we are taking a closer look at twelve cases of particular interest, with a summary of the issue (or issues) at stake, MGERC's position with regard to each case and the F&R issued the Committee's review. When available, the FA decision is also included.

RECORDED WARNING FOR FAILING TO REPORT A PERSONAL RELATIONSHIP

CASE 2016-165

The grievor, a Reg F officer, complained that he was given a recorded warning (RW) for failing to report a personal relationship he had with another member of his unit. The grievor contended that he was not obliged to report the relationship unless he considered that it could adversely impact the unit's mission capability. He judged that his relationship offered no such threat.

The IA found, on a balance of probabilities, that the grievor was aware of his obligation to report the relationship to the CO, under both the DAOD 5019-1, Personal Relationships and Fraternization, and the Unit Standing Orders. As such, the IA concluded that the RW was reasonable and denied the grievance.

The Committee found that the grievor's relationship had the potential to negatively impact the unit and that he should have been aware of his duty to report it to his chain of command (CoC).

The Committee also found that after the Deputy CO was made aware of the relationship by the unit's administration officer, he failed to take appropriate action to fulfill his responsibility to uphold the personal relationship policy by bringing the circumstances of the relationship to the attention of the CO.

Finally, the Committee agreed with the grievor that the RW was not properly administered. The Committee also objected to the RW depicting the relationship as inappropriate because the grievor was an officer and the other CAF member was not. The Committee found no support for this view within current CAF policies.

The Committee recommended that the RW be rescinded and that all documentation referring to the RW be revised or rescinded.

FA Decision*[1]*: Pending

1 The FA is the CDS or his/her delegate

REIMBURSEMENT OF HOUSE HUNTING TRIP BENEFITS

CASE 2016-186

The grievor complained that he was wrongly denied an authorization for a reimbursement of house hunting trip (HHT) benefits by Brookfield Global Relocation Services (BGRS) and by the DCBA, based on the fact that he was a single CAF member and was already at his new place of duty.

The DGCB, acting as the IA, recognized the grievor's entitlement to conduct an HHT, and also found that the grievor was entitled to a kilometric allowance for the use of his private motor vehicle during his HHT. However, the IA noted that the grievor's living arrangement at destination was at a relative's residence where he stayed for approximately ten months. Therefore, the IA concluded that the grievor "normally resided" with this relative and was not entitled to the non-commercial lodging and meal allowances. In addition, the IA concluded that the grievor was not on travel status and, as such, was not entitled to incidentals.

The Committee agreed with the IA that since the grievor had not yet secured accommodations at his new place of duty, he remained eligible for an HHT. As such, the Committee considered the grievor's eligibility to HHT-related benefits. The Committee noted that it had considered the term "normally resident" in a number of previous grievance files and reiterated that it should not be interpreted in a restrictive manner; many factors should be considered in its determination. The Committee found that the grievor's living arrangement with his relative was temporary in nature, as he had requested an HHT shortly after arriving at destination and selling his home at origin. The Committee noted that the grievor's temporary stay was prolonged by the denial of his HHT request.

Finally, the Committee concluded that the grievor was not "normally resident" at his relative's home and that he was therefore entitled to non-commercial lodging and meal allowances for his HHT, as well as incidentals.

The Committee recommended that the grievor be reimbursed his full HHT benefits as per the Canadian Forces Integrated Relocation Program (CF IRP).

FA Decision:

The FA agreed with the Committee's F&R that the grievor was eligible for an HHT and that it was due to exceptional circumstances that the timing of when he was able to take it was not optimal. The FA also agreed that the grievor's prudent decision to live with his relative during the lengthy wait times for BGRS and DCBA adjudications did not constitute becoming "normally resident" with his relative. As he was entitled to the HHT and was staying in non-commercial lodging, the FA concluded, like the Committee, that the grievor was entitled to the mileage already paid, to the non-commercial lodging allowance, and to meals and incidentals for the five-day period.

EXPECTATION OF CONTINUED PRIMARY RESERVE EMPLOYMENT

CASES 2016-189 and 2016-190

The grievor contended that it was unfair that the CAF failed to continue to employ him upon completion of a key appointment as a Regimental Sergeant Major (RSM) in the Primary Reserve (P Res). He also challenged the decision to release him from the CAF arguing there was no justification for his release. He argued that it was not his fault that there were no vacant positions in which he could be employed. He also argued that it is misguided to place a greater importance on maintaining establishment positions over retaining an experienced Chief Warrant Officer.

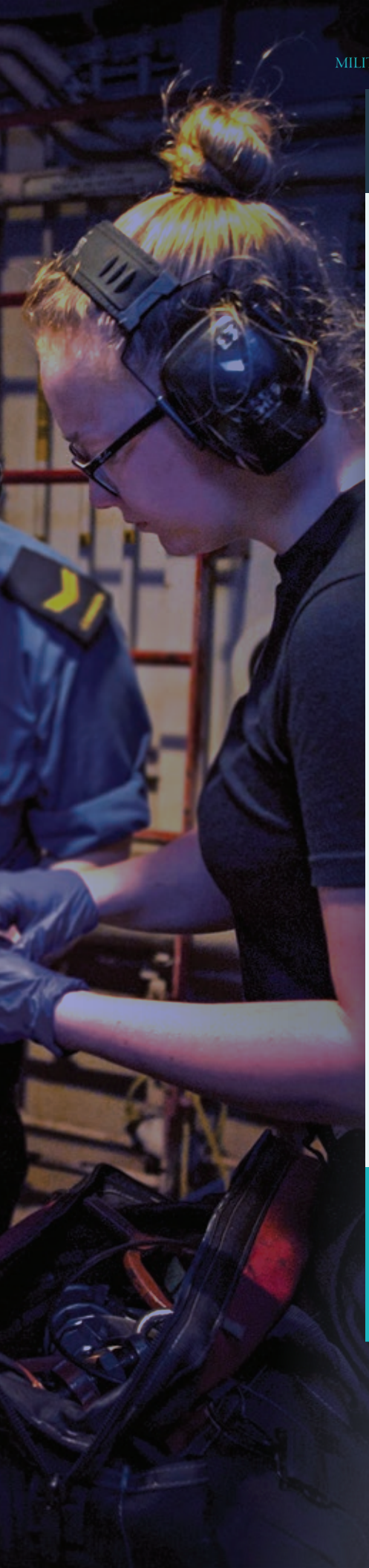
The IA stated that there is no guarantee of continued employment following the completion of a RSM appointment, but that there were three options available to the grievor: commissioning from the ranks (CFR), being selected for a higher-level key appointment, or release. The grievor was not successful on the Canadian Forces Aptitude Test (CFAT) to be considered for CFR, and he was not selected in the very competitive process for a higher level appointment. Therefore, release from the CAF was the last option available as there was no position in which to employ the grievor.

The Committee found that Reserve employment policies were very clear and the grievor could not have had a reasonable expectation of continued employment upon completion of his RSM appointment. The Committee also found that the grievor's CoC did everything possible to assist him in obtaining employment following his RSM appointment by offering him the opportunity to CFR, as well as the opportunity to fill other positions within the division. Given that the grievor did not accept the other positions, and did not qualify for CFR, the Committee found that his release was justified and in accordance with the regulations.

The Committee also found that it was reasonable to release the grievor from the Reserve Force upon completion of his key appointment, as there were no other vacant positions at the appropriate rank at which he could be employed. Consequently, the Committee recommended the grievance be denied.

FA Decision:

The CDS, who acted as the FA in this file, disagreed with the Committee's recommendation to deny the grievance. He agreed with the Committee's F&R and found that the grievor was treated in accordance with the applicable policies. However, he stated that he felt compelled by the grievor's case and offered him a commission with a corresponding Class A employment opportunity, relying on the provisions of recent CANFORGEN 203/15 – 2016 Special Requirements Commissioning Plan, by which the requirement for a CFAT is now rescinded.



ADDITIONAL FINANCIAL COMPENSATION FOR COSTS INCURRED FOLLOWING AN INJURY

CASE 2016-192

The grievor, a member of the Reserve Force who was injured on Class A service, requested to be reimbursed for expenses incurred when he hired a replacement to finish the construction contracts that he was not able to complete following his injury.

The DGCB, who acted as the IA, found that the grievor was treated fairly and in accordance with the regulations and policies in effect at the time of his injury. The IA therefore found that it could not grant the grievor's redress-of-grievance request. The IA explained that CBI 210.72 – Reserve Force – Compensation During a Period of Injury, Disease or Illness, made provisions for compensation equivalent to the rate of pay that the grievor was receiving at the time of his injury, covering the period of incapacity. The IA therefore found that the grievor was eligible for it until he returned to his civilian duties.

The Committee first specified that the CDS does not have the authority to award damages as part of the grievance process. Although he has the authority to award an *ex-gratia* payment under Order in Council 2012-0861, the Committee is of the opinion that he cannot authorize that in this case, as it would involve compensating the grievor to fill a gap or circumvent the regulation, i.e. CBI 210.72, so as to expand the application of the provisions of this compensation.

The Committee therefore recommended that the grievance be denied.

The Committee noticed certain anomalies in the file and found that the CAF did not handle the grievor's case in accordance with the CBI. First, the Committee noted that, following the grievor's injury, his Reserve unit employed him while he was unable to fulfill the duties associated with his occupation and he had not yet seen a medical doctor who could have issued medical employment limitations (MEL) and determined whether a period of treatment and a return to work program were required. Second, the Committee noted that the Director Casualty Support Management (DCSM) seems to have determined after the fact that the grievor did not return to active duty when he returned to Class A service. It found, rather, that his service was now part of a period of treatment and a return-to-work program, thus his entitlement to the compensation. The Committee is of the opinion that it is not up to the DCSM to determine that a CAF member has not returned to active service or to deem that he has participated in a return-to-work program without being advised of that by a doctor or his unit.

Despite those anomalies, the Committee found that the claimant should not be penalized because the CAF did not handle his case in accordance with the CBI and recommended that he be able to keep his compensation.

FA Decision:

The FA agreed in part with the Committee's F&R. The FA was satisfied with the DCSM's interpretation of CBI 210.72. However, the FA determined that the pay granted for the half days of Class A service should have been for a full day. Therefore, the FA granted three additional half days to the grievor.

PRINCIPAL RESIDENCE DEFINITION

CASE 2016-198

The grievor claimed that he was entitled to post living differential (PLD) benefits for the initial period when he was authorized to stay in SQ, after separating from his spouse, and preferably for the entire duration of his stay in SQ. The grievor based his argument on the fact that, during this period, he retained a "principal residence" within the PLD area where his dependants lived and for which he remained financially responsible.

The IA found that the PLD policy found in CBI 205.45 defines a "principal residence" as "a dwelling in Canada, other than a summer cottage, other seasonal accommodation or a single quarter that is occupied by the member or their dependants." As such, the IA determined that the grievor was not entitled to receive the PLD benefit for the duration of the time when he was living in SQ.

The Committee found that the definition set out in CBI 205.45 stipulated that a SQ cannot be a "principal residence." As such, the Committee sought to determine whether the grievor's family residence could fall within the definition of "principal residence." In other words, was the grievor's house a dwelling still occupied by his dependants? Given that the grievor's spouse was no longer "normally resident with" him after he moved out of the home, and that he did not have a "dependant child" as defined in CBI 205.015, the Committee concluded that the grievor had no dependants for the purposes of PLD, as of the date he moved into SQ. As the grievor did not occupy his house after the separation date and had no dependants, the Committee found that he did not have a "principal residence" as defined in CBI 205.45 and was not eligible for PLD. The Committee recommended that the grievance be denied.

FA Decision:

There is no FA decision as the grievor withdrew the grievance.

HOME EQUITY ASSISTANCE FOLLOWING FORECLOSURE

CASE 2016-211

The Committee had to determine whether the grievor could receive the Home Equity Assistance (HEA) benefit for the loss realized on the sale of her home.

The IA noted that Section 8.01 of the CF IRP, Sale and Purchase of Principal Residence, states that its purpose is to assist a CAF member in the sale of a principal residence when posted from one location to another. He indicated that section 1.4, Definitions, provides that a principal residence must be owned by a CAF member, or their dependants, or jointly. The IA added that CF IRP Article 8.2.13, HEA, provides that CAF members may be eligible for HEA benefits if the CAF member or their dependants own the principal residence. He stated that when the grievor signed a consumer proposal (after she defaulted on her mortgage), she was required to turn over possession of her home to the bank. The IA concluded that, when the house sold, the grievor was no longer the owner of the property.

To determine if the consumer proposal changed the ownership of the house the Committee requested a copy of the municipal property tax certificate and a copy of the provincial land title. Both documents clearly showed that the grievor was in fact the registered owner of the house when it was sold. The Committee found that while the grievor had a consumer proposal in place to manage her financial circumstances, she remained the legal owner of her house until it was sold. The Committee recommended that the grievor be granted HEA.

FA Decision:

The CDS, who acted as the FA in this case, disagreed with the Committee's recommendation to uphold the grievance and reimburse the grievor." The FA found that the "Committee's understanding of consumer proposals and their impact on secured debts such as a mortgage was flawed." Citing from the Office of the Superintendent of Bankruptcy Canada website, the FA stated that secured creditors, such as a bank holding a mortgage, are not impacted by a consumer proposal and can seize a property if one fails to make their mortgage payments. The bank decided to foreclose and take control of the property. Through the court approved foreclosure process, it placed the house for sale and sold it, and was under no obligation to proceed with a property title change. The FA also noted that it was the Canada Mortgage and Housing Corporation (CMHC), as the insurer, who reimbursed the bank for the loss incurred upon sale. While CMHC could have sued for its losses, as an unsecured creditor, it decided to participate in the consumer proposal and only collect the monies the grievor had paid over three years. The FA found that, upon foreclosure, the grievor lost all rights to the property and since she was not the seller of record, there was no entitlement to HEA under the CF IRP Directive.

DELAY IN DETERMINING RELEASE ITEM

CASE 2017-002

The grievor was granted a voluntary release from the Reg F to transfer to the Primary Reserve (P Res). During his release, a pre-existing condition was noted and the D Med Pol assigned him permanent MEL, in breach of the Universality of Service principle, several months after. This also resulted in a decision to release him from the P Res under item 5(e) – irregular enrolment, later changed to item 3(b) – on medical grounds. The grievor had already completed 30 months of a Class B Reserve Service. He argued that the delay in assigning his MEL and rendering a decision on his release prevented him from receiving the transitional services and benefits associated with a medical release from the Reg F to which he should have been entitled. He requested to be retroactively released from the Reg F under item 3(b), that he receives the transitional services and benefits applicable to a 3(b) release, and that his 30 months of service in the P Res be disregarded in the calculation of his benefits.

The IA denied the grievance finding that the grievor's release from the Reg F was not medical but voluntary, and that he could have withdrawn his request had he felt a medical release was warranted at the time. The IA noted that the delay in determining the appropriate item of release was uncommonly lengthy, but was due to the uniqueness of the grievor's case. He also found that decision to amend the P Res release item from 5(e) to 3(b) was appropriate in the circumstances. For the last item of release to be 3(b) from the Reg F, it would require the CAF retroactively grant the grievor a three-year period of accommodation in the Reg F, which the IA found was neither possible, nor justified.

The Committee agreed that the item of release must reflect the reason for release at that time and not aim to provide specific benefits. While it factually remains that the grievor's release from the Reg F was to enable him to transfer to the Reserve, thus voluntary, the Committee found that the grievor had a well-documented medical condition that warranted MEL be imposed at least three years before his voluntary release from the Reg F. The inadequate administration of the grievor's medical condition prevented his case from being assessed in a timely manner and his MEL would have most likely prevented his transfer to the P Res and resulted in a release from the Reg F under item 3(b). This would have been a major consideration in his decision had this information been known to the grievor. For this reason, the Committee found that, in the very unique circumstances of this case, the appropriate item of release from the Reg F should be amended to 3(b). Consequently, the item of release from the P Res would also have to be changed to 5(e).

The item of release and the component in which CAF members are serving at the time of their release from the CAF impact on the benefits to which they may be entitled. While the QR&Os allow the CDS to change the item after the effective date of release, the regulatory framework generally does not provide for cases where the CAF do so many months, if not years, after the fact. A transfer to the P Res requires that a CAF member first release from the Reg F. The Committee stated that a more efficient process is needed to deal with cases where a preexisting medical condition (that could lead to a change of release item to 3(b)) is noted during the release medical exam to avoid such complications. The Committee concluded that the delay in properly administering the grievor's circumstances was entirely attributable to the CAF. Nevertheless, the grievor's earnings in his 30 months of employment in the P Res could not be disregarded. The Committee recommended that the CDS:

- Find that the appropriate item of release from the Reg F is 3(b) and from the P Res is 5(e);
- Deny the grievor's request for financial compensation; and
- Send letters to managers of the service and benefits programs in question to explain the circumstances for their consideration within the applicable policy framework.

FA Decision: Pending

DISCRIMINATION ARGUED AS REASON BEHIND COURSE FAILURE

CASE 2017-033

The grievor argued that he was discriminated against on the basis of sex, colour, and race, which are prohibited grounds of discrimination under sub-section 3 (1) of the *Canadian Human Rights Act*. He alleged that, while he was assessed as a course failure, another candidate who had also failed the same performance check was granted a course pass on the basis that she was a female from a minority ethnic group. As redress, he sought to be granted the qualification.

The IA denied the grievance, finding that the assessment of the other candidate was indeed influenced by other factors, but these were unrelated to gender and race, and the grievor had provided no relevant evidence to enable the IA to conclude otherwise. The IA also stated that the grievor's performance had to be reviewed against the course training standard and he could not be granted a pass as he had not shown he had acquired the skills of the performance objective in question.

The Committee found that the grievor failed to provide evidence to establish, on the balance of probabilities, that the characteristics in question (sex, colour, or race) were a factor in the decision rendered in his regard. As such, he failed to meet the criteria of the *prima facie* test established by the courts. Accordingly, there was no need to proceed to an analysis of the employer's reasonable justification or *bona fide* occupational requirement.

The Committee noted that the information on file shows that the course staff deviated from the standard under the premise that, given her occupation, the other candidate would have to show she possessed the desired skills on follow-on training, which was not the case for the grievor. The Committee observed that this was not an acceptable practice and that the FA might wish to address the issue. As the grievor recognized that he had failed, thus meeting the course failure criteria, the Committee agreed that he could not be granted the qualification.

The Committee recommended that the grievance be denied.

FA Decision: Pending

LEAVE ENTITLEMENT FOLLOWING AN UNPAID LEAVE WITHOUT PAY SERVICE

CASE 2017-037

The grievor complained that her annual leave entitlement was incorrectly calculated following her return to work from unpaid leave without pay service (LWOP).

The DGCB, who acted as the IA, found that her leave entitlement was calculated correctly in accordance with policy and denied redress.

The Committee noted that the QR&Os, article 16.14(4), provided the annual leave entitlements for CAF members and that the Canadian Forces Leave Policy Manual (CFLPM) was intended to elaborate on the regulation. However, as the IA acknowledged in his decision letter, the CFLPM was not worded as clearly as it could or should be and thus created some confusion regarding how to re-calculate leave entitlement following a period of LWOP.

The Committee found that the grievor's leave entitlement was correct in accordance with the regulation and that the CFLPM should be amended to correctly reflect the regulation. The Committee recommended that the grievance be denied.

FA Decision: Pending

REMEDIAL MEASURES TOO SEVERE

CASE 2017-067

Over a period of less than ten months, the grievor was issued seven remedial measures, including counselling and probation (C&P). During this time, the CO also recommended the grievor's release under item 5(f) – Unsuitable for further service, based on the grievor's disciplinary and administrative records. The grievor contested all seven remedial measures, arguing that these were issued without consideration for his mental health issues. Consequently, he asked that the recommendations to initiate an administrative review (AR) and to release him be cancelled.

The Committee reviewed each remedial measure found on the grievor's file and concluded that the majority of the measures issued by his CoC were too severe in the circumstances. First, the performance and conduct issues reproached to the grievor were minor in nature and his CoC did not offer him sufficient time and assistance to allow him to show whether he was able to improve his performance and address his shortcomings. Second, his CoC failed to take into account that the grievor's mental health issues could limit his ability to improve and perform his duties, despite the MO's opinion to that effect. Consequently, the Committee recommended that the CDS order the removal of five remedial measures, including the C&P, the replacement of the RW by an initial counselling (IC), and reissuance of an IC to remove parts of it that were not compliant with the relevant policy.

The Committee noted that the CO had a responsibility to favour the grievor's rehabilitation by creating a flexible work environment and to accommodate his needs. Hence, the CO ought to have initiated the process to post the grievor to the Integrated Personnel Support Unit when he realized that his MEL prevented him from performing his duties, instead of issuing a C&P. Having concluded that a number of remedial measures, including the C&P, should be removed, the Committee found that the grievor's performance and conduct throughout his career had not deteriorated to a point where his continued employment should be reviewed. Taking into account the grievor's mental health issues, the Committee was of the view that recommending his release was premature and unreasonable. The Committee recommended that the CDS order the DMCA proceed by way of an AR/MEL.

FA Decision: Pending

COMPENSATION FOR ILL AND INJURED RESERVISTS

CASE 2017-083

The grievor was injured while on Class C Reserve Service in a special duty area (SDA). Treatment for his injuries continued well after his return to Canada, and after the expiration of his Class C service. The grievor's Class C service was not extended.

After the fact, a Reserve Force Compensation (RFC) claim was approved for the grievor. This RFC claim was ceased effective the date that the grievor commenced full-time civilian employment notwithstanding that he continued to obtain medical treatment and was on a temporary medical category after the date the RFC claim was ceased.

The grievor argued that his Class C service ought to have been extended in accordance with CBI 210.72(13), rather than receiving RFC pursuant to CBI 210.72(2). He requested an extension of his Class C service until the date his medical category was removed.

The Acting DGCB, who acted as IA, rejected the grievance based on timeliness.

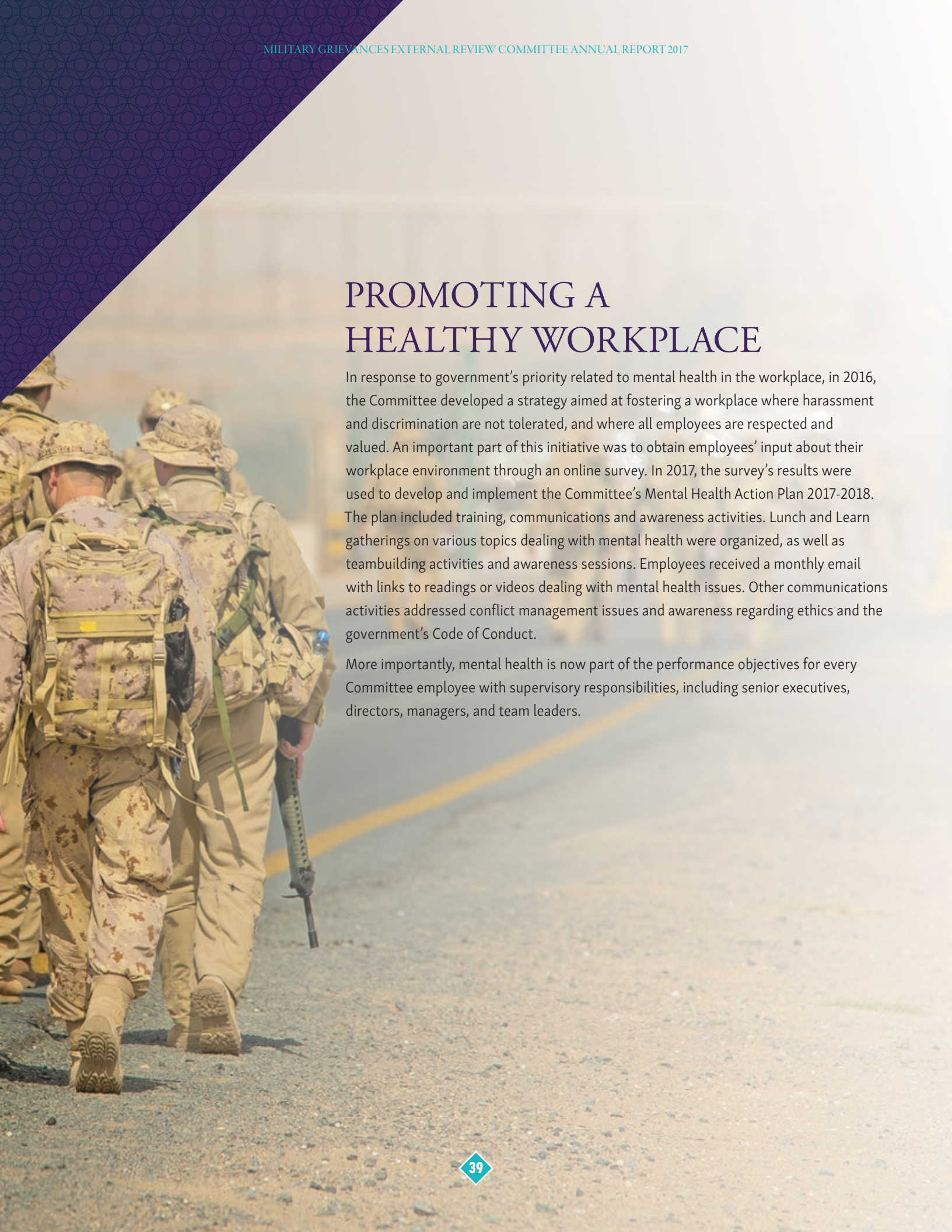
The Committee found that since the grievor was injured while in a SDA, his situation was governed by CBI 210.72(13), and that the DCSM had incorrectly applied the provision in issuing RFC. The Committee also determined that the grievor's Class C service ought to have been extended.

The Committee then reviewed the factors outlined at CBI 210.72(13) to determine when the grievor's extension of Class C service should cease. The Committee found that the service would not have been ceased upon the commencement of his civilian employment because it was not the "civilian employment held prior to going on Special Duty Area" as stipulated in the CBI regulation. In fact, the grievor had been on Class B service prior to his SDA duty. The Committee concluded that the Class C service extension should cease when the grievor was deemed medically fit (i.e. his medical category was removed).

The Committee observed that if the grievor's situation had been properly managed, and had his CO been more suitably engaged, the grievor could have been compensated appropriately at the time rather than having to undergo what he described as financial hardship. The Committee supported and reiterated the recommendation made by the Office of the Ombudsman for the Department of National Defence and the CAF to improve the knowledge of compensation options for ill and injured Reservists.

The Committee recommended that the grievor's Class C service be extended until the date that he was deemed medically fit (less any RFC or Reserve pay received during that time).

FA Decision: Pending



PROMOTING A HEALTHY WORKPLACE

In response to government's priority related to mental health in the workplace, in 2016, the Committee developed a strategy aimed at fostering a workplace where harassment and discrimination are not tolerated, and where all employees are respected and valued. An important part of this initiative was to obtain employees' input about their workplace environment through an online survey. In 2017, the survey's results were used to develop and implement the Committee's Mental Health Action Plan 2017-2018. The plan included training, communications and awareness activities. Lunch and Learn gatherings on various topics dealing with mental health were organized, as well as teambuilding activities and awareness sessions. Employees received a monthly email with links to readings or videos dealing with mental health issues. Other communications activities addressed conflict management issues and awareness regarding ethics and the government's Code of Conduct.

More importantly, mental health is now part of the performance objectives for every Committee employee with supervisory responsibilities, including senior executives, directors, managers, and team leaders.

LOGIC MODEL

Independent Review of Military Grievances Program		
LEGISLATIVE MANDATE	*The Chief of the Defence Staff shall refer every grievance that is of a type prescribed in regulations made by the Governor in Council, and every grievance submitted by a military judge, to the Grievances Committee for its findings and recommendations before the Chief of the Defence Staff considers and determines the grievance. The Chief of the Defence Staff may refer any other grievance to the Grievances Committee. (National Defence Act, section 29.12 (1))*	
Program Component	**Intake**	**Reporting**
Activity Description	**Receive and prepare grievance file**	**Issue the Findings and Recommendations**
Operational Outputs	• Initial Committee grievance file • Team & Committee member assignment • Initial contact with grievor	• Summary of case conference • Review-ready Committee grievance file • Analysis of Committee grievance file • Findings and Recommendations
IMMEDIATE Operational Outcomes	• Team and Committee members are aware of upcoming work • Grievor is aware of team and Committee member assignment	• Team is aware of what is needed to complete the file • Committee member is satisfied that the file is complete • The Final Authority and the grievor are aware/ knowledgeable of the results of the independent review of the grievance
PROGRAM OUTPUT	Committee Findings and Recommendations [1]	
PROGRAM IMMEDIATE OUTCOME	The Final Authority and the grievor are aware and knowledgeable of the results of the independent review of the grievance	
PROGRAM INTERMEDIATE OUTCOME	The Final Authority and the grievor are better able to compare and assess the advice given in the Findings and Recommendations against the position of the Canadian Armed Forces	
PROGRAM ULTIMATE OUTCOME	The Final Authority of the Canadian Armed Forces grievance review process is able to rely on the Military Grievances External Review Committee's Findings & Recommendations to render a decision on the military grievances reviewed by the Committee	

1 Legislative Limitation: The Chief of the Defence Staff is not bound by any finding or recommendation of the Grievances Committee (National Defence Act, section 29.13 (1))

FINANCIAL TABLE

PLANNED SPENDING 2017-2018 (IN DOLLARS)

SALARIES, WAGES AND OTHER PERSONNEL COSTS	3,881,187
CONTRIBUTION TO EMPLOYEE BENEFIT PLANS	562,442
SUBTOTAL	4,443,629
OTHER OPERATING EXPENDITURES	2,770,587
TOTAL PLANNED EXPENDITURES	7,214,216

As of 31 December 2017
Actual expenditures will vary from the planned spending.

COMMITTEE MEMBERS AND STAFF

INTERIM CHAIRPERSON AND CHIEF EXECUTIVE OFFICER
CAROLINE MAYNARD

Ms. Caroline Maynard was appointed Interim Chairperson and Chief Executive Officer of the Committee for a one-year term, commencing on 4 January 2017.

From 2006 to 2017, Ms. Maynard has held the position of Director of Operations and General Counsel to the Committee. Prior to working at the Committee, Ms. Maynard worked as Legal Counsel at the office of the Judge Advocate General (Department of National Defence), the RCMP External Review Committee, the Canada Revenue Agency and in private practice.

She holds a Bachelor of Laws from Sherbrooke University and has been a member of the Quebec bar since 1994.

"Like a big family, our Committee in 2017 faced challenges and achieved a lot. Through it all, we never stopped working together as a team."

Caroline Maynard

THE COMMITTEE'S STAFF OCTOBER 2017

"I am pleased with the appointment of these outstanding individuals to the Military Grievances External Review Committee... Their experience and knowledge will aid them as they review military grievances. Their work is essential to strengthen confidence in, and the fairness of, the Canadian Armed Forces grievance process."

Harjit S. Sajjan, National Defence Minister, welcoming the appointment of new members to the Committee

COMMITTEE MEMBERSHIP CHANGES

In late December 2017, new members were appointed for various terms.

- Dominic McAlea was appointed full-time Vice-Chairperson for a four-year term, starting on 28 March 2018.
- Nina Frid was appointed full-time Committee Member, for a four-year term, starting on 5 February 2018.
- Eric Strong was appointed part-time Committee Member for a three-year term, starting on 14 December 2017.
- Allan Fenske, a part-time Committee Member, ended his three-year term in June 2017.

Short bios of new members are available on the Committee's website.

CONTACT US

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VISIT THE COMMITTEE ONLINE

The Committee publishes online summaries of select cases and recommendations on systemic issues affecting not only the grievor, but other CAF members. Summaries and recommendations provide information about the Committee's interpretation of policies and regulations, and on key issues and trends. Decisions of the FA, whenever available, are also included.