



# BULLETIN

FROM THE CANADIAN FORCES  
GRIEVANCE BOARD

The purpose of the Canadian Forces Grievance Board (CFGB)'s *Bulletin* is to contribute to Canadian Forces (CF) members understanding of the military grievance process and to provide them with information regarding the CFGB's role within this process, as an external and independent review board.

Since it began operations in 2000, the CFGB reviews military grievances referred to it by the Chief of the Defence Staff (CDS), pursuant to section 29 of the *National Defence Act*, and provides findings and recommendations to the CDS and the CF member who submitted the grievance. Both the grievance process and the Board's role are outlined in further detail within the pages of this insert.

The Board has now provided findings and recommendations in over 1400 grievances.

In the following article, the Board discusses the issue of timeliness in grievance review and the importance of the initial authority adhering to the existing timeframe or, where this is not possible, providing the grievor with an estimate of the anticipated delay. The pursuit of a grievance can be a very stressful process as the issues often involve crucial matters such as well-being or even employment. Thus, it is of the utmost importance that a grievance be dealt with within the prescribed timelines.

The Board is hopeful CF members will find this *Bulletin* useful and welcomes their feedback ([www.cfgb.gc.ca](http://www.cfgb.gc.ca); (613) 996-8529; Toll free: 1-877-276-4193).

We also invite you to consult previous *Bulletins* inserted in the *Maple Leaf* and other Board's publications, as well as the summaries of the Board's findings and recommendations issued during the last three years, currently available on the CFGB's Web site.



# A TIMELY REVIEW

The Board is aware that CF members attach great importance to a timely, fair and transparent review of their grievances.

Recently, the Board has received an increasing number of files where the initial authority (IA) has been unable to provide a decision within the requisite timeframe. The responsibilities of the IA with respect to the timeliness of its review, and the related rights of the grievor, form an important part of the grievance process that is worthy of review.

The CF grievance process is defined in section 29 of the *National Defence Act*<sup>1</sup> (NDA) and further detailed in Chapter 7 of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O). Grievances are subject to two levels of review. The IA constitutes the first level of review; article 7.06 of the QR&O specifies who may act in that capacity. If the decision of the IA does not afford the redress the grievor believes is warranted, or if the grievance is not resolved within the specified timeframe, the grievance may be submitted to the CDS who is the final authority (FA) or second level of review.

Article 7.07 of the QR&O sets out the regulatory obligations of the IA in detail:

## 7.07 – DUTIES OF INITIAL GRIEVANCE AUTHORITY

- (1) Upon receipt of a grievance the initial authority shall, within 60 days:
- (a) consider and determine the grievance;
  - (b) advise the grievor in writing, through the commanding officer if the initial authority is not the commanding officer, of:
    - (i) the determination and the reasons for it; and
    - (ii) where applicable, the grievor's entitlement to submit the grievance to the Chief of the Defence Staff;

- (c) return any documents or things submitted by the grievor if requested to do so; and
  - (d) maintain a record of the grievance, including the determination made and any action taken.
- (2) Where an initial authority other than the Chief of the Defence Staff does not determine a grievance within the period required under paragraph (1), the grievor may request that the initial authority submit the grievance to the Chief of the Defence Staff for consideration and determination.
- (3) Where the Chief of the Defence Staff is the initial authority, the time limit under paragraph (1) does not apply.

## The Grievance Process

The CF 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)

Grievors who are dissatisfied with the IA's decision are entitled to have their 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, in his or her discretion, refer it to the Board. If the grievance is referred for consideration, the Board conducts a review and provides its F&R to the CDS and the grievor. Ultimately, the FA makes the final decision on the grievance.

<sup>1</sup> R.S.C. 1985, c. N-5.

According to article 7.07, the IA has 60 days to consider and determine a grievance; the article is silent as to whether or not the IA may request an extension. It leaves the reader with the expectation that a decision will be rendered within that time. When the timeline is not met, the onus is on the grievor to request that his/her grievance be sent to the FA. In other words, a grievance file could remain at the IA level for as long as and until a grievor requests that the file be sent to the FA for determination. Depending on the workload of the IA, this could be months and even years.

When the 60-day timeline cannot be respected, the Board has noticed that some IAs have put a process in place, whereby, as a matter of course, they inform the CF member that the grievance will not be determined in time, and ask to be granted an extension.

The Board is of the view that a grievor should at the very least know what to expect of the grievance process. Thus, once the appropriate IA has been identified, a decision should be made as to whether or not it will be possible to consider the grievance within 60 days. If it is not possible, the grievor should be provided with an accurate estimate of the anticipated delay. In other words, rather than issuing standardized extension requests, a grievor should be given a realistic assessment of the delay, based on the IA's current average turnaround time, so that the grievor can make an informed choice as to whether he/she wishes to grant the extension. In the event that additional time is necessary, the request should include an update of the work performed to date on the grievance file so that once again the grievor can make an educated decision. Finally, a grievor should be informed of his/her right, at any time during the expected delay, to require that his/her grievance be immediately referred to the FA.

From the grievor's point of view, the pursuit of a grievance can be a very stressful process as the issues often involve matters affecting his/her well-being or quality of life (or even employment) and thus, it is of the utmost importance to determine a grievance within a reasonable timeframe.

Ideally, grievances should be dealt with at the IA level quickly, with less expense and with the involvement of fewer people, than at the FA level. However, the Board recognizes that an IA must have access to adequate tools and resources. That said, the regulations cannot be interpreted as permitting the multiple extensions requested by IAs that have led to substantial delays in many files reviewed by the Board.

It bears mention that in 2003, the former Chief Justice of the Supreme Court of Canada, Antonio Lamer, recommended that decisions respecting CF grievances be rendered within a time limit of twelve months,<sup>2</sup> with the 60-day time limit for the IA to decide a grievance, amended to 90 days. Subsequently, in 2010, the Armed Forces Council approved similar recommendations, however, it was noted that the time limit adjustments would require amendments to the QR&O.

Until such changes are made to the regulations, the Board would emphasize the importance of an IA adhering to existing timelines and where this is not possible, making a concerted effort to ensure their accountability to members by assisting them in making informed decisions regarding the progress of their grievances.

### What happens when the Board receives a grievance file?

The Board's internal grievance review process consists of three steps: grievance reception, Board review, and the preparation and submission of findings and recommendations (F&R).

#### **Grievance Reception:**

Upon receipt of a grievance, the Board acknowledges receipt of the file to the grievor disclosing the information contained in his/her file and inviting the grievor to submit additional comments or other documents relevant to his/her case.

#### **Board Review:**

An assigned Board member reviews the grievance and identifies the issues. If necessary, additional documentation is obtained and added to the file and subsequently disclosed to the grievor. The Board member is assisted by a team leader, a grievance officer and legal counsel.

#### **Findings and Recommendations:**

The Board member issues the final F&R which are then sent simultaneously to both the Chief of the Defence Staff (CDS) and the grievor.

<sup>2</sup> See *The First Independent Review by the Right Honourable Antonio Lamer P.C., C.C., C.D. of the provisions and operation of Bill C-25* (September 2003).