



PERSPECTIVES

FROM THE CANADIAN FORCES GRIEVANCE BOARD

I am pleased to present to you this second edition of *Perspectives*, my first as Chairperson of the Canadian Forces Grievance Board.

One of the benefits of having military grievances reviewed by an agency outside the Canadian Forces and the Department of National Defence is that the Board with its well-developed Information Management System is able to identify general trends, flawed or inadequate policies, areas of dissatisfaction and problems of a systemic nature and report them to the leadership, key decision-makers and professionals associated with conflict resolution in the Canadian Forces. The Board feels that in conveying this information it plays an active role in improving conditions of service for all military personnel. It was in fact to meet this specific goal that our publication, *Perspectives*, was created.

The first edition of *Perspectives* was extremely well received. Judging by the comments we received, it is apparent that it is filling a requirement. So here is the second edition, which covers some issues and topics the Board believes would be of interest to you.



Bruno Hamel
Chairperson

About the Board

The Canadian Forces Grievance Board is a Federal Agency external to the Department of National Defence and the Canadian Forces (CF). The Board reviews military grievances referred to it by the Chief of the Defence Staff (CDS) and issues findings and recommendations to the CDS and the grievor in a fair and timely manner. In fulfilling its mandate, the Board strengthens confidence in, and adds to, the fairness and transparency of the CF grievance process.

RECURRENT ISSUES – RESERVE FORCE

During these first nine years of the Board's existence, approximately 20% of all grievances reviewed have been submitted by Reservists. Many of these 220 cases express dissatisfaction between the compensation and benefit regimes for the Regular Force and that of the

Reserve Force. The 15% differential between Class B Pay and Regular Force Pay remains an ongoing complaint. The limitation on Post Living Differential (PLD) for those Reserve personnel on long term Class B service is also a frequent issue.

A number of Reservists have based their compensation/benefits complaints on what they perceive to be “discrimination”. In fact, differential treatment is not necessarily discrimination under the *Charter of Rights and Freedom* and the *Canadian Human Rights Act*. Although the policies in question may be lawful and defensible, the Board has expressed the view to the CDS that they may well be having an impact on morale and recruiting/retention.

Outdated Policies

At issue here is the dissatisfaction expressed by Reservists regarding CF policies that fail to address the current reality. There is evidence in the grievance files to suggest that some Reservists believe that the CF does not place as much emphasis on maintaining up-to-date policies for Reservists as it does for the Regular Force. Consider, for example, the following complaint regarding movement benefits:

- > The grievor sought reimbursement of expenses associated with the sale of his home during the Active Posting Season 2005 but was denied. He complained that in 11 years of Class B service, he had been asked to relocate three times but only once was he reimbursed for his costs associated with the sale of his residence [in 1997]. The grievor stated that he had lost approximately \$50,000 of equity as a consequence of his various moves and he suggested that, had he been a Regular Force member, he would have been reimbursed for expenses associated with all the moves. In addressing this grievor’s original request, the Director Compensation and Benefits Administration (DCBA) applied the policy found under TR Pol 009/95 and did not approve his request based on the provision that a Reservist is entitled to claim just one home sale in a seven-year period.

The Board assisted the CF in resolving this grievance to the grievor’s satisfaction through the use of an informal resolution and the request for reimbursement was approved. In reviewing this grievance, the Board noted that even though the grievor’s request for reimbursement was made in 2005, it was considered by DCBA under the provisions of the [then] ten-year old TR Pol 009/95 policy; a policy that had long since ceased to apply to members of the Regular Force.

Policy – Class B/Class C Reserve Service

A significant number of grievances have been received on this issue; there has been evident confusion and frustration dating back to the major policy change in March 2002 restricting Class C Reserve service to employment on operations. Many Reservists challenged the CF’s application of the policy following its initial introduction arguing that it was not reflective of the wording of the regulations on Class B and C employment as defined in *Queen’s Regulations and Orders* (QR&O) 9.07 and 9.08. Reserve members are still complaining about the lack of harmony between what the new policy intended, what the regulations say and the manner in which the policy has been applied.

These grievances were referred to the Board since they involved pay and they were ultimately denied on the basis that the CDS has the discretion to decide when a Reservist can be employed on Class B or C service. This position was supported by the Board and, when challenged in Federal Court was found to be reasonable. However, the Class B/Class C issue, as evidenced by recent grievances, continues to be a dissatisfier. Two points continue to surface: first, Reservists who serve on a full-time basis, in positions which historically were filled by Regular Forces members, consider the



distinction made by the CF policy as to when Class C service will be approved to be unfair and, secondly, they insist that their particular circumstances clearly fall within the other definitions for Class C service found in QR&O 9.08.

A notable issue is precisely what is meant by the term “operations” in the most recent policy relating to Class C service. In reviewing grievances with respect to this matter, the Board has noted that CDS discretion has been used to approve Class C service for pre-deployment training in Canada or when Reserve members on Class B service are redirected to a search and rescue mission. In a recent case:

- > The grievor accepted a reserve employment opportunity with a Sea Training Unit. The grievor agreed to serve on Class B service but was authorized Class C service whenever he was deployed at sea aboard a Maritime Coastal Defence Vessel (MCDV). This occurred often in his job and he therefore requested that his position be categorized as Class C. The grievor argued that the QR&O 9.07 definitions of Class B service did not apply to his situation and that QR&O 9.08(1)(b) was more appropriate.

The Board found that the wording of QR&O 9.07 and 9.08 appeared to require that Class B and Class C service be authorized for continuous periods of service in predetermined positions or types of operations and that the CF’s practice of alternating (sometimes daily) the grievor’s service from Class B to C was not contemplated by the applicable regulations. The Board therefore concluded that a Reservist’s period of full-time service should normally be either Class B or C – but not both. The Board noted that the nature of the grievor’s service did not fit squarely in either of the QR&O definitions. In determining the appropriate Class of service, the Board relied upon the latest CDS Directive on the meaning of “operations”. In this Directive, the

CDS defined “operations” as including preparation, deployment, employment and redeployment (including all post deployment activities) and leave related to the operation. The Board also noted that “routine naval operations” were included under the CDS Directive and observed that the Navy considers the grievor’s unit to be operational. In addition, the Board gave considerable weight to the fact that Ministerial Order 018/06 designated all positions in the grievor’s unit as sea-going positions for the purpose of the Sea Duty Allowance benefit in accordance with Compensation and Benefits Instructions (CBI) 205.35.

Given that the grievor’s duties were significantly linked to MCDV operations, the Board concluded that Class C service was more appropriate in the grievor’s particular circumstances.

From the Board’s perspective, the current classes of Reserve service, as defined in the QR&O appear to be outdated and not well adapted to today’s needs; a review may be appropriate.

Post Living Differential (PLD)

The Board has also reviewed a number of PLD benefit cases involving locally hired Reservists. These grievors complained they were not eligible to receive PLD benefits because, although they were subject to the same high costs of living as any other CF member receiving PLD benefits in the same area, they had not been moved to that PLD area at public expense as required by the policy. In the following case:

- > The grievor argued that Reserve personnel who voluntarily accept a position requiring that they be moved at public expense to a PLD area could not be said to be doing so on a compulsory basis and

therefore were no different than those Reservists hired locally. He suggested that granting the PLD benefit only to those Reservists moved at public expense was unfair and resulted in unequal treatment between Reservists for no cause since both had chosen to serve in the PLD area and both had to deal with the same high cost of living in that PLD area.

There have been several modifications to the PLD policy since its inception, some of which have redefined who is eligible to receive the benefit. These changes have, judging from the grievances we have seen, generated significant misunderstanding among Reservists.

Initially, Reservists were not eligible to receive PLD under any circumstances. Following several policy iterations, Treasury Board (TB) approved the granting

of PLD benefits to Reservists provided they were moved at public expense to the PLD area. The rationale of the new policy, apparently, was that locally hired Reservists did not face any new costs in terms of living expenses as a result of their service in the PLD area since they were already living there when they were hired. Although the Board accepts the logic and reasoning regarding PLD entitlement for Reservists, it does note that the reasoning appears to conflict with the policy of granting PLD benefits to Regular force personnel who are recruited in a PLD area and remain there for their first posting following their recruitment. It is this type of differential treatment that will likely continue to be perceived as unfair.

CONFLICT BETWEEN THE DCBA AIDE-MEMOIRE AND CBIs

In the first issue of *Perspectives* the Board discussed some of the problems that have resulted from inequities in the application of internal policies that purport to limit or expand benefits set out in regulations. The Board has since reviewed several grievances that have revealed serious inconsistencies and conflicts between the provisions of certain CBI and the DCBA Aide-Memoire, which the Board feels must be brought to the attention of the senior leadership given the apparent scope of the problem.

In 2006, DCBA issued an Aide-Memoire as interim policy to assist with the administration of non-relocation benefits such as Family Care Assistance (FCA), Leave Travel Assistance (LTA), Separation Expenses (SE), etc. Since then, the

Aide-Memoire has been re-issued every year under the proviso that amendments to the CBI, the TB approved regulations, had been submitted to TB and had been approved in principle.

The Board has recently reviewed several compensation and benefits cases where the grievance has arisen as a result of the application of certain provisions found in the DCBA Aide-Memoire. Through the review of these grievances, the Board has identified significant conflicts between the provisions of the applicable CBI, still in effect at this time, and those of the Aide-Memoire. Of particular concern, the Board noted that the Aide-Memoire places additional restrictions on member's eligibility for benefits such as the FCA and SE, without the proper regulatory amendment to the applicable CBI.



The following are a few examples:

- > The grievor's ex-spouse lived in the same geographic area and shared custody of his children. Upon deployment to an operational theatre, the grievor requested the FCA for his children to be cared for by their mother. His request was denied because the Aide-Memoire stipulated that the dependants had to be living with the grievor on a full-time basis and the biological parent had to be residing in a different geographical area from the member.

The Board observed that the grievor met all of the eligibility requirements stipulated by the applicable CBI 209.335 – FCA. In particular, his children met the definition of dependant provided under the CBI and he did not have a spouse to take care of his children while he was away.

- > The grievor was posted from Edmonton to Calgary. His request for Imposed Restriction (IR) was approved and he became entitled to receive SE benefits. The grievor soon observed that the ceiling rate for SE in Calgary, as provided by the Aide-Memoire, was insufficient to cover his actual expenses.

The Board noted that certain elements of the Aide-Memoire dealing with the establishing of SE ceiling rates were inconsistent with CBI 209.997 – SE. For example, the Aide-Memoire provides that a member is entitled to 65% of the dinner meal rate, while the CBI holds that the member is entitled to 35% of the daily allowance. Based on the 2008 rates, there is a five dollar difference with the CBI provision being the more generous of the two.

- > The grievor married a foreign national while posted outside Canada. For employment reasons, the spouse could not accompany the grievor upon posting back to Canada. The grievor's request to be placed on IR with associated SE benefits was denied

based on the Aide-Memoire stipulation that members who enter into a recognized marital relationship while posted outside Canada are ineligible for SE benefits should those members repatriate without their spouse.

The Board noted that the grievor met all the entitlement criteria for SE found under the applicable CBI 209.997. Moreover, the Board observed that the grievor and spouse had been living together in a residence situated at the grievor's place of duty in a foreign country. They were subsequently separated for military reasons when the grievor was posted to a new place of duty (Canada) and the spouse could not follow the grievor on posting for employment reasons.

The Board recognizes that an Aide-Memoire may serve as a valid instrument to administer and clarify benefits provided it is not inconsistent with the underlying TB regulations. However, the Board is concerned that, through the Aide-Memoire, the CF is adding additional conditions and/or restrictions to TB authorized benefits solely on the basis of informal agreements in anticipation of the eventual receipt of the formal TB approval. The Board also observes that these informal amendments to TB approved benefits have been awaiting TB approval for more than two years and, in the interim, benefits are being approved without proper lawful authority or denied on the basis of a policy not in conformity with the regulations.

The Board is of the view the current law must be applied to administer compensation and benefits. It is entirely possible that a number of members are being denied benefits to which they are currently lawfully entitled. CF Aide-Memoires should be confined to the ambit of the existing regulations.

SUMMARY

The Board understands the modern complexities that challenge the CF and, in particular, the difficulty associated with ensuring an appropriate level of compensation and benefits for its members. Indeed, these challenges are compounded by the ongoing high Op Tempo and the increasing emphasis being placed on the employment of Reservists by the CF in order to sustain operations.

At the same time, the CF has also been working hard to transition from the use of QR&Os to CBIs and from CFAOs to DAODs. Various Orders, CANFORGENs and Aide-Memoires have been produced with the intent of clarifying certain issues that have arisen during this transition period. These clarifying administrative guides and directions issued by the CF have worked quite effectively for the majority of issues. However, where they have attracted grievances, it has generally been the result of a lack of alignment with the underlying regulations.

Today's compensation and benefits issues are complicated and becoming more so all the time. The many factors to be considered means a greater likelihood that unintended inequities may emerge with the potential to negatively affect the morale and well being of CF members. Although the CF does its best to ensure that all possibilities are considered and addressed, the unintended or unexpected will continue to happen from time to time; as we said in our first issue of Perspectives, no policy is perfect in scope or application. In such cases, the Board is particularly well positioned to capture this and to report back to CF leadership.

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