



# PERSPECTIVES



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I am pleased to present this new edition of *Perspectives*, the Military Grievances External Review Committee's newsletter intended for senior management in the Canadian Armed Forces (CAF).

*Perspectives* returns in a new format to reflect the organization's name change which came into effect in June 2013. However, the aim of this publication remains unchanged: to share with CAF authorities issues found common to several cases in an effort to promote better understanding of a particular topic. *Perspectives* also serves to raise decision-makers' awareness of broader issues and trends which have come to the Committee's attention during the review of grievances.



In this edition, the Committee will discuss whether certain practices and measures put in place by the CAF to implement *Defence Administrative Order and Directive* (DAOD) 5039-6, *Delivery of Training and Education in Both Official Languages*, actually meet the requirements of this DAOD and, more importantly, the relevant provisions of the *Official Languages Act*. The Committee has reviewed several grievances in which the complainants submitted that they were denied access to individual training and education in the official language of their choice. This allegedly led to their failure of mandatory training courses and, for some, may have resulted in their release.

In several of these cases, the Committee found serious breaches of DAOD 5039-6 and provided recommendations of a systemic nature to alert the Chief of the Defence Staff to the need to address these issues, so that all CAF members, whatever their official language, are afforded equal opportunities in training and in their military careers.

We hope that this new issue will be as useful and instructive as those that preceded it. You can find all issues of *Perspectives* on our Web Site at ([www.mgerc-ceegm.gc.ca](http://www.mgerc-ceegm.gc.ca)). We are also interested in receiving your comments, which you can submit by email ([najwa.asmar@mgerc-ceegm.gc.ca](mailto:najwa.asmar@mgerc-ceegm.gc.ca)) or by phone (613-996-8529, toll-free: 1-877-276-4193).

## About the Committee

*The Military Grievances External Review Committee is a federal body independent of the Department of National Defence and the Canadian Armed Forces (CAF). The Committee 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 Committee strengthens confidence in, and adds to, the fairness and transparency of the CAF grievance process.*

**Bruno Hamel**  
Chairperson

Canadian Armed Forces imagery sourced from the Department of National Defence's Combat Camera Web site: [www.combatcamera.forces.gc.ca](http://www.combatcamera.forces.gc.ca)



## LANGUAGE RIGHTS AND OBLIGATIONS

The Office of the Commissioner of Official Languages states that “English and French are a fundamental characteristic of the Canadian identity, and the importance of language rights is clearly recognized in the *Canadian Charter of Rights and Freedoms*, part of the *Constitution Act* of 1982... [the *Charter*] establishes that English and French both have equal status, rights and privileges as to their use in all institutions of the Parliament and government of Canada<sup>1</sup>.” The *Official Languages Act* (OLA) reflects this right and applies across all federal institutions, including the Canadian Armed Forces (CAF). More specifically, sections 34 to 38 of the OLA provide that “employees of federal institutions, regardless of whether their position is bilingual, have the right to work in the official language of their choice in ... designated bilingual regions<sup>2</sup>.” It follows that federal institutions have the obligation to offer their employees training in their first official language. The Office of the Commissioner of Official Languages states:

*Having the right to work in the official language of your choice includes: having work tools (such as reference books, manuals, keyboards, computer software and telephone systems) in your choice of English or French; ... having access to training in your choice of English or French.*<sup>3</sup>

To comply with the provisions of the OLA, the CAF implemented *Defence Administrative Order and Directive* (DAOD) 5039-6, *Delivery of Training and Education in Both Official Languages*, which provides that:

*CF members may take IT&E [individual training and education] in the OL [official language] of their choice, regardless of their FOL [first official language] ... Accordingly, prior to attending IT&E activities, CF members shall identify the OL of their choice [to the responsible personnel]...*

However, in several of the cases reviewed, including the three cases discussed in this publication, the Committee identified flaws in the practices and measures taken by the CAF, which resulted in a failure to meet the provisions set out in DAOD 5039-6. These deficiencies may have cost some CAF members their military careers.

It should be noted that the three grievances presented in this article raise a variety of issues specific to each case. However, the right of a CAF member to receive individual training in the official language of his/her choice is common to all three grievances and it is the issue we will be discussing in this publication.

1 The Office of the Commissioner of Official Languages Web Site dated 9 September 2014

2 Ibid

3 Ibid

## RIGHT TO INSTRUCTION IN THE OFFICIAL LANGUAGE OF CHOICE

The first example (file 2013-067) is the case of a CAF member who grieved his release after failing an occupational training course. The grievor attributed his failure to the fact that his right to receive individual training in the official language of his choice, in this case French, was not respected. The course, provided by a private institution, was delivered exclusively in English and the course materials were not translated into French. To address this problem, the grievor was given language assistance, which involved assigning him a French-speaking person to translate the teaching material in the classroom and to answer his questions.

The following description is a summary of the grievor's view of this somewhat unique teaching arrangement. During the initial months of training, the instructor would halt the course for a few moments to allow the linguistic assistant to answer the grievor's questions. As the course went on, the teacher's delivery sped up, and he no longer stopped the course. To avoid interrupting the flow, the grievor wrote down his questions and asked the language assistant for explanations following the course. It should be noted that the linguistic assistant was not a qualified translator and was not proficient in the technical terminology of the occupation being taught. The linguistic assistant often had to query the course instructor before providing the grievor with explanations and was sometimes unable to get back to the grievor on the same day.

After reviewing the grievor's arguments and questioning the parties involved in the case, the Committee gathered sufficient evidence of contravention of DAOD 5039-6. To start with, the CAF and the course provider confirmed that the course had been delivered exclusively in English and that the material taught was not translated into French, the grievor's first official language. This is an infringement of DAOD 5039-6 which stipulates that:

***The COs [Commanding Officers] of IT&E establishments shall ensure that instructional materials, examinations and tools (including electronic systems) developed and acquired by the CF, or produced on their behalf by a third party, are offered to CF members in both OLs.***

Neither was the Committee convinced that the teaching method described by the grievor met the requirements of DAOD 5039-6, which states that:

***COs shall ensure that the instructional content of all materials and tools is comparable in both OLs and of equivalent quality.***

In this case, the linguistic assistant was unable to provide simultaneous translation of the course and was neither a professional translator nor an expert in the course subject material. Furthermore, one must ask whether it is reasonable to believe that a Francophone student, listening to a course delivered in a language in which he is not proficient, while writing down the parts he does not understand and posing questions to an unqualified translator, who then tries to catch up later with what he has missed, would be receiving training "comparable and of equal quality" to that received by his English-speaking colleagues?

Finally, when a representative from the Canadian Forces School of Military Engineering (CFSME), responsible for the course, was asked to provide an explanation for the difficult conditions under which the grievor had received his training, he indicated there was a "systemic" problem with resources and that CFSME was bound by contract to a private institution that taught the course. Still, the wording in DAOD 5039-6 is clear on this matter:

*The following shall not be considered as valid reasons to delay or impede the right of CF members to receive IT&E in the OL of their choice: limited resources; administrative inconvenience; limited in- or out-service capacity; or geographic location.*

Given that there was evidence of the grievor's misconduct in this file, the Committee was unable to definitively conclude that the grievor's failure resulted solely from his language disadvantage. The Committee did conclude, however, that the grievor clearly suffered a real prejudice with respect to his right to individual instruction in his official language of choice. The Committee recommended that the grievor's case be re-evaluated in order to determine his eligibility to pursue a career in another occupation where he would have access to training in his official language of choice.

### RIGHT TO ASSESSMENT IN OFFICIAL LANGUAGE OF CHOICE

The Committee identified similar breaches in the case of a CAF member who grieved his release following four consecutive failures during training as a military engineering officer, at CFSME (file 2014-006). The grievor submitted that his failures were mainly owing to the fact that he was not evaluated in French, his official language of choice. Furthermore, he had repeatedly taken his training in either a bilingual format or in English only. In fact, three of his four assessments, which required him to give or receive orders, were conducted in English. Only the fourth was conducted in French. The grievor also alleged that during these evaluations he received his orders in English from an Allophone student who was having trouble understanding him and would regularly ask him to translate into English what he had just said in French. Despite the fact that his fourth evaluation was conducted in French, the grievor submitted, and rightly so, that he had been assessed in a fair manner only once, while his peers were consistently evaluated in their official language of choice.

It was easy to conclude in this case, as in the previous one, that the CAF had failed in their obligation, very clearly stated in DAOD 5039-6, to provide the grievor with training and access to testing in his official language of choice. In this case, the CAF again invoked a lack of resources which, as noted earlier, contravenes the provisions of DAOD 5039-6.

This case presented an additional irregularity that the Committee needed to address: one of the arguments used by the CAF was that the grievor's English proficiency allowed him to "function" in both official languages. It was the opinion of the CAF that the grievor's failures were not due to his linguistic disadvantage, but rather to his leadership problems and the fact that he lacked the necessary skills to succeed as a CAF officer. Nowhere does DAOD 5039-6 state that a CAF member's proficiency in his second official language relieves the CAF of their primary obligation to: "... ensure that instructional materials, examinations and tools (including electronic systems) developed and acquired by the CF, or produced on their behalf by a third party, are offered to CF members in both OLs."

Given the conditions under which the grievor's training and evaluations took place, the Committee could not eliminate the possibility that the use of the English language during training and testing may have contributed to the grievor's failures. The Committee recommended that the decision to order the grievor's release be re-examined.

### PROFICIENCY IN A FIRST OFFICIAL LANGUAGE

The third case to be discussed involves an Allophone CAF member who objected to her withdrawal from the Basic Public Affairs Officer Course, where her performance was deemed unsatisfactory (file 2013-063). The reason given by the learning centre was the fact that the grievor lacked the requisite proficiency in French, her official language of

choice, to do a job where high language standards were required. The grievor argued however that her poor performance was owing to the fact that the CAF did not provide her with training in French.

According to the grievor, the Basic Public Affairs Officer Course was taught primarily in English and the available training manuals in French were very limited. The grievor explained that she had to expend double the effort of others as she had to assimilate the material taught in English, and then translate it into French so she could complete her work and submit it in her first official language. The grievor explained that even when the speakers were bilingual, their presentations were delivered mainly in English. In class, she inevitably asked questions in English, given that most of her colleagues were Anglophones. On several occasions, the grievor's instructor allegedly told her to stop asking questions as it interrupted the flow of the course and that he had difficulty understanding her accent. In the grievor's opinion, there is no doubt that the CAF failed to meet their obligation to provide her with training in her official language of choice and, as a result, she was prevented from fulfilling her ambition of becoming a Public Affairs Officer.

The case was unique in several respects and the Committee, deeming it to be of public interest, held a public hearing to debate the issue. The grievance also presented a number of complications, not only because of the particularities of the public affairs trade<sup>4</sup>, where mastery of at least one of the two official languages is essential, but also because of the absence of policies or practices in the CAF governing such cases. Furthermore, the CAF does not have any mechanism in place to pre-evaluate members who enrol in military occupations that call for specific language skills. Finally, the course in question was delivered in a bilingual format and its specifications and structure were not covered in any CAF policy, but were developed according to the spirit of the law, a situation confirmed by the Director of Official Languages of the Department of National Defence and the CAF.<sup>5</sup>

Notwithstanding the evidence and arguments submitted by the CAF to justify the grievor's removal from the course, the Committee identified certain breaches of the provisions set out in DAOD 5039-6. Testimonies and evidence on file indicated that the ratio of the course teaching manuals offered solely in English was disproportionate to those available in French and the proportion of teaching offered in English compared to the teaching offered in French clearly put the grievor at a disadvantage. In addition, the solutions made available to those students whose first official language was French, in order to address this imbalance, such as remedial work after class and mentoring, also failed to meet the obligation to dispense training simultaneously in both official languages. When consulted on this issue by the Committee, the Office of the Commissioner of Official Languages indicated that "the fact that material or explanations are later provided to someone in his or her first official language is not sufficient to meet federal institutions' obligations under the OLA, nor does the provision of additional mentoring meet these requirements. A person must be able to receive training in his/her official language of choice at the time the training is delivered."

In light of these breaches, the Committee could not conclude that the grievor had received her training under favourable conditions, in compliance with the OLA and DAOD 5039-6. The Committee recommended that the grievor re-take the course and that it be delivered in a manner that respected her language rights. The Committee noted that substantial

4 According to Part IV of the *Official Languages Act* on communications with the public and the delivery of services, "Every federal institution has the duty to ensure that any member of the public can communicate with and obtain available services from its head or central office in either official language." This applies to public affairs officers whose tasks include communicating with the public and answering questions in both official languages.

5 Testimony given during the public hearing held by the Committee on 20 December 2013

improvements have been made to the Basic Public Affairs Officer Course in recent years and felt that it was now 90 percent bilingual and met the obligations of the CAF. As a result, the course could now adequately fulfill the requirement that the grievor receive instruction in her official language of choice.

## CONCLUSION

The Committee acknowledges the CAF efforts to respect the language rights of its members and to address the issues surrounding the application of the OLA in a complex military environment, where operational effectiveness and mission success remain of prime importance. The Committee remains convinced, however, that the CAF must have in place the mechanisms, practices and resources necessary to guarantee that its members have access to individual training in their official language of choice. A fair assessment of skills means giving candidates equal opportunities at every level, including and most importantly at the linguistic level. As long as equality in training is not guaranteed, CAF members are at risk of losing the opportunity to serve within the CAF, of having their career cut short or their progress slowed, not due to lack of skill or motivation, but due to the disadvantage of not receiving individual training and education in their official language of choice. The Committee is hopeful that the CDS, whose final decision in the three above-cited cases was still pending at the time of writing, will take into consideration the deficiencies identified during the review of these grievances and direct that they be corrected.



*Perspectives was created to share valuable lessons learned from the review of grievances with key decision-makers and professionals associated with conflict resolution in the Canadian Armed Forces. We look forward to your feedback: [najwa.asmar@mgerc-ceegm.gc.ca](mailto:najwa.asmar@mgerc-ceegm.gc.ca); 613-996-8529; toll-free: 1-877-276-4193.*

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