



Military Grievances
External Review Committee

Comité externe d'examen
des griefs militaires

RENEWAL AND CONTINUITY

2018 ANNUAL REPORT



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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.

29 March 2019

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 2018 annual report on the activities of the Military Grievances External Review Committee for tabling in Parliament.

Yours truly,



Christine Guérette
Chairperson and Chief Executive Officer

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MESSAGE FROM THE CHAIRPERSON AND CHIEF EXECUTIVE OFFICER

I am pleased to submit the Annual Report of the Military Grievances External Review Committee for 2018, my first as Chairperson and Chief Executive Officer (CEO).

The year began with my predecessor, interim Chairperson and CEO Caroline Maynard, moving on to become Information Commissioner of Canada. Her exemplary work has left a long-lasting mark on our organization, and I wish to express my most heartfelt thanks to her, both personally and on the Committee's behalf. I am taking over the reins of a healthy organization that is able to stand on a solid footing of accomplishments to take on the challenges of the future.

In the spring, we had the pleasure of welcoming four new Committee Members appointed by the Governor in Council to oversee the review of grievances. Collectively,

Nina Frid, François Malo, Dominic McAlea, and Eric Strong come to us with decades of experience in legal, management, and conflict resolution matters, acquired within the Canadian Armed Forces (CAF) and federal administrative tribunals. CAF personnel and all of us at the Committee are fortunate to have access to their experience, their abilities, and their knowledge.

After having been Director General of Corporate Services at the Committee for more than two years, I was appointed Chairperson and CEO in June, rounding out an entirely renewed complement of Members. Over the summer, a new senior management team was formed, with Jean-François Poirier succeeding me in Corporate Services and Vihar Joshi succeeding Caroline Maynard as Director General of Operations and General Counsel.

"The vision I hope to accomplish by 2022 is that of a modern and agile administrative tribunal, where employees and Members have what they need to do their work efficiently and effectively."

Due to the departure of several seasoned grievance review officers, the interval before new Committee Members were appointed, and the learning period of these Members once they were appointed, we have reviewed fewer files in 2018 than we did in previous years. This is a temporary situation that should be resolved in 2019. Still, the high quality of our reviews remains unchanged. The quality of our output is our constant, even in a period of great change.

In the fall, we developed our strategic framework for 2019-2022, which outlines precisely where we want to lead the Committee over the next three years and how we will do so. Our priorities are centered around three main pillars: our people, our tools, and our methods.

The vision I hope to accomplish by 2022 is that of a modern and agile administrative tribunal, where employees and Members have what they need to do their work efficiently and effectively. My main objective is to ensure the Committee is optimally positioned to provide, in a timely fashion, high-quality findings and recommendations to the Chief of the Defence Staff and to the CAF members who have filed a grievance.

In closing, as Chairperson and CEO, I must applaud the professionalism and dedication of all Committee Members and employees. During a period of great change, they have answered the call and performed their duties with great zeal and conviction.

The quality of their work is a testament to their positive spirit and their perseverance. I am looking forward to the great achievements that the coming years will bring to us.



Christine Guérette



The Chairperson and CEO, along with a lucky few Committee Members and employees, had the chance to take part in Exercise COLLABORATIVE SPIRIT at Canadian Forces Base Petawawa in September 2018. This unforgettable experience allowed them to gain a greater understanding of some of the challenging tasks carried out by Canadian Armed Forces members.



Throughout the year, a half dozen grievance officers moved on to retirement, received promotions elsewhere in the public service, or decided to refocus their careers. We plan to return to a full complement of grievance officers in 2019. Our confidence rests on an important fact: the Committee is a great place to work, as evidenced by the results of the most recent Public Service Employee Survey.



Committee Members and employees benefited from hearing from the Chief of the Defence Staff, General Jonathan Vance, as he praised the Committee for the quality of the analysis behind every findings and recommendations report when he visited our offices in June 2018. General Vance highlighted the value of our findings and recommendations in every single determination he rendered as final authority.

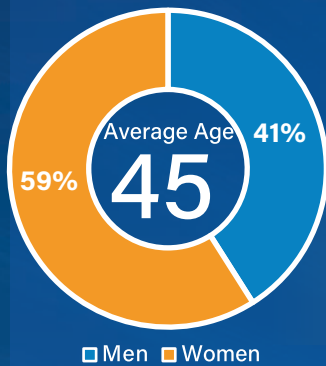
ABOUT THE COMMITTEE



151 Grievances Received



96 Findings & Recommendations


107 Parliamentary Enquiries



39 Workforce




\$6,761,847 Expenditures¹


\$4,002,894 Salaries, wages and other operating costs


\$582,235 Contribution to employee benefit plans


\$2,176,718 Other operating expenditures


7 Representation from employment equity groups²

¹ Actual expenditures for the calendar year ended 31 December 2018.

² Includes self-identified Aboriginal peoples, persons with disabilities, and members of visible minorities, but excludes women.

OUR MANDATE

Section 29 of the *National Defence Act* (NDA) provides a statutory right for an officer or a non-commissioned member 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 overestimated 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 Chief of the Defence Staff (CDS), as stipulated in the NDA and article 7.21 of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O). Following its review, the Committee submits its findings and recommendations (F&R) to the CDS, at the same time forwarding a copy to the grievor.

As the final decision-maker, the CDS is not bound by the Committee's F&R, 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 types³ of grievances that must be referred to the Committee (mandatory referrals) are those involving administrative actions resulting in forfeiture or 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 the discretion to refer any other grievance to the Committee (discretionary referrals).

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Since it began operations in 2000, the Committee has acted as the external and independent component of the CAF grievance process.
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³ Article 7.21 of the QR&O sets out the types of grievances that must be referred to the Committee once they reach the final authority level.

COMMITTEE STRUCTURE

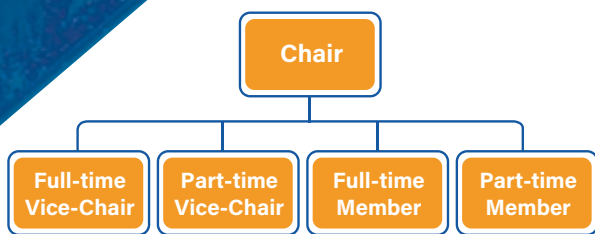
The Committee consists of Members appointed by the Governor in Council⁴ (GIC), who are responsible for reviewing grievances and issuing F&R.

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 are for up to four years and may be renewed.

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.

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COMMITTEE MEMBERS



MANAGEMENT TEAM



THE CANADIAN ARMED FORCES GRIEVANCE PROCESS

The Canadian Armed Forces (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 initial authority (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 final authority (FA), which is the Chief of the Defence Staff (CDS), or his or 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 F&R to the CDS and the grievor. Ultimately, the FA makes the final decision on the grievance.

⁴ Information about the Governor in Council appointments can be found at www.appointments-nominations.gc.ca.

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 or 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 or her delegate.

THE YEAR IN REVIEW

OUR PROGRAM: INDEPENDENT REVIEW OF MILITARY GRIEVANCES

This section includes the number of grievances that were referred to the Committee by the Chief of the Defence Staff (CDS), the number of findings and recommendations (F&R) reports we have issued, and the average review time it took the Committee in 2018 to complete the analysis of a grievance.

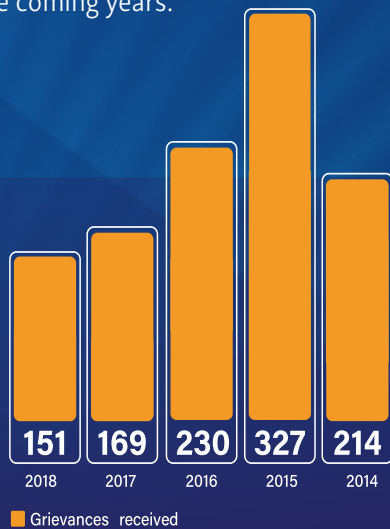
Summaries of select cases for which the Committee issued F&R reports can be found online at <https://www.canada.ca/en/military-grievances-external-review.html>

HOW MANY GRIEVANCES DID THE COMMITTEE RECEIVE?

The number of grievances referred to the Committee from 2014 to 2016 was much higher than in 2017 and 2018.

On 1 June 2014, the CDS initiated Operation RESOLUTION with the intent of reducing the backlog of grievances at the initial authority (IA) level across the Canadian Armed Forces (CAF). The operation was successful, and therefore had the secondary effect of causing a significant temporary increase in the number of grievances referred to the Committee during that period of three years.

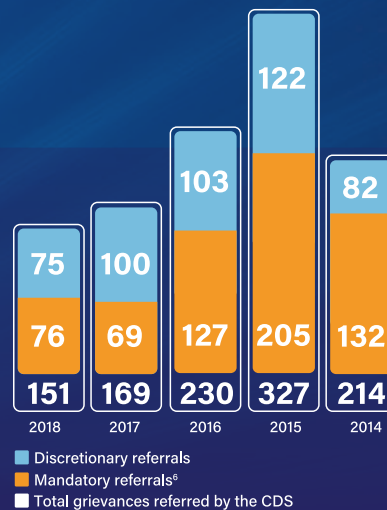
The number of grievances we received in 2018 was comparable to the number we received in 2017. We expect numbers in the coming years to be comparable. With the termination of Operation RESOLUTION, we anticipate a return to a normal workload of approximately 150 referrals per year over the coming years.



WHAT GETS REFERRED TO THE COMMITTEE?

The Queen’s Regulations and Orders for the Canadian Forces (QR&O) sets out the types of grievances that must be referred to the Committee once they reach the final authority (FA) level.⁵ The Committee refers to these grievances as mandatory referrals.

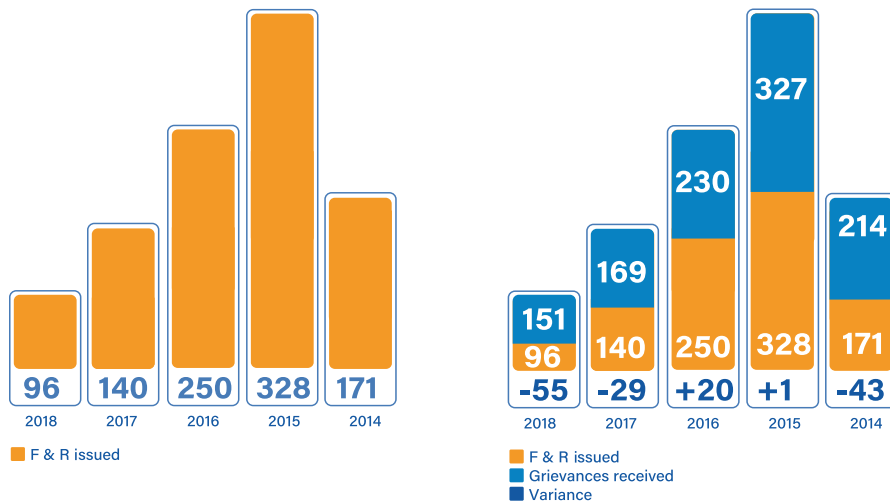
The QR&O also empowers the FA to send other grievances to the Committee when he or she wishes to leverage the benefits of having a grievance reviewed externally. The Committee refers to these grievances as discretionary referrals.



⁵ Shall be referred to the Committee, "any grievance relating to one or more of the following matters: (a) administrative action resulting in the forfeiture of or deductions from pay and allowances, reversion to a lower rank or release from the Canadian Forces; (b) the application or interpretation of Canadian Forces policies relating to the expression of personal opinions, political activities, candidature for the office, civil employment, conflict of interest and post-employment compliance measures, harassment or racist conduct; (c) pay, allowances and other financial benefits; (d) the entitlement to medical or dental treatment; (e) any decision, act or omission of the Chief of Defence Staff in respect of a particular officer or non-commissioned member." (QR&O, article 7.21)

⁶ See note (5) for a list of the types of grievances that must be referred to the Committee.

HOW MANY F&R HAS THE COMMITTEE COMPLETED?



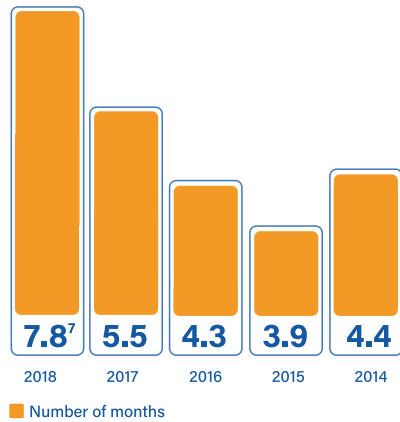
The Committee experienced a dramatic shortage of Members in 2017 and the early months of 2018, which was followed by a learning period for new Members and the unforeseen departure of a number of operations staff. Consequently, the number of F&R issued in 2017 and 2018 was lower than it had been in previous years.

This lower output is in sharp contrast with the higher than usual number of F&R issued the two previous years, when the Committee had proactively increased its capacity to respond to the temporary effect of Operation RESOLUTION on its workload.

As the number of F&R issued was lower than the number of grievances referred to the Committee in 2018, we ended the year with a relative deficit of 55 case files. We are optimistic that the larger inventory of files caused by this deficit will decrease progressively as we hire new grievance officers and as Committee Members continue to gain experience.

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HOW LONG DID IT TAKE THE COMMITTEE TO REVIEW A GRIEVANCE?



As is the case for the number of F&R issued, the temporary shortage in Members, the time required for new Members to gain experience, and the unforeseen departure of operations staff also had an effect on our average review time. Similarly, we anticipate that by staying the course, our average review time will decrease progressively.

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⁷ Average review time for files received in 2018 and completed by 31 December 2018.

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 feels a particular obligation to identify issues that may have wider implication and, where appropriate, provides recommendations for remedial action to the CDS.

This section includes systemic recommendations that were included as part of some F&R reports issued by the Committee in 2018.

A NEED FOR QUALITY CONTROL ON ENROLMENT OFFERS

The Committee has reviewed numerous grievances where potential CAF enrollees were given erroneous information from staff at Canadian Forces Recruiting Centers. In the case of re-enrollees, review of the rank, pay increment, and time credit towards promotion granted on enrolment, based on prior service, has led to cases where considerable adjustments were made to the pay of affected CAF members, leading to financial hardship on them and their families. In the past few years, the Canadian Forces Recruiting Group has instituted a quality control check of enrolment offers.

However, this review is normally performed months after applicants have been enrolled, thus resulting in retroactive amendments to pay entitlements and recovery of overpayments. By that time, candidates are CAF members and must serve until lawfully released under the amended conditions of service, while the CAF bears no responsibility for the significant financial impacts these amendments may have on them and their families.

Recommendation

The Committee recommended that the Canadian Forces Recruiting Group be directed to implement a process for a quality control review before an enrolment offer is presented to an applicant.

FAMILY CARE ASSISTANCE FOR NEW RECRUITS

Through its review of grievances, the Committee has observed that it is not uncommon for new recruits to be single parents. This is reflective not only of ongoing socio-demographic change, but also of the willingness and desire of these Canadian citizens to become members of the CAF despite the additional and significant challenges they face as single parents.

The CAF acknowledged these challenges by providing the Family Care Assistance benefit, under Compensation and Benefits Instruction (CBI) 209.335, to help defray the costs of childcare for single parents when they are removed, for service reasons, from their place of duty or their family home for a period of 24 hours or more. However, because the provisions of CBI 209.335 only apply to members on short-term assignments (i.e. Temporary Duty or attached posting), this means that the CAF does not currently provide such a benefit to new recruits who are single parents. Like single parent members on Temporary Duty, these new recruits are being sent on training and separated from their dependants.

Often, these periods of separation requiring expensive childcare for dependants can even exceed one year. Consequently, there appears to be a very real need for consideration of a Family Care Assistance-like benefit applicable to the childcare needs of single parent new recruits.

Recommendation

Given that the CAF is competing as an employer to attract committed and competent new recruits, including single parents, the Committee recommended that the Chief of the Defence Staff consider directing the creation of a new benefit to assist single parent recruits with the onerous costs of childcare that must be incurred during basic and occupational training while they are prohibited from moving their dependants to live with them. Pending creation of such a benefit, the Committee recommended that the ministerial discretion found at CBI 209.013(2) be used to compensate these members.

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SYSTEMIC RECOMMENDATIONS

PROVIDING NOTICE OF RELEASE TO SENIOR CAF MEMBERS

While reviewing a number of grievance files, the Committee noticed that senior CAF members are not clearly informed of their planned release dates.

Recommendation

The Committee recommended that the Director Senior Appointments adopt a practice by which the planned date of release for each senior CAF member is clearly given in writing by the release authority. This should be conveyed in a document whose primary purpose is to communicate that information, and not in documents whose primary purpose is to thank members for their service or congratulate them on their retirement. The Committee recommended that the document be signed by a Director Senior Appointments staff member who is higher in rank than the member being released.

The CDS agreed with the Committee's systemic recommendation that a practice by which a notice of the release date is clearly issued to each senior CAF member in writing. To that end, he directed the Director General Military Careers to adopt the policy of informing Chief Petty Officers, 1st Class, and Chief Warrant Officers, in writing, including the date and reason of release, a minimum of one year in advance of an impending release.

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CLARIFICATION ON THE ADMINISTRATION OF TERMS OF SERVICE FOR ILL OR INJURED RESERVISTS

In February 2016, the Office of the Ombudsman for the Department of National Defence and the Canadian Armed Forces published a report entitled "A Systemic Review of Compensation Options for Ill and Injured Reservists". This report concluded that there was no clear direction on the proper way to handle remaining periods of service for reservists who became ill or injured.

In some grievances referred to the Committee, units would continue to employ the ill or injured member despite their inability to perform all the duties, initiating a claim for Reserve Force Compensation only after the original period of service had ended. But in other cases, units would terminate the ill or injured member's Terms of Service (TOS) prior to its end date, causing those members to lose eligibility for important benefits, including dental and medical treatment, as well as obtaining qualifying service for pay, leave and pension purposes.

The Committee found that the lack of clear policy direction to units regarding the proper administration of the TOS for ill or injured reservists is leading to inconsistent and unfair policy application across the CAF.

This has resulted in some reservists losing eligibility for important benefits, while others fortunate enough to remain on their original TOS until the expiry date have retained those benefits.

The Committee concluded that all ill or injured reservists should be similarly protected, and that significant harm is being done to those ill or injured reservists whose TOS are ceased prematurely. In his 2016 report, the Ombudsman recommended that the Department of National Defence and the CAF "take concrete steps to improve the knowledge and awareness of the compensation options available to ill and injured Reservists". According to the Ombudsman's website, this recommendation appears to not have been implemented to date. Although the

Committee determined that the applicable policies appear to indicate that reservists' TOS should not be ceased prematurely when they become ill or injured, the policies continue to be interpreted and applied inconsistently. This is unfair to those reservists whose TOS are prematurely terminated due to injury or illness and who then lose eligibility for important benefits. Meanwhile, other ill or injured reservists who remain in their position until their TOS expiry date retain their eligibility for those key benefits.

Recommendation

The Committee recommended that the CDS direct the clarification of these policies.

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COMMITTEE MEMBERS



CHAIRPERSON AND CHIEF EXECUTIVE OFFICER

Christine Guérette was appointed on 26 June 2018 for a four-year term.

Prior to this, Ms. Guérette held various senior positions in the federal public service, including Director General of Corporate Services and Chief Financial Officer at the Committee, Chief Financial Officer at the Canadian Transportation Agency, and faculty member at the Canada School of Public Service, as well as a variety of senior positions at the Canadian International Development Agency.

Ms. Guérette holds a Bachelor of Science in Accounting from the Université du Québec à Hull and has been a member of the Quebec Order of Chartered Professional Accountants since 1994.

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FULL-TIME VICE-CHAIRPERSON

Dominic McAlea was appointed for a four-year term on 28 March 2018.

Mr. McAlea is a senior executive with extensive management experience within the Canadian Armed Forces, the Department of Justice, and Global Affairs Canada. A barrister and solicitor, Mr. McAlea's background includes serving as a Deputy Judge Advocate General in the Canadian Armed Forces and Canadian Defence Attaché to Afghanistan, in Kabul. His expertise includes strategic planning, policy development and implementation, developing and implementing federal legislation and regulations, criminal and civil accountability systems, and consensus building nationally and internationally.

Mr. McAlea holds a Bachelor of Laws from the University of Windsor, a Master of Laws in Public International Law from the London School of Economics and Political Science, and a Master of Philosophy in International Relations from the University of Cambridge.

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PART-TIME VICE-CHAIRPERSON

François Malo was appointed for a three-year term on 1 May 2018.

Mr. Malo joins the Committee as a former member of the Canadian Armed Forces with over 35 years of service. He has served as the Wing and Air Defence Sector Commander at 22 Wing North Bay and as the Director of Space Development at National Defence Headquarters. He also served at the Canadian Space Agency and NORAD, and commanded combat missions during the NATO air campaign in former Yugoslavia. In April 2012, Mr. Malo was appointed Director General of the Canadian Forces Grievance Authority, and acted at the final authority level. It is during this tenure that Mr. Malo developed a unique expertise in the complexities of grievances related to the profession of arms.

Mr. Malo holds a Bachelor of Arts in Political Science with a minor in Canadian History from the University of Manitoba. He is also a graduate of the Queen's University Public Executive Program, and a certified tribunal member with the Council of Canadian Administrative Tribunals.

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FULL-TIME COMMITTEE MEMBER

Nina Frid was appointed for a four-year term on 5 February 2018.

Ms. Frid has extensive experience and training in alternative dispute resolution, including mediation and arbitration. She has gained significant leadership experience in executive positions with a number of government departments and agencies, including the Canadian Food Inspection Agency, the Canadian Transportation Agency, and the Treasury Board of Canada Secretariat.

Ms. Frid graduated with a Master of Laws (Dispute Resolution) from York University and a Master of Business Administration from Carleton University. She also holds a certificate in Advanced Alternative Dispute Resolution from the University of Windsor Law School, and a Bachelor with Honours in Economics from the University of Marine Transportation in St. Petersburg, Russia.

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PART-TIME COMMITTEE MEMBER

Eric Strong was appointed for a three-year term on 14 December 2017.

Mr. Strong has more than 30 years of experience in the Canadian Armed Forces, the Department of National Defence, and the private sector. He has extensive knowledge of the Canadian Armed Forces and experience in facilitating rapport-building with a variety of stakeholders.

Mr. Strong graduated from the Richard Ivey School of Business at Western University with a Master of Business Administration. He also holds a Bachelor of Mechanical Engineering from Carleton University. Mr. Strong is accredited as a Project Management Professional (PMP) from the Project Management Institute, and as a Certified Management Consultant (CMC) from the Canadian Association of Management Consultants.

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