



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' intent is to raise decision-makers' awareness of broader issues and trends which come to the Committee's attention during the review of grievances in the hope this may assist in a better understanding of a particular topic. Since this publication was launched in 2008, the Committee has shared several of these issues with CAF decision-makers. We are gratified when we see that our input has an impact and that the Committee is contributing to the early resolving of issues for the benefit of CAF members and the institution as a whole.

In this edition, the Committee discusses cases related to CAF members' designation of their "next of kin" (NOK) for the purpose of benefits. Unfortunately, several CAF members have been denied benefits due to a misreading or an overly restrictive interpretation of the policies. We provide examples of NOK related cases in the hope to clarify these misunderstandings.

Another issue examined in this edition concerns cases where CAF members have no option but to pay for accommodations in two separate locations while they are attending mandatory training: their principal residence and the base where their training is offered. This issue has already been raised with the Final Authority who has agreed with the Committee's recommendation to use an existing policy to ease the financial burden of affected CAF members.

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 (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) or by phone (613-996-8529, toll-free: 1-877-276-4193).

Bruno Hamel

Chairperson and Chief Executive Officer



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.

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



Next of Kin Identification

In the past years, the Committee has received a number of grievances related to the identification of “next of kin” (NOK) by CAF members. Since an improper identification of NOK can lead to certain benefits being denied, the Committee wishes to bring the following observations and examples to the attention of the chain of command.

NEXT OF KIN TRAVEL BENEFIT

The most common benefit claimed by CAF members related to their NOK is the Next of Kin Travel Benefit (NOKTB). The NOKTB policy is set out in *Compensation and Benefits Instructions* (CBI) article 211.07. It reads as follow:

211.07 – Next of Kin Travel Benefit

211.07(1) (Purpose) The purpose of the Next of Kin Travel Benefit is to pay or reimburse an ill or injured member for the travel and living expenses of the next of kin and travel assistants.

211.07(2) (Definitions) The following definitions apply in this instruction:

next of kin	has the same meaning as in article 1.02 (<i>Definitions</i>) of the [Queen's Regulations and Orders for the Canadian Forces] QR&O.
NKTB	means the payment or reimbursement of the travel and living expenses of the next of kin and travel assistants of an ill or injured member.
travel and living expenses	has the same meaning as in article 209.01 (<i>Interpretation</i>) of QR&O.
travel assistant	means a person who in respect of a next of kin meets the requirements of subparagraphs (3)(a) or (b) of article 209.02 (<i>Entitlements – Next of Kin</i>) of the QR&O.

211.07(3) (Entitlement) A member is entitled to the NKTB if all of the following conditions are satisfied:

- a. medical officer is of the opinion that,
 - i. the member has a serious, catastrophic, or life-threatening impairment, and
 - ii. the presence of the member's next of kin is immediately required at the member's location; and
- b. the Chief of the Defence Staff – or an officer designated by the Chief of the Defence Staff – determines that there is no operational or security reason that prevents the next of kin – and a travel assistant, as the case may be – being at the member's location; and

- c. the next of kin – and a travel assistant, as the case may be – travel to the member's location.

211.07(4) (Number – Persons) The NKTB is authorized for a maximum of four persons, including travel assistants.

211.07(5) (Travel – Duration) The NKTB is authorized for a maximum of 120 days in respect of the total number of persons who travel and as divided among those persons by the member, if the member is competent, or by the member's adult primary NOK, if the member is incompetent. Upon the authority of the Chief of the Defence Staff, an additional period of travel not exceeding a maximum of 180 days may be authorized for one person, if in the opinion of the medical officer, additional attendance of the NOK is required.

([Treasury Board] TB, effective 7 June 2012)

QR&O article 1.02 sets out the definition of “next of kin” as persons specifically designated on a form approved for that purpose:

“next of kin”

in respect of an officer or non-commissioned member, means persons designated, in order of preference, as next of kin by the officer or non-commissioned member, on a form that is approved by the Chief of the Defence Staff for that purpose;

The CAF current interpretation of the above CBI and QR&O is that the policy is very specific as to who can be reimbursed for travel: an officer or non-commissioned member can only be reimbursed for travel undertaken by a person designated as NOK on the Department of National Defence (DND) form 2587. Unfortunately, many CAF members either forget to update their form regularly or believe there is a limit as to how many NOK they can identify. This can lead to a denial of the NOKTB.

For example, in a recent case, the grievor underwent surgery for a life-threatening medical condition. Later, she submitted a claim for the reimbursement of her mother's travel expenses under the NOKTB framework. The claim covered four trips her mother had made to accompany her while she recovered from surgery. The claim was denied as the grievor's mother was not listed on the NOK form. The grievor explained that her mother, who was also a CAF member, frequently changed addresses due to postings and that she opted to list her father as her NOK because he had a stable address.

The grievor also claimed that she did not know she could list multiple family members on the DND form. Unfortunately, as mentioned before, the policy clearly states that a CAF member can only be reimbursed for the eligible travel expenses undertaken by a person designated as NOK on the DND form 2587. The Committee recommended that the grievance be denied while also noting that the grievor did not have to go as far as not listing her mother as NOK. Since QR&O 1.02 defines “next of kin” as “persons designated, in order of preference, as next of kin,” the grievor could have simply added her mother down the list so she would not be the grievor's primary NOK, but the grievor would still be eligible for the NOKTB for her mother's travel.

ERRORS IN UPDATING THE NOK IDENTIFICATION FORM

Concerning the DND form 2587, the Chief of the Defence Staff (CDS) has shown some flexibility in the interpretation of what he will accept as an update to the “form,” as defined in policy. Essentially, the CDS has accepted written intent to add names to a NOK form as being sufficient for the identification of NOK. For example, in one file, the grievor’s brother, who was also a CAF member, had completed by hand the DND form 2587, adding their father and mother, the grievor and another brother. The Chief Clerk (CC) would later admit that, due to a lack of time and experience, the form was not verified and the requested changes made were not entered in the system. Tragically, the grievor’s brother died soon after and the NOKTB was denied to his family as the form had not been properly filled out. Since the CC confirmed that it was her responsibility to verify that the form was correctly completed, once submitted, and that she could attest that the hand written changes were intentionally made by the grievor’s brother, just before his death, the Committee concluded that the hand written list of NOK should be accepted as is. The Committee was of the view that the errors made were not sufficient cause to invalidate the list, which represented the grievor’s brother true will before his death. The CDS agreed with the Committee and recognized the grievor and his family as NOK of the deceased brother for the purpose of the NOKTB.

The Committee further noted that the policy requires CAF members to review their DND form 2587 every twelve months and it was discovered that forms that have not been reviewed annually were considered and treated as invalid by the CAF authorities. The Committee found this interpretation overly restrictive and completely unreasonable, explaining that the DND form 2587 should not be invalidated just because it has not been reviewed or updated by the CAF member in the last twelve months. The Committee compared this situation to that of wills. While CAF policy requires military members to review their wills every year, the legality of the last will would not be questioned should such a review not have been completed. Updating the NOK form is merely an administrative step to ensure that the document is as up to date as possible and should not be used as a basis to disentitle CAF members to NOKTB. The Committee recommended, and the CDS agreed, that all requests for compensation that were denied on the basis that the form had not been reviewed annually be reassessed properly.

CONFUSION ABOUT THE LEAVE TRAVEL ASSISTANCE ENTITLEMENT

Finally, the Committee has received a number of cases in which CAF members were under the wrong impression that their Leave Travel Assistance (LTA) entitlement was connected to the priority list of family members they had provided using the DND form 2587 (NOK).

The entitlement to LTA is set out in CBI 209.50, which provides (pp. 37-38):

209.50(1) (Purpose) The purpose of Leave Travel Assistance is to reimburse Canadian Forces members for some expenses paid because of travel on leave to meet a family member.

209.50(2) (Definitions) The following definitions apply in this instruction:

(.....)

“family member” means:

(a) a dependent;

(b) in respect of a member who has no dependent, a member’s child, including a stepchild, legal ward, adopted child, or child adopted under a Canadian aboriginal custom adoption practice;

(c) in respect of a member who has no dependent and no child, the member’s parent, including a person who stood, prior to the member’s enrolment, in the place of the member’s father or mother; and

(d) in respect of a member who has no dependent, no child, and no parent, the member’s brother, stepbrother, sister, or stepsister.

In one case, the grievor, who was single with no children at the time, sent a memo entitled “Request to Change Next of Kin for Leave Travel Assistance” to his commanding officer (CO). In his memo, the grievor explained that his mother had sold her home and purchased a recreational vehicle with the intent to permanently travel in the United States. Therefore, she would have no fixed address other than a postal box and the grievor indicated that he believed his mother’s situation would cause him difficulties when attempting to use and claim LTA benefits. Therefore, he asked to identify his sister as his NOK for LTA purposes. The grievor’s LTA claim was later denied when he visited his sister because his mother was still living.

Unfortunately, in accordance with CBI 209.50(2), the grievor did not meet the eligibility criteria for LTA and could not substitute his sister for a living parent; therefore, visiting his sister did not qualify for LTA. CBI 209.50(2) very clearly defines what is meant by “family member” and it is important for CAF members to understand the distinction: a “family member” for the purpose of LTA is defined by the CBI and is not linked to the DND form 2587.

Prohibited Posting¹ while on Mandatory Training

The Committee continues to receive cases where CAF members grieve because they were required to pay for accommodations in two separate locations while attending mandatory training. In those cases, CAF members on prohibited posting, mainly new recruits, are posted for mandatory occupation training without being allowed to move their household goods and effects (HG&E). Many of those CAF members are required to live on base and pay for single quarters (SQ) while maintaining a principal residence elsewhere. Most are normally not entitled to separation expenses (SE) because they do not meet the conditions found in *Compensation and Benefit Instructions* (CBI) 208.997. This imposes an undue financial hardship on those CAF members. However, the Committee has noted in a number of cases that there is a policy that can, and should, be used to ease their financial burden. Indeed, the Department of National Defence (DND) Living Accommodation Instruction, which was last modified on 31 July 2008, provides the following:

This instruction ... amplifies [Defence Administrative Orders and Directives] DAOD 5024-0 and applies to all DND Residential, Training and Transient accommodation...

¹ A CAF member is on prohibited posting when the move of his/her dependents and household goods and effects ((D) HG&E), at public expense, to his/her new place of duty is, for service reasons, prohibited or restricted.

13.2 (...)

DND quarters shall be provided without charge to the occupant:

- when engaged in training in support of the CF as authorized...
- when a member or civilian employee living out is required to temporarily occupy DND quarters for service reasons on the approval of the base, wing, unit or elemental commanding officer...

Also, article 208.52 (Remission of Charges for Provision of Single Quarters, Rations, Family Housing or Covered Residential Parking) of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O) states:

In exceptional circumstances, the charges mentioned in article 208.50 (Deductions for Provision of Single Quarters and Covered Residential Parking) ... may be wholly or partly remitted in accordance with orders issued by the Chief of the Defence Staff.

Having extensively reviewed a number of similar cases, the Committee's position is that no CAF member should be expected to pay for two accommodations when they have no choice but to attend required occupational training in another location, without even the option of moving their HG&E. Like the Committee, the Final Authority (FA) agreed that there is a gap in the policy and, in 2015, asked the Director General Compensation and Benefits to address this matter with the appropriate authority.

In the meantime, the Committee continues to receive grievances on this issue and recommends to the FA that these charges for provision of SQ be remitted in accordance with QR&O 208.52 and the DND Living Accommodation Instruction. The Committee is confident that the FA will continue to act on these recommendations.

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