

SOLDIERS' GRIEVANCES: A MORALE AND LEADERSHIP BAROMETER

Colonel-Maître[®] Michel W Drapeau, OMM, CD¹

GENERALSHIP AND CARING FOR SUBORDINATES

“One concept ... which is a central theme of Canadian Forces leadership but is not necessarily thought of by many in the public at large is “caring”. Reduced to its simplest form, the military ethos is rooted in caring for subordinates.

This issue is core to ethical leadership. It implies caring for troops before operations by training, equipping and supporting them to have a fair chance to fight, win and come home; caring for them during operations by professional leadership and support; and caring for them after operations by meeting their needs [and grievances] arising from that service, as well as honouring their deeds.”

General (ret'd) Ramsey M Withers,
CMM, CD, Chief of the Defence Staff [1980–1983]²

The approach taken by the Canadian Armed Forces' (“CAF”) leadership in recent times to grievance resolution has lacked an appreciation for its historic and strategic importance, but there may be hope on the horizon. Recent changes to how the CAF leadership approach the serious backlog of administrative grievances awaiting determination shows that there is an appetite to ‘redress the redress’.

L'approche adoptée récemment par la direction des Forces armées canadiennes (« FAC ») à l'égard du règlement des griefs ne tient pas compte de son importance historique et stratégique, mais il y a peut être de l'espoir à l'horizon. Les récents changements à la façon dont la direction des FAC aborde l'arriéré important de griefs de nature administrative en attente de jugement montrent qu'elle souhaite corriger la situation.

¹ Colonel Michel W Drapeau retired in 1993 after serving 34-years of service in the Canadian Armed Forces. After his retirement, he graduated from law school and after articling at the Federal Court of Appeal opened the first administrative law firm in Canada specializing in Military Law: Michel Drapeau Law Office (MDLO).

² Canadian Defence Academy, *Leadership in the Canadian Forces: Conceptual Foundations* (2005) at 20, citing Bernd Horn & Stephen J Harris, eds, “Generalship and the Art of the Admiral: Perspective on Canadian Senior Military Leadership” (St. Catherines: Vanwell Publishing Ltd, 2001).

Contents

1. Introduction	93
2. Legal Underpinning	93
3. Historic Right to Grieve	95
A) Articles of War	95
B) The <i>Mutiny Act</i>	96
4. Grievances: An Indicator of Good Morale?	97
A) 1949: Mainguy’s Naval Commission of Inquiry	97
B) 2003: First Independent Review of the NDA by the Right Honourable Antonio Lamer	98
C) 2011: Second Independent Review of the NDA by the Honourable Patrick Lesage	99
5. Modern-Day Grievance Process in the CAF	100
A) 2021: Third Independent Review of the NDA by the Honourable Morris J Fish	102
B) 2022: Fourth Independent Review of the NDA by the Honourable Louise Arbour	103
C) Military Grievances External Review Committee	104
6. The DND/CAF Ombudsman May Also Play a Role	105
7. Morale as a Vital Element of Combat Power and a Key Factor in Maintaining the Determination and Resilience of Soldiers	106
A) Principles of War	106
8. International Perspective	107
9. Coming to Grips With a Growing Backlog of CAF Grievances	108
A) Operation Resolution: 2014	108
B) CDS Directive on the Grievance System Enhancement 2021	109
C) Limitations to the Grievance Right	110
10. Conclusion	111

1. Introduction

The ability to file a workplace grievance is the only statutory right conferred upon members of the CAF to report administrative wrongdoing. Historically, the importance of allowing junior members to voice concerns to their leadership cannot be understated. It was not only central to maintaining morale and efficiency, but it connected more senior leadership to the concerns of the lower ranks, without buffer. In so doing, grievances, and grievance resolution and management, acted as a check and balance, and an important indicator of overall health of a fighting force.

For decades, the CAF has struggled with a significant backlog of grievances, with many taking years to be decided. Some may argue that an increase in administrative grievances is simply a symptom of a peacetime army. The issue may have now reached a crescendo. Since 2014, the CAF has taken active measures to alleviate the delays in grievance administration. Successive directives and orders from the Office of the Chief of Defence Staff (“CDS”) have signalled that there is a recognition, at the highest ranks, that delays in grievance administration can be ignored no more.

2. Legal Underpinning

The civilian justice system rests on a multitude of federal and provincial legislations such as the *Criminal Code of Canada*³ the *Québec Civil Code*⁴ and the *Code of Civil Procedure*⁵, the *Canada Labour Code*⁶, the *Corrections and Conditional Release Act*⁷ and numerous other statutes and regulations.

By contrast, the military justice system’s foundation is the *National Defence Act* (“NDA”),⁸ the *Queen’s Regulations and Orders* (“QR&O”)⁹

³ *Criminal Code*, RSC, 1985, c C-46.

⁴ *Civil Code of Québec*, CLRQ, 1991, c 64.

⁵ *Code of Civil Procedure*, CQLR c C-25.

⁶ *Canada Labour Code*, RSC, 1985, c L-2.

⁷ *Corrections and Conditional Release Act*, SC 1992, c. 20.

⁸ *National Defence Act*, RSC 1985, c N-5. [NDA].

⁹ *Queen’s Regulations and Orders for the Canadian Forces* (QR&O) are issued under the authority of s 12 of the NDA.

and a multiplicity of military regulations,¹⁰ orders,¹¹ directives¹² and instructions.¹³ Violations to the military administrative legal regime may give rise to remedial measures¹⁴ or prosecution under the *Code of Service Discipline*.¹⁵ For instance, subsection 129(2) of the *NDA* deems an act prejudicial to good order and discipline a contravention to “any regulation, order or instructions published for the general information and guidance of the Canadian Forces” as well as “a contravention to any general, garrison, unit, station, standing, local or other orders.”¹⁶

The *NDA* and subordinate legislation are the backbone for the military administrative legal system to deal with judicial, organizational, financial, educational, administrative, correctional, criminal, penal and/or disciplinary matters. It is meant to regulate the constitution, management and operations of the integrated CAF. Most importantly for the rank and file of the armed forces, members can make a statutory grievance pursuant to section 29 of the *NDA* if they feel that they have been wronged on a matter that arises when they are subject to military law. This can include

¹⁰ For example: *Court Martial Appeal Rules*, SOR/86-959; *Defence Controlled Access Area Regulations*, SOR /86-957; *Military Police Professional Code of Conduct*, SOR/2000-14; *Military Rules of Evidence*, CRC, c 1049; *National Defence Claims Regulations*, SOR/70-426.

¹¹ See *NDA*, *supra* note 8 at ss 50. Orders made under the *NDA* may be signified by an order, instruction or letter under the hand of any officer whom the authority that made those orders has authorized to issue orders on its behalf, and any order, instruction or letter purporting to be signed by any officer appearing therein to be so authorized is evidence that the officer is so authorized.

¹² There is a comprehensive collection of Defence Administrative Orders and Directives (DAOD) that are issued by or under the authority of the Deputy Minister, Department of National Defence (DND), and the Chief of the Defence Staff (CDS).

¹³ Canada, National Defence, *Queen’s Regulation and Orders for the Canadian Forces*, vol 1 (from 1 December 2024 to 31 March 2025) at art 1.23 [QR&O] Authorizes the CDS to issue orders and instructions “not inconsistent with the National Defence Act or with any regulations made by the Governor in Council, the Treasury Board or the Minister”.

¹⁴ Canada, National Defence, [DAOD-5019-4, Remedial Measures](#), (last modified 16 November 2018), online: <<https://tinyurl.com/mv8umvr7>> [perma.cc/RG83-82QW].

¹⁵ The Code of Service Discipline (CSD) is contained at Part III of the *NDA*. The CSD provides offences unique to military service, such as misconduct in the presence of the enemy, and the respective punishments. It also incorporates all offences under the *Criminal Code*, all other federal statutes and, in certain circumstances, foreign laws. The CSD structures the court martial system and an appellate court, the Court Martial Appeal Court of Canada (CMAC).

¹⁶ *NDA*, *supra* note 8 at s 129(2).

complaints of bullying, abuse of power, harassment, discrimination, prejudice, and/or improper behavior.¹⁷

3. Historic Right to Grieve

A) Articles of War

Grievances in a military, whether dealing with mistreatment, intimidation, faulty weapons (the Ross rifle) or equipment, supplies (including boots that rotted in the mud), uniforms that disintegrated and trenching shovels that were useless,¹⁸ promotions, poor clothing, bad rations, medical care, and soldiers' compensation¹⁹ are as old as recorded military history. The historic "right to grieve" has its legislative origins in the *Articles of War of 1672* (UK). In older times, the "right to grieve" was designed to ensure the protection of service rights and correct the misuse of military authority.

The *Articles of War* were a set of regulations drawn up to govern discipline and justice in the armed services. Gustavus Adolphus's²⁰ *Articles of War of 1621* are considered "a recognizable ancestor of the British Articles of War."²¹ They formed the statutory provisions regulating and governing the behaviour of members of the Royal Navy. They were issued in addition to the criminal law of England and Wales, and any local criminal law of that time. In the army, the *Articles of War* replaced the

¹⁷ *NDA*, *supra* note 8 at s 29 (2). According to section 29(2) of the *NDA* there is no right to grieve in respect of the following: (a) A decision of a court martial or the CMAC; (b) A decision of a board, commission, court or tribunal established other than under this Act; or (c) A matter or case prescribed by the Governor in Council in regulations.

¹⁸ CBC Learning, "[Profits for Lives](https://tinyurl.com/y22uyvc9)", online: <<https://tinyurl.com/y22uyvc9>>.

¹⁹ See Murray Brewster, "[Military Lacks the power to address many soldiers' complaints about pay, benefits: report](https://www.cbc.ca/news/military-lacks-the-power-to-address-many-soldiers-complaints-about-pay-benefits-report)" *CBC News* (18 June 2024), online: <<https://tinyurl.com/3fhxmy7u>> [perma.cc/XK3B-Q873]. Who cites the then DND/CAF Ombudsman, Gregory Lick as follows: "While Canadian Armed Forces members have the right to grieve compensation and benefits decisions, the Canadian Armed Forces may not have the authority to provide redress. Many of the complaints clogging the system relate to federal Treasury Board policies over which the military has little control."

²⁰ Gustavus Adolphus was King of Sweden (1611–1632) and is credited with the rise of Sweden as a great European power. His contributions to Sweden's rise in power includes the reformation of the administrative structure of armies. His integration of infantry, cavalry, logistics and the use of artillery earned him the titles of the "father of modern warfare" or the "first modern general".

²¹ See Norman G Cooper, "Gustavus Adolphus and Military Justice" (1981) 92 *Mil L Rev* 134. The UK's first *Articles of War* were formalised in an Act for the Royal Navy in 1661.

medieval *Rules and Ordinances of War*, which were a list of regulations issued by the King at the beginning of every expedition or campaign.²²

B) The *Mutiny Act*

By the mid-17th century, the *Mutiny Acts* empowered the King *de lege* and his government *de facto* to govern their army by creating a separate set of *Articles of War* for each conflict. These articles defined “mutiny” and other military offenses and, established court-martial procedures for their punishment, including capital punishment. These *Articles of War* were later converted into and replaced by codes of service discipline embedded in statutes governing armed forces.²³

In older times, the ‘*right to grieve*’ was designed to ensure the protection of service rights, correct the misuse of military authority and, most important, to attune Commanders to the effect or impact of various military policies²⁴ particularly in areas of pay and clothing. It was, in effect, a system designed to prevent individuals’ dissatisfaction from spreading to a crescendo of voices, which could result in insubordination, poor morale or even mutiny. More importantly, it served to alert Commanders to the effect or implementation of various military policies, procedures, rules or instructions.

The British *Mutiny Act of 1689* formalized the disciplining of a standing army and initiated modern Anglo-American military law. A plain reading of the *Mutiny Act* makes it clear that a good soldier must accept the constraints of military discipline, be deferential to the

²² See “[List of ordinances and acts of the Parliament of England, 1642–1660](https://tinyurl.com/3fdyd2ke)”, online: <<https://tinyurl.com/3fdyd2ke>> [perma.cc/3DHM-N6C2].

²³ See *Act for the Establishing Articles and Orders for the regulating and better Government of His Majesties Navies Ships of War & Forces by Sea, 1661* (Eng), 13 Cha II St 1, c 9.

²⁴ See Department of National Defence, “Canadian Army Training Pamphlet No 1: A General Instructional Background for the Young Soldier”(Ottawa: 1942) at 182.

“The manner in which an officer or a soldier should proceed to obtain redress for any grievance under which he conceives himself to be suffering is prescribed in Section 42 and 43 of the Army Act and the notes thereto in the Manual of Military Law ... The above methods of complaint alone will be recognized and an officer or soldier is forbidden to use any other method of obtaining redress for a grievance, real or supposed.

Everything in the nature of combination to obtain redress of grievances is strictly forbidden among individuals composing a military force. Each individual must speak for himself alone. Appeals for redress by “rounds robins” or by means of any document bearing the signature of more than none complainant are strictly forbidden.”

hierarchy of ranks, and be respectful of orders, directives, instructions, customs, and traditions. A soldier's personal well-being and safety were to be subordinated to the judgment of superiors who may order a soldier into harm's way in the performance of a military duty. However, such as is life in the military, on occasion, a soldier may become disillusioned, disappointed, frustrated or aggrieved by decisions or omissions of his superiors.

4. Grievances: An Indicator of Good Morale?

Canada's military grievance system is rooted in pre-confederation British military law or our own colonial *Militia Act*, which is based on British tradition. One such tradition is the historic right to grieve given to soldiers, for the better governance of the armed forces.

Since 1717, in Britain and elsewhere, the operation of an effective grievance system has been taken as an indicator of the wider health and morale of the military justice system. A significant backlog in the number of grievances awaiting resolution, for example, may be symptomatic of a more general dysfunctionality of the military administrative legal system, military leadership or the administration's failure to recognize the importance of dealing with grievances promptly. Prompt grievance administration demonstrates a commitment to military members' well-being which contributes to high morale and job satisfaction and prevents possible escalation.

The importance of a military grievance procedure was institutionalized by the CAF as early as 1883. During that era, officers were issued a pocket-sized publication titled *Militia Orders and Regulations*, and information concerning filing and handling of complaints was found within the British *Manual of Military Law*.²⁵ By the 1920's, non-commissioned members were being trained and required to know how to "handle grievances."²⁶ In 1968, there was standardized curriculum teaching members specifically about redress of grievance procedures.²⁷

A) 1949: Mainguy's Naval Commission of Inquiry

In 1949, the Royal Canadian Navy's inability to recognize and promptly deal with growing frustrations boiled over when, during a fueling stop

²⁵ Chris Madsen, *Another Kind of Justice Canadian Military Law from Confederation to Somalia*, (Vancouver: UBC Press, 1999) at 22.

²⁶ *Ibid* at 65.

²⁷ *Ibid* at 121.

in Mexico, 90 members of HMCS²⁸ ATHABASKAN locked themselves in their mess decks, refusing to come out until the Captain heard their grievances. Two weeks later, 83 junior ranks in HMCS CRESCENT, staged a similar protest while alongside in Nanjing, China. Then, 32 aircraft handlers aboard the carrier HMCS MAGNIFICENT in the Caribbean, refused to turn to morning cleaning stations as ordered. While collectively of great concern to the senior naval leadership, these sailors never became mutinous principally because the ships' officers, from the Captain on down, recognized the validity of the complaints and took immediate action to address their grievances.

A subsequent Commission of Inquiry, headed by Rear Admiral Rollo Mainguy, investigated the matter and his quintessential report became the blueprint of sorts for the modern Canadian Forces, especially in terms of leadership and superior-subordinate relationships within the CAF hierarchical system.²⁹

B) 2003: First Independent Review of the NDA by the Right Honourable Antonio Lamer³⁰

In more recent times, retired Chief Justice, the Right Honourable Antonio Lamer opined on the importance of the grievance process in 2003 when he wrote:

“The large number of outstanding grievances—close to 800 at last count, some outstanding for ten or more years—is unacceptable. As a result, I have made many recommendations to ensure that grievances are dealt with much more quickly and in a fair and transparent manner ... Grievances still caught in the process after ten and even twelve years are not unheard of, and those of two or more years at the level of the Chief of Defence Staff seem to be the norm.

To increase transparency, the Chief of Defence Staff should be required to report annually on the Canadian Forces grievance process, including on the timeliness of the review of grievances. This report should be made public. Moreover, grievors should be entitled to find out the status of their grievances without delay.

²⁸ HMCS stands for His Majesty Canadian Ship.

²⁹ See Edmond Clouthier, *Report on certain “Incidents” which occurred on board H.M.C. Ships ATHABASKAN, CRESCENT and MAGNIFICENT and on other matters concerning THE ROYAL CANADIAN NAVY*, (Ottawa: King's Printer and Controller of Stationery, 1949).

³⁰ The Right Honourable Antonio Lamer, *The First Independent Review by the Right Honourable Antonio Lamer of the provisions and operation of Bill C-25, An Act to amend the National Defence Act and to make consequential amendments to other Acts, as required under section 96 of Statutes of Canada 1998, c 35*, submitted to the Minister of National Defence, 2003 [*First Independent Review*].

That, from now on, decisions respecting grievances be rendered within a time limit of twelve months.

Soldiers are not second-class citizens. They are entitled to be treated with respect, and in the case of the grievance process, in a procedurally fair manner. This is a fundamental principle that must not be lost in a bureaucratic process even a military one [and] It is essential to the morale of CF members that their grievances be addressed in a fair, transparent, and prompt manner.”³¹

C) 2011: Second Independent Review of the NDA by the Honourable Patrick Lesage

In part IV of his report,³² the Honourable Patrick Lesage, retired Chief Justice of Ontario Superior Court of Justice made a wide range of recommendations concerning the grievance process and endorsed the Lamer recommendation that grievances be resolved within one-year time limit and observed the following:

“Canadian Forces members are not like other government employees. They cannot form unions. Courts have confirmed that there is no legally enforceable employment contract between the Crown and Canadian Forces members. Courts have held that, due to the nature of their relationship, Canadian Forces members do not have the same range of legal remedies that are available to most Canadians in normal employment relationships. However, Canadian Forces members do have access to a mechanism to challenge decisions or actions that they feel are unfair, and that is the Canadian Forces grievance process.”³³

³¹ Ibid at Foreword 3, 4, 87.

³² See The Honourable Patrick J LeSage, *Report of the Second Independent Review Authority to the Honourable Peter G MacKay Minister of National Defence* (2011), at 53–66 [*Second Independent Review*].

³³ *Ibid* at 53.

5. Modern-Day Grievance Process in the CAF³⁴

Modern militaries have created a complaint mechanism which remains mainly with the chain of command.^{35 36 37} Today, section 29 of the *NDA* allows a CAF member to grieve any administrative act or omissions of his superiors, but not one committed by his or her fellow soldiers or subordinates.³⁸ A grievance must relate to a service matter. In submitting

³⁴ The Honourable Morris J Fish, *Report of the Third Independent Review Authority to the Minister of National Defence Pursuant to subsection 273.601(1) of the National Defence Act, RSC 1985, c N-5 (2021) [Third Independent Review]*. In 2021, the Honourable Morris J Fish, retired justice of the Supreme Court of Canada conducted the *Third Independent Review* of specified provisions of the *NDA* and made many recommendations dealing with the CAF grievance process. At page 168 of his Report, he writes about the capital importance of the grievance system for a serving soldier:

“622. Members of the Canadian Armed Forces have fewer means of redress than civilians in other organizations. They are not permitted to unionize or otherwise collectively negotiate their working conditions. They do not have employment contracts. And when they believe they have been aggrieved by any decision, act or omission of the CAF, they do not have recourse to an independent tribunal.”

At footnote 682 of his report, Justice Fish added the following: “Judicial review is an unsatisfactory remedy in many respects and falls short of the type of recourse a civilian would have in similar circumstances.”

³⁵ See Georg Nolte, *European Military Law Systems*, (Berlin, Germany: De Gruyter Recht, 2003) at 105–111 which details how many European militaries soldiers benefit from a Right to File a Complaint [or a Right to Petition] within their military hierarchy; a complaint which concerns the individual soldier and which must be addressed to the superior who has taken the decision or to his or her immediate superior. The author discusses in detail the rights to file a complaint in Belgium, Denmark, France, Germany, Italy, Luxembourg, Netherlands, Poland, Spain, United Kingdom.

³⁶ See UK, Ministry of Defence, *The Service Complaint Process*, (published 27 October 2012) online: <<https://tinyurl.com/4p3xrx3>>. In modern UK, soldiers can make an Armed Forces Service Complaint if they feel they have been wronged on a matter that arises when they are subject to service law. This can include complaints of bullying, harassment, discrimination and biased, improper or dishonest behaviour.

³⁷ Australia, *Department of Defence, Review of Management of Incidents and Complaints in Defence including Civil and Military Jurisdiction* (Report) by Geoff Earley AM (Canberra, Australia: Inspector General Australian Defence Force, 2011), online: <<https://tinyurl.com/mv2duxzn>> [perma.cc/S9XV-QZD7]. In Australia, soldiers may complain about a decision, act or omission relating to their service in the Australian Defence Force by filing a Redress of Grievance (ROG). Commanding Officers are required to deal with grievances within 90 days. Complaints that are referred for consideration by a Service Chief are required to be dealt with within 180 days. Those who are eligible for further referral to the CDF are required to be dealt with within 90 days.

³⁸ See House of Commons, *Official Report of Debates (Hansard)*, 41-1, No 232, (15 April 2013) (Hon Scott Brison) at 15421. In accordance with information tabled by the government in the House of Commons on February 27, 2013, following inquiry number

a grievance, the member must explain the remedy being sought. Chapter 7 of the QR&Os provides specific direction about the grievance process which has two levels, the Initial Authority and the Final Authority.³⁹

The CAF grievance system is established in section 29 of the *NDA* and regulated under chapter 7 of the QR&Os.⁴⁰ The following Federal Court decisions provide a detailed review of the CAF grievance process and confirm that the default standard of review for a Final Authority's decision is that of reasonableness, meaning that the decision must fall within a range of acceptable outcomes.⁴¹

- (a) *Bossé v Canada (Attorney General)*, 2014 FC 1143 at paras 22–23.
- (b) *Ouellette v Canada (Attorney General)*, 2015 FC 1185 at paras 66–71.

A member of the CAF is able to grieve “any decision, act or omission in the administration of the affairs of the Canadian Forces.”⁴² There are few exceptions to the right to grieve. Such exceptions generally concern legal proceedings.⁴³

The CAF grievance system has two levels.

- (a) The Initial Authority, who is either the Commanding Officer, or the person at the lowest rank level that can grant redress.⁴⁴ An Initial Authority has four months to render a decision from receipt of the grievance.
- (b) The Final Authority is the CDS or her delegate.⁴⁵ Aside from limited *ex gratia* authority conferred in 2012,⁴⁶ the CDS cannot award pecuniary compensation to an injured party.

Q-1195, the following grievances were submitted for the years indicated below: 2008-453; 2009-413; 2010-701; 2011-678; and 2012-619.

³⁹ *QR&O*, *supra* note 13 at arts 7.08, 7.10.

⁴⁰ The title of *QR&O* has yet to be changed to *King's Regulation and Orders (KR&Os)* following the ascension of His Majesty King Charles III as reigning monarch on May 6, 2023.

⁴¹ See *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65; *Dunsmuir v New Brunswick*, 2008 SCC 9.

⁴² *NDA*, *supra* note 8 at s 29(1).

⁴³ *Ibid* s 29(2).

⁴⁴ *NDA*, *supra* note 8 at s 29.1; *QR&O*, *supra* note 13 at art 7.14.

⁴⁵ *NDA*, *supra* note 8 at s 29.11, 29 14.

⁴⁶ [Privy Council Order 2012-0861](https://tinyurl.com/yt86vyzf) at 1.(1), online: <<https://tinyurl.com/yt86vyzf>> [perma.cc/N9K5-6Z2E]. The Privy Council authorizes the CDS to provide financial

- (c) The CAF grievance process has faced criticism for its lack of timeliness in determining grievances.⁴⁷ The impact of delay on morale and efficiency was reported upon in a 2010 investigation report by the DND/CAF Ombudsman,⁴⁸ which concluded that:

“The office is very concerned about the length of time that it is taking to process a grievance. The delays at ... are having a negative financial impact on CF members who must wait a minimum of 12 months to have their grievance adjudicated by the IA. These extended delays are not in line with the principles of procedural fairness and must be remedied as soon as possible.”⁴⁹

Just a few years ago, it was reported that the average time for a grievance to be decided at the Initial Authority level was more than 18 months.⁵⁰

A) 2021: Third Independent Review of the NDA by the Honourable Morris J Fish

In 2021, retired Justice Morris J. Fish of the Supreme Court of Canada conducted the *Third Independent Review* of specified provisions of the NDA and made wide-ranging recommendations pertaining to the CAF grievance process and its deficiencies and in particular the CAF’s “enduring problem with unacceptable delays.” In doing so, Justice Fish carefully chronicled several far-reaching, unexpired recommendations made by his two predecessors to ameliorate the performance of the grievance process.⁵¹

relief whereas there was no authority previously. The order stipulates: “The CDS may authorize an *ex gratia* payment to a person in respect of whom a final decision is made under the grievance process established under the *National Defence Act*.” See Canadian Forces Grievance Process Ex Gratia Payments Order, PC 2012-0861. See also *Stemmler v Canada (Attorney General)*, 2016 FC 1299, at 19, 64.

⁴⁷ Drapeau and Juneau “The CF Grievance System: A beacon for troubles ahead”, *Esprit de Corps* 20:5 (June 2013).

⁴⁸ See Murray, *supra* note 19. The DND/CAF Ombudsman commented on the issue of delays as follows: “Delays of this sort undermine discipline, exemplify inefficiency and sap morale.” A DND representative is quoted as saying: “On average, Canadian Armed Forces have to wait 1,000 days to get compensated when there is a mistake with their pay. People are frustrated, tired and angry. Our men and women who bravely serve our country and keep Canadians safe deserve better.”

⁴⁹ TJ Lawson, “[A Report Outlining the Delays in the Processing of Adjudications and Initial Authority Grievances by the Director General Compensation & Benefits](https://tinyurl.com/5a83rhmj)” (2013) online: <<https://tinyurl.com/5a83rhmj>> [perma.cc/SC7P-EDMG]

⁵⁰ Drapeau and Juneau, “The CAF Grievance Process: An operational failure”, *Esprit de Corps* 26:11 (December 2019).

⁵¹ Retired Justice Fish’s report contains a detailed discussion of the several recommendations made by his two predecessors: a) Chief Justice Antonio Lamer, the

Noticeably, Justice Fish identifies “unacceptable delays” as the main enduring problem plaguing the grievance process. For instance, he notes that the average delay experienced by the Initial Authority to render a decision is now more than twice the prescribed time limit of four months. He writes: “Delays of this sort undermine discipline, exemplify inefficiency and sap morale.”⁵²

In its response to Justice Fish’s report, on June 2, 2021, the Office of the Minister of National Defence⁵³ recognized that delays in addressing grievances remain a major impediment to achieving established grievance system goals noting that the report provides a strong foundation for the reforms necessary to usher the grievance system into a new era.

B) 2022: Fourth Independent Review of the NDA by the Honourable Louise Arbour

More recently, in her 2022 Independent Review the Honourable Louise Arbour, also a former Justice of the Supreme Court, notes that undue delay to adjudicate many grievances is unacceptable, adding that “By the time a determination is eventually made, the grievor’s career may have been irreparably harmed.” She added: “This is particularly egregious as this process essentially blocks access to external authorities, such as the courts or the CHRC.”⁵⁴ On page 144 of her report, Madame Arbour notes that the average number of days from filing the grievance to its final resolution is as follows:

First Independent Review Authority (2003) who made five recommendations which he called ‘solutions’ for the problem of delays in the grievance process, particularly at the Final Authority Level; and b) and, Chief Justice Patrick LeSage (2011), the Second Independent Review Authority who, reiterated the recommendation made by his predecessor that of a one-year time limit to settle a grievance, from beginning to end.

⁵² National Defence, News Release, “[Defence Minister releases results of the Third Independent Review of the National Defence Act and begins implementation of recommendations](https://tinyurl.com/34s5e7bh)” (1 June 2021), online: <<https://tinyurl.com/34s5e7bh>> [perma.cc/TH92-E4UE]. The Defence Minister releases the results of the *Third Independent Review of the NDA* and begins the implementation of its several recommendations.

⁵³ *Third Independent Review*, *supra* note 34 at v.

⁵⁴ The Honourable Louise Arbour, *Report of the Independent External Comprehensive Review of the Department of National Defence and the Canadian Armed Forces* (2022), at 145.

Table 1: Average number of days for the resolution of grievances at the Initial Authority and Final Authority levels for years 2019–2021

YEAR	Initial Authority Level		Final Authority Level	
	# Files	Delay	# Files	Delay
2019	594	260 days	93	916 days
2020	661	276 days	175	945 days
2021	618	282 days	263	961 days

C) Military Grievances External Review Committee

At the Final Authority level, the CDS may refer a matter to an independent oversight body called the Military Grievances External Review Committee (MGERC).^{55 56} The MGERC was established to provide an independent review of CAF grievances, and their sole purpose is to produce a report to assist the Final Authority in making his or her decision. The MGERC’s report is not binding, however, if the Final Authority departs from the reasons of the MGERC report then detailed reasons must be given for doing so.⁵⁷

There are five categories of grievance that are referred, on a mandatory basis, to the MGERC that concern arising from administrative action such as a compulsory release from the CAF, policy issues, pay and benefits, entitlement to medical care, and acts of the CDS.⁵⁸

The MGERC has faced its share of criticism.⁵⁹ Despite claims of independence, the committee is filled with retired military members and military lawyers⁶⁰ from the Office of the Judge Advocate General.⁶¹ Another criticism the MGERC has faced is the prejudice caused to an aggrieved due to the passage of time in resolving complaints. In their 2023 Report, the MGERC advertised a staff of 43 full-time employees and three committee members. Despite this large bureaucracy, grievances remain within the MGERC for an average of 16 months. Once a Report

⁵⁵ NDA, *supra* note 8 at s 29.12.

⁵⁶ Formerly the Canadian Forces Grievance Board.

⁵⁷ See *Zimmerman v Attorney General of Canada*, 2011 FCA 43 at para 22.

⁵⁸ *QR&O*, *supra* note 13 at art 7.21.

⁵⁹ Drapeau and Juneau, “MGERC, Schme MGERC”, *Esprit de Corps* 27:6 (July 2020).

⁶⁰ Drapeau and Juneau, “Oversight of the Military Establishment: *Tempis agenda*” at 20, *Esprit de Corps* 30:2 (March 2023).

⁶¹ The [composition of the MGERC](https://tinyurl.com/2e4wsfv7) is available here: <<https://tinyurl.com/2e4wsfv7>> (accessed November 21, 2024).

is produced, it can still be a further year or more before the grievance is determined by the Final Authority.⁶²

Section 29.13 of the *NDA* indicates that the CDS is not bound by any finding or recommendation of the MGERC while section 29.15 emphasizes that the CDS decision is final and binding and, except for judicial review under the *Federal Courts Act*, it is not subject to appeal or to review by any court.

The primary regulatory deficiency at the Final Authority level is the fact that there is no statutory period to adjudicate, though the Federal Court has started ordering time limitations in cases that are remanded for reconsideration.⁶³ This means that, theoretically, grievances may remain on the desk of the CDS indefinitely. It has been reported that it is not uncommon for a grievance to remain at the Final Authority level for many years.⁶⁴

6. The DND/CAF Ombudsman May Also Play a Role⁶⁵

According to sections 13(1) and 13(2) of the Ministerial Directives Respecting the Ombudsman of the Department of National Defence and the Canadian Forces⁶⁶ which are reproduced below, the Ombudsman may in 'compelling circumstances,' deal with a CAF grievance:

1. Except in compelling circumstances, the Ombudsman shall not deal with a complaint if the complainant has not, within the applicable time limit, first availed himself or herself of one of more of the following existing mechanisms available to the complainant
 - (a) the CF redress of grievance;

⁶² Drapeau and Juneau, "Coexistence & Convergence: The lawful formation of a military association", *Esprit de Corps* 20:8 (Sept 2013).

⁶³ *Beddows v Canada (Attorney General)*, 2023 FC 91 at 154.

⁶⁴ House of Commons, *Order Paper*, 41-1, No 1195 (20 February 2013).

⁶⁵ In 1998, the then Minister of National Defence, the Honourable Art Eggleton, created the Office of the DND/CAF Ombudsman to promote transparency and fairness in managing the concerns of military personnel, civilian employees of National Defence, and their family members. The Ombudsman is a neutral party who investigates complaints from CAF members, DND employees and family members and reports on matters related to DND and CAF. The Ombudsman is independent from the military chain of command and civilian management. He reports to the Minister of National Defence.

⁶⁶ See [Canada, National Defence, DAOD 5047-1, Office of the Ombudsman](#), (last modified: 27 June 2017), online: <<https://tinyurl.com/2ca4vy29>> [perma.cc/R4YV-VKNM].

- (b) the public service grievance and complaints process;
 - (c) the Security Intelligence Review Committee; or, the complaint process under Part IV of the National Defence Act.
2. For the purpose of determining whether there are compelling circumstances under section (1), the Ombudsman shall consider if
- (a) access to a complaint mechanism will cause undue hardship to a complainant;
 - (b) the complaint raises systemic issues; or
 - (c) the complainant and the competent authority agree to refer the complaint to the Ombudsman.

7. Morale as a Vital Element of Combat Power and a Key Factor in Maintaining the Determination and Resilience of Soldiers

A) Principles of War

Students of military history understand that the maintenance of morale⁶⁷ (which is the second *Principle of War*⁶⁸) is dependent, to a large degree, on a grievance system that not only works properly but is seen to work properly and in a timely manner. Delays of years to resolve simple workplace grievances have long-term effect on morale and performance. It also delays the realisation of a just and fair outcome to a valid grievance.⁶⁹

⁶⁷ See Mioara Serban, “[The role of military morale as an essential dimension of combat power](https://tinyurl.com/yw3c8xsd)” (2024) 47:3 Security & Defence Q, online: <<https://tinyurl.com/yw3c8xsd>> [perma.cc/2U29-W28S]. Maintaining morale in military operations is a vital element in maintaining the resilience and determination of members of the armed forces. Key aspects of this support include developing strong interpersonal relationships and a team culture.

⁶⁸ Principles of War are rules and guidelines that represent truths in the practice of war and military operations. The earliest known principles of war were documented by Sun Tzu in 500 B.C.; Machiavelli in 1521 and later by Carl von Clausewitz in 1812. There are national variations of the principles of war. Most countries, including Canada and the UK, use 10 principles of war. These are: 1) The Maintenance of the Aim; 2) Maintenance of Morale; 3) Offensive Action; 4) Security; 5) Surprise; 6) Concentration of Forces; 7) Economy of Effort; 8) Flexibility; 9) Cooperation; 10) Sustainability.

⁶⁹ See Law Office of Rory Fowler, “[Incompetence & Intransigence in Grievance Adjudication—Part I](https://tinyurl.com/yvndk7ah)” (15 March 2024), online: (blog); <<https://tinyurl.com/yvndk7ah>> [perma.cc/BE49-NQLS].

The current CAF Grievance does not fulfill its purpose. Despite the existence of a rather large administration spread out throughout various levels of the chain of command, the grievance process fails in its statutory obligations towards the serving men and women of the Canadian military. The 2003 Lamer Report noted in its Foreword that the Grievance process is not working, “The large number of outstanding grievances—close to 800 at last count, some outstanding for ten or more years—in unacceptable.”⁷⁰

Grievance procedures are a means of dispute resolution designed to be used by a military organization to address complaints and provide a hierarchical structure for presenting and settling workplace disputes. As a matter of principle, these grievances should be settled in a timely and cost-effective manner.

Ideally, an effective grievance procedure helps the chain of command to discover and remedy problems before they can cause discontent and conflict in the workplace. In order to “fix the process”, in 2003 the late Chief Justice Lamer “recommended new measures to end the unacceptable delays. . . that, from now on, decisions respecting grievances be rendered within a time limit of twelve months.”⁷¹ Also in 2003, the Chief Justice recommended that the CDS “be required to report annually on the Canadian Forces Grievance Process, including the timeliness of the review of grievances.”⁷² This has not occurred.

8. International Perspective

In 2005, the Australian Department of Defence and the Office of the Commonwealth Ombudsman⁷³ conducted a study which measured the performance of the military grievance system. The results were that, with respect to timeliness, 80% of grievances were dealt with at the unit level within three to four months, whereas 80% of grievances at the Service Chief level took up to eight months to complete. Overall, many grievances took well over a year to finalise through all levels of the Defence system.

In the United Kingdom, the Service Complaints Commissioner for the Armed Forces stated that their equivalent complaints system is important because it ensures that the duty of care that the nation owes to its

⁷⁰ *First Independent Review*, *supra* note 30 at Foreword.

⁷¹ *Ibid* at 3.

⁷² *Ibid* at 4.

⁷³ Australia, “[Review of Australian Defence Force Redress of Grievance System 2024](#)” (27 January 2005) (produced by the Department of Defence and the Commonwealth Ombudsman, Canberra), online: Report No. 1/2005—Review of Australian Defence Force Redress of Grievance system 2004—April 2005 <<https://tinyurl.com/yy8rta4w>> [perma.cc/84BD-FS8H].

Service personnel is carried out effectively.⁷⁴ The UK Service Complaints Commissioner acknowledged that there are too many Service personnel being reluctant to raise genuine complaints and grievances, as well as too many instances of delay, inefficiency and lack of resources. In his report, the UK Service Complaints Commissioner reinforced the message that effective grievances handling is a function of command, and that early and timely handling of issues/grievances, whether formally or preferably informally, has a direct benefit for unit cohesion and effectiveness. He concludes by stating that servicemen and servicewomen deserve a complaints system that is as good as it can be. Failure to provide such a system would be a failure of the nation's duty to these service persons.

9. Coming to Grips With a Growing Backlog of CAF Grievances

At its core, the purpose of any grievance system is to resolve workplace conflicts. To have any meaning, such conflicts must be resolved in a timely manner, which is not occurring within the CAF grievance system writ large. The issue may be one of over-broad legislative drafting, as section 29 of the NDA enables such a broad array of issues to be presented for consideration as a military grievance that it has caused an unsustainable influx of grievances.⁷⁵

Additionally, it could be the overly complex bureaucracy that was criticized by the late Right Honourable Antonio Lamer in his *First Review of the NDA*⁷⁶ when he writes, "This current grievance process was never intended to be as complicated and bureaucratic as it is presently. It was intended to be an informal procedure through which matters that affect a CF member can be dealt with quickly."⁷⁷

A) Operation Resolution: 2014

In 2014 the then CDS, General Thomas Lawson launched OP RESOLUTION in an effort to clear out the backlog of grievances. This was no small *task*. In his Biennial Report on the State of the CAF Grievance System (2013–2014), General Lawson writes: "Not dealing with grievances in a timely manner undermines the confidence of CAF

⁷⁴ Democratic Control of Armed Forces (DCAF), "[Ombuds Institutions for the Armed Forces](https://tinyurl.com/33ykfjfn)", online: <<https://tinyurl.com/33ykfjfn>> [perma.cc/4V9Q-9YXG].

⁷⁵ Drapeau and Juneau, "The CAF grievance system: Back to the drawing board", *Esprit de Corps* 21:2 (March 2014).

⁷⁶ *First Independent Review*, *supra* note 30.

⁷⁷ *Ibid.*

members in the chain of command and thus, may undermine their loyalty to the institution.”⁷⁸

In his message, the then CDS General Tom Lawson writes: “I am committed to the principle that all CAF members have the right to submit a grievance and to receive a well-explained, timely, reasonable and impartial determination of the grievance from the appropriate authority.”

OP RESOLUTION enabled the CDS to broadly delegate his authority in the grievance. This may have been an error. It has become routine for important grievances to be delegated to officers four ranks junior to the Chief of Defence Staff, resulting in the CDS being, at least optically, disconnected from the needs of his troops.⁷⁹ At the end, there really has to be a balance between the objectives of efficiency (served by this delegation to more junior ranks) and the confidence, trust and credibility that comes from lower ranks knowing that they have been heard by the most senior commander.

B) CDS Directive on the Grievance System Enhancement 2021

On March 3, 2021, the (then acting) CDS, General Wayne Eyre, released a Directive for the CAF Grievance System Enhancement. As of February 2021, the Directive reads that there were “1,350 grievances awaiting resolution across the CAF” which General Eyre deemed “unacceptable.”⁸⁰ General Eyre continues by detailing that the administrative delays in grievance determination have eroded the “trust” and “credibility” in the system and thus directed a streamlined procedure to deal with grievances.⁸¹ The goal was to reduce the backlog by “at least 80%.”⁸²

In addition to setting efficiency targets,⁸³ General Eyre instructs persons acting as Initial Authority to endeavour to accept late grievances where the delay was “unforeseen, unexpected or beyond the control”⁸⁴ of the grievor. Pursuant to his Directive, two specific types of grievances are now being diverted from the CAF grievance procedure. These grievances

⁷⁸ National Defence, *2013–2014 Biennial Report of the State of the Canadian Armed Forces Grievances System*, at 2, online: <<https://tinyurl.com/fuurz7ts>> [perma.cc/6L6X-F9X4].

⁷⁹ Drapeau and Juneau, “The CAF grievance system: Crumbling to dust”, *de Corps* 24:5 (June 2017).

⁸⁰ CDS Directive for CAF Grievance System Enhancement, March 3, 2021 at para 4.

⁸¹ *Ibid* at para 6.

⁸² *Ibid* at para 20 and 25.

⁸³ *Ibid* at para 13(a).

⁸⁴ *Ibid* at para 13(f).

concern Compensation and Benefits⁸⁵, and Performance Appraisals,⁸⁶ and doing so makes eminent good sense.

Interestingly, this proposition was first suggested in an article penned in *Esprit de Corps* military magazine in December 2019.⁸⁷ In that article, the authors note that a possible remedy to assist in clearing the backlog of grievances may be to limit the scope or confine to what is grievable beyond issues that touch on other legal processes. For example, categories of grievances that rely on a correctness⁸⁸ review could become subject to a separate, parallel review process.

C) Limitations to the Grievance Right

Historically, up to one in three CAF grievances concern compensation and benefits (“C&B”) issues, which are decided based on the application or misapplication of policy—either one qualifies for benefits under the statutory scheme, or does not. As such, these issues are largely matters of fact, and not necessarily driven by fairness. It is recommended that these C&B matters be removed entirely from the grievance process and be instead be examined through a departmental Compensation Review Process—according to a strict deadline⁸⁹—whose decisions would be subject to judicial review before the Federal Court on grounds of ‘correctness.’⁹⁰

Additionally, a CAF member should be limited in their right to grieve a performance review, which has historically made up between 5–10% of active grievances. The reasoning is simple: a soldier cannot be considered the best judge of their performance. This judgment is best left to their commanding officer, and intermediaries, who can supervise and compare that soldier’s performance to that of their peers. However, in instances of seriously unexpected performance appraisals and ineffective feedback, a CAF member should have a right to submit a written communication that contains the reasons for his disapproval of the appraisal which would

⁸⁵ *Ibid* at para 26.

⁸⁶ *Ibid* at para 27.

⁸⁷ Drapeau and Juneau, “The CAF Grievance Process: An operational failure”, *Esprit de Corps* 26:11 (December 2019).

⁸⁸ The correctness standard is a common law standard of review that allows a reviewing court to substitute its judgment for all questions of law regardless of the relative expertise of an administrative tribunal.

⁸⁹ Such a delay should not exceed 100 days.

⁹⁰ See *Fawcett v Canada (Attorney General)*, 2017 FC 1071 at para 21, the Court noted that the reasonableness standard applied because of the highly specialized nature of the grievance process within the CAF.

be appended to his performance appraisal report for consideration by the appropriate Merit Review Board.

This would result in grievances being confined to harassment, abuse of authority, discrimination, detention, career management issues (postings, transfer, secondment, seniority, training, promotions, relief from the performance of military duty selection, leave, remustering, personal records, releases), healthcare, honours, dress and appearance, messes and institutes as well as matters of Conduct and Discipline covered by sections 1, 2 and 4 of chapter 19 of the QR&Os. Once addressed at the Final Authority Level, these grievances would be eligible for judicial review on grounds of *reasonableness* at the Federal Court of Canada.

10. Conclusion

The CAF's grievance administration needs to learn from history and re-establish the duty to address workplace complaints in a timely and fair manner. It appears that initial steps have been taken, and there may be hope on the horizon. To an outsider, such delays may appear inconsequential in peacetime, but in times of war, soldiers rely on leadership to address their concerns in a meaningful and understandable way. Hearing soldiers' concerns through a robust, efficient and fair grievance process is too important of an issue to leave languishing.