



## eBULLETIN - April 2016

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### Highlights

#### [Kosher Foods](#) (case no. 2014-001)

*The grievor complained that he was improperly denied kosher food while attending training at a Canadian Armed Forces base, and that he was treated inappropriately when he raised his concerns to the attention of the training staff.*

#### [Next of Kin Designation](#) (case no. 2015-033)

*The Director Casualty Support Management (DGSM (Director Casualty Support Management)) refused to recognize the grievor as next of kin as entered on the Department of National Defence 2587 form completed by his brother, who was also a Canadian Armed Forces member, prior to the death of the brother in question. As a result, the DGSM (Director Casualty Support Management) refused to pay the grievor Next of Kin Travel Benefits.*

#### [Medical Marijuana](#) (case no. 2015-077)

*The grievor obtained a 12-month prescription for medical marijuana from a civilian family physician and was denied reimbursement of the cost.*

### Case Summaries

#### Kosher Foods

##### Committee Findings and Recommendations

The grievor complained that he was improperly denied kosher food while attending training at a Canadian Armed Forces (CAF (Canadian Armed Forces)) base, and that he was treated inappropriately when he raised his concerns to the attention of the training staff. As redress, he sought an apology, qualification for the course he failed to complete, a commitment that a similar event would not happen again, and a retroactive promotion and pay.

The Initial Authority refused to adjudicate, finding that the grievance was submitted beyond the six-month time limit and that the reasons provided by the grievor were not sufficient justification for the late submission.

The Committee noted that the CAF (Canadian Armed Forces) policy with respect to religious accommodations should be interpreted in the context of the CAF (Canadian Armed Forces)'s obligations under the *Canadian Human Rights Act*. The Committee found that the direction in the CAF (Canadian Armed Forces) Food Services Manual was not followed by the base authorities and that the standards of "undue hardship" and "reasonable efforts" were not met in this case.

The Committee also found that some of the allegations of mistreatment made by the grievor in his complaint met the definition of harassment as provided by the Harassment Prevention and Resolution Guidelines (the Guidelines) and that, although a disciplinary investigation was done, it was not an appropriate means of investigating harassment allegations. Therefore, the Committee recommended that a proper situational assessment and investigation be completed in accordance with the Guidelines.

The Committee found that the grievor could not be granted his course qualification as he did not finish the course. However, it was noted that if his allegations were to be deemed "founded"

following an investigation, then he should be given priority for recourse.

Finally, the Committee observed that it was apparent that some CAF (Canadian Armed Forces) members did not have a clear understanding of the requirement to accommodate a legitimate religious requirement to the point of "undue hardship." Therefore, it was recommended that it would be worthwhile to remind CAF (Canadian Armed Forces) personnel within food services, as well as the CAF (Canadian Armed Forces) training schools, of their duty to accommodate.

### Final Authority Decision

The Chief of the Defence Staff (CDS (Chief of the Defence Staff)) agreed with the Committee's recommendation that the grievance be partially upheld, but he did not endorse completely all the remedies. The CDS (Chief of the Defence Staff) agreed with the Committee's finding that the grievor's allegations met the definition of harassment, but due to the passage of time, he deviated from the Committee's recommendation that a investigation be directed. The CDS (Chief of the Defence Staff) gave the grievor the opportunity to complete the required training and associated validation process for the course in question. He also agreed with the recommendation that the grievor be reimbursed for the meal supplements, but, instead of forwarding the file to the Director Human Rights and Diversity, he approved the reimbursement of 10 days of meals under *Compensation Benefits Instructions* 210.83(2).

## Next of Kin Designation

### Committee Findings and Recommendations

The Director Casualty Support Management (DGSM (Director Casualty Support Management)) refused to recognize the grievor as next of kin (NOK (next of kin)) as entered on the Department of National Defence (DND (Department of National Defence)) 2587 form completed by his brother, who was also a Canadian Armed Forces member, prior to the death of the brother in question. As a result, the DGSM (Director Casualty Support Management) refused to pay the grievor Next of Kin Travel Benefits (NOKTB (Next of Kin Travel Benefits)). The DGSM (Director Casualty Support Management) refused to recognize the four additional NOK (next of kin)s entered on the form, judging that there were too many irregularities in the way the form had been filled out by the grievor's brother.

The grievor alleged that the error in this case was not committed by his brother but rather by the chief clerk (CC (chief clerk)) of his brother's unit, who had voluntarily acknowledged her mistakes.

The initial authority (IA (initial authority)) concluded that the grievor and the other members of his family had suffered damages resulting from a systemic flaw that the DGSM (Director Casualty Support Management) refused to acknowledge. The IA (initial authority) expressed his disagreement with the DGSM (Director Casualty Support Management)'s decision to refuse to consider the grievor as NOK (next of kin), but stated that he lacked sufficient authority to approve payment of the NOKTB (Next of Kin Travel Benefits) as requested.

The Committee concluded that the grievor's brother had not failed in his obligations by providing his unit CC (chief clerk) with a form that he believed had been duly completed. The fact that the form was not completed wholly in compliance with the relevant instructions has no impact whatsoever on its validity. Moreover, it does not put in question the veracity of the details relating to the NOK (next of kin) contained therein.

The Committee therefore concluded that the DND (Department of National Defence) 2587 submitted by the grievor's brother reflected his wishes and was comprehensive enough to validate the four additional NOK (next of kin) designated by him, despite the errors in form that it contained.

The Committee recommended that the Chief of the Defence Staff (CDS (Chief of the Defence Staff)) recognize the unqualified admissibility of the DND (Department of National Defence) 2587 completed by the grievor's brother and acknowledge that the information contained in that document accurately reflects the intentions and desires of the brother. The Committee accordingly recommended that the CDS (Chief of the Defence Staff) authorize the reimbursement of travel costs under the NOKTB (Next of Kin Travel Benefits) (to be shared at the discretion of the four NOK (next of kin)s on the form), in accordance with sub-paragraph 211.07(5) of the *Compensation and Benefits Instructions* (CBI (Compensation and Benefits Instructions)).

### Final Authority Decision

The CDS (Chief of the Defence Staff) endorsed the Committee's findings and recommendation to uphold the grievance. The CDS (Chief of the Defence Staff) was notably of the view that the errors and omissions by the grievor's brother and the clerk in the administration of the NOK (next of kin) form did not invalidate the changes he wished to make. In accordance with CBI (Compensation and

Benefits Instructions) 211.07, the grievor, his other brother and his parents were also entitled on the NOKTB (Next of Kin Travel Benefits). The CDS (Chief of the Defence Staff) did not endorse the instructions stipulated on the form requiring that it be revised every twelve months in order for the NOK (next of kin) to be entitled to the benefit; he consequently ordered a review of previous requests of this nature that were denied on this basis.

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## Medical Marijuana

### Committee Findings and Recommendations

The grievor obtained a 12-month prescription for medical marijuana from a civilian family physician and was denied reimbursement of the cost.

The grievor contended that as a Canadian taxpayer, it was unfair that he could not receive reimbursement for his prescribed medical marijuana from the Veteran Affairs Canada (VAC (Veteran Affairs Canada)) until he is released, nor from the Canadian Armed Forces (CAF (Canadian Armed Forces)) while he is still serving. He asked why is it that one federal agency pays for the medication, while the other does not.

The Initial Authority (IA (initial authority)) rejected the grievance on the basis that it was submitted outside of the time limit. Nonetheless, the IA (initial authority) stated that he believed that the current CAF (Canadian Armed Forces) policy prohibiting the reimbursement of medical marijuana costs is reasonable and was appropriately applied to the grievor's case.

The Committee first explained that while the Canadian Courts have required that reasonable access be available to a legal source of medical marijuana when it has been prescribed by a physician, they did not direct that legally accessed marijuana be reimbursed by the government or by group health insurance plans.

The Committee noted that Health Canada does not consider marijuana to be an approved drug or medicine in Canada, and that the CAF (Canadian Armed Forces) does not recognize the medical use of marijuana as being supported by and based on sound scientific evidence. As this is a key requirement in order for its use to be funded under the five principles of CAF (Canadian Armed Forces) Spectrum of Care (SoC (Spectrum of Care)), the Committee found that the decision refusing to reimburse the grievor was reasonable and compliant with the CAF (Canadian Armed Forces) healthcare obligation and commitment described in the SoC (Spectrum of Care).

Finally, the Committee commented on the difference between VAC (Veteran Affairs Canada) and the CAF (Canadian Armed Forces), stating that VAC (Veteran Affairs Canada) is responsible for providing care and support to former CAF (Canadian Armed Forces) members rather than serving members. Unlike the CAF (Canadian Armed Forces), VAC (Veteran Affairs Canada) does not have the obligation to maintain operationally ready troops. Rather, its unique function is to look to the care and needs of former troops. In this regard, VAC (Veteran Affairs Canada) is not held to a standard of comparability with other Canadian citizens across the country concerning the funding of medical marijuana treatments. In light of the very different mandate of VAC (Veteran Affairs Canada), the Committee found that it would be unreasonable to compare its position on medical marijuana to that of the CAF (Canadian Armed Forces).

The Committee recommended that the grievance be denied.

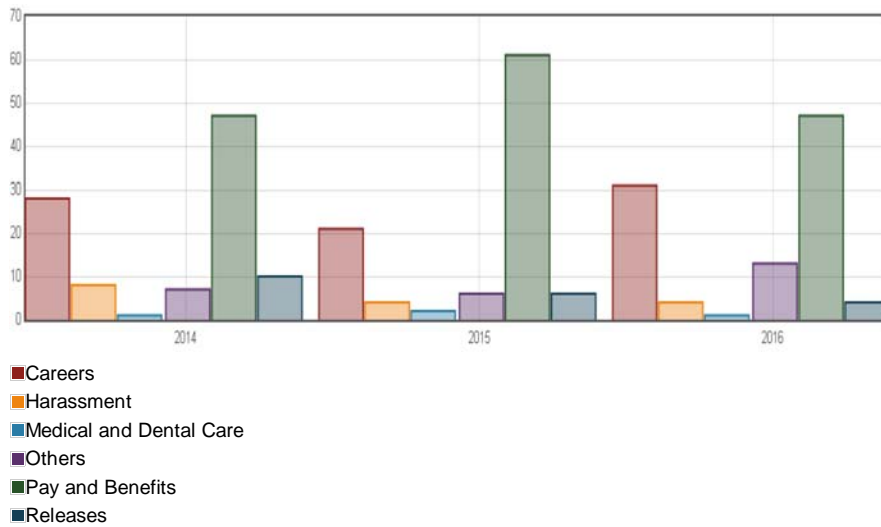
### Final Authority Decision

The Chief of the Defence Staff agreed with the Committee's findings and recommendation that the grievance be denied.

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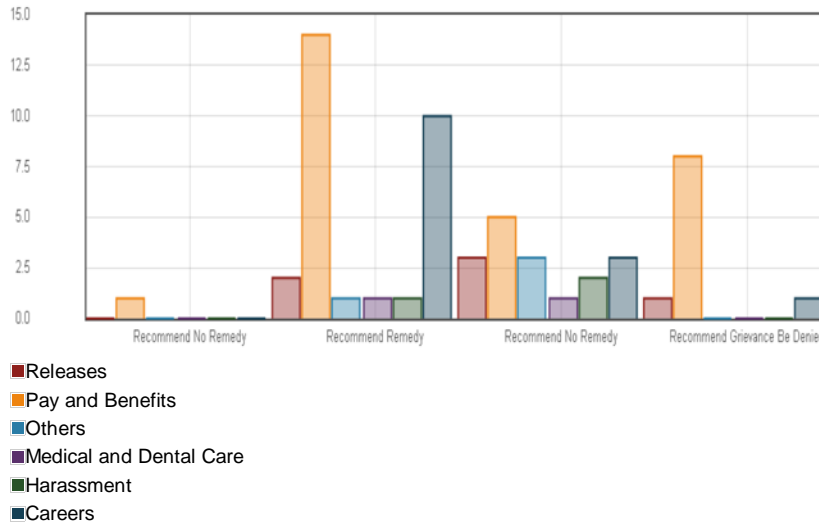
## Statistics

Category of grievances received since 2014 as of March 31, 2016



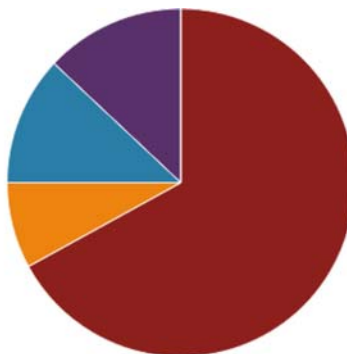
► **Category of grievances received since 2014 as of March 31, 2016 - Table**

**Distribution of the Findings and Recommendations (F&R (Findings and Recommendations)) by category of grievance for the period between January 1, 2016 and March 31, 2016**



► **Distribution of the Findings and Recommendations (F&R (Findings and Recommendations)) by category of grievance for the period between January 1, 2016 and March 31, 2016 - Table**

**Chief of the Defence Staff (CDS (Chief of the Defence Staff)) decisions received between January 1, 2016 and March 31, 2016**



- CDS agrees with Committee's F&R
- CDS partially agrees with Committee's F&R
- CDS does not agree with Committee's F&R
- Grievances resolved by CAF Informal Resolution

► **Chief of the Defence Staff (CDS (Chief of the Defence Staff)) decisions received between January 1, 2016 and March 31, 2016 - Table**

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