Federal Court  Cour fédérale

Date: 20150622

Docket: T-1205-14

Citation: 2015 FC 775

Ottawa, Ontario, June 22, 2015

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

JASYN EVERETT WALSH

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Chief of the Defence Staff (CDS), in his capacity as Final Authority (FA) in the grievance process under the *National Defence Act*, RSC 1985, c N-5, denied the Applicant's grievance of his release following an administrative review of his repeated sexual misconduct. The Applicant now seeks judicial review of the CDS' decision.

[2] For the reasons that follow, I have come to the conclusion that the CDS' decision was both reasonable and in accordance with the principles of procedural fairness. As a result, the application for judicial review is dismissed.

I. Facts

[3] The Applicant joined the Primary Reserve in January 1998 and served in several units on an occasional part-time as well as full-time basis until his release from the Canadian Forces (CF) in March 2010.

[4] The Applicant was charged with committing an indecent act in October of 2001. The charges were stayed and the Applicant then attended a six-month Forensics Sex Offender Treatment Program followed by monthly sex offender maintenance sessions. The arrest was not reported by the Applicant to his chain of command and it did not come to light until the investigation of a subsequent offence in January 2008.

[5] On January 27, 2008, the Applicant was arrested by the Vancouver Police Department and charged with committing an indecent act under section 173(1)(a) of the *Criminal Code*, RSC 1985, c C-46. He was convicted of that offence in June 2008, and received a conditional discharge with two years' probation and other conditions.

[6] In May 2008, the Director Military Careers Administration (DMCA) sent a message to the Applicant's chain of command advising them of their responsibility to conduct an

investigation to determine if the Applicant had violated Canadian Forces Administrative Order (CFAO) 19-36 (Sexual Misconduct), and submit a report with supporting documentation.

[7] In September 2009, while still on probation, the Applicant was detained and cautioned by the Victoria Police Department for committing another indecent act. No charges were laid. Shortly thereafter, the DMCA staff completed their administrative review of the Applicant's case and concluded he had violated Defence Administrative Order and Directive (DAOD) 5019-5 (Sexual Misconduct and Sexual Disorders), which replaced the former CFAO 19-36. DMCA staff recommended to DMCA that the Applicant be released pursuant to item 5(f) of the Table to article 15.01 of the Queen's Regulations and Orders for the Canadian Forces (QR&Os).

[8] In October 2009, the Applicant was provided with a disclosure package concerning the administrative review and invited to provide representation.

[9] In November 2009, the Applicant responded to the disclosure and requested that the recommendation for release be changed to retention with counselling and probation. The Applicant supported his request with statements from two psychiatrists and his probation officer as well as a number of his Performance Evaluation Reports (PER).

[10] In December 2009, the Applicant's Commanding Officer (CO) provided extensive comments on the Applicant's circumstances, his performance and the medical reports. Taking all these factors into account, the CO concurred that the Applicant should be released from the CF.

[11] In February 2010, the DMCA issued a decision to release the Applicant from the CF under item 5(f) of the QR&Os (unsuitable for further service). In March 2010, the Applicant was released from the CF under item 5(f) of the QR&Os.

[12] On February 8, 2010, the Applicant grieved the DMCA decision to release him. That grievance was denied on June 1, 2010 by the Director General Military Careers (DGMC), as the Initial Authority.

[13] On September 2, 2010, the Applicant sent a letter (which included an opinion from his legal counsel) to the CDS requesting reinstatement in the CF. Several subject matter experts (SME) were thereafter consulted on the matters raised in the Applicant's grievance, and the Applicant was provided with disclosure during this process and was able to make several representations.

[14] On September 30, 2010, the Applicant's grievance was referred to the Military Grievances External Review Committee (the Committee), formerly known as the Canadian Forces Grievance Board. On December 17, 2010 the Committee provided its findings and recommendations in relation to the Applicant's grievance. The Committee recommended the Applicant's grievance be upheld and his release considered void *ab initio*. The Committee also recommended the Applicant be placed on counselling and probation for sexual misconduct.

[15] On October 19, 2011 the Director General Canadian Forces Grievance Authority (DGCFGA) produced a grievance synopsis recommending the CDS deny the grievance on the

basis that the Initial Authority decision did not breach procedural fairness. On December 12, 2011 the Applicant submitted a representation in response to the grievance synopsis.

[16] On November 14, 2013 the DGCFGA produced a second grievance synopsis recommending the CDS deny the grievance on the basis that there was no evidence on the file to support the Applicant's contention that his withdrawal from Paxil produced an adverse reaction that led to his reoffending. On January 12, 2014 the Applicant submitted a representation in response to the second grievance synopsis.

[17] On March 17, 2014, the CDS denied the Applicant's grievance.

II. The impugned decision

[18] Before dealing with the Applicant's main arguments, the CDS addressed a few preliminary issues. First, he opined that the Federal Court of Appeal decision in *McBride v Canada (National Defence),* 2012 FCA 181[*McBride*] established that a *de novo* hearing cures a breach of procedural fairness. As such, the Committee's opinion that the Applicant's release was void *ab initio* because he was denied procedural fairness could not be accepted.

[19] The CDS also acknowledged that the DMCA did not explicitly set out the reasons for his decision or adequately address the Applicant's representations. However, the CDS set aside that decision and endeavoured to address all of the Applicant's concerns and explain why he came to a different conclusion than that of the Committee.

[20] Notwithstanding that there is no time limit for the FA to consider and determine a grievance, the CDS recognized that the Applicant's grievance had experienced considerable delay. However, because this delay was a result of a combination of factors, the CDS found that it did not establish partiality. Similarly, the fact that the synopses prepared by the DGCFGA analysts did not refer to civilian administrative law publications or legal cases does not amount to partiality, because the policy documents relevant to the Applicant's grievance are the DAOD's. In any case, the synopses contain advice and are not decisions of the FA.

[21] Turning to the reasonableness of the Applicant's release, the CDS noted the following factors: the misconduct that led to the administrative review, the Applicant's career performance and his CO's recommendation, his representations, and the assessments regarding his medical care.

[22] With respect to the Applicant's contention that his three sexual misconduct offences were minor in nature, the CDS noted that the Committee did not provide any explanation as to why it stated that the Applicant's transgressions, "although significant, are not on the same level as the usual sexual misconduct case". He also observed that the Applicant did not report the October 2001 sexual misconduct incident as required.

[23] Absent any impact statements from the Applicant's victims or co-workers, it was not possible to determine the extent of the negative impact the Applicant's actions may have had. Moreover, a lack of media involvement did not mean the CF was not discredited in the eyes of the public, which included the civilian police officers, probation personnel, medical practitioners

and victims. Most significantly, the issue of publicity is immaterial and the CF does not determine the nature of a member's conduct by first determining whether or not the behaviour garnered media attention. While the Applicant's offences may be of a minor nature according to the *Criminal Code*, this is not the only measure of right and wrong for a CF member. As stated by the CDS:

> The CAF *Code of Values and Ethics* governs conduct within the CAF and there can be no mistake that compliance with the principles, values and expected behaviours is an order for all CAF members. As already discussed, we hold ourselves to a high standard and accept the consequences of our decisions and actions. Overall, I conclude that your three sexual misconduct incidents are not minor in nature within the military context and that the continued occurrences of the misconduct over a span of approximately eight years, notwithstanding that you were provided with medical assistance, treatment, and time to overcome your propensity for such inappropriate behaviour/conduct, brought discredit to the CAF and cannot be tolerated by an individual that wears the CAF uniform.
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> Certified Tribunal Record, p 7

[24] The CDS also took note of the fact that the Applicant appeared to have accepted the gravity of his conduct and had expressed remorse. He reviewed his annual performance reports and mentioned that the Applicant was consistently assessed as a dedicated, strong performer throughout his career and was an above average Master Seaman. Contrary to the Applicant's submission, however, the CDS found that the Applicant's CO was not dismissive of the Applicant's performance but exercised his due diligence and provided a thorough and well-reasoned recommendation. He added that the Applicant, by not reporting his October 2001 arrest to his chain of command, in effect denied the CF the opportunity to counsel and support him early in his career.

[25] As for the psychiatric report to the effect that exhibitionism is generally viewed as a nuisance behaviour and that there is a prospect of favourable change over the long term, the CDS indicated that the Applicant committed a third indecent act while on probation, despite the considerable treatment received from both civilian and CF medical practitioners. Moreover, the fact that a CF member has a medical condition does not preclude the CF from taking such administrative or disciplinary actions as deemed appropriate under the circumstances. Of note, the CF did not bring military disciplinary action against the Applicant, but rather undertook an administrative process which resulted in release.

[26] Counsel for the Applicant had also contended that the Applicant's unit's medical staff had not monitored his progress closely enough after stopping his medication, resulting in an adverse reaction which contributed to his September 29, 2009 arrest. The CDS found that there was no evidence to substantiate the Applicant's contention that his medical practitioners were negligent with respect to stopping his medication or otherwise. The Applicant's treatment was consistent with the standard of care and he was treated appropriately by the mental health department. Moreover, the Applicant's own submissions indicated a number of factors that contributed to the September 2009 sexual misconduct incident, and that the medication withdrawal was a marginal factor at best.

[27] The CDS summed up his findings in the following way:

> In determining whether your compulsory release under item 5(f) was reasonable and justified, I have considered the following factors in reaching my decision: the sexual misconduct that initiated the AR; your career performance; your CO's recommendation; your representations; as well as your medical assessments. I am also cognisant of the fact that you have received

> assistance in your rehabilitation through the provision of the two educational programs following you [*sic*] conviction in 2001. As a result, I have reached the independent conclusion that your above average career performance, your admission of guilt and the medical factors associated with your treatment are not enough to counterbalance your CO's recommendation supporting 5(f) release and the weight the CAF assigns to the serious nature of your sexual misconduct. I therefore determine that your release from the CAF was a reasonable outcome of the nature of your repeated misconduct.
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> Applicant's Record p 19

III. Issues

[28] The Applicant raised a number of issues pertaining both to the reasonableness of the decision and to procedural fairness. With respect to the reasonableness of the decision, the Applicant submitted that the CDS failed to consider all the major points that he raised throughout the military grievance process, including his submission that his psychological/medical condition did not seriously impair his usefulness to the CF. In addition, the CDS did not provide adequate reasons and did not have an evidentiary basis to reject the medical opinion according to which his medication withdrawal played a significant role in the third incident of September 29, 2009.

[29] As for the procedural fairness aspect of the decision, the Applicant raises two issues. First, he attempts to distinguish the Federal Court of Appeal decision in *McBride* and relies on *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*] to argue that a *de novo* review does not cure a breach of procedural fairness. Second, he argues that the delay in the adjudication process led to a breach of procedural fairness and/or an abuse of process.

[30] I will now address each of these issues. Before doing so, however, I will briefly set out the legislative and policy framework, and determine the appropriate standard of review.

A. *Legislative and Policy Framework*

[31] Sections 29 to 29.15 of the *National Defence Act* prescribe the CF's grievance process. According to s 29(1), a CF member aggrieved by any decision in the administration of the affairs of the CF is entitled to submit a grievance if no other process for redress is provided under the *National Defence Act*. Section 29.11 provides that the CDS is the final authority in the grievance process. Further, s 29.12 provides that he shall refer every grievance that is of a type prescribed in regulations made by the Governor-in-Council, and may refer any other grievance, to the Grievances Committee for its findings and recommendations before considering and determining the grievance.

[32] The Committee's findings and recommendations are not binding on the CDS (s 29.13(1)), but he must provide written reasons if he fails to act upon them (s 29.13(2)). The decision of a final authority (the CDS may delegate any of his or her powers, pursuant to s 29.14) is final and binding, and with the exception of judicial review before this Court, is not subject to appeal or to review by any court (s 29.15).

[33] As for the DAODs, they are orders to CF members. DAOD 5019-0 states that "CF members shall be held accountable for any failure to meet established standards of conduct and performance resulting from factors within their control". DAOD 5019-2 outlines the process for conducting an administrative review. DAOD 5019-5 deals with sexual misconduct and sexual

disorders. According to that order, "sexual misconduct" consists of one or more acts that "are either sexual in nature or committed with the intent to commit an act or acts that are sexual in nature", and "constitutes an offence under the *Criminal Code* or Code of Service Discipline". More specifically, it includes offences "such as sexual assault, indecent exposure, voyeurism and acts involving child pornography". As part of the General Principles, we find the following CF commitment:

> Sexual misconduct destroys basic social and military values and undermines security, morale, discipline and cohesion in the CF. It also reflects discredit on the CF and is therefore not tolerated by the CF.
>
> The CF is committed to ensuring that all incidents of sexual misconduct are reported, investigated and dealt with as soon as practicable.
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> Applicant's Record, p 288

B. *Standard of review*

[34] The parties are in agreement that decisions of the CDS involve questions of mixed fact and law and are therefore reviewable on a standard of reasonableness: Snieder v Canada *(Attorney General)*, 2013 FC 218, at para 20. As a result, the Court will intervene only if the decision of the CDS is outside the range of "possible, acceptable outcomes which are defensible in respect of the facts and law" or if the decision-making process lacks justification, transparency and intelligibility; see: *Dunsmuir* at para 47. Sufficiency and adequacy of the reasons must be assessed as part of that enquiry: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, [*Newfoundland and Labrador Nurses' Union*], at paras 14-15.

[35] As for issues raising procedural fairness concerns, they are reviewable on the standard of correctness*: Smith v Canada (National Defence),* 2010 FC 321, at paras 34-37; *McBride* at para 32.

IV. Analysis

A. *The reasonableness of the decision*

[36] Counsel for the Applicant submitted that the CDS disregarded the findings of the Committee without providing adequate reasons for doing so. In particular, it is argued that the CDS did not consider the medical opinions confirming that the Applicant was treatable and had been successfully participating in the recommended rehabilitation programs prior to his release. Counsel is also of the view that the CDS failed to explain why he chose release, the most serious sanction, over counselling and probation as recommended by the Committee.

[37] This argument is without merit. At pages 9 and 10 of his reasons, the CDS explicitly deals with the Applicant's medical assessments and refers to reports both from Dr. Eaves, the Applicant's psychiatrist, and from Dr. Robinow, another psychiatrist who treated him. He quotes Dr. Eaves according to whom the "prognosis for exhibitionists is generally not good", but that in the Applicant's case there was a prospect of favourable change over the long term. He also acknowledges Dr. Robinow's report of November 2009 that the Applicant's prognosis for appropriate function and conduct in the CF "remains very good as long as he continues to adhere to his treatment", but emphasizes that this prognosis relates to his depression and not to the issues underlying his sexual misconduct.

[38] The Applicant takes issue with the CDS' conclusion that Dr. Robinow's prognosis appears to be related to the Applicant's depression and not his sexual misconduct. The Applicant points to Dr. Robinow's notes in May, July and August 2008 with respect to the Applicant's Paxil dosage that would tend to confirm that the condition he was talking about in his medical note of November 2009 was indeed exhibitionism.

[39] It may well be that the Applicant saw Dr. Robinow at least in part to treat him for the causes of his exhibitionism. However, as indicated by the Respondent, the Applicant states in his own submission dated January 12, 2014 that he saw Dr. Robinow in September 2009 with regards to his depression. At that time, he indicated he had restarted his Paxil because he was feeling mildly down. Further, in Dr. Stein's psychological assessment dated June 26, 2013, there is a note that Dr. Robinow mentioned that the Applicant had suffered from dysthymia since 2002, and was treated with supportive therapy, behavioural measures and Paxil, an anti-depressant. Dr. Eaves' report dated May 31, 2008 indicates quite clearly that the Applicant recently switched to seeing a psychiatrist, Dr. Robinow, for his depression. In light of all this, and considering the cryptic nature of Dr. Robinow's report of November 2009, the CDS could reasonably conclude that his favourable prognosis related to the Applicant's depression.

[40] It is clear, therefore, that the CDS did have regard to the medical opinions in the file. As for the reasons why he decided to diverge from the Committee's recommendation, they are to be clearly found in the paragraph immediately following the discussion of the medical reports. First, the Applicant committed a third indecent act while on probation, despite the considerable

treatment he had received. Second, his sexual misconduct is serious and not merely a "nuisance behaviour" as characterized by Dr. Eaves.

[41] These reasons are perfectly intelligible and make it clear why the CDS decided to depart from the Committee's recommendations. The same is true in every instance where the CDS' perspective differed from that of the Committee. Contrary to the Applicant's submissions, the CDS did explain how a *de novo* hearing can cure a serious breach of procedural fairness. The Applicant is of the view that his circumstances are much different from those in *McBride*, essentially because the breach of procedural fairness in that case was less severe than in the Applicant's case. The CDS disagreed, emphasizing that *McBride* also dealt with a member who had been released by the time his grievance was considered. He also stressed that it is the *de novo* consideration of the grievor's file at various stages of the grievance process that cures a previous breach of procedural fairness. The CDS was entitled to come to that finding, and he more than adequately explained his rationale for not acting on the Committee's recommendation to consider the Applicant's release void *ab initio*.

[42] When dealing with an argument revolving around the adequacy of reasons, one must remember that such an argument cannot be a stand-alone basis for quashing a decision. A decision will not be quashed merely because it could have been better articulated or more thorough. As the Supreme Court stated in *Newfoundland and Labrador Nurses' Union* at para 16:

> Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-

> maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion… In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

[43] I have no hesitation to conclude that, when considered through that lens, the decision of the CDS passes muster. The decision may not be the one this Court would have made, it may even be considered somewhat harsh, but it is certainly not a decision that is unintelligible or for which there is no basis in the evidence. I note, in passing, that the Applicant was released under s 5(f) (unsuitable for further service) and not under s 2(a) (unsatisfactory conduct), in recognition of his entire service record. The Final Authority is given a broad discretion when considering and determining grievances, especially when identifying the remedies appropriate under the circumstances, because of his in-depth knowledge of the military environment and operations. These kinds of decisions are owed a high degree of deference, and I have not been convinced that the course of action chosen (release instead of counselling and probation) is not one of the "possible, acceptable outcomes which are defensible in respect of the facts and law".

[44] The Applicant further contends that the CDS failed to consider certain points he raised throughout the grievance process, and more particularly his submission that his psychological/medical condition did not seriously impair his usefulness to the CF (as is required when release is ordered pursuant to s 5(f)). He argues that his case should be compared to that of another CF member who raped a 14 year old girl and who did not participate in any treatment programs but nevertheless received counselling and probation.

[45] Having carefully read the impugned decision of the CDS as a whole, I do not believe it can be said that the reasons do not address the Applicant's submissions. It is clear that the CDS turned his mind to the instructions governing the release of CF members, as set out in QR&O Chapter 15. Pursuant to those instructions, s 5(f) "[a]pplies to the release of an officer or non-commissioned member who, either wholly or chiefly because of factors within his control, develops personal weakness or behaviour or has domestic or other personal problems that seriously impair his usefulness to or impose an excessive administrative burden on the Canadian Forces".

[46] Throughout his reasons, the CDS makes it abundantly clear that the seriousness of the Applicant's repeated sexual misconduct is the underlying rationale for his finding that the Applicant is unsuitable for service. He also reviewed the Applicant's medical assessments as well as his employment record and found that his conduct was within his control and that he was wholly responsible for his actions. He endorsed his CO's recommendation supporting release under s 5(f), and he found that the medication withdrawal was at best a marginal underlying cause of the September 2009 incident on the basis of the medical review that he had requested from the Director of Medical Policy and of the Applicant's own explanations for his conduct.

[47] As for the CDS' refusal to consider the grievance case the Applicant submitted as a comparator, this was entirely appropriate in the context of an administrative review. It is a well-established principle of administrative law that each case turns on its own merits, and that a decision-maker is not bound by any previous decision.

[48] Accordingly, I am of the view that the decision reached by the CDS is consistent with the military guidelines regarding release of CF members, and that the reasons are sufficient to explain why placing the Applicant on counselling and probation was not the chosen course of action. All of the Applicant's submissions were addressed, and there is no ambiguity as to why they were not accepted. The Court's mandate on judicial review is not to reweigh the evidence, but to determine if the decision reached is intelligible and is supported by the evidence and the law. In my respectful opinion, the decision of the CDS meets those criteria.

B. *The procedural fairness argument*

[49] The Committee found that the Applicant was not provided procedural fairness in that the Administrative Review Process was fundamentally flawed. More specifically, the Committee found that the Applicant's unit failed to take action on the Applicant's file in a timely manner. While the Administrative Review Process was initiated by the DMCA in May 2008, it remained dormant until the Applicant was involved in another incident in September 2009. Moreover, the Committee found that the DMCA approved the recommendation to release the Applicant without providing reasons for his decision, as required under DAOD 5019-2. The Committee found that these breaches of procedural fairness could not be cured by the Grievance process, and therefore recommended that the Applicant's grievance be upheld.

[50] As previously mentioned the CDS disagreed with those findings and recommendations and relied on *McBride* for the proposition that a *de novo* hearing does cure a breach of procedural fairness. The Applicant tried to distinguish his case from *McBride* on the basis of the fact that the breach of procedural fairness in *McBride* was less severe than in his case, and that

the breach of procedural fairness could have been cured by Mr. McBride himself had he decided to obtain a copy of his medical records as directed by the military.

[51] I agree with counsel for the Respondent that the thrust of the Federal Court of Appeal in *McBride* is that a *de novo* review will be sufficient to cure a breach of procedural fairness when the procedure, considered as a whole, was fair. This is clearly the situation in the case at bar. Not only did the CDS review the file in its entirety, but the Applicant was given the opportunity to make representations at every step of the process. He received disclosure of all documentation regarding the administrative review of his release and provided several submissions on material disclosed to him throughout the analysis of his grievance. The CDS carefully considered the Applicant's submissions and addressed each one of them in his reasons. He also acknowledged that the Initial Authority (the DMCA) did not explicitly state the reasons for his decision nor sufficiently addressed the Applicant's representations, but the decision and the process that he followed to reach it clearly remedied earlier shortcomings. I have no hesitation to conclude that, when considered as a whole, the Administrative Review Process was fair.

[52] Finally, counsel for the Applicant argued that the unexplained delay from the CDS in adjudicating his claim led to a breach of procedural fairness and/or an abuse of process in his case. It is clearly unfortunate that the entire grievance process took more than four years (from February 2010 to March 2014), and the CDS conceded as much in his decision. He explained that several subject matter experts were consulted and that the case was complex, but nevertheless recognized that this protracted process likely caused the Applicant additional stress as his situation remained in limbo, for which he apologized.

[53] Unfortunately, delays in the context of administrative proceedings are common, and the Supreme Court in *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 SCR 307 explained that they do not all amount to breaches of procedural fairness. The Court accepted that unacceptable delays may amount to an abuse of process in certain circumstances even where the fairness of the hearing has not been compromised. In the context of a sexual harassment complaint before a provincial human rights commission, the Supreme Court provided the following guidelines to determine whether a delay is unacceptable (at paras 121-122):

> To constitute a breach of the duty of fairness, the delay must have been unreasonable or inordinate…There is no abuse of process by delay *per se*. The respondent must demonstrate that the delay was unacceptable to the point of being so oppressive as to taint the proceedings. While I am prepared to accept that the stress and stigma resulting from an inordinate delay may contribute to an abuse of process, I am not convinced that the delay in this case was "inordinate".
>
> The determination of whether a delay has become inordinate depends on the nature of the case and its complexity, the facts and issues, the purpose and nature of the proceedings, whether the respondent contributed to the delay or waived the delay, and other circumstances of the case. As previously mentioned, the determination of whether a delay is inordinate is not based on the length of the delay alone, but on contextual factors, including the nature of the various rights at stake in the proceedings, in the attempt to determine whether the community's sense of fairness would be offended by the delay.
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> See also: *Moodie v Canada (Attorney General)*, 2014 FC 433; *Dockstader v Canada (Attorney General)*, 2008 FC 886

[54] In the case at bar, I have not been presented with evidence tending to show that the delay was "so oppressive as to taint the proceedings". There is no evidence either that the Applicant suffered a prejudice likely to compromise the fairness of the determination of his grievance. The

delay was clearly inconvenient and may not have been satisfactorily explained in its entirety; however, it does not amount to a breach of procedural fairness calling for the quashing of the decision made by the CDS.

V. Conclusion

[55] For all of the foregoing reasons, I therefore come to the conclusion that the decision reached by the CDS to release the Applicant from the CF is reasonable and does not breach the principles of procedural fairness.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed, with costs.

"Yves de Montigny"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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