Federal Court  Cour fédérale

Date: 20160108

Docket: T-2361-14

Citation: 2016 FC 32

Ottawa, Ontario, January 8, 2016

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

CORPORAL J.J. HIGGINS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of the decision dated September 22, 2014 by Colonel J.R.F. Malo of the Canadian Armed Forces (CAF) acting as Final Authority (FA) in which the Applicant was granted most, but not all, of the redress he sought in his grievance dated December 5, 2011.

[2] At the commencement of the hearing a motion to change the name of the Respondent to the Attorney General of Canada was granted. Otherwise, there were no preliminary matters.

I. Background

[3] The Applicant is a corporal in the CAF who, at the time of the incidents at issue, was serving as a Second Lieutenant in the Reserve Force Cadet Instructor Cadre for the Cadet Administration and Training Service (COATS). COATS officers act as adult supervisors to non-military youth members of the Cadet program. The precipitating event was his suspension from 40 (Snowbird) Royal Canadian Air Cadets Squadron (RCACS) on August 30, 2011.

[4] On September 6, 2011 the Applicant filed a complaint of harassment and abuse of authority against his Commanding Officer (CO) and another officer, both of whom had had discussions with him concerning improper interactions he was alleged to have engaged in with cadets. His alleged failure to correct his actions precipitated his suspension. Unsatisfied with the report of the investigation of his complaint, the Applicant filed a grievance on December 5, 2011. He transferred to the Regular Forces (RF) the following day.

[5] The Applicant has persistently denied all allegations which led to his suspension. He grieved both the fact that he was suspended and the actions of his CO. He alleged the CO had failed to adhere to basic tenants of the principles of military procedural fairness and conducted a flawed investigation into his harassment complaint.

II. The Allegations, Complaint, and Grievance

A. *The Allegations against the Applicant*

[6] There were various allegations against the Applicant. They fall into two broad categories, one being inappropriate activities or conduct with cadets and the other being disrespecting or going outside of the Chain of Command (COC).

[7] During 2010 and 2011, the Applicant's CO received a variety of complaints from parents of cadets about the Applicant's conduct with their cadets outside of regular hours including such things as going for coffee with cadets, emailing cadets, contacting them through social networking sites, exchanging emails with them and inviting them to fly with him on his airplane. He also befriended some of the parents, which was viewed by his COC as an attempt to circumvent the requirement that the Applicant not engage with cadets outside of work hours. There was an allegation that the Applicant served alcohol to an underage cadet at the Applicant's home and then allowed that cadet to drive home. Another allegation was that the Applicant took five cadets swimming after his request to do so was denied by the civilian oversight committee.

[8] In particular the Applicant denied using social media to contact the cadets. He vigorously denied having cadets to his house, serving them alcohol and watching a movie with them. As one of the complaints was that the Applicant was contacting cadets through his Facebook account, the Applicant demonstrated to his CO, that no cadets were friends on his Facebook account. The CO confirmed this to the Applicant by email on March 17, 2010.

[9] The Applicant was warned both verbally and in writing on a number of occasions to cease engaging in the conduct alleged although he never admitted to having so engaged. There were also concerns expressed to him that he was acting outside the COC by speaking with parents and others directly about internal COATS matters.

B. ***The Complaint***

[10] The Applicant's complaint was submitted to the CO of Regional Cadet Support Unit (Prairie) (RCSU (Pra)). It alleged his CO and ACO were procedurally unfair to him, which

resulted in harassment and abuse of authority in that they failed to provide him with specifics or evidence to support the various allegations regarding his interactions with cadets.

[11] The Training Services Officer RCSU (Pra) was assigned to investigate the complaint. On October 3, 2011 the Applicant submitted further information and documentation to support his complaint including emails and accounts of anecdotal evidence.

[12] On November 1, 2011 a 4 page investigation report was released. It acknowledged the Applicant's complaints of harassment and procedural fairness but did not directly address them. The report found the Applicant had demonstrated conduct deficiencies over a long period of time and "given the number of times he had been counselled between 2 Mar 10 and 16 Feb 11 it is reasonable to expect that on 30 Aug 11 2Lt Higgins would have been aware of the reasons that he was being asked to leave the squadron". The investigation recommended, amongst other things, that the reasons for his removal be reiterated to the Applicant and that he be placed on Initial Counselling (IC) regarding expectations about his responsiveness to the direction of superior officers and his personal relationships with cadets. IC is a form of administrative action meant to formally record and provide the mentorship framework necessary to address conduct deficiencies.

[13] The investigation concluded that the Applicant had failed to respond to repeated attempts to assist him in overcoming the deficiencies noted. The report found the Applicant should be allowed to continue to serve, but in another unit as there had been an "irreversible effect on the trust between him and the CO." (sic)

C. *The Grievance*

[14] On December 5, 2011, the Applicant initiated a grievance contending that his COC did not adhere to basic principles of procedural fairness, did not properly investigate his harassment complaint, lied to the officer who reviewed his complaint and improperly distributed protected information about him. The grievance included a statement that the errors could not be cured by a subsequent review.

[15] Effective December 6, 2011, the Applicant re-enrolled in the regular component of the CAF. Ultimately it was determined by the Chief of Defence Staff (CDS) that this action rendered moot many of the issues raised in the Applicant's grievance.

[16] On April 16, 2012, as a result of new information received through the disclosure process, the Applicant amplified his grievance to add requests that certain communications and documents be removed from his files and destroyed and that the CO and other officers of RCACS be subjected to administrative and/or disciplinary measures because confidential information about the Applicant was distributed improperly.

[17] The amplified grievance is the one which the CDS determined. It is the document underlying the decision which is the subject of this review application.

III. <u>The CAF Grievance Procedure</u>

[18] The Applicant has alleged procedural unfairness. It is appropriate therefore to review the nature of the grievance procedure established by the CAF. The right to grieve and the grievance procedure prescribed for the CAF is set out in section 29 of the *National Defence Act*, R.S.C, 1985, c. N-5 (Act) and chapter 7 of the *Queen's Regulations and Orders for the Canadian*

Forces. They are supplemented by a Defence Administrative Order and Directive (DAOD) being DAOD 2017 - 1, Military Grievance Process which is an order that applies to all officers and non-commissioned members of the CAF. As such it is an integral part of the grievance system.

[19] There is also a Grievance Manual issued by the Director General, Canadian Forces Grievance Authority (DGCFGA) which was developed to assist in the preparation and submission of grievances. The manual explains what may and may not be grieved, the roles played by various parties in a grievance, including the Canadian Forces Grievance Board (CFGB) as it then was but which is now known as the Military Grievances External Review Committee. The manual sets out, in a fair level of detail, the process which will be followed with an explanation of each step. The manual clearly states it is not a legally authoritative document and has no force of law. It is merely a guide.

[20] The CAF grievance procedure is thorough and detailed as one would expect of a military organization. There are only two levels within the process with the authority to grant or deny a grievance. One is the Initial Authority (IA), which is usually the CO and the other is the FA, which is the CDS or, as in this instance, his delegate. If a grievor is dissatisfied with the decision of the IA they have the right to have the matter sent to the CDS for final determination. Assisting the CDS is the DGCFGA which provides analysis of the grievance and makes non-binding recommendations. On occasion, as was the case here, the CFGB also makes a report to the CDS. The CFGB is an external, independent, and arm's-length legal body mandated under the Act to investigate and review grievances referred to it by the CDS. The CFGB provides findings and recommendations to the CDS who, under subsection 29.13(1) of the Act, is not

bound by any finding or recommendation but shall provide reasons if they do not act on a finding or recommendation of the CFGB.

[21] The grievance process with which the IA and CDS engage does not include hearing witnesses, examining or cross-examining on affidavits or documents. It is purely a written, documentary process where all the evidence considered is in writing. A procedural fairness requirement is contained in DAOD 2017-1, which orders that "the grievor has the right to be provided with all relevant documents and other information to be considered by a redress authority, to comment on this information, and to receive a well-explained, timely and impartial determination of their grievance."

[22] The documentary process that was followed in this case was extensive. It included creating and sending to the Applicant at both the IA and FA stages disclosure documents and a grievance synopsis then receiving from him one or more detailed written responses. A similar process occurred at the CFGB stage. Throughout the entire process there was a lively exchange of documents between the Applicant and whoever was involved in the process at that time as the reviewing authority.

[23] The Applicant's procedural complaint is, and has been from the beginning of the allegations against him, the fact that he has never received the names of the complainants or names of the cadets with whom he is alleged to have improperly engaged. He also says he never received the dates upon which the events in question took place. He still denies any improper activities occurred.

IV. Initial Authority Decision

[24] The Applicant was provided with a grievance synopsis on May 2, 2012 to which he filed a response on June 1, 2012.

[25] The IA reviewed the grievance as well as comments of superiors in the COC and of senior staff at Headquarters. The comments were disclosed to the Applicant on May 2, 2012. On June 6, 2012 the Applicant's reply to that disclosure was received.

[26] On July 11, 2012 the IA released his decision. With respect to the Applicant's continuing complaint that he was not provided with specifics such as dates, names and locations for the events about which he had received counselling the finding was that he had been verbally briefed on a number of occasions and had received the "proper and appropriate level of procedural fairness".

[27] The decision reviewed the very specific complaints made by the Applicant both initially and as amplified. While some of the Applicant's contentions were supported, the majority were not. The decision was that the Applicant had not established to the satisfaction of the IA that he was grieved. The redress requested was not granted.

[28] The Applicant was advised of his right to forward the grievance to the CDS within 90 days. On August 7, 2012 he provided a response to the IA decision. On August 17, 2012 he requested review by the CDS.

V. Canadian Forces Grievance Board Findings & Recommendations

[29] On January 3, 2013, the Applicant's grievance was sent by the CDS as a discretionary referral to the CFGB. On May 30, 2013, Findings and Recommendations (F&R) by the CFGB

recommending that the grievance be partially upheld were released. On June 4, 2013, the CFGB sent the F&R to the Applicant. It also disclosed to him his grievance file of 826 pages to assist him in preparing for the CDS decision. He was advised that after reviewing the materials he might wish to provide comments and/or other pertinent documents to the DGCFGA for consideration by the CDS. The F&R largely, but did not entirely, upheld the Applicant's grievance.

[30] The issue as stated by the CFGB was:

> . . . whether the decision to post the grievor from his unit was justified and in accordance with the policy, and whether the Remedial Measure he was issued was appropriate.

[31] The CFGB determined that as the Remedial Measure of an IC took place after the Applicant had already transferred to the RF it was of no force or effect and should be removed from the Applicant's personnel files.

[32] The CFGB concluded that the initial investigation of the Applicant's complaint was fundamentally flawed for several reasons. It found the conclusions were not justified, transparent, intelligible, or understandable, therefore the investigator's conclusions were unreasonable. The CFGB recommended the investigation report be set aside and expunged from all unit files.

[33] The CFGB reviewed three documents which the Applicant had asked to be removed from his files. It concluded that there was no justification to remove them as they were appropriate actions for the CO to have taken. In addition the CFGB indicated it was not persuaded an apology which the Applicant sought from the CO and ACO was justified and, in any event, it had adopted a position against obliging a person to write a letter of apology.

[34] With respect to the various allegations involving inappropriate contact with cadets, the CFGB acknowledged they were poorly handled but had become moot as the Applicant had transferred to the RF. It did note that the allegation of serving alcohol to a minor had not been properly investigated and that the CAF may wish to consider whether to pursue the matter.

[35] Dealing with the decision to remove the Applicant from his unit, the CFGB again found the situation had been poorly handled and was not properly justified as a proper and fair investigation had not been made. However as result of the Applicant's transfer to the RF the CFGB again found this matter to be moot.

[36] The only recommendation made by the CFGB was that the CDS partially uphold the grievance by ordering "That the Initial Counselling form and the "Review of [the Grievor's] Complaint" along with any reference to those documents be removed from the Applicant's personnel file and disposed of in accordance with the National Archives of Canada Act."

VI. Final Authority Decision

[37] On June 13, 2014 the DGCFGA wrote to the Applicant to confirm the accuracy and completeness of the information it held and to confirm its understanding of the issues being grieved and the redress sought. The Applicant was provided with the information that the CDS would be considering and was invited to provide a response if desired. A synopsis of the grievance to that date was enclosed with the letter. The synopsis included a review of the redress sought, the relevant facts including alleged activities with cadets, the findings of the investigation report, the fact that the IA synopsis had been disclosed to the Applicant who had received the IA decision as well as the CFGB F&R. Within the disclosure package were copies of emails between and amongst various members of the COC concerning the Applicant and the

allegations against him as well as internal notes to file detailing various meetings and discussions about the matter.

[38] The grievance synopsis set out the applicable laws and policies and reviewed them in the context of the Applicant's grievance. The summary and recommendation provided in the synopsis was somewhat different than but largely consistent with the F&R of the CFGB. The recommendation to the CDS was to partially grant the redress by removing and destroying documentation related to the investigation and also the three records of discussion from all files and remove the Initial Counselling but issue a Recorded Warning instead. Major Vallée, the analyst writing the synopsis, recommended the CDS order a military police investigation on the allegation of providing alcohol to minors.

[39] The Applicant provided a thorough response to the synopsis and disclosure on July 7, 2014.

[40] On September 22, 2014 the CDS provided his decision (Decision). He indicated he had conducted a *de novo* review setting aside previous decisions and starting afresh. The CDS confirmed that he reviewed the entire grievance file including the most recent reply information received from the Applicant. He reviewed the nature of the grievance and the redress being sought and decided that, to a certain extent, the Applicant had been aggrieved but not for the reasons put forward by the Applicant.

[41] The CDS decided to partially grant the redress sought as the Applicant had been aggrieved to a certain extent. He looked at four issues:

- whether the Applicant's suspension was appropriate;
- whether the investigation was properly conducted;

- whether procedural fairness was applied from March 2, 2010 until December 12, 2011; and
- whether the remedial measure issued was justified and legal.

[42] The CDS found the decision to transfer the Applicant to another unit was not the proper way to deal with the situation as the proper remedial measures procedure had not been followed, but, the matter was moot. The CDS found the CO RCSU (Northwest (NW)) reacted promptly and according to regulation by ordering an investigation, but he did not provide written terms of reference, leaving the investigating officer without proper guidance. As a result, the CDS found the investigation into the harassment complaint conducted by RCSU (NW) was flawed and appeared to be biased. The redress was granted and the report of the investigation together with any related documents were to be removed from all files and destroyed.

[43] With respect to procedural fairness, the CDS found the Applicant had been treated fairly throughout. He had been made aware of deficiencies and counselled on how to improve his behaviour. He received at every stage a chance to explain his actions and all available documentation was disclosed to him together with a fair chance to comment each time.

[44] With respect to the remedial measure, the CDS found it to be well documented that the Applicant was advised in person or via email on nine occasions about the same standard of conduct deficiencies which he did not correct. The CDS reviewed the nature and purpose of a remedial measure and the factors to be considered in both initiating a remedial measure and selecting the appropriate measure. The CDS agreed a remedial measure was required but that the Applicant's chain of command had been "overly accommodating" by not acting quickly enough. He found the Initial Counselling was issued without proper authority as it was done after the

Applicant's transfer to the Regular Forces, therefore he quashed it. The CDS then determined that, at the very least, a Recorded Warning was appropriate to administer.

[45] The CDS found that because the allegations with respect to providing alcohol to minors had not been properly investigated there would always be "some doubt" which could have a negative impact on both the Cadet organization and the Applicant. Therefore, he felt that matter should be re-considered. The CDS therefore directed that the appropriate CO contact the local military police unit and explore the value in opening an investigation with respect to the allegation that the Applicant provided alcohol to a minor.

[46] The CDS directed the three documents about which the Applicant complained be removed from all files because keeping them in the file would go against the spirit of the directive of the Chief of Military Personnel with respect to a Unit Personal File, the purpose of which is to protect CAF members.

[47] The CDS agreed with the CFGB with respect to not ordering an apology and that the COC acted appropriately despite committing administrative errors. He also found it inappropriate for him to deal with possible administrative and disciplinary measures against the CO or other officers in the context of the grievance. He preferred to leave the matter of any performance supervision to the appropriate authorities.

[48] Dealing with the specific redress sought by the Applicant, that any policy or procedure calling for disciplinary action based solely on an allegation be rewritten, the CDS found that the Applicant had not demonstrated he had been treated unfairly. He also specifically found the policies and procedures relating to procedural fairness were sound.

[49] In the result, the CDS directed all the records of discussion, the Initial Counselling form, the Review of Complaint (the investigation report) and any reference to those documents be removed from the unit personnel record and the Applicant's unit personal record. The removed documents were to be disposed of in accordance with the *Library and Archives of Canada Act*. In all cases once these matters were completed a report was to be made to the Applicant and the DGCFGA as well as the Applicant's CO.

[50] On November 14, 2014, the Applicant filed his application for judicial review of the Decision.

VII. Issues

[51] The Applicant submits the issue is whether it is appropriate for the Court to quash the Decision and the recommendation provided therein with respect to issuance of a Recorded Warning.

[52] The Respondent phrases the issues somewhat differently but the parties and the Court are in agreement that the issues to be considered on this judicial review are:

A) Is the decision by the Final Authority reasonable?

B) Did the Final Authority or the CAF breach the rules of procedural fairness by not providing adequate disclosure and details of the allegations to the Applicant during the grievance process?

VIII. Standard of Review

[53] The first question for the Court to address is what is the appropriate standard of review for each issue?

A. *Reasonableness of the Decision*

[54] The Federal Court of Appeal has previously held that decisions of the CDS with respect to grievances are reviewable on the reasonableness standard (*Zimmerman v Canada (Attorney General)*, 2011 FCA 43 at para 21). In *Dunsmuir v New Brunswick*, 2008 SCC 9 (*Dunsmuir*) at paragraph 57, direction is provided that if the standard of review has previously been determined it need not be canvassed again. This review will therefore proceed on the basis that reasonableness is the standard of review for the Decision and deference is owed to the decision-maker.

B. *"Adequacy of Reasons"*

[55] In oral argument, counsel for the Applicant raised as an issue that the reasons provided by the CDS were not adequate, particularly as there was no specific finding of fact that the Applicant actually engaged in the conduct as alleged. The Applicant also submitted the standard of review for adequacy of reasons should be correctness. This position was arrived at with reference to the trial judgment in *Rifai v Canada (Attorney General)*, 2014 FC 529 (subsequently overturned on appeal) which referred to paragraph 22 of *Tainsh v Canada (Attorney General)*, 2011 FC 1180, which cited paragraph 43 of *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 to hold that "the adequacy of reasons may be regarded as one aspect of procedural fairness and therefore subject to review based on correctness". However, both *Tainsh* and *Khosa* were decided before *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 (*Nfld. Nurses)* in which Justice Abella described the standard of review when dealing with that part of a decision being challenged on the grounds of "adequacy of reasons" or, the lack thereof, this way at paragraph 22:

> [22] It is true that the breach of a duty of procedural fairness is an error in law. Where there are no reasons in circumstances where they are required, there is nothing to review. But where, as here, there *are* reasons, there is no such breach. Any challenge to the reasoning/result of the decision should therefore be made within the reasonableness analysis. (emphasis in original)

[56] As *Nfld. Nurses* is the accepted authority in dealing with a question of whether reasons are adequate, I will review whether the reasons provided by the CDS were adequate or not on the basis that it is part of my review and analysis of the overall reasonableness of the Decision.

C. *Procedural Fairness*

[57] The Applicant has alleged there was a breach of fairness to him because he did not know the particulars of the allegations against him. He submits that he did not have even a minimal opportunity to respond to the allegations because he did not know who complained, with which cadets he was alleged to have been inappropriately involved, the nature of the inappropriate conduct, the dates it occurred and where it took place. He also claims he was not given any reason why such involvement was inappropriate.

[58] The standard of review for issues of procedural fairness is correctness. (*Mission Institution v Khela*, 2014 SCC 24 at para 79 and *Moodie v Canada (Attorney General),* 2015 FCA 87 at para 50). However, recent jurisprudence of the Court of Appeal recognizes that even on a correctness standard when a decision-maker has considerable experience and expertise the margin of appreciation to be applied is considered contextually. When the specific statutory context of the decision-maker is considered it may cause the review to be more like a reasonableness review. (*Maritime Broadcasting System Limited v Canadian Media Guild,* 2014 FCA 59 at para 51).

[59] Most recently, the state of the standard of review for issues of procedural fairness has been described as "unsettled" and "a jurisdictional muddle" in *Bergeron v Canada (Attorney General)*, 2015 FCA 160 at paragraph71. Here it is not necessary to try to sort out the "muddle". I have determined, for the reasons which follow, that the procedure followed was fair and it was correct, which means it was also reasonable.

IX. Positions of the Parties on the Issues

A. *Applicant's Submissions*

(1) Reasonableness of the Decision

[60] Counsel for the Applicant asked the Court to keep in mind that the Applicant was self-represented until after he filed his application for judicial review at which time he retained counsel to cross-examine the Respondent's affiant and then to represent him at the hearing.

[61] Counsel also submits there is no evidence substantiating the events alleged. The Applicant has maintained throughout the various stages of this matter that he did nothing wrong. He has not admitted to inappropriate conduct with cadets. There is no agreement that the allegations are true or that the events in question actually occurred.

[62] The Applicant submits that what occurred was he was repeatedly warned for actions which he denied and therefore could not correct; the "proof" of his misbehaviour is found only in the repeated warnings he received.

[63] In support of his position, the Applicant points to the CFGB F&R that states the initial harassment investigation was fundamentally flawed, procedural fairness had not been provided

as the draft report was not submitted to the Applicant for comment or review, and the conclusions of the investigation were found to be unreasonable.

(2) Adequacy of Reasons

[64] The Applicant says that although he was chastised by his superiors for not "correcting" his behaviour with respect to the cadets, he could not correct something that was not occurring. Counsel said it is in fact "absurd" to substantiate the finding of the CDS without the misconduct first being proven and a specific finding being made by the CDS including recitation of the underlying particulars and events.

(3) Procedural Fairness

[65] The Applicant says that at no time did he receive adequate particulars to enable him to properly defend himself. He agrees fraternizing is inappropriate but steadfastly maintains he is not guilty of it.

[66] The Applicant relies upon *R v Stinchcombe,* [1991] 3 SCR 326 (SCC) for the proposition that he is entitled to know the "who, what, when etc." He says he did not know the case he had to answer and it was not clear in the decision whether the CDS, Col. Malo, knew it either.

[67] In his written submissions, the Applicant relied solely upon the foregoing lack of details supporting the allegations to submit that he did not receive even a minimum level of fairness to which he says he was entitled. He relies generally on the factors set out in *Baker v Canada (Minister of Citizenship and Immigration),* [1999] 2 SCR 817 (SCC) in support of that assertion without specifying anything further as to its application.

[68] The Applicant also stated in his notice of application that a *de novo* consideration (in this case by both the CFGB and the CDS) cannot save the procedural unfairness which occurred. He cites no authority in support of that position.

B. *Respondent's Submissions*

(1) Reasonableness of the Decision

[69] The Respondent submits that not only is the decision of the CDS owed a high degree of deference, the Applicant is simply asking the court to re-weigh the evidence or to be very selective with respect to the evidence. The Respondent urges the Court to look at the totality of the evidence as was done by the CDS. In that case, the Respondent alleges there is more than sufficient evidence upon which the CDS could and did base his decision.

[70] Relying on *Rompré v Canada (Attorney General)*, 2012 FC 101 (*Rompré*) the Respondent submits the CDS is entitled to significant discretion with respect to grievances and determination of the appropriate remedies.

(2) Adequacy of Reasons

[71] As this issue first arose at the hearing, the Respondent did not make any written submissions with respect to this allegation but did say, relying on *Dunsmuir*, that as the nature of the grievance process is a specialized process within a specialized body and the standard of review of the Decision is reasonableness, the reasons are justified and intelligible.

(3) Procedural Fairness

[72] In support of the process having been fair to the Applicant the Respondent points to the extensive disclosure which took place and the opportunity provided to, and taken up by, the

Applicant at every critical juncture for input and reply. Additionally, by the time the CDS considered the matter it was a *de novo* review and the Applicant had received either the actual names of the complainants and informants there was enough information revealed to easily ascertain their identities. All known to him either professionally or personally.

X. Analysis

[73] In addition to the Notice of Application and the usual Memorandum of Argument and Law from each party, the record before me included a transcript of the cross-examination of the DGCFGA Grievance Analyst, Major Michel Vallée, who was responsible for reviewing and providing analysis of the Applicant's file to the CDS, as well as an extensive Certified Tribunal Record containing over 1000 pages, many of which were replicated several times and interspersed throughout with each disclosure.

A. *Reasonableness of the Decision*

[74] It is well-settled that reasonableness is a deferential standard in which the Court must recognize that questions which come before administrative tribunals may not lend themselves to one specific, particular result, but can give rise to a number of possible, reasonable conclusions. My review of whether the decision of the CDS is reasonable will be concerned with determining by a review of the reasons he provided whether they are justified, transparent and intelligible within the context of the decision-making process and whether the decision which was rendered falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir* at para 47).

[75] Mr. Justice Noël in *Bernath v Canada*, 2007 FC 104 (aff'd in *Canada v Bernath*, 2007 FCA 400) conducted an extensive examination of the nature of the grievance process established

by Parliament for the Canadian Forces under the *National Defence Act* and the *Queen's Regulations and Orders for the Canadian Forces*, volume 1, chapter 7. He found at paragraph 42 that the grievance process is:

> …an internal grievance resolution system unique to the Canadian Forces. The competent authority at each decision-making level is the superior, in the hierarchical order established within the Canadian Forces, of the grieving officer or non-commissioned member. In fact, there is no independent decision-maker, in the legal sense of the term, who is called on to decide a dispute between the parties. (my emphasis)

[76] Under section 18(1) of the Act, the CDS is given very broad powers in that he is "charged with the control and administration of the Canadian Forces" subject only to the regulations and under the direction of the Minister.

[77] Given this degree of autonomy and the particular expertise of the CDS within a highly specialized process and unique organization, it is my view that the degree of deference to which he is entitled is what is referred to as "a wide margin of appreciation". In *Canada (Attorney General) v Boogaard*, 2015 FCA 150, Stratas, J.A. when dealing with review of a decision of the Commissioner of the RCMP (which position I find is a reasonable parallel to that of the Chief of the Defence Staff of the Canadian Forces) found that the Commissioner was entitled to a very broad margin of appreciation. In my opinion the same holds true, for the same reasons, with respect to decisions of the CDS.

[78] As the CFGB had done, the CDS found the initial investigation was flawed and did not follow the proper policy and process. He determined that the investigation including any related documents should be removed from all files and destroyed. While the Applicant has submitted that the flawed investigation shows the decision by the CDS was not reasonable, I disagree.

Neither the CFGB finding nor the Decision leads to that conclusion as they both considered the allegations against the Applicant afresh. In the case of the CFGB, they found nothing "untoward or unfair" in the action by the CO to change the Applicant's unit responsibilities and restrict his involvement with cadets outside the Cadet program. The CFGB also found there was nothing untoward in the November 2, 2010 and February 16, 2011 Records of Discussion that would warrant removing those documents from the Applicant's files. Both documents dealt with the alleged behaviour of the Applicant and the discussion with respect to it. The reasons the investigation was found to be flawed related to lack of procedural process, not the gathering of evidence, most of which consists of written materials in the form of letters, emails, or records of discussion. It does not follow that the fact that the initial investigation was flawed has any impact at all on the subsequent decisions. Both the CFGB and the CDS considered the evidence without considering any of the findings of the investigation report, which they each confirmed was to be removed from the Applicant's records because of its flaws.

[79] I have reviewed the record before the CDS and find that it more than adequately supports his findings. Even if the margin of appreciation had been narrow rather than wide, the Decision is defensible on the facts and law. The Decision addresses each issue raised by the Applicant or by previous decision-makers in the process. There is sufficient detail and explanation to be able to understand why the CDS arrived at the conclusions he did.

[80] Contrary to the submissions of the Applicant at the hearing, reasons were provided by the CDS where there was any disagreement with the recommendations of the CFGB F&R the only two of which were as follows:

1. the CDS decided documents should be removed from the Applicant's file and destroyed contrary to the CFGB F&R that there was nothing untoward in the documents and no justification to remove them.

   The reason provided by the CDS was that to leave them in the file went against the spirit of the directive to protect members.

2. the CFGB F&R found the remedial measure of Initial Counselling was of no force and effect because of his transfer to the RF and so it should be removed from the Applicant's record. The CDS agreed with that finding but went further and directed issuance of the new remedial measure of a Recorded Warning (RW), which is more serious than Initial Counselling.

   The CDS provided a very detailed explanation of his decision to issue a RW which culminated with his conclusion that the Applicant had not reached the appropriate level of professional maturity and did not have a clear understanding of the line that must separate personal from professional relationships.

[81] With respect to this latter finding Counsel for the Applicant submitted the CDS did not have the authority to replace the IC with a RW. However, in *Rifai v Canada (Attorney General)* 2015 FCA 145, the Court of Appeal set aside the trial judgment that had arrived at a similar conclusion with respect to a case involving a military grievance and a remedial measure. In doing so, the Court specifically found at paragraph 4 that:

> replacing a remedial measure relating to performance with one relating to conduct falls within the discretion and expertise of the CDS.

[82] In other words, substituting one form of remedial measure with another form of remedial measure is within the purview of the CDS. As a result this action by the CDS is reasonable given the authority he had, the evidence he considered, and the reasons he gave for removing the IC and for issuing a RW. Those decisions were well within the special expertise and authority of the CDS and are defensible on the facts and law.

[83] Although he succeeded with respect to most of his grievances, the Applicant was unable to persuade the CDS that the allegations that he had behaved improperly with cadets were

unsubstantiated. With respect to those allegations the CDS found it was "well documented" that the Applicant was "advised in person or via email on nine occasions about the same standard of conduct deficiencies" and, on a balance of probabilities, the Applicant did not correct his deficiencies. While the Applicant and his counsel say the CDS made no explicit finding that the allegations were proven and did not address the issue that particulars were still not provided, it is clear from the portion of the Decision dealing with Background, as well as the reasons provided throughout the Decision, that the CDS did find the allegations were substantiated even though the investigation was flawed.

[84] The record clearly supports such a finding by the CDS. While counsel for the Applicant would have preferred the decision of the CDS state the underlying particulars of the allegations by chapter and verse rather than refer to them at a high level, there is no doubt that the CDS made a specific finding that the allegations were proven. The record contains an abundance of information from multiple different sources showing the Applicant was fraternizing with cadets and was inappropriately critical to parents and others of his COC. The cumulative weight of the evidence is such that had the CDS found otherwise with respect to the conduct deficiencies that were alleged, such a finding may well have been unreasonable.

[85] If the Applicant's claim that he is entirely innocent of the allegations is to be believed it would mean that there was a vast conspiracy which extended not only within the COC, parents of cadets and cadets, but also involved members of the public external to COATS. There is absolutely no evidence of such a conspiracy or any apparent reason as to why one might exist.

[86] Repeatedly denying events occurred does not in and of itself mean the allegations are not true. It does mean enough evidence must support the allegations to allow the decision-maker to

determine that it is more likely than not that they are true. That is the balance of probabilities test which is the one applicable in this case. Here, there is evidence that a number of people had concerns about the Applicant's behaviour and tried to counsel him to change it. While it is true that at least two parents of cadets provided letters that supported the Applicant that support largely revolved around his perceived right to know the precise details of the various events and the notion that he was being poorly treated.

[87] In the result, the CDS found the Applicant had been aggrieved to a certain extent but not for the reasons given by the Applicant. He determined that a remedial measure was the correct administrative vehicle with respect to the allegations but the Applicant's COC had been overly accommodating and should have issued it earlier in the process. He quashed the IC remedial measure because it was issued after the Applicant had transferred to the RF and was therefore issued without proper authority.

[88] The CDS found the Applicant was aggrieved not for the reasons he alleged but rather because he "did not have the opportunity to correct [his] shortcomings and prove to [his] COC that [he] understood the nature of [his] conduct deficiency." Contrary to the submission by the Applicant that the CDS did not make a finding the allegations were proven, this is a very clear finding of the allegations being proven. The CDS gave reasons for the finding and explained in the Decision why officers need to have "a clear understanding of the line that must separate personal from professional relationship." For that reason the CDS determined a new remedial measure should be issued and that a Recorded Warning (RW) was appropriate for the reasons given.

B. *"Adequacy of Reasons"*

[89] Although not raised in his written Memorandum of Argument, the Applicant questioned before me whether the reasons rendered by the CDS were adequate to explain what evidence he considered and how he arrived at his conclusions particularly as there was no specific finding of fact by the CDS that the Applicant actually engaged in the conduct as alleged.

[90] However, the CDS did explain why he made the findings he did with respect to the allegations and the remedial measure related to them. As I stated with respect to the standard of review, the adequacy of a set of reasons is simply part of the analysis of whether the decision is reasonable. In *Nfld. Nurses* Justice Abella explains the concept at this way paragraph 12:

> [12] It is important to emphasize the Court's endorsement of Professor Dyzenhaus's observation that the notion of deference to administrative tribunal decision-making requires "a respectful attention to the reasons offered or which could be offered in support of a decision". In his cited article, Professor Dyzenhaus explains how reasonableness applies to reasons as follows:
>
> > "Reasonable" means here that the reasons do in fact or in principle support the conclusion reached. That is, even if the reasons in fact given do not seem wholly adequate to support the decision, the court must first seek to supplement them before it seeks to subvert them. For if it is right that among the reasons for deference are the appointment of the tribunal and not the court as the front line adjudicator, the tribunal's proximity to the dispute, its expertise, etc, then it is also the case that *its decision should be presumed to be correct even if its reasons are in some respects defective*. (underlined emphasis in original) (italicized emphasis mine)

[91] In summarizing how a reviewing court ought to judge reasons given by a decision-maker such as the CDS, Justice Abella, at paragraph 18 quoted from the decision in *Canada Post Corp. v Public Service Alliance of Canada*, 2010 FCA 59 by Mr. Justice Evans who said:

> . . . "perfection is not the standard" . . . reviewing courts should ask whether "when read in light of the evidence before it and the nature of its statutory task, the Tribunal's reasons adequately explain the bases of its decision" (para. 163). (my emphasis)

[92] In *Nfld. Nurses* at paragraph 15, the Supreme Court of Canada confirms that a reviewing court may look to the record to assess the reasonableness of the decision under review and that reasons need not address every constituent element of the case. The Court's instruction at paragraphs 15 and 16 in that respect is very helpful:

> [15] In assessing whether the decision is reasonable in light of the outcome and the reasons, courts must show "respect for the decision-making process of adjudicative bodies with regard to both the facts and the law" (*Dunsmuir*, at para. 48). This means that courts should not substitute their own reasons, but they may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome.
>
> [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 (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). 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.

[93] There is a wealth of evidence in the record to support the reasons of the CDS. In addition to all the evidence, the CDS had the decision by the IA, the F&R of the CFGB, and the analysis by the DFGA. I have also reviewed the record including all the reasons provided by previous decision-makers and of course the Decision under review. I have already determined that the reasons provided by the CDS are within the margin of appreciation which is also known as the "range of acceptable outcomes". I find the reasons provided are supported by the record, are

defensible on the facts and law, and are justified, transparent and intelligible. I say this in particular because all of the decisions in the record also serve to supplement the reasons of the CDS except where he explicitly disagrees, such as with the lack of process in the initial investigation and two of the recommendations by the CFGB. For the same reasons as I stated in reviewing the reasonableness of the Decision, I find there is no problem with the adequacy of the reasons provided. The Decision is sufficient to allow me to understand why the CDS decided as he did and I have already determined that the conclusion of issuing a RW is both within the range of acceptable outcomes and the authority of the CDS.

C. *Procedural Fairness*

[94] The Applicant has raised two issues under this heading. The first is that he did not know the case he had to meet because he had insufficient details. The second is that a *de novo* consideration cannot cure this defect. He also alleged the decision-makers failed to take into account witnesses who were favourable to him.

(1) Degree of Disclosure Required

[95] It has been held that "[t]he level of disclosure required for a named person to be reasonably informed is case-specific, depending on the allegations and evidence against him or her. Ultimately, the designated judge is the arbiter of whether this standard has been met." *Canada (Citizenship and Immigration) v Harkat*, 2014 SCC 37 at para 57.

[96] In a case upon which the Applicant relies, *Knight v Indian Head School Division No. 19* [1990] 1 SCR 653, the Supreme Court held that an employee who was never officially notified of the reasons for his dismissal "knew or should have known" why his employer "was unhappy with his employment contract" saying he was informed of the reasons through meetings with his

employer. In the process the Supreme Court at paragraph 53 acknowledged and accepted the statement that "the aim is not to create "procedural perfection" but to achieve a certain balance between the need for fairness, efficiency and predictability of outcome".

[97] Legislatively the CDS is empowered and directed by section 29.11 of the Act when acting as final authority in the grievance process that he "shall deal with all matters as informally and expeditiously as the circumstances and the consideration of fairness permit." This clearly differentiates the level of disclosure required in the CAF grievance procedure from, for example, charges laid under the Criminal Code of Canada. Indeed, in *Bernath* Mr. Justice Noël when considering whether the CDS was "a court of competent jurisdiction" within the meaning of section 24 of the Canadian Charter of Rights and Freedoms found he was not. In arriving at that finding Mr. Justice Noël at paragraph 98 held that "the legal foundation for the two proceedings is clearly not the same." It is reasonable then to find that the procedural foundation and process are also not the same as in a court proceeding.

[98] In my opinion, the Applicant, as evidenced by his reliance on *Stinchcombe*, is confusing the "right to know the case he has to meet" with the high level of disclosure required of the Crown in criminal matters. However this is not a criminal case, it is a decision by a specialized administrative tribunal with a high level of discretion given to the CDS. When he is determining matters "informally and expeditiously" which includes the merit of grievances and the remedies deemed appropriate, the deference owed to the CDS is significant as long as procedural fairness is considered as per section 29.11 of the Act.

[99] The components of procedural fairness which the Applicant was entitled to expect are outlined in DAOD 2017-1. They are as follows:

> Procedural fairness requires decision makers to ensure that the person affected by the decision has the opportunity to participate in the decision-making process. Under the CFGS, the grievor has the right to be provided with all relevant documents and other information to be considered by a redress authority, to comment on this information, and to receive a well explained, timely and impartial determination of their grievance.

[100] Considering the procedure as a whole, by the time this matter was considered by the CDS the complete details had been made available to the Applicant. Included with the disclosure packages both at the IA and CDS level were, for example details of the allegations including:

- emails between members of the CAF concerning the behaviour of the Applicant as either directly observed by the writer or reported to the writer
- emails or letters by parents concerning the Applicant's behaviour both in support of him and alleging misconduct by him
- a detailed three-page typewritten letter dated March 22, 2011 from a parent of two cadets, who had been friendly with the Applicant, the contents of which would not leave any doubt in the Applicant's mind as to who authored it; included were:
    - details of, amongst other misdeeds, the allegation that the Applicant provided alcohol to her son
    - the statement that at one time the Applicant "came to me and said even the MP's questioned how much he hung out with the cadets"
    - the statement that Applicant did not listen to or respect the chain of command
    - he shared information inappropriately from fortress [sic]
- the detailed allegations supplied in response to a request for information from the investigating officer by those directly involved with the Applicant including the CO and ACO against whom he lodged the complaint
- a copy of an email from the chair of the civilian parent committee (a Lieutenant Colonel) which had been sent to the Applicant admonishing him for contacting the chair "contrary to proper military protocol"

[101] Having reviewed the record it is clear that some of the file notes and emails redacted actual names but all contained other significant details which would make it simple for the Applicant to know who was relaying the information and which cadets or events were involved. For example, typical are these two different file notes by the COC, which were disclosed to the Applicant, describing alleged events:

> Mr. [redacted] stopped in to see me, I have known him for many years, as he is another Professional Engineer with the Saskatchewan Watershed Authority (unnecessary words omitted). . [the Applicant] had spoken to him and asked if I had any correspondence related to [the Applicant] and his son because a complaint was made that [the Applicant] was having casual non-Cadet related conversations with F/Cpl [redacted] last year.
>
> The instant we had before involved Mrs. [redacted] and her son. Her son did not get promoted to WO2 as he did not qualify, however, [the Applicant] was giving the family information, again undermining the unit and creating a lot of extra paperwork and hardships for the parents, cadet and myself. He denies this but the information Mrs. [redacted] had could only have come from an Officer, such as CATO's and attendance rates from FORTRESS. Her son was one of the friends [the Applicant] was known to associate with on a personal basis, and also happens to be the Cadet that [the Applicant] was accused of serving alcohol to, based on the verbal statement from his father to me and a verbal statement from his mother.

[102] Clearly there is sufficient detail in these two notes for the Applicant to understand who the complainant was and which cadet and events were at issue. Although specific dates may not be in the notes the date the notes were created is present and, unless the Applicant engaged in such behaviour more than once, the precise date is somewhat superfluous.

[103] Perhaps one of the most critical pieces of evidence was a three-page letter sent by a parent who was a friend of the Applicant's and who was the mother whose son allegedly was served alcohol. At the beginning of her letter she indicates she is the parent of two cadets and has concerns regarding the Applicant "and his close involvement with the cadets." She goes on to say:

> as time went on my husband would say don't you think it's weird that John always wants to hang out with [redacted]. I said well maybe but he is only taking him to his plane and he has taught [redacted] how to drive a stick shift car.

[104] Later on she relays a discussion held during a meeting at Tim Horton's with the Applicant, who asked to meet with the writer and her husband. In the letter she writes that the Applicant said:

> he had been calling [redacted] to see if he wanted to hang out and [redacted]'s reply was no I'm busy, so John's concern was that we might be making [redacted] work to much [sic].

[105] This letter and other notes in the record have in common one concluding theme which is the statement by the author with respect to the Applicant's behaviour and attitudes that "he just doesn't get it".

[106] The above examples plainly contain enough information as do the other documents disclosed to the Applicant for him to know the *who*, the *what* and, with some certainty, the *when* of the various allegations despite the redaction of the names. There is also other identifying information in the letters and notes that in most instances would leave a reasonable person in similar circumstances no doubt as to the identity of both the author and the cadets involved. The events are well detailed. They were disclosed multiple times to the Applicant.

[107] I have no hesitation in finding based on the record, the actual involvement of the Applicant in the process and the very detailed and thorough compliance with DAOD-2017-1 by the CAF that the disclosure provided to the Applicant was fair in every respect. The determination that eight of ten of his grievance components were upheld similarly bears out the legitimacy and fairness of the process once it reached the CFGB and the CDS.

(2) *De Novo* Review

[108] The Applicant states that a *de novo* review in this case is not sufficient to cure the defects in the investigation of his complaint and the lack of detail in the allegations made against him. He offers no justification for the statement but, having raised it, I must address the issue.

[109] In *Walsh v Canada (Attorney General),* 2015 FC 775 (*Walsh)* Mr. Justice de Montigny, as he then was, held at paragraph 51 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." The reference to *McBride* is to the Court of Appeal decision in *McBride v Canada (National Defence),* 2012 FCA 181, which canvassed at some length the question of whether a *de novo* review can cure prior procedural defects and found that in the context of the military grievance procedure the process followed, which was identical to the one followed for the Applicant, served to cure the prior breaches.

[110] Both the CFGB and the CDS completely and thoroughly reviewed the evidence afresh. At each stage the Applicant submitted additional comments and critiques of the process to that date. No stone was left unturned. Through the disclosure process, as shown above, complete details of the complainants, information sufficient to identify the cadets and the events in question were effectively provided even though actual names were in some cases redacted. With respect to the names it was submitted at the hearing by counsel for the Respondent that all names were disclosed to the Applicant. However, as the record before me had redactions, I prefer to base my analysis on the basis that some information was redacted. Certainly if nothing was redacted there is no basis whatsoever for the Applicant's continued position that he did not know the case he had to meet.

[111] The CDS had all this information before him. The Applicant in his defence to the disclosures offered explanations such as the letter writer may have been unduly influenced by the COC as she declined to report the alleged event immediately and the letter was not signed. But, the letter was disclosed to the Applicant several times and while three copies were not signed at least one copy which was disclosed was signed.

[112] The Applicant says that without specific dates it was hard to defend the allegations. He may have had an answer to some of the allegations but, if he did, he never provided it. The Applicant said he was out of the country in the spring of 2010 on two separate sets of dates for personal reasons. He said he was in possession of evidence which proved he was not in the province at the time at which at least one of the events in question was said to have occurred. The Applicant's position was if they would supply him with the date of the events in question he would supply the actual evidence as to his absences.

[113] Ultimately, the Applicant chose not to deliver the evidence and so failed to put his full case forward. Regardless of whether he had exact dates or not it clearly was a risk the Applicant took by not delivering possibly exculpatory evidence. It is not a matter of procedural fairness or unfairness when a person under investigation makes a decision not to participate in or respond to part of the process. That is a calculated decision the consequence of which the Applicant must accept. Being self-represented is not an excuse for making a tactical error of such obvious magnitude.

[114] By the time the CFGB and the CDS considered the file *de novo* all the allegations were well known by the Applicant and were quite detailed. The Applicant's rebuttals were equally detailed and on the record. By that time he certainly should have presented any documentary

rebuttal evidence he had in his possession. He spent a lot of time dealing with the social media allegation and criticizing the actions of others in the COC. He stated he feels his "character has been libelled, slandered and defamed due to the baseless allegations made against him. There has been no basis in fact for any of the allegations nor has any conclusive evidence been provided to support them." He refers to emails and explains why they show the allegations are not valid. He claims the evidence he provided refuting the allegations appears to have been ignored or disregarded at all levels. I have already addressed the fact that the letters tendered from two different parents in support of the Applicant are in fact in the record. All of this information is in the record and was before both the CFGB and the CDS as well as the Court. The decision-makers are not required to refer to each and every specific piece of evidence.

[115] I find the *de novo* review greatly assisted the Applicant in fully developing his position and responding to everything on the record. As they say, "the proof of the pudding is in the eating". In this case, the fairness of the process can be seen in the result which was highly favourable to the Applicant and was very different than both the initial investigation and the decision of the IA. The Applicant was in large measure successful in having his grievance upheld. In part, it was upheld because of his transfer to the regular forces which rendered some of the issues moot. In other aspects he was successful because the original investigation into his complaint was severely criticized by both the CFGB and the CDS, who found it was "flawed and appeared to be biased", with the result that the report of the investigation and any related documents are to be removed from all files and destroyed.

XI. Conclusion

[116] The onus was on the Applicant to show why the Decision was unreasonable. While he still denies the events took place, the only issue of any substance he has raised was the lack of particulars of the allegations. I have found the required degree of disclosure was provided to the Applicant. I will not re-weigh the evidence as that is not my role. I wish however to assure the Applicant that I have reviewed the record and considered the matter carefully. I have come to the same conclusion as the CDS with respect to the allegations of conduct deficiencies. They have been made out to the required standard of proof on a balance of probabilities or, it is "more likely than not" that the events occurred.

[117] I have found the process followed was fair. The CDS has been entrusted by Parliament to determine the appropriate remedy. The issuance of an RW and the possible investigation of the alcohol allegation do not appear to be out of line with the conduct which was found to have occurred, they appear to be reasonable and as stated by the CDS, may help the Applicant.

[118] The Applicant largely succeeded in his grievance. I understand why he sought judicial review - he still maintains his innocence and he does not want the RW on his record. But, I am satisfied the issuance of an RW is well within the expertise of the CDS and is also reasonable. It is not a disciplinary mark on his record, it is administrative and is meant to assist the Applicant by assisting him in overcoming the performance deficiency and providing him with time to correct his conduct or improve his performance. Similarly, the matter of a possible investigation of the allegation of providing alcohol to a minor is meant to "clear the air" and remove any suspicion related to the Applicant's behaviour. If there is an investigation and the Applicant has evidence that will exonerate him it would be prudent to produce it at that time.

[119] For all the foregoing reasons this application for judicial review is dismissed with costs to the Respondent to be determined on assessment unless the parties can agree as to the amount within 20 days of the release of this judgment.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is dismissed.
2. Costs are awarded to the Respondent. If the parties cannot agree within 20 days of the date of this judgment on the appropriate amount of costs then it shall be referred to an Assessment Officer for determination**.**

"E. Susan Elliott"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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