

Federal Court



Cour fédérale

20230919

Docket: T-805-17

Citation: 2023 FC 1252

[ENGLISH TRANSLATION]

Vancouver, British Columbia, September 19, 2023

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

JEAN-PIERRE PINDI

Applicant

and

**THE ATTORNEY GENERAL OF CANADA
THE CHIEF OF THE DEFENCE STAFF**

Respondents

JUDGMENT AND REASONS

I. Overview

[1] Jean-Pierre Pindi was a member of the Canadian Armed Forces [CAF] Regular Force until 2013, when he was released. He is seeking judicial review of a decision dated April 21, 2017 [Decision] rendered by the Chief of the Defence Staff [CDS]. The Decision consists of 53 single-spaced pages. It deals with two grievances Mr. Pindi filed, the first, dated September 29,

2010, concerning several workplace issues, including corrective measures and his harassment complaint, and the second, dated March 15, 2013, regarding the decision to release him from the CAF.

[2] In his original grievance of September 29, 2010, as remedies, Mr. Pindi asked that the Personnel Evaluation Reports [PERs], as well as disciplinary and administrative measures, which he received during his assignment to 5 Canadian Service Battalion [5 Battalion] between 2006 and 2012 be set aside and removed from his file; that the [TRANSLATION] “injustice, racism, abuse and harassment” to which he was allegedly subjected be recognized; that he be promoted to the rank of Captain, granted retroactively to January 1, 2003; and that financial compensation of \$50,000 be paid to him for the losses incurred due to mistreatment and refusal to grant him the promotion. At a later date, in response to the disclosure of the initial authority [IA] that dealt with the grievance, Mr. Pindi requested that he be promoted to the rank of Major and that his former superiors offer him letters of apology.

[3] On March 15, 2013, Mr. Pindi filed a second grievance, opposing the decision to release rendered by Colonel Sirois, former commander of 5 Area Support Group, to have it canceled and him reinstated in the CAF. In his subsequent submissions, he sought further remedies, including the initiation of a harassment investigation against Lieutenant-Colonel (now Colonel) Gignac, commander of 5 Battalion from 2007.

[4] At the relevant date, Defence Administrative Order and Directive 5019-0, *Harassment Prevention and Resolution* [Directive] defined harassment as:

. . . [i]mproper conduct by an individual, that is directed at and offensive to another individual in the workplace, including at any event or any location related to work, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises objectionable act(s), comment(s) or display(s) that demean, belittle, or cause personal humiliation or embarrassment, and any act of intimidation or threat. It also includes harassment within the meaning of the *Canadian Human Rights Act* . . .”

[5] This definition includes five essential criteria for finding harassment: (1) improper conduct; (2) directed at one or more persons that is; (3) offensive to one or more persons; (4) in the workplace; and; (5) the perpetrator knew or reasonably should have known that such conduct could offend or injure.

[6] An external grievance committee [Committee] conducted an independent analysis of the two grievances submitted by Mr. Pindi. It recommended that the grievances be granted in part, specifically that the CDS acknowledge that Mr. Pindi was harassed by Lieutenant-Colonel Gignac on three separate occasions; order a written warning to Lieutenant-Colonel Gignac; inform Mr. Pindi of the corrective measures taken; send Mr. Pindi’s file to the Director Human Rights and Diversity so that a settlement on the issue of harassment could be negotiated; cancel an imposed warning; order the transfer of Mr. Pindi from the Reserve Force to the Regular Force, facilitate his reintegration and give him the opportunity to complete his training; and, finally, inform Lieutenant-Colonel (now Brigadier-General) Eldaoud , Lieutenant-Colonel Gignac’s predecessor, that he made an error of judgment in writing a letter to Colonel Morin, Commandant Canadian Forces Logistics Training Centre [CFLTC].

[7] As the final authority, the CDS reviewed the grievance files *de novo*. After considering all the evidence in the record, he concluded that Mr. Pindi was aggrieved, but he was not disposed to grant him all the remedies sought. The decision explains in detail the reasons why the CDS did not follow the Committee's recommendations, including not accepting the allegations of harassment against Mr. Pindi's superiors. In the end, he concluded that Mr. Pindi's release was the appropriate decision because the relationship of trust was completely broken on both sides.

[8] Mr. Pindi, who is representing himself, argues that the CDS erred in fact and law in rendering the Decision. In his view, the CDS should have shown deference to the Committee's findings and recommendations. Mr. Pindi considers that the CDS's negative findings against him ignore [TRANSLATION] "the contents of the abundant personal evidence filed" and that all of the evidence corroborates his statements. He further maintains that breaches of procedural fairness automatically invalidate the decision to release him from the CAF.

[9] Hence the application for judicial review.

[10] As explained below, after considering the record and the written and oral submissions of the parties, I am of the view that Mr. Pindi is essentially asking me to reweigh the evidence that was before the CDS. That is not my role. Taken as a whole, the decision is coherent, reasonable and well reasoned. The application for judicial review is dismissed.

II. Facts

[11] The factual background to the case is long and complex. A summary of the facts is useful not only for a good understanding of the issues before me, but also to contextualize the findings of fact that led the CDS to decide as he did. At the outset, I acknowledge that I draw heavily from the respondent's written submissions for the statement of facts as they are stated in a fair and concise manner.

A. *Mr. Pindi's background and employment history*

[12] On January 26, 1996, Mr. Pindi enrolled in the CAF Reserve at the rank of Second Lieutenant with simultaneous promotion to the rank of Provisional Lieutenant as a logistics officer (army). Between January 26, 1996 and October 31, 2003, he completed several periods of service. During this period, he received letters of appreciation from his commanding officers. He joined the CAF Regular Force in October 2003.

[13] On June 1, 2005, Mr. Pindi was temporarily assigned to the Canadian Forces School of Administration and Logistics [CFSAL] to take the four-phase Logistics Officer Course.

[14] On June 9, 2005, after a summary trial, Mr. Pindi received a reprimand for fraudulently using his government credit card.

[15] A directive issued on July 19, 2005 states that Mr. Pindi would be retroactively promoted to the rank of Captain as of November 8, 2003. The message states that promotion is conditional on whether he successfully completes the Logistics Officer Common Course.

[16] After completing Phase III of the Common Course, Mr. Pindi failed Phase IV on September 8, 2005. It is important to note that Mr. Pindi did not report to his chain of command at the time, as he would later claim, that the deaths of several members of his family were the factor that contributed to his failure. Mr. Pindi was transferred to the 5 Battalion, and his promotion was postponed.

[17] On July 5, 2006, Mr. Pindi received a written warning from Lieutenant-Colonel Eldaoud for unreliability in his responsibilities regarding personal leave, for lack of leadership because he demonstrated having difficulty interacting with his peers and subordinates, and for arrogance.

[18] On August 1, 2006, Mr. Pindi resumed Phase IV of the Common Course. Two weeks earlier, his father had been murdered by the Congolese militia.

[19] On August 11, 2006, Lieutenant-Colonel Eldaoud requested a full and objective assessment of Mr. Pindi to determine whether he was able to be assigned the responsibilities of a captain. His letter contains a summary of Mr. Pindi's career, informing the Commandant CFSAL that Mr. Pindi received a written warning of shortcomings in his leadership and that he has difficulty admitting his mistakes.

[20] On September 8, 2006, Mr. Pindi again failed Phase IV because he had failed to implement the lessons and because he had not demonstrated the skills and abilities necessary to successfully complete the course. During the processing of his grievances, it was discovered that Mr. Pindi met with two chaplains, the first from Canadian Forces Base [CFB] Valcartier and the

second from CFLTC, and that, according to Mr. Pindi, they had made recommendations that he should resume Phase IV of the course at a later date. However, upon reviewing his file, the CDS noted that the CFB Valcartier chaplain reported, during the harassment investigation, that he had not issued such a recommendation and had not found any reason to suggest that Mr. Pindi's chain of command postpone his training. He further noted that Mr. Pindi had waited until September 6, 2006, a date that appears to correspond to the date he failed his training, to have a meeting with the CFLTC chaplain. He allegedly only recommended to the Commandant CFLTC following the second failure that Mr. Pindi resume the course at a later date given the death of his father.

[21] On September 15, 2006, a notice of intent to place on counselling and probation, involving leadership measures for a period of six months, was issued to Mr. Pindi.

[22] On November 3, 2006, the Personnel Selection Officer [PSO] recommended that Mr. Pindi be allowed a third attempt to complete Phase IV.

[23] On December 7, 2006, Mr. Pindi was found guilty of an act prejudicial to good order and discipline for failing to report to the operations officer to receive his instructions. He received a reprimand and a fine of \$500.

[24] On January 9, 2007, Mr. Pindi was found guilty of being absent without authority. A reprimand and a \$500 fine were again imposed on him.

[25] On April 2, 2007, a request for a psychological assessment was sent by the Technical Services Officer to assess Mr. Pindi's ability to continue with Phase IV given his trauma related to the deaths of several members of his family.

[26] On April 3, 2007, the Technical Services Officer informed the Acting Commander 5 Battalion, Major Bourassa, that Mr. Pindi failed to demonstrate that he had corrected his leadership deficiencies during the counselling and probation period. Further to this conclusion, Major Bourassa recommended that Mr. Pindi be released from the CAF for breach of counselling and probation. The third attempt to complete Phase IV was canceled, and an administrative review was initiated.

[27] On May 30, 2007, the doctor responsible for Mr. Pindi's psychological assessment reported that Mr. Pindi alleged that, although the deaths of his family members affected his performance, everything was fine now and that he did not see the usefulness of a psychological assessment. He stated that he felt ready to resume Phase IV.

[28] On July 20, 2007, Lieutenant-Colonel Gignac upheld her predecessor's decision to release Mr. Pindi.

[29] On August 21, 2007, during a meeting with Mr. Pindi, who wished to inform his new commander of the nature and consequences of the difficulties he had encountered since his arrival at 5 Battalion, Lieutenant-Colonel Gignac said:

[TRANSLATION]

[Mr. Pindi], I don't know what you're doing to make all the

misfortunes of the world only happen to you. You have lost your family members, and your classes have not gone well. You will have to keep your family troubles to yourself and not bring them to work. When my mother was diagnosed with cancer, I was completely devastated. But, I kept it to myself. In addition, I didn't have an easy life as a woman in the [Canadian Forces] to get where I am. In my profession, there aren't really any women [lieutenant colonels] or battalion commanders. In a world of men, it's not easy. So you call people racists. You do not have to call us racists. If it's not working out in the [Canadian Forces], then go somewhere else.

[30] On September 25, 2007, Mr. Pindi failed to remove the magazine from his weapon and caused an accidental discharge. He received a written warning for this incident on March 31, 2008.

[31] On December 4, 2007, the PSO recommended that Mr. Pindi be retained in the same occupational group and recommended that Phase IV be resumed, since he was of the view that there was insufficient evidence of Mr. Pindi's lack of leadership and that Mr. Pindi had not received sufficient feedback to correct his shortcomings.

[32] On December 18, 2007, Lieutenant-Colonel Gignac informed the PSO that he did not support his recommendation, being of the opinion that the PSO had breached his mandate by reviewing Mr. Pindi's release rather than evaluating a possible reassignment, as requested.

[33] In February 2008, in an email exchange between Mr. Pindi, Captain Picard, incoming commander of the Royal 22e Régiment Band and Colonel Gignac, in which the following topics were discussed. Mr. Pindi is accused of holding the change of command documents, and Mr. Pindi allegedly confronted Captain Picard about an alleged falsification of a letter of

appreciation written by his predecessor regarding him. The conclusion of this event allegedly resulted in Mr. Pindi's chain of command charging him. The following words were said to have been spoken by Lieutenant-Colonel Gignac during a meeting to criticize his conduct in connection with this situation:

[TRANSLATION]
[Mr. Pindi], you are not a good example as an officer in the [Canadian Forces], you should not do as you did in your [email] and call a unit [commander] a liar. I will do everything in my power to remove this uniform from you. Go on, get out of here.

[34] On March 25, 2008, the Army LOG Career Manager conducted a career review to determine whether an environment transfer would be a way to retain Mr. Pindi in the CAF. He determined that Mr. Pindi does not have the leadership skills or potential required of a logistics officer and therefore recommended that he not be offered such a position and that he be released immediately from the CAF.

[35] On July 11, 2008, the Director Military Careers Administration [DMCA] issued a decision on the administrative review initiated in May 2007 that recommended the release of Mr. Pindi for breach of counseling and probation. Although he was of the opinion that Mr. Pindi is not qualified for a logistics officer position, he asked to take additional steps to reclassify him rather than release him.

[36] On October 18, 2008, four charges were laid against Mr. Pindi: two charges for disobeying a lawful command of a superior officer, one for behaving with contempt toward a superior officer, and one for conduct to the prejudice of good order and discipline. Three of the charges were not proceeded with, and Mr. Pindi was found not guilty of the fourth.

[37] On November 7, 2008, Mr. Pindi filed a harassment complaint containing sixty-eight allegations against six third parties. Of these allegations, eleven were accepted for consideration against three third parties.

[38] On November 18, 2008, the DMCA rendered its decision on the administrative review and offered Mr. Pindi continued membership in the CAF as a non-commissioned member; otherwise, he would be released.

[39] On January 16, 2009, Mr. Pindi asked that the decision to release him be deferred pending the resolution of his harassment complaint, which the DMCA accepted.

[40] On May 15, 2010, the Harassment Investigation Report accepted only one of the eleven allegations. The investigator concluded that the allegations were supported by the evidence. Of these allegations, only one against Lieutenant-Colonel Gignac was recognized as harassment. The other allegations were unfounded because they constituted the normal exercise of the commanding officer's authority, a conclusion endorsed by the responsible officer and validated by the IA. Corrective action was recommended, and Lieutenant Colonel Gignac sent a letter of apology to Mr. Pindi.

[41] On September 29, 2010, Mr. Pindi filed a first grievance, which concerned his Phase IV failure, the administrative measures taken against him and his performance evaluations and challenged the harassment investigation report. On June 23, 2011, as a partial settlement of his grievance, he was granted a promotion to the rank of Captain retroactive to March 22, 2005.

[42] On November 9, 2011, Mr. Pindi punched his hand while explaining to his immediate supervisor his frustration with a situation between him and another member of the military. On February 19, 2012, Mr. Pindi allegedly again demonstrated threatening, disrespectful and unprofessional behaviour toward another member. On March 28, 2012, he received a written warning for misconduct for both incidents and was placed on probation until October 5, 2012.

[43] On July 5, 2012, the DMCA, after the resumption of the administrative review of the file, recommended that Mr. Pindi be given the opportunity to be reclassified as a non-commissioned officer or to be released from the CAF. Mr. Pindi refused the offer. The file was then referred to the commander of the chain of command, Colonel Sirois. Colonel Sirois concluded on February 18, 2013, that release from the CAF was the most appropriate outcome in the circumstances.

[44] On March 7, 2013, the IA rendered its decision and allowed the grievance of September 29, 2010 in part, concluding that the written warning of July 5, 2006 and the counselling and probation of September 18, 2006 were not in accordance with the procedures. He also decided to replace the written warning of March 31, 2008 with initial counselling. Finally, he noted that the performance appraisal reports must be replaced to reflect the rank obtained following Mr. Pindi's promotion.

[45] Challenging the IA's findings, Mr. Pindi asked that his grievance be forwarded to the CDS, the final authority. At the same time, Mr. Pindi filed a second grievance concerning the decision to release him from the CAF. Both grievances were referred to the Committee in

accordance with subparagraph 7.12(1)(b) of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O).

[46] On March 23, 2013, Mr. Pindi filed a complaint with the Canadian Human Rights Commission [Commission] for harassment, discrimination, racism, abuse of authority and disability. The Commission declined to deal with the complaint after determining that the human rights issues Mr. Pindi raised had already been addressed in the CAF's internal settlement process.

B. *Committee's conclusions and recommendations*

[47] On October 31, 2013, the Committee issued its report on Mr. Pindi's two grievances and recommended that the CDS allow Mr. Pindi's two grievances in part. The Committee recommended that two of the six allegations against Lieutenant-Colonel Gignac be recognized. The allegations against the other two third parties are not accepted. In addition, the Committee was of the view that Mr. Pindi had been harassed on a third occasion by Lieutenant-Colonel Gignac when she ordered the destruction of a letter of appreciation about Mr. Pindi and then requested that it be replaced by a less praiseworthy letter.

[48] The Committee recommended that the CDS order the issuance of a written warning to Lieutenant-Colonel Gignac, that the CDS inform Mr. Pindi of the measures taken with respect to him, and that Mr. Pindi's file be referred to the Director Human Rights and Diversity for a settlement on the harassment issue to be negotiated.

[49] The Committee further recommended that the CDS inform Lieutenant-Colonel Eldaoud that he committed an error of judgment in writing a letter to the Commandant CFSAL, the content of which was inappropriate. The purpose of this letter was to coach Mr. Pindi in his apprenticeship, he said. However, the Committee concluded that its purpose was to formally request assistance from the CFSAL in order to validate his own findings regarding Mr. Pindi. The Committee concluded that a reasonable person would consider that the Brigadier General was attempting to influence the CFSAL.

[50] With respect to the corrective measures sought, the Committee recommended, among other things, that the CDS cancel the initial counselling imposed by the IA and that the CDS order the transfer of Mr. Pindi from the Reserve Force to the Regular Force, including the implementation of transitional measures to facilitate the reintegration of Mr. Pindi as a logistics officer (Phase IV unqualified), as the transfer should include the opportunity to complete Phase IV.

C. *Decision*

[51] Following the Committee's recommendations, Mr. Pindi's file ended up before the CDS, the CAF's final grievance authority. As noted above, the CDS considered Mr. Pindi's case *de novo*. Any previous decision was set aside, and the issues raised in the grievances were redetermined.

[52] On April 21, 2017, the CDS rendered a decision on all grievances and accepted the Committee's findings in part. After reconstructing the events surrounding the allegations, he reached the following conclusions:

- That Mr. Pindi was treated fairly by the first progress review committee after his first failure in Phase IV.
- That the withdrawal of Mr. Pindi from the course by his chain of command was inappropriate and that Mr. Pindi and his chain of command shared responsibility for not postponing the start of his training. Moreover, chain of command failures are not in themselves a valid argument explaining his second failure of Phase IV.
- That there is nothing in the record that demonstrates that the elements included in Lieutenant-Colonel Eldaoud's letter contributed to or are responsible for the second failure of Phase IV, but that this letter was removed from Mr. Pindi's personnel file.
- That the PER will remain in Mr. Pindi's personnel file with corrections that have been approved by the IA, i.e. anomalies and technical errors.
- That the written warnings of July 5, 2006 and March 31, 2008, and the counseling and probation of September 18, 2006, be removed from Mr. Pindi's file.
- That Mr. Pindi was not entitled to a promotion to the rank of Captain as of March 22, 2005, a promotion granted to him by the DMCA, since he did not meet

the necessary promotion conditions and promotion to the rank of Major was not an option.

- That Mr. Pindi was prejudiced during the mandatory reassignment process because his file on this subject was not properly managed.
- While Lieutenant-Colonel Gignac should have known that her comments about Mr. Pindi in February 2008 (allegation 1) were offensive in nature, Mr. Pindi [TRANSLATION] “played a crucial role because of his repeated interruptions, which could only lead to escalating both parties’ frustrations”. As a result, the CDS was of the view that the “knew or should have known” element of the Department of National Defence [DND] and CAF policy on harassment complaints, that the remarks were likely to injure Mr. Pindi, could reasonably have escaped Lieutenant-Colonel Gignac’s notice.
- That even though Lieutenant-Colonel Gignac did wrong, his remarks on August 21, 2017 were to try to encourage Mr. Pindi to move forward and were not intended to hurt him.
- That the behaviour of Lieutenant-Colonel Gignac in the face of the letter of appreciation leaves something to be desired and that she did not have jurisdiction to intervene in this case. The CDS agreed with Mr. Pindi that this incident bordered on harassment. However, he could not conclude with certainty that the behaviour was inappropriate and that it met the definition of harassment. He noted that Lieutenant

Colonel Gignac's treatment of the letter of appreciation is not the only reason why Mr. Pindi was not promoted to Major.

- That the Committee was wrong to conclude that the administrative review leading to release was premature.
- That there was a breach of the duty of procedural fairness in the release process, but that this breach did not invalidate the recommendation or process as it was rectified, since Mr. Pindi knew of his chain of command's intention to recommend his release.
- That Colonel Sirois had the delegated authority to release Mr. Pindi as of July 1, 2012.
- That the corrective action proposed by the Committee with respect to Lieutenant-Colonel Eldaoud, namely to inform him that sending the letter was an error of judgment, was outside the grievance process, since this process is not designed to provide complainants with a mechanism to request disciplinary or administrative action against other military personnel.
- That the corrective measures put in place against Lieutenant-Colonel Gignac, namely the establishment of a program to help her rectify her shortcomings, were appropriate.

- That the request for an apology from the respondents in connection with the eleven allegations of harassment is not granted, as this could be a violation of these individuals' freedom of expression.
- As for the resumption of Phase IV, the CDS was of the opinion that the Committee was wrong to conclude that Mr. Pindi should have had a third opportunity, since the cancellation of the attempt was justified and in accordance with the organization's practices.

[53] The CDS concluded that the relationship of trust between Mr. Pindi and the CAF is broken on both sides. In the end, the CDS upheld the decision to release Mr. Pindi under reason 5(d) of Article 15.01 of QR&O Volume I. He declined to grant the request for financial adjustment and, contrary to the Committee's recommendation, the file was not referred to the Director Human Rights and Diversity.

III. Issues and standard of review

[54] The following issues are raised by this application:

- (a) Has Mr. Pindi demonstrated a breach procedural fairness?
- (b) Has Mr. Pindi demonstrated that the decision is unreasonable?

[55] I agree with the parties that the analytical framework is based on the presumption that reasonableness is the applicable standard when a court reviews an administrative decision, although questions of procedural fairness must be reviewed on a standard of correctness.

IV. Analysis

[56] Given the breadth of the evidence and the length of the decision-making process, I will not address each of the points Mr. Pindi raised in this decision, but rather limit myself to the issues related to the crux of the dispute.

[57] Mr. Pindi attempted to articulate several observations as arguments that raise issues of procedural fairness. Nevertheless, I am satisfied that the CDS thoroughly considered these arguments in the Decision and was correct in rejecting them. As explained below, Mr. Pindi essentially challenged the reasonableness of the CDS's findings of fact and thus disagreed with the findings. It is therefore appropriate to deal first with the issue of procedural fairness.

A. *Has Mr. Pindi demonstrated a breach procedural fairness?*

[58] According to Mr. Pindi, it goes without saying that several breaches of procedural fairness automatically invalidate the decision to release him from the CAF. He insists that the CDS: (a) acted without jurisdiction; (b) failed to observe a principle of natural justice or procedural fairness; (c) erred in law in making its decision; (d) made its decision on the basis of a wrong policy in a perverse and capricious manner; (e) made its decision by relying on false testimony or speculation; and finally, (f) acted contrary to law.

[59] Procedural fairness is based on the principle that individuals involved in a judicial process should be given the opportunity to present their position fairly. A court assessing a question of procedural fairness is required to ask whether the procedure was fair, having regard to all of the circumstances [*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [2019] 1 FCR 121 at para 54]. To do so, Mr. Pindi must have the opportunity to read the evidence and be able to respond to it in a complete and fair manner. This opportunity depends on the context and is variable.

[60] In the decision, the CDS first summarized the adjudication process followed by the CAF to review Mr. Pindi's grievances and the background to the facts concerning Mr. Pindi. The CDS specifically noted Mr. Pindi's complaint contained a breach of procedural fairness during the release process since Mr. Pindi had not received the Notice of Intent to Recommend Release - Commissioned Officers form.

[61] Mr. Pindi repeats the same argument he made before the CDS, which was rejected, and I think rightly so. Although the breach had indeed been acknowledged, the CDS concluded that the failure to issue a notice did not, however, invalidate the decision to release him from the CAF since Mr. Pindi was made aware of the CAF's intention to release him following several disclosures, that he was able to make his representations on many occasions, and that no prejudice therefore arises from the fact that he did not receive formal notice. Upon review of the foregoing, I cannot detect any error on the part of the CDS. I note that, in fact, at the grievance disclosure stage, Mr. Pindi was able to read all the facts relevant to his file and had the

opportunity to respond to them. He also had ample time to submit his submissions at each stage of his file.

[62] Mr. Pindi claims that Colonel Sirois was biased and prejudiced when he was required to proceed with the administrative review of his file. This argument is rejected because it is presented for the first time in Mr. Pindi's memorandum before this Court.

[63] I am satisfied that the CDS conducted, in this case, a *de novo* review of Mr. Pindi's grievances and that this process was in no way tainted by the breaches of procedural fairness found in the previous process. The CDS did consider the standard of proof, on a balance of probabilities, reminding Mr. Pindi that he had the burden of proving the merits of his allegations. He gave his decision in writing, with adequate reasons. When he decided not to follow up on the Committee's recommendations, it gave detailed reasons for its decision.

[64] On reading the record, I am satisfied that the procedures respected the principles of procedural fairness. It is therefore not necessary for this Court to intervene on this point.

B. *Has Mr. Pindi demonstrated that the decision is unreasonable?*

[65] It is well established that the standard of review for decisions of a CDS who acts as FA in a CAF grievance process is reasonableness, because the resulting findings deal with questions of fact as well as questions of mixed fact and law (*Moodie v Canada (Attorney General)*, 2015 FCA 87 at para 51 [*Moodie*]; *Zimmerman v Canada (Attorney General)*, 2011 FCA 43 at para 21);

[66] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 13, 24, 30, the Supreme Court tells us that the starting point for assessing the reasonableness of a decision calls for judicial deference and respect for the distinct role of administrative decision-makers. In addition, due to the highly specialized nature of the CAF grievance process and the particular expertise of the CDS who routinely make decisions in their areas of expertise, considerable deference is owed to the CDS (*Rompré v Canada (Attorney General)*, 2012 FC 101 at para 49; *Stemmler v Canada (Attorney General)*, 2016 FC 1299 at para 30).

[67] The role of the Court on judicial review is not to make findings of fact or decide questions on the merits, but rather to examine the reasonableness of the decision of the administrative decision-maker (*Andrews v Public Service Alliance*), 2022 FCA 159 at para 18). *Vavilov* requires at paragraph 94 that the reviewing court consider the reasons on the basis of the evidence, taking into account the particular context of the decision.

[68] Mr. Pindi first submits that the CDS erred in fact and in law by failing to consider the Committee's findings and recommendations that were made in accordance with legislation, directives and policies applicable to DND and the CAF. There is no merit in this argument. The CDS is in no way bound by the Committee's conclusions and recommendations; he only has to give reasons for his decision if he deviates from them (*National Defence Act*, RSC 1985, c N-5, s 29.13; see *Walsh v Canada (Attorney General)*, 2015 FC 775 at para 32, aff'd 2016 FCA 157 at para 9). I would therefore go beyond my role by reassessing the evidence before the CDS (*Moodie* at para 79).

[69] Mr. Pindi returns essentially to the facts and evidence considered by the CDS. He alleges that the CDS misapprehended the evidence and asks this Court to reweigh it. However, as I have already mentioned, it is not the role of the reviewing court to substitute its interpretation of the facts or law for that given in the impugned decision, unless, of course, the latter is tainted by an overriding error that would invalidate it, which is in no way the case here. Mr. Pindi raises no evidence casting doubt on the reasonableness of the decision and simply disagrees with the reasons expressed by the CDS. Also, I note that given the military context of this case, the CDS is entitled to great deference in his analysis of the case.

[70] For example, in its recommendation to the CDS, the Committee was of the opinion that Colonel Sirois, the officer who recommended Mr. Pindi's release, did not have the authority to approve the release, since the policies in force provided that only school commandants had that authority. In the decision, the CDS disagrees with this view, noting that the Committee did not refer to the correct policy in reaching its conclusion. Mr. Pindi does not give up and writes in his memorandum:

[TRANSLATION]

Having carefully examined the CDS's decision (para 3, page 44, Exhibit P-1) leading to my release, and having regard to the AD's decision, Col Sirois, (pages 67 to 70, Exhibit P-66), I am entitled to confirm that the latter did not have the authority to release me, since I have long been a qualified logistics officer (para 9, page 126, Exhibit P-4 and para 69, page 108, Exhibit P-3). Accordingly, the decision to release me is invalid.

[71] It is a bald statement unsupported by the evidence. Rather, the evidence shows the contrary. As the CDS clearly explained in the Decision, release approval authority changed on July 1, 2012, returning to Mr. Pindi's commanding officer, and refers to a document announcing

the decentralization of authorities related to remedial measures and administrative actions: CANFORGEN 134/12 CMP 056/12 121920Z JUL 12. The CDS's determination of Colonel Sirois' authority is entirely reasonable and justified, as it is a matter of policy interpretation within his area of expertise.

[72] Mr. Pindi then went on to attack the following words of the CDS that he said leave him

[TRANSLATION] "stunned":

[TRANSLATION]

With regard to the [position, an Instruction Development Officer position], I note that, at first, you were informed that the [position] was closed and that, at another time, you were not eligible since you did not meet the academic criteria: a bachelor's degree in education and two years of experience in education.

[73] In Mr. Pindi's view, these comments are [TRANSLATION] "unthinkable or even irrational".

He insists that the position in question [TRANSLATION] "was never closed since 2006 until [his] release in 2013" and that this is an "undeniable fact". These are also bald assertions unsupported by evidence. However, the CDS considers, on the evidence, that at the time of Mr. Pindi's reassignment, the two positions he wished to obtain were not available. Mr. Pindi has not submitted any evidence to challenge this finding of fact by the CDS.

[74] Mr. Pindi adds that a [TRANSLATION] "bachelor's degree in education and two years of experience in education have never been the only academic criteria required for this purpose." I do not understand why Mr. Pindi comes back to this issue. However, the CDS acknowledged that file was handled improperly, since the information given was that the applicant had a doctorate in administration, not a doctorate in education administration and evaluation. He indicated that

even if Mr. Pindi had qualified and the position had been available, this would not be sufficient to grant him an absolute right to be transferred to the position of his choice. According to the CDS, a reassignment is not a vested right, as the process must meet service and military needs. The CDS explained that while the interest of the member is taken into account, it is reasonable for the CAF to consider operational needs in the mandatory reassignment. This is why a list is compiled every month detailing the positions available for reassignment. This list evolves in real time according to needs and assignments. Accordingly, the CDS concluded that Mr. Pindi was aggrieved in the process of assessing his qualifications, but did not grant the relief sought. Mr. Pindi has not submitted any evidence to challenge this finding of fact by the CDS.

[75] With respect to his harassment complaint, Mr. Pindi writes in his memorandum:

[TRANSLATION]

With unprecedented contradictions and inconsistencies, it is unthinkable to see how the CDS dismissed the findings of the investigation report dated May 18, 2010, from the time he acknowledged that the investigation was conducted in accordance with the directives in force within DND and the CAF

[76] Recall that the harassment investigation report determined that Mr. Pindi had been the victim of a single incident of harassment. The Committee, for its part, considered that he was the victim of three. The CDS, after analysis, was of the opinion that there was no harassment and that the Committee did not use the correct test to determine whether Mr. Pindi had been harassed.

[77] The Committee was of the view that investigators did not have to assess whether the alleged incidents met the definition of harassment. According to the Committee, the

investigators' work was limited to determining whether the evidence supported the allegations and whether the incidents in question had actually occurred, since the responsible officer had already determined that such allegations amounted to harassment if they were true.

[78] The CDS rightly pointed out that this is not the way to do things. The responsible officer only assesses a situation based on the complainant's allegations, reflecting the complainant's own perception. The responsible officer assesses whether the incidents, as presented by the complainant, meet the definition of harassment and the criteria required for an investigation to be initiated. It is the investigators who confirm the alleged facts. If the allegation is substantiated, the investigator must also determine whether these facts amount to harassment. The CDS correctly pointed out that it is reasonable to believe that the facts as established during the investigation may differ from the allegations in the complaint. Nuances can be made and explained, and although these facts did occur, they do not constitute actions outside the general framework of labor relations.

[79] The parties agree that if statements made by a superior officer demean, humiliate or offend a person, and the perpetrator knew or reasonably should have known that such conduct could offend or cause harm, such statements could constitute harassment. The phrase "reasonably should have known" adds an objective element to the subjective intention of the perpetrator of the conduct in question. This objective element suggests the situation must be analyzed from the perspective of a "reasonable person". However, defining the characteristics of the reasonable person presents difficulties to the extent that reasonable people, particularly in a military context, may regard a case differently. That said, quite reasonable people may disagree.

[80] The CDS expressed satisfaction with the completeness and quality of the harassment investigation, including the recording of interviews with fifty-five witnesses, which was conducted in accordance with current directives. He rightly rejected Mr. Pindi's arguments that investigators participated in a culture of silence and camouflaged the truth by protecting the respondents. The CDS was of the opinion that none of the allegations against Mr. Pindi's two superiors meet the definition of harassment, as their actions were part of the normal exercise of their authority. Mr. Pindi did not raise any reviewable error in this regard.

[81] As for the allegations against Lieutenant-Colonel Gignac, although the Committee accepted two of the six allegations, the CDS concluded that none of the allegations met the definition of harassment, expressing his reasons in the following terms:

[TRANSLATION]

You seem to have had difficulties integrating when you arrived at the unit. When you are in trouble, and as you wanted to defend yourself against what you considered to be injustice, you have undertaken your own personal investigations and reported for witness meetings. This approach only demonstrated your lack of confidence in your chain of command and put your chain of command on the defensive. Your approach was perceived as stubbornness, especially in your constant questioning and seeking advice from officers from outside your unit who did not fully grasp your context. I can understand that your chain of command may have felt challenged and defied by your actions. I am not ignoring some of their actions, as I cannot ignore yours.

[82] In his memorandum, Mr. Pindi disagrees with this conclusion, but does not explain why it was unreasonable. However, as it was possible that some of his findings directly affected Lieutenant-Colonel Gignac, for there to be preponderant evidence of harassing conduct, the CDS was required to conduct a review that more broadly covered the circumstances of the alleged events and provided a fairer perspective on the nature of the alleged conduct. These events must

be studied in the context in which they took place and in relation to all external factors that may have played a role. This is precisely what the CDS undertook in his analysis of the harassment complaint. I find no error in his findings of fact, which are based on the extensive and nuanced evidence on the record.

[83] Even if there was an error in the assessment of the evidence or in the interpretation of the Directive as Mr. Pindi contends, the ultimate issue before the CDS was whether release was appropriate. The Supreme Court has already established in *Vavilov* at paragraph 142 that, as a general rule, the courts must favour one outcome to proceedings over constant back and forth between administrative tribunals. It is in the interests of the parties and of administrative justice that this debate be resolved. In my view, the opportunity to refer the file back for reconsideration of the harassment issue is not appropriate in this case. The passage of time would prevent the respondents from responding satisfactorily to the allegations, which date back almost 15 years.

[84] Furthermore, I am satisfied that the CDS was entitled to confirm Mr. Pindi's release by exercising his discretion if he had conduct or performance problems. In *Blair v Canada (National Defence)*, 2017 FC 10 at para 43, the Court reiterated that an initiating authority may review the member's personnel file and decide that other administrative action is warranted. "What is important is not the number of measures, but rather the overall character of the CAF member's service." Therefore, the cancellation or modification of disciplinary and administrative measures did not render his release unreasonable. I find that the CDS considered the record and Mr. Pindi's submissions.

[85] The CDS reviewed and weighed Mr. Pindi's history in the CAF and noted that he had demonstrated several conduct deficiencies during his career, namely disobeying orders from his supervisors, being found guilty of being absent without authority, being found guilty of inappropriate use of his Government of Canada American Express card, and of demonstrating excessively threatening, disrespectful and unprofessional behaviour toward a colleague. All of this demonstrates that his conduct was likely to become an administrative burden on the CAF. The CDS also noted his difficulty in accepting his misconduct, the criticisms he was given, and his perseverance in finding excuses for his failures and not accepting any share of responsibility. Mr. Pindi's approach left the CDS puzzled about his vision of CAF moral values: integrity. According to the CDS, these practices demonstrate a major failure on the part of a CAF officer to demonstrate exemplary conduct for his or her subordinates.

[86] Upon reading about the overall nature of Mr. Pindi's conduct, coupled with the outcome of the reassignment process, the CDS was of the view that there were sufficient significant elements to trigger an administrative review and a recommendation for release from the CAF.

[87] The CDS's closing submissions adequately reflect his reasons for concluding that Mr. Pindi's release from the CAF was a reasonable decision, justified and consistent with current policies:

[TRANSLATION]

Administrative failures and, in some instances, questionable actions by the CAF and by you are present in your file. I understand your dismay with respect to the CAF's failures. Having said that, it is as difficult for me to conceive that an individual with an education like yours, who has acquired a certain level of military experience, has had so much difficulty understanding the values of the CAF. Indeed, you have demonstrated difficulty

integrating into the military environment. Your expectations of the CAF and what the CAF expects of you diverge; and what is troubling, you accept no responsibility for your actions. Your proposal that the CAF ignore your accidental discharge is just one example. The CAF is a mission-oriented organization where officers are expected to live up to their duty and responsibilities, without being constantly supervised. Your record shows that you lost confidence in your chain of command and that your chain of command also lost confidence in you. I come to the conclusion that this trust, which is fundamental, is irrevocably broken. As a result, I can only reach one conclusion: it is for the benefit of all to cut the ties that united us and continue our paths separately.

[88] The decision must be affected by a substantive defect in order to intervene on review, and this defect must be fundamental in order to invalidate the decision. The burden is on Mr. Pindi to demonstrate that the CDS's decision is unreasonable. In my view, he did not succeed.

V. Conclusion

[89] While I sympathize with Mr. Pindi and deplore the unfortunate circumstances of his release from the CAF, I must dismiss the application. The Decision takes into account the evidence and falls within the range of acceptable outcomes defensible on the facts and the law. I cannot conclude that the CDS's decision regarding his grievances was unreasonable. That being said, my intervention would be in no way justified.

[90] On balance, I will not award any costs.

JUDGMENT IN T-805-17

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. Without costs.

“Roger Lafrenière”

Judge

Certified true translation
Janna Balkwill

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-805-17

STYLE OF CAUSE: JEAN-PIERRE PINDI v THE ATTORNEY
GENERAL OF CANADA, THE CHIEF OF THE
DEFENCE STAFF

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: NOVEMBER 30, 2022

JUDGMENT AND REASONS: LAFRENIÈRE J.

DATED: SEPTEMBER 19, 2023

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