Federal Court  Cour fédérale

Date: 20111028

Docket: T-699-10

Citation: 2011 FC 1230

Ottawa, Ontario, October 28, 2011

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

JEFFREY EUGENE RIACH, CD

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant is self-represented in this proceeding. He joined the Canadian Forces (CF) in 1990 as a Reservist. In June 2005, he was transferred to the Regular Forces and in January 2007, he was posted to the 8 Air Movement Squadron (8 AMS) in Trenton, Ontario.

[2] The applicant has struggled with depression and alcoholism. Between April 2007 and January 2009, he received successive administrative measures due to his behavioural and performance issues related to his misuse of alcohol. He was also placed on Counselling and

Probation for misusing alcohol and for being absent without leave. On February 4, 2009, the Squadron Administrative Officer (SAO) of the applicant's unit, Capt. Flatman, issued a Notice of Intent to Recommend Release (NOI) regarding the applicant. On May 19, 2009, the applicant filed a grievance against the NOI on the ground that an apprehension of bias existed on the part of Capt. Flatman based on her friendship with the applicant's ex-common-law partner. The grievance process followed its course and, on March 22, 2010, the Chief of Defence Staff (CDS), as the final authority in the grievance process, denied the grievance. This application for judicial review relates to this decision.

[3] For the reasons that follow, this application for judicial review cannot succeed.

I. Background

[4] The release of CF members is governed by Chapter 15 of the *Queen's Regulations and Orders of the Canadian Forces* (1999 Revision) [QR&O] and a member can only be released in accordance with the reasons contained in article 15.01. Item 5(d) of the table under article 15.01 refers to the release of a member who is no longer "advantageously employable" under existing service policy.

[5] Issuing the NOI to the applicant was the first step in an administrative process that concluded with the Director Military Careers Administration (DMCA) making the final decision to release the applicant from the CF.

[6] Other decisions followed the NOI. The applicant did not file any grievances against those decisions. They are, however, relevant to understanding the context of the applicant's allegations.

[7] The NOI reads, in part, as follows:

> a. This notice is to advise you that it is intended to recommend your release from the Canadian Forces under the provisions of QR&O 15.01 item "**5D- Not Advantageously Employable"** for the following reasons:
>
> > *You violated your Counselling & Probation for Misuse of Alcohol as well your Counselling & Probation for AWOL as outlined in DAOD 5019-4. This was confirmed by your being more than 2 days absent from your First Aid training with no notice that you would not be attending, and having your supervisor come to your house and find you admitting that you had been drinking and the smell of alcohol on you.*
>
> 2. You are hereby required to make known, in writing, to your Commanding Officer thru S Admin O within 14 days (18 Feb 09) any objections you have to your being release or whether you do not object to being released. . . .
>
> [Emphasis in original]

[8] On March 13, 2009, the applicant's Commanding Officer, A.M. Agnew, recommended to the DMCA that the applicant be released from the CF and supplied reasons for this recommendation. He indicated that the applicant breached the terms and conditions of his Counselling and Probation for conduct arising from misuse of alcohol and for being absent without leave. He also referred to the applicant's history of transgressions since January 2007 when he was posted to the 8 AMS. He concluded his recommendation as follows:

> 3. Cpl Riach has been medically referred on three occasions (ref A) since his arrival at 8 AMS. It is evident that he is unable to live up to the terms of his C&P or the Directions on Release from Custody.

> These last two incidents in January and March are clear violations of his [*sic*] both the C&P for Misuse of Alcohol and the C&P for AWOL. Despite his poor attitude, Cpl Riach has generally cooperated at each step in this process, admitting to his misuse when confronted and submitting to counselling and treatment. Therefore we feel a 5D release is more appropriate than a 5F release, because his misuse of alcohol does seem to be beyond his control.
>
> 4. I have lost all faith and trust in Cpl Riach. After reviewing the arguments and representation provided to me in response to the NOI to Recommend Release, I am not swayed by his many statements of his keen desire to remain in the Canadian Forces. In my view, he has had many opportunities to rectify his shortcomings, particularly with alcohol, and even though he did ask the hospital for anti-alcohol drugs (ref N), he has clearly demonstrated his failure in the most recent incident (Ref R). It is my strongest recommendation that Cpl Riach be released immediately from the CF under item 5D.

[9] The applicant was given the opportunity to make submissions to the DMCA before a final decision was reached and he did so on June 1, 2009. On July 13, 2009, the DMCA made the final decision to release the applicant under item 5(d) article 15.01 of the QR&O. As noted earlier, the applicant did not file a grievance in relation to the DMCA's decision to release him from the CF.

[10] While the process that led to the applicant's release was following its course, the grievance process with respect to the initial NOI also continued.

[11] The applicant filed his grievance on May 19, 2009. The grievance reads, in part, as follows:

> a. I am requesting redress of grievance in regard of a Notice of Intent to Release issued to me whereas my CO is recommending my compulsory release from the CF.
>
> b. I feel that a circumstance regarding a signatory to this Notice (Ref A), as well as much of the correspondence relating to this matter, may constitute a conflict of interest, therefore, prejudicing its validity.

> c. I contend that, Capt Rhonda Flatman, 8 AMS ADMINO, may be acting in bias due to her personal relationship with my aggrieved ex-common-law wife, Lt. Lisa Prosser.
>
> d. I submit that there was a breakdown of my common-law relationship with Lt. Prosser as a result of my becoming involved with my current wife and that she (Lt. Prosser) was much aggrieved as a result.
>
> e. Refs B, C and D show that the AdminO 8 AMS maintains a friendship with Lt. Prosser which may be causing her to act in bias against me.
>
> f. Given the serious nature of the administrative action against me, it would seem appropriate that any party acting against me be free of unrelated influence.
>
> g. As remedy I ask that the NOI be withdrawn. Furthermore, as there seems to be question as to impartiality in this matter as well as this is in regards to a pending release from the CF, I request that this grievance be adjudicated by the CF Grievance board IAW QR&O 7.12 (Referral to CF Grievance Board).

[12] The applicant attached a two-page document to his grievance establishing that the SAO was listed as a friend on Lt. Prosser's Facebook page.

[13] The right to grieve under certain conditions is set forth in section 29 of the *National Defence Act*, RSC 1985, c N-5 [the Act]. The grievance process is set forth in chapter 7 of the QR&O and provides for the following steps. First, a member must submit a grievance to his Commanding Officer who must decide, depending on the nature of the grievance, if he or she can act as the Initial Authority. If he or she acts as the Initial Authority, the Commanding Officer considers and determines the grievance. Upon receiving the Initial Authority's decision, the grievor can elect to

have his grievance forwarded to the CDS who acts as the Final Authority in the CF grievance process. However, there is sometimes a preliminary step to the CDS's decision.

[14] When a grievance relates to certain types of measures, among which are administrative actions resulting in release from the CF, the grievance is first referred to the Canadian Forces Grievance Board (the Board), an independent body. The Board's role is to review the grievance and make findings and recommendations to the CDS (section 29.12 of the Act).

[15] Section 29.13 of the Act provides that the CDS "is not bound by any finding or recommendation of the Grievance Board." It states, however, that if the CDS does not act on a finding or recommendation of the Board, he must provide reasons for not having done so in his final disposition of the grievance.

[16] The applicant's Commanding Officer acted as the Initial Authority in the grievance process. He denied the applicant's grievance on June 3, 2009. He indicated that the applicant had not provided evidence of bias and that the events that led to the NOI predated Capt Flatman's arrival to the unit.

[17] On June 10, 2009, the applicant submitted a Request for Redress of grievance and asked that his grievance be submitted to the CDS. The grievance was submitted to the Board for findings and recommendation which was issued on November 13, 2009.

[18] The Board framed the issue as follows: “The issue to be determined is whether the NOI to recommend the grievor’s release should be withdrawn or set aside due to the alleged bias of Capt. Flatman, the officer who signed the NOI.” As a preliminary issue, the Board indicated that there was no requirement in the applicant’s case to even initiate the release process by a NOI, given that he did not meet the criteria provided in article 15.36 of the QR&O. The Board stated that, even though the CF was not required to provide the applicant with an NOI, the fact that he received one was to his benefit as it gave him an additional opportunity to submit representations as to why he should not be released. The Board then stated that the proximate cause for the applicant’s release was “that he was found to have breached the terms of his C&P [Counselling and Probation] by being AWOL [absent without leave] and by consuming alcohol.”

[19] The Board then dealt with the allegation of apprehension of bias on the part of Capt. Flatman. It framed the applicant’s allegations as follows:

> The grievor alleged that Capt Flatman was biased against him given her personal relationship with his ex-common-law spouse, also a Canadian Forces member. He offered as evidence the fact that Capt Flatman, who signed the NOI, appeared on the “Facebook” friends list of the grievor’s ex-common-law-spouse. There are no other details of the nature of the relationship between the two aforementioned officers or whether they discussed the grievor and his issues before the NOI was signed.

[20] The Board defined bias according to the principles of administrative law as being whether a reasonable person would believe that a decision-maker would be incapable of making an impartial decision. The Board stated the test as follows: “would an informal observer, aware of the facts and the circumstances, conclude the decision-maker was biased?”

[21] The Board was not persuaded, on a balance of probabilities, that a bias, real or apprehended, had been established. It found that the mere fact that Capt. Flatman and the applicant's ex-common-law spouse knew each other bore no weight in demonstrating that she was bias when she signed the NOI. The Board added that Capt. Flatman's role was limited to simply signing the NOI. The actual recommendation for release was made by the applicant's Commanding Officer to the National Defence Headquarters, where the actual decision to release was made.

[22] The Board communicated its findings and recommendations to the CDS and to the applicant. On December 13, 2009, the applicant submitted comments in response to the Board's findings and recommendations. On March 22, 2010, the CDS dismissed the applicant's grievance.

II. Decision under review

[23] The CDS stated in his decision that he reviewed the grievance, the applicant's comments, the comments from the applicant's superiors and the Board's findings and recommendations.

[24] The CDS found that the summary of the facts and positions of the parties presented in the Board's findings and recommendations were complete and accurate. He further stated that the Board had analysed each of the applicant's contentions and that he concurred with its findings and recommendations. Notwithstanding his agreement with the Board's findings and recommendations, the CDS decided to expand on his reasons for why he agreed with the Board that there was no evidence to support the applicant's allegation of an apprehension of bias on Capt. Flatman's part.

[25] The gist of the CDS's reasoning is reflected in the following excerpt from his decision:

… As evidence to support your allegations of bias, you provided a print out from the social networking service “Facebook” showing that Capt Flatman and Lt Prosser are connected to each other on this social network website.

You stated: “Given the serious nature of the administrative action against me, it would seem appropriate that any party acting against me be free of unrelated influence.”

Although you have provided an indication that both Capt Flatman and Lt Prosser know each other, you have not supported your allegations that this relationship caused Capt Flatman to be bias, nor have you identified what decisions Capt Flatman made that are considered to be bias.

In order for bias to occur in a situation, a decision maker must be incapable of making an impartial decision. The predication that Capt Flatman was or was not impartial has little relevance due to the fact that Capt Flatman did not render a decision with respect to your NOI to recommend release. Capt Flatman signed and presented you with the NOI to recommend release in her capacity as the Squadron Administration Officer (S Admin O) of 8 Air Maintenance Squadron, 8 Wing Trenton. The only decision maker concerning your release from the CF was Director Military Careers Administration (DMCA). DMCA’s decision was based on facts, evidence and policy and not on the influence of Capt. Flatman.

. . .

Capt Flatman was obligated by regulations to take action with respect to your situation due to your misuse of alcohol relapse on 19 January 2009. The only error that Capt Flatman committed was in presenting you with the NOI to recommend release. QR&O 15.36 (Notice of Intent to Recommend Release – Non-Commissioned Members) stipulates that a NOI to recommend release is only required for a non-commissioned member who is above the rank of Sergeant (Sgt) or, if below the rank of Sgt, the individual must have served a minimum of ten years in the Regular Force. Neither of these criteria applied to you. The fact that you did receive the NOI to recommend release was in fact to your benefit because it permitted you to respond directly to your Commanding Officer (CO) with reasons why you believed the chain of command should not recommend your release from the CF. A review of the representation you provided to your CO focussed on personal issues between you and your spouse that led to your depression and subsequent incident of being absent without

> authority and alcohol misuse. There is no mention in your representation of your apprehension of bias by Capt Flatman.
>
> I find that you have not supported your grievance with respect to bias on the part of Capt Flatman concerning your release from the CF. . . .

III. Issues

[26] In his Memorandum of Fact and Law, the applicant raises issues that pertain to the NOI which were the subject of the grievance at issue. He also raises issues and arguments that relate to decisions that were made after Capt. Flatman issued the NOI, including the decision to release him from the CF.

[27] As mentioned earlier, those decisions were not grieved and this Court cannot entertain arguments against these decisions.

[28] The applicant acknowledges that he did not file a grievance against the decision to release him from the CF. However, he contends that given that the NOI, which initiated the process that led to his release, was flawed, the entire process was vitiated, including the final decision to release him and that therefore this proceeding should capture the entire process.

[29] This argument cannot stand. First, although the NOI and the decision to release the applicant stemmed from the same set of facts and were both part of the same administrative process, they were two distinct decisions made at different times, which generated different impacts on the applicant’s status within the CF. The process that led to his release contained three steps: the issuance of the NOI by Capt. Flatman in her capacity as the SAO of the unit, the

Commanding Officer's decision to recommend the applicant's release to the DMCA and the DMCA's decision to release the applicant. Each of these decisions needed to be grieved if the applicant wished to challenge them. Yet the applicant only filed a grievance against the NOI.

[30] Second, the evidence does not support a proposition that the process was contaminated by Capt. Flatman's decision to issue the NOI. It is true that Capt. Flatman initiated the process that led to the applicant's release, but the NOI was issued in her capacity as an SAO and the actual decision to recommend the applicant's release to the DMCA was made by the Commanding Officer. Moreover, the evidence does not establish that the Commanding Officer's decision was in any way influenced by Capt. Flatman or by any possible bias that she may have had against the applicant. It is apparent from the wording of the Commanding Officer's recommendation that the decision to recommend release was based on his own assessment of the applicant's behaviour and history.

[31] The evidence also shows that the final decision to release the applicant was made by the DMCA and that this decision was not, in any way, influenced by Capt. Flatman's issuance of the NOI or by her involvement in the process. The DMCA made its decision in light of the applicant's file and circumstances. It is also worth noting that the applicant provided submissions to the DMCA that were aimed at trying to convince the DCMA not to release him. At that time, the applicant did not raise the issue of his apprehension of bias on the part of Capt. Flatman. This element was totally absent from the decision-making process of the DMCA.

[32] Therefore, I am of the view that the evidence does not support the allegation that an apprehension of bias (real of perceived) on the part of Capt. Flatman could have influenced the decision made by the Commanding Officer and by the DMCA. Accordingly, the grievance, and this judicial review, should not capture the entire process that led to the applicant's release.

[33] The applicant further contends that, since the CDS's decision to deny his grievance referred to his actual release, "his narrative of all of the stated reasons for the justification of my release in his *ratio decidendi* open the basis of them to the scrutiny of this court on review the decision." (para 9 of the applicant's Reply). With respect, this proposition cannot stand either.

[34] The CDS was not seized of a grievance challenging the applicant's release and he did not opine on the merits of the release. The CDS's reference to the applicant's release is related to his assessment of the impact of any possible bias on the part of Capt. Flatman surrounding the DMCA's ultimate decision to release the applicant from the CF. In this context, his reference to the factual situation and the circumstances surrounding the applicant's release cannot open the door to an indirect challenge of the applicant's release from the CF.

[35] In short, the NOI, which is at issue in these proceedings, is distinct from the decision to release the applicant. The latter decision was not grieved and is not at issue before this Court. This Court's jurisdiction is restricted to reviewing the decision rendered by the CDS denying the grievance filed by the applicant against the NOI. This grievance raised only one allegation; an apprehension of bias against the applicant on Capt. Flatman's part. This application for judicial review cannot capture the entire process that led to the applicant's release. Therefore, the Court

will disregard the issues and arguments raised in the applicant's Memorandum of Fact and Law that do not pertain to the decision that was the object of the grievance at issue.

[36] In his Memorandum of Fact and Law, the applicant raised the issue of whether the CDS erred in not finding that there was a reasonable apprehension of bias on the part of Capt. Flatman. At the hearing, he added a new argument regarding this issue: the applicant contended that the CDS applied the wrong test for assessing whether there was an apprehension of bias. The respondent did not oppose this issue being raised and provided oral submissions in response. Given that this issue is somewhat related to the one initially raised by the applicant and given the absence of prejudice or opposition from the respondent, I will deal with both issues. Therefore, this judicial review raised the following two issues:

A. *Did the CDS apply the wrong test with respect to an allegation of an apprehension of bias?*

B. *Did the CDS err in his assessment of whether there was a reasonable apprehension of bias on Capt. Flatman's part?*

IV. Standard of review

[37] The determination of whether the appropriate test for bias was applied is a question of law and both parties agreed that such a question should attract the standard of correctness (*Cheney v Canada (Attorney General)*, 2005 FC 1590 at para 14, 144 ACWS (3d) 193 [*Cheney*]. However, the question of whether the CDS properly assessed whether there was a reasonable apprehension of bias is a question of mixed fact and law that should be reviewed under reasonableness standard of review (*Cheney* at paras 14-15).

V. Analysis

A. *Did the CDS apply the wrong test with respect to an allegation of an apprehension of bias?*

[38] The test for bias was enunciated in *Committee for Justice and Liberty v Canada (National Energy Board)*, [1978] 1 SCR 369 at 394 (available on CanLII):

> . . . the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information… [The] test is "what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision maker], whether consciously or unconsciously, would not decide fairly."

[39] While actual bias need not be proven (*Cheney* at para 18), the test is an objective one and as stated by the Court in *Armstrong v Canada (Attorney General)*, 2006 FC 505 at para 75, 291 FTR 49, "the threshold for establishing a claim is high and substantial grounds are necessary to support a claim."

[40] The applicant contends that the CDS did not apply the correct test and imposed a heavier burden, requiring him to actually prove that Capt. Flatman was bias against him.

[41] The respondent acknowledges that the CDS was not clear is his formulation of the test but contends that if the CDS misstated the test, this did not have any impact on the outcome since the CDS endorsed the Board's findings which formulated the appropriate test. The respondent further contends that, if the Court concludes that the CDS erred in formulating the test, it should

nevertheless conclude that, in light of the evidence, the outcome would have remained the same if the CDS had applied the appropriate test.

[42] I agree that the CDS's decision can lead to confusion as to the test that he applied, especially when he states ". . . you have not supported your allegations that this relationship caused Capt. Flatman to be bias, nor have you identified what decisions Capt Flatman made that are considered to be bias." and ". . . you have not supported your grievance with respect to bias on the part of Capt Flatman concerning your release from the CF." However, I consider that these comments are of no consequence to the decision.

[43] First, it is clear from the CDS's decision that he endorsed the Board's finding and reasoning. The CDS stated: "I concur with the CFGB's findings and recommendations. . ." It is not disputed that the Board formulated and applied the appropriate test for determining whether there was a reasonable apprehension of bias.

[44] The CDS could have limited himself to stating that he was in agreement with the Board's findings and recommendations without further expanding. Article 7.14 of the QR&O states that after having received the Board's findings and recommendations, the CDS must consider and determine the grievance and must advise the grievor of the "determination and the reasons for it." However, section 29.13 of the Act provides that the CDS is not bound by the Board's findings and recommendations but if he chooses to depart from them, he is required to include the reasons for doing so. I understand from these provisions that when the CDS is in agreement with the Board's findings and recommendations, he can endorse its reasoning without having to expand further.

[45] In this case, the CDS chose to expand and add to the Board's findings and recommendations and I think that his additional reasons must be put into context. By endorsing the Board's findings, the CDS endorsed the test and reasoning applied by the Board. In his additional reasons, the CDS replied to the allegation made by the applicant that Capt. Flatman was bias against him and that such a bias was inferred from her being a "friend" of his ex-common-law wife on the Facebook website. In the context of the allegations made by the applicant in his grievance, I do not infer that the CDS misapplied the test for an apprehension of bias. As well, I do not infer that he departed from the analysis of the Board.

B. *Did the CDS err in his assessment of whether there was a reasonable apprehension of bias on Capt Flatman's part?*

[46] The applicant contends that it was unreasonable for the CDS to conclude that there was no reasonable apprehension of bias on the part of Capt. Flatman. In his grievance, the applicant based his allegation of an apprehension of bias on the alleged relationship between Capt. Flatman and his ex-common-law partner that he evidenced with a printout showing that the applicant's ex-common-law wife and Capt. Flatman were linked through Facebook.

[47] The applicant had several opportunities during the grievance process to provide additional evidence and arguments. He was invited to provide comments and submissions at every step of the process: to the Initial Authority; to the Board; and to the CDS. The applicant did provide comments and submissions at each step. The only time he added further elements in

support of his allegation of bias was in the comments that he made before the CDS prior to his decision.

[48] In an email dated December 14, 2009, Chief Warrant Officer, J.S.B. Bergeron, wrote to the applicant and asked him the following three questions:

> QUESTION 1. You have submitted a grievance, that came about because the staff in Trenton notified you of their intent to recommend your release due to misuse of alcohol, AWOL and C&P issues. Your grievance speaks of an alleged bias on the part of Capt Flatman. You are grieving the fact that Capt Flatman may be biased in her recommendation to have your [*sic*] released because she had a friendship with your ex-common-law-spouse, Lt Prosser. Is this correct?
>
> QUESTION 2. You have submitted evidence/fact to support your allegation of bias. The evidence you submitted shows that Capt Flatman and Lt Prosser have given each other permission to be friends on Face Book. You also have also [*sic*] referenced a document of 5 Mar 08 which notes Capt Flatman contacted your ex-common-law spouse. Is this correct?
>
> QUESTION 3. As a remedy, you have asked that the notice of intent to recommend release be withdrawn. To clarify, are you asking that you should be permitted to remain in the CF because the notice of intent to recommend release, signed by Capt Flatman is bias?

[49] The applicant replied, in part, the following to the questions:

> Question 1. Yes. I believe a conscious bias did exist. In the entire time I was posted to Trenton, Several administrative and legal actions were imposed or attempted to be imposed upon me, in nearly every instance, a large degree of impropriety either in law or ethics was shown. Also of note, one fact remained constant throughout, that being my request to be posted with my wife. Despite the considerable administrative efforts expended by my leadership, little, if any, was focused on this aim but rather, on endeavours that certainly curtailed the possibility of us being reunited. It has been argued recently that a bias by Capt. Flatman could not have influenced the decision to release me as she was

> merely the signatory agent and that the decision was the CO's. If that had been truly [*sic*] the case, then my CO erred in acting as IA to this grievance (as I state in my representation) as he cannot act as an authority in a grieved action involving a decision he made.
>
> Question 2. I believe my evidence shows a definite trend towards bias, Capt. Flatman had ample opportunity to disclose such and or recuse herself. Not only in her role as AdminO, she also acted in a legal role (as CRO during my detention) where she had a legal obligation to disclose ANY possibility of bias. She only reinforced my perception of bias when my release from custody was delayed and I was disallowed representation by council [*sic*] despite my plea for Habeas Corpus and she insisted on acting as CRO despite being on leave at the time (I cannot be convinced that there was any shortage of officers available that could have fulfilled this role in her absence). She also alluded to personal information about me that could not have been procured from any official data.
>
> . . .

[50] In his Memorandum of Fact and Law and his Reply, the applicant alleges that Capt. Flatman acted with hostility towards him and that this is another element that points to an apprehension of bias. At the hearing, the applicant added that Capt. Flatman could have adopted a different measure than proposing his release. He argued that the fact that she opted for the harshest measure is another element that points to a reasonable apprehension of bias. He further contended that Capt. Flatman did not consider mitigating factors in her decision to recommend his release.

[51] The applicant's arguments cannot succeed. The evidence provided by the applicant in support of his allegation of an apprehension of bias is speculative and far from sufficient to meet the threshold. The allegations regarding Capt. Flatman's hostility towards the applicant is not supported. Neither does the evidence show that Capt. Flatman issued the NOI and chose to recommend release as a result of any bias on her part. The applicant's allegations are speculative. The same can be said about the allegation regarding the friendship between Capt. Flatman and

the applicant's ex-common-law wife. First, the Facebook page is insufficient evidence to conclude that Capt. Flatman and the applicant's ex partner are friends or to characterize the nature of the alleged "friendship." The evidence presented by the applicant is insufficient to conclude that a reasonable apprehension of bias exists. Therefore, the CDS's decision was reasonable and does not warrant the intervention of this Court.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed with costs to the Respondent in the requested amount of $2500.

"Marie-Josée Bédard"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-699-10
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PLACE OF HEARING:	Halifax, Nova Scotia
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