Federal Court  Cour fédérale

Date: 20120126

Docket: T-579-11

Citation: 2012 FC 101

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, January 26, 2012

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

MAJOR MICHEL ROMPRÉ (RETIRED)

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant entered the Canadian Forces (CF) as a reservist in 1986. In April 2003, he volunteered to be deployed in Afghanistan, where he was attached to an American-British unit in Kabul. During his deployment, the applicant accidentally discharged his firearm on two occasions. Following these incidents, he was repatriated to Canada.

[2] Upon his return to Canada, several administrative actions were imposed on him. The applicant challenged a number of these actions with three grievances. On March 2, 2011, the Chief of the Defence Staff (CDS) upheld all of the applicant's grievances and ordered various remedies. The applicant filed an application for judicial review of certain aspects of the CDS's decision. The applicant is criticizing him for not granting some of the remedies sought and for not declaring that he was the subject of harassment by the chain of command.

I. Background

[3] The applicant had been a reservist in the CF for over 17 years when he was deployed to Afghanistan as a strategic planning officer. The applicant was deployed under unusual conditions. On April 15, 2003, he volunteered for a deployment that started on May 14, 2003, and that was supposed to go until October 29, 2003. Considering the short period of time before his departure, the applicant was deployed without receiving usual pre-deployment training.

[4] While he was deployed, the first incident took place on August 27, 2003, when the applicant accidentally discharged his firearm. Despite this incident, he was granted an extension of his assignment in Afghanistan for the period of October 23 to November 22, 2003. On October 27, 2003, the applicant once again accidentally discharged his firearm.

[5] On November 1, 2003, the commander of the task force in Kabul, Major General A.B. Leslie, ordered his repatriation to Canada. The repatriation letter is very severe with respect to the applicant and Major General Leslie recommended, namely, that the applicant not be authorized to take part in operational deployments. Here is an excerpt from the letter:

> 2. . . . He has lost my confidence in his ability to perform his duties as the Canadian Strategic Planning Officer – Coalition Training with OMC-A based on his inability to safely handle weapons endangering not only himself but others. As well, he has compromised his effectiveness and credibility with not only TFK but with our allies. This lost of trust stems from Major Rompre's displayed lack of the most basic of professional soldier skills – safe weapon handling. His continued presence in theatre presents an unacceptable potential risk to his fellow soldiers. Two charges for the NDs have been laid against Maj Rompre and he has elected Court Martial in both cases.
>
> 3. I have grave doubts about the professional abilities, common sense and basic soldier skills of this officer. I believe his performance and conduct to be unacceptable, and would provide my strongest advice that this officer not be allowed to take part in any future operational deployments. . . .

[6] Several administrative actions followed the applicant's repatriation.

[7] On February 8, 2004, Major General Leslie recommended that the applicant not receive the general campaign star for his mission in Afghanistan. This recommendation was approved by the Deputy Chief of the Defence Staff on September 7, 2004.

[8] On July 24, 2004, two violation notices were submitted to the court martial regarding the accidental discharges. The applicant pleaded guilty to the charges of "conduct to the prejudice of good order and discipline" and was given a severe reprimand and fined $1,500.

[9] On September 28, 2004, the commander of 34 Canadian Brigade Group, Colonel Y. Duhamel, asked commander Lieutenant-Colonel L. Benoit of the Régiment de Maisonneuve, to which the applicant was attached, for his recommendation with respect to the continuation of the applicant's career within the CF further to his repatriation. On October 14, 2004,

the commander of the Régiment de Maisonneuve recommended, taking into account the seriousness of the circumstances surrounding the court martial charges and the excellent service rendered by the applicant to the Régiment de Maisonneuve, that he be kept in the CF, that he be issued a recorded warning for professional shortcomings and be provided with a requalification program for the 9-mm pistol.

[10] On October 26, 2004, a recorded warning for professional shortcomings was placed in the applicant's file.

[11] On November 28, 2004, Colonel Y. Duhamel informed the Land Force Quebec Area Headquarters (LFQA HQ) of his and Lieutenant-Colonel L. Benoît's recommendations with respect to the applicant's future in the CF. He noted the applicant's excellent service in the Régiment de Maisonneuve, the sentence imposed by the court martial and the recorded warning imposed on the applicant. He also noted that it would be very difficult to consider the applicant's candidacy for potential missions, but specified that he was in agreement with Lieutenant-Colonel L. Benoît's recommendation keep the applicant in the CF. He finished by specifying that he believed that the file could be considered closed.

[12] On April 19, 2005, the LFQA HQ deputy commander, Brigadier-General Marc-André Préfontaine, decided that the applicant could continue to serve in the CF but could not be employed in international or domestic contingency operations until further notice.

[13] In June 2005, more than two years after his repatriation, the applicant received his personnel evaluation report (PER) for the period of May 15 to October 15, 2003, the time when he was deployed in Afghanistan. It should be noted that it was a replacement report because the original had been lost. The PER was signed by Lieutenant-Colonel M.G. Mussolum, Colonel M.D. Hodgson and Major-General Leslie. The PER shows an unsatisfactory performance and contains only negative elements. It focuses on the two accidental discharges and on the applicant's attitude with respect to those two incidents.

[14] On October 4, 2005, the applicant's commander served him a notice of his intention to place him on counselling and probation for insubordination within his unit. The applicant challenged this notice, which was set aside and replaced by a recorded warning for professional shortcomings dated February 28, 2006.

[15] The applicant challenged the above-mentioned actions with three grievances.

[16] The grievance procedure is set out in section 29 of the *National Defence Act*, RSC, 1985, c N-5 (Act) and the CDS is the final authority (section 29.11). Certain types of grievances, including the grievances filed by the applicant, are subject to a preliminary review by the Grievance Board, an independent tribunal that reviews grievances and makes recommendations to the CDS (sections 29.12 and 29.2). The CDS is not bound by any finding or recommendation by the Grievance Board, but if he does not act on one, he shall include the reasons for not having done so (section 29.13).

[17] In this case, the CDS adopted almost all of the Grievance Board's recommendations.

II. Impugned decision

[18] The CDS's decision is exhaustive and 16 pages long. In his decision, the CDS gave a detailed explanation of the context of each grievance, the remedies sought by the applicant and his analysis of each grievance. In his decision, the CDS set aside the following administrative actions and ordered the withdrawal of the documents applicable to those actions from the applicant's file:

a. The mission PER;

b. The recorded warning dated October 26, 2004, for professional shortcomings;

c. The decision dated April 19, 2005, to not redeploy the applicant;

d. The decision to not award him the general campaign star;

e. The recorded warning dated February 28, 2006, for professional shortcomings.

[19] However, the CDS did not order all of the remedies sought by the applicant. Namely, he refused to withdraw from his file the letter dated March 1, 2003, by Major-General Leslie that ordered his repatriation and contained the recommendation to not redeploy him. He also refused to order that a new mission PER be rewritten to replace the one that was set aside. The grievances also contained monetary demands and a request that the authors of the actions imposed on the applicant be subject to disciplinary action. The CDS rejected this last request and found that he did not have jurisdiction to award monetary compensation.

III. Issue

[20] The applicant makes three criticisms of the CDS's decision that are all related to the same issue: Is the CDS's decision reasonable?

IV. Standard of review

[21] The respondent submits, and I share his opinion, that the CDS's decision should be reviewed on the standard of reasonableness.

[22] In *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 (*Dunsmuir*), at paragraph 62, the Supreme Court indicated that the first step in analyzing the standard of review consists in verifying "whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question". In this case, the CDS is the most senior officer in the CF and he is charged with control and administration of the CF. For grievances and, more particularly, when appropriate remedies must be determined, he has significant discretion. The issues he had to decide in this case are questions of mixed fact and law that fall under his expertise and his specific knowledge of the military environment.

[23] Our Court has already determined that it must show deference to such issues, which had to be reviewed on the standard of reasonableness (*Jones v Canada (Attorney General)*, 2009 FC 46 at paragraph 23, 339 FTR 202; *McIlroy v Canada (Attorney General)*, 2011 FC 149 at paragraph 29 (available on CanLII); *Birks v Canada (Attorney General)*, 2010 FC 1018 at paragraph 25-27, 375 FTR 83; *Moodie v Canada*, 2009 FC 1217 at paragraph 18, 356 FTR 304.

[24] In *Dunsmuir*, above, the Supreme Court set out the analytical framework for the Court when it is reviewing a decision according to the reasonableness standard:

> 47 Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.
>
> [Emphasis added.]

[25] Recently in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paragraph 13 (available on CanLII), the Supreme Court noted and further developed the principles that should guide the application of the reasonableness standard. The Court stated the following regarding the deference courts must show to decisions within the expertise of specialized tribunals:

> 13 This, I think, is the context for understanding what the Court meant in *Dunsmuir* when it called for "justification, transparency and intelligibility". To me, it represents a respectful appreciation that a wide range of specialized decision-makers routinely render decisions in their respective spheres of expertise, using concepts and language often unique to their areas and rendering decisions that are often counter-intuitive to a generalist. That was the basis for this Court's new direction in *Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corp.*, [1979] 2 S.C.R. 227, where Dickson J. urged restraint in assessing the decisions of specialized administrative tribunals. This decision oriented the Court towards granting greater deference to tribunals, shown in *Dunsmuir*'s conclusion that

> tribunals should "have a margin of appreciation within the range of acceptable and rational solutions" (para. 47).

V. Analysis

A. *Position of the applicant*

[26] The applicant challenges three aspects of the CDS's decision.

[27] The first criticism involves the remedy the CDS ordered regarding the grievance with respect to the mission PER.

[28] The CDS found that the PER should be set aside. First, he noted that information about the second accidental discharge, the applicant's attitude further to the accidental discharges and his repatriation should not have been included in the PER because they involved events that occurred after the period covered by the PER. The CDS also considered that the evaluators did not take into account the laudatory comments with respect to the applicant made by the foreign officers who supervised him during his deployment in Afghanistan or the specific circumstances of his deployment. In that respect, the CDS noted that the applicant did not receive pre-deployment training or a performance development review (PDR) [a document that contains a statement of the duties and expectations of the deployed personnel], or adequate coaching upon his arrival in Afghanistan. The CDS also found that the PER focused too much on the negative elements surrounding the two accidental discharges and that it was biased. The CDS also thought that the applicant's performance could not have been as mediocre as was described because the chain of command had extended his service on two occasions. He therefore cancelled the PER and ordered that it be withdrawn from the applicant's file.

[29] The applicant also asked that his PER be rewritten on the basis of the evaluation written by his British superior, Lieutenant Nayle, in October 2003. That evaluation reads as follows:

> Major Rompré has played a vital part in the success of the Afghan National Army Plans and Design Team (ANA PDT) over the last six months. He has been responsible for liaison with, and coordination of training by, non-US coalition members and all the national contingents within ISAF.
> . . .
> He is a very hard working, dedicated and committed officer. He is reliable, honest and very conscientious and he has shown great enthusiasm, and dogged persistence in his efforts to persuade national contingents to provide training for the ANA. All of which has been in addition to their operational commitments. His success in this has been the clearest possible indicator of his initiative, resourcefulness and effectiveness as a problem solver.
> However, he is open and frank to the point of bluntness and tact is not one of his most obvious attributes. Therefore, despite his undoubted value to the PDT, he has not always been as popular with some team members as he might have been.
> Major Rompré is an efficient and very effective officer who has made a very real contribution to the establishment of the ANA, something he has every right to be proud of.

[30] The CDS noted the remedy sought by the applicant, but did not allow his request. His decision in that respect reads as follows:

> [TRANSLATION]
>
> Even after the CFGB [Grievance Board] released its findings and recommendations, you still wanted your PER to be rewritten so that there would be a document describing your mission in theatre. Although that would have been ideal, I share the CFGB's recommendation in this regard. Since seven years have elapsed and the parties are entrenched in their respective positions, rewriting the PER is impossible. Consequently, your theatre PER for the period from May to October 2003 will be removed from your personnel records and sent to the Director General Canadian Forces Grievance Authority (DGCFGA) to be appended to your grievance file and managed in accordance with the *Library and Archives of Canada Act* with respect to its final disposition. Moreover, I believe it would be

> inappropriate for your theatre PER to be replaced by a document that has not been verified or reviewed by those who were with you at the time of your deployment.

[31] The applicant agrees with the CDS's decision to set aside and withdraw the existing PER from his file. However, he criticizes the CDS for not ordering that his PER be rewritten. The applicant disagrees with the CDS for finding that it was impossible to rewrite the PER because the authors of the PER remained unchanged in their position, that more than seven years had passed since the period in question and that the evaluation by Lieutenant-Colonel Nayle had not been reviewed. The applicant raises the following arguments. He maintains that his performance in Afghanistan was recognized by various independent sources and, more particularly, by Lieutenant-Colonel Nayle, and that this evaluation is consistent with the performance evaluations he had received throughout his career. He also argues that this evaluation is neutral and mentions both positive and negative aspects of his performance. The applicant adds that the mission PER of a colleague who was with him in Afghanistan was in large part based on the evaluation done by Lieutenant-Colonel Nayle and that it is unreasonable for the CF to refuse to do the same thing in his case. The applicant also claims that the CDS, because he had already invalidated all of the opinions issued by the chain of command, should have done more and ordered that the PER be rewritten. Regarding the delay raised by the CDS, the applicant insists that all of the delays are attributable to the CF and that he should not have to pay for them.

[32] The applicant stresses the impact of the absence of a PER for his deployment in Afghanistan. He contends that the CDS eliminated the consequence of the biased PER, but that, by not replacing it, he deprived him of any meaningful remedy. First, the applicant indicates that all military personnel must have a mission PER and that the lack of a PER does not highlight his actual

performance during his mission in Afghanistan, diminishes the value of his military career and reduces his chance of a promotion. He adds that the lack of a PER for such an important mission puts a hole in his career path that would cast doubt in the mind of any senior officer in the CF. Since the incidents, the applicant was voluntarily released from the CF, but stated to the Court that he intended to re-enrol now that his reputation has been restored by the CDS's decision. In his opinion, the absence of a PER will negatively affect his re-enrolment and/or will compromise his opportunities for advancement within the CF. The applicant adds that the lack of a mission PER places him in a situation where he will always have to provide explanations and defend his record in the eyes of potential superiors.

[33] He criticizes the CDS for not measuring the consequences and the harm he suffers due to the lack of a PER. He also submits that the CF would have suffered no harm if his PER had been rewritten. The applicant argues that, under these circumstances, the CDS's decision to not order that the PER be rewritten is unreasonable.

[34] The second criticism made by the applicant involves the letter dated November 1, 2003, written by Major-General Leslie ordering his repatriation and recommending that he not be redeployed on any missions. That letter is related to the grievance challenging the LFQA HQ commander's decision dated April 19, 2005, to not redeploy the applicant.

[35] The CDS found that the applicant was not afforded procedural fairness when the decision to not redeploy him was made because he was not given the opportunity to make his submissions before that decision even though it had a significant impact on the furthering of his career within the

CF. The CDS subsequently noted that everything pointed to the fact that the decision was motivated by the repatriation letter signed on November 1, 2003, by Major-General Leslie. The CDS indicated that he did not call into question the commander's decision to repatriate the applicant because of the accidental discharges of his firearm. He also found that the recommendation to never permit the applicant to redeploy was unreasonable. It noted that the decision was made without the commander further explaining himself and without giving the applicant the chance to correct the shortcomings. He also indicated that he found that the decision by the deputy commander of the LFQA HQ was disproportionate and that nothing demonstrated that the applicant would never be able to redeploy or use and maintain a weapon. The CDS found that the decision to not permit him to redeploy was irrational and disproportionate and that the applicant could be permitted to redeploy if he respected the same eligibility and training standards as his comrades in arms.

[36] As a remedy, the CDS ordered that the letter by the deputy commander of the LFQA HQ dated April 19, 2005, be withdrawn from his file. However, he refused to withdraw the letter by Major-General Leslie ordering his repatriation and recommending that he not be redeployed. The CDS explained his decision as follows:

> [TRANSLATION]
>
> The letter from the comd of TFK will remain in the record since it explains the circumstances of your repatriation and is an important archival record. Although I have already determined that his recommendation to never permit you to redeploy was unreasonable since it was not clear enough and did not give you a second chance, the fact remains that he had the right to issue his opinion as the in-theatre comd and that it was only a non-binding recommendation to the senior officials at NDHQ in Ottawa.

[37] The applicant submits that it was unreasonable for the CDS to keep this letter, at least in its current form, in his file. The applicant does not call into question the decision by the commander ordering his repatriation; he acknowledges that he had the authority to order his repatriation and that the reasons that led him to make that decision were reasonable. However, he challenges two parts of the repatriation letter: the assessment by Major-General Leslie on his basic soldier skills and the recommendation that he never be permitted to redeploy.

[38] The applicant rebuts the statement by the CDS that the existence of this letter is inconsequential. First, he maintains that, if this letter is kept in his personal file, it remains accessible to all of the chain of command and could compromise his opportunities for advancement because it contains severe, excessive comments about him. This letter contains harmful comments that, in his opinion, had and could still have significant consequences for his career because it consists of the professional opinion issued by one of the most senior officers in the CF; it is therefore inevitable, in his opinion, that such comments would influence any potential reader who would not necessarily have in his or her possession the CDS's decision stating that Major-General Leslie's comments and recommendation are unreasonable. Therefore, the applicant argues that potential superiors who read this letter will not have the opportunity to qualify it and put the comments it contains into context.

[39] The applicant submits that he suffered significant harm from the fact that this letter remains in his file, whereas it would have been very simple and inconsequential for the CF to withdraw the letter or, at least, redact it to take out the inappropriate comments and the recommendation that he

not be redeployed. As with the lack of a PER, the applicant also submits that the presence of this letter, in its current form, will have a negative impact on his re-enrolment.

[40] Finally, the applicant criticizes the CDS for not acknowledging in his decision that the treatment imposed on him constituted harassment. The applicant acknowledges that he made no formal harassment complaint regarding all of the treatment he received and the actions imposed on him, but he maintains that it would have been inappropriate to proceed with that avenue of recourse. First, he indicates that he had already filed a complaint against an officer and that, further to filing this complaint, his situation had worsened and the actions taken against him had intensified. He emphasized that the authors of the unfair and unreasonable treatment he was subject to are all senior officers and that it would have been unthinkable for him to file a complaint against each of them without suffering serious consequences; he would have had to file the complaints at a time when he had lost all credibility with the chain of command and he risked having his complaints dismissed altogether or being released from the CF on grounds of "administrative burden". Furthermore, the filing of the complaints would have halted the grievance process. The applicant adds that the harassment evidence arose only when the grievances were upheld and the actions imposed on him were set aside. Throughout the grievance process, the applicant raised the unreasonable, disproportionate and unfair nature of the actions, but they were only claims. The CDS's decision confirmed the abusive and inappropriate nature of the actions.

[41] The applicant also contends that, even if he did not file a formal harassment complaint, he told the CDS that he had been the subject of harassment. The CDS also acknowledged this in his

decision and it is on that basis that he claimed financial compensation and the imposition of administrative actions on the authors of the actions that were imposed on him.

[42] The applicant submits that the CDS, considering his rank, position and the resources available to him, should have recognized that all of the actions that were imposed on him, in conjunction with the administrative errors, delays and breaches of procedural fairness, amounted to harassment. He claims that it would have been reasonable for anyone in the CDS's position to recognize and condemn the harassment he had suffered.

B. *Position of the respondent*

[43] The respondent argues that the remedies ordered by the CDS are reasonable and fall within his discretionary authority. He maintains that the applicant's requests, that is, that the PER be rewritten and that the letter dated March 1, 2003, be withdrawn or redacted, would have also been possible remedies, but that it was up to the CDS to choose the remedies he deemed the most appropriate. The actions he ordered fall within the acceptable outcomes in respect of the evidence and should not be reviewed. The respondent adds that it is clear from the CDS's decision that he understood and considered the applicant's submissions and that his reasons are clear and make it possible to understand the basis of his decision.

[44] With respect to the criticism made regarding the demand for recognition that the applicant was the subject of harassment, the respondent raises that the applicant did not file a harassment complaint and that the grievances before the CDS did not seek a declaration in that respect. The applicant's harassment allegation was part of his claim for monetary compensation and for the

imposition of actions on the officers who imposed disciplinary actions on him and the CDS's decision, in those respects, is not challenged by the applicant.

C. *Discussion*

[45] First, it should be specified that the treatment of the applicant after the incidents in Afghanistan seem completely disproportionate, unfair and unreasonable to me. I believe, upon reading the entire file, that the CDS correctly interpreted the situation and that his decision to set aside all of the actions imposed on the applicant was completely justified.

[46] I also understand the applicant's frustration and am sensitive to the harm he claims to have suffered because his PER was not rewritten and because the letter dated March 1, 2003, by Major-General Leslie remains, in its current form, in his personal file. I would hope that the applicant's fears in this respect are unfounded and that any future superior would have access to the applicant's file in its entirety, including the CDS's decision and this judgment.

[47] The applicant is basically criticizing the CDS for not going far enough with the remedies he ordered. The submissions made by the applicant, however, have not convinced me that the intervention of the Court is warranted.

[48] I believe that the remedies ordered by the CDS were reasonable and that his decision to not order that the PER be rewritten or to have the letter dated March 1, 2003, withdrawn or redacted fall within the range of possible acceptable outcomes in respect of the evidence and the elements before him.

[49] The CDS has discretion when determining the merit of grievances. This discretion is especially important when determining the remedies he deems appropriate under the circumstances because of his in-depth knowledge of the military environment and its operations. The Court must show deference to these decisions. It is clear from the CDS's decision that he properly understood and considered the applicant's requests and arguments and that his decision is intelligible and well-reasoned with respect to why he found it inappropriate to order that the PER be rewritten and the repatriation letter be withdrawn. The reasons raised by the CDS for not ordering the PER to be rewritten are not illogical and rely reasonably on the evidence. It is true that the authors of the PER were holding to their position and refused to modify their evaluation. It is also correct that they did not recognize the value of the evaluation by Lieutenant-Colonel Nayle. Regarding the decision to keep the entire repatriation letter in his file, the CDS found that Major-General Leslie's recommendation was merely an inconsequential opinion because he ordered the decision made on the basis of this recommendation to be set aside. I cannot find that this reasoning falls outside the range of possible, acceptable outcomes because the CDS's statement is technically correct. I am also sympathetic to the applicant's arguments when he maintains that this letter will be accessible to anyone who reads his file, but this argument is insufficient to render the decision unreasonable in my opinion.

[50] I also believe that it would also have been reasonable, and maybe preferable, for the CDS to have allowed the applicant's requests. However, it is the very nature of the reasonableness standard to recognize that more than one solution to a problem may be reasonable and unless the Court is convinced that the solution or interpretation accepted by the administrative tribunal does not

constitute one of the possible outcomes which are defensible in respect of the facts and law, the Court must not intervene to substitute its own assessment of the evidence or its own solutions for those chosen by the administrative decision-maker.

[51] In *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, Justice Binnie, writing for the majority, clearly indicated that reviewing courts cannot substitute their own appreciation of the appropriate solution. He stated the following:

> 59 Reasonableness is a single standard that takes its colour from the context. One of the objectives of *Dunsmuir* was to liberate judicial review courts from what came to be seen as undue complexity and formalism. Where the reasonableness standard applies, it requires deference. Reviewing courts cannot substitute their own appreciation of the appropriate solution, but must rather determine if the outcome falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47). There might be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome.

[52] These principles must apply in this case.

[53] I will now address the applicant's third criticism of the CDS's decision. The applicant essentially criticizes the CDS for not taking the initiative to declare that all of the treatment imposed on him constituted harassment. With respect, I believe that this argument does not render the CDS's decision unreasonable.

[54] First, the CDS did not hear a harassment grievance, but rather three grievances on specific actions seeking specific remedies. None of the grievances sought a declaration that the applicant

was the subject of harassment. The CDS's mandate consisted of deciding the grievances before him and ruling on the specific requests contained in the grievances. It is true that the applicant raised that he was the subject of a harassment campaign, but this allegation was made in the context of and in support of his monetary claim and of his request that disciplinary actions be imposed on the authors of the actions that were imposed on him. However, the CDS did not allow these claims and that part of his decision is not the subject of this application for judicial review.

[55] The CDS acted as authority to decide the grievances submitted by the applicant. The applicant's criticism of the CDS is now more so related to his role as senior manager of the CF than his role as adjudicator. The applicant wishes that the CDS had taken the initiative to declare that he was the subject of harassment and to denounce this situation. The CDS could have done so, but was not obligated to go that far. He clearly denounced the unreasonableness of the actions imposed by the respondent, but was not hearing a harassment grievance and was not obligated to go further than what the applicant himself claimed in his grievances.

[56] For all of these reasons, I consider the CDS's decision reasonable in all respects that there is no basis for the Court to intervene.

[57] Given the particular circumstances of this case, there is no order as to costs.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

"Marie-Josée Bédard"
Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-579-11
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APPEARANCES:

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