

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20170627**

**Docket: A-348-16**

**Citation: 2017 FCA 137**

**CORAM: GAUTHIER J.A.  
DE MONTIGNY J.A.  
WOODS J.A.**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Appellant**

**And**

**CAPTAIN DAVID SIMMS**

**Respondent**

Heard at St. John's, Newfoundland and Labrador, on June 27, 2017.  
Judgment delivered from the Bench at St. John's, Newfoundland and Labrador, on June 27, 2017.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**GAUTHIER J.A.**

Federal Court of Appeal



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ATTORNEY GENERAL OF CANADA

Appellant

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CAPTAIN DAVID SIMMS

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**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at St. John's, Newfoundland and Labrador, on June 27, 2017).

**GAUTHIER J.A.**

[1] The Attorney General of Canada (AGC) appeals from a decision of Heneghan J. of the Federal Court (2016 FC 770), which allowed Captain D. Simms' application for judicial review of a decision of the Director General of Canadian Forces Grievance Authority (Director General), confirming the dismissal of his grievance made under the *Queen's Regulations and Orders for the Canadian Forces* Chapter 7 (QR&Os). The Director General refused the

grievance on the grounds that it was submitted outside the expiration of the three-month period prescribed at section 7.06 of the QR&Os and because he was not satisfied that the delay to file was caused by a circumstance which was unforeseen, unsuspected or beyond Captain Simms' control.

[2] The AGC no longer disputes that it was open to the Federal Court to quash the decision as unreasonable, considering our Court's decision in *Canada (Attorney General) v. Beddows*, 2016 FCA 294, 273 A.C.W.S. (3d) 537 [*Beddows*], which was released after the Federal Court decision in this matter and after the filing of the Notice of Appeal.

[3] Rather, the AGC argues that the Federal Court should not have substituted its own views of what was in the "interest of justice" in this case, and should not have directed the Director General to grant the extension of time and review the actual merits of Captain Simms' grievance. Again, our Court has recently issued a decision directly on point. Indeed, in *Canada (Citizenship and Immigration) v. Yansane*, 2017 FCA 48, [2017] F.C.J. No. 264, our Court made it clear that only directions and instructions explicitly stated in the judgment may bind the administrative decision-maker responsible for re-examining a case.

[4] In this case, the Federal Court made no such direct and explicit direction in its judgment.

[5] Obviously, the Director General in this matter may wish to consider the circumstances suggested by our Court in *Beddows* at paragraph 48, and by the Federal Court in its reasons, but as mentioned by our Court in *Beddows* at paragraph 49, the decision as to whether or not the

grievance ought to be considered is entirely that of the Director General who must exercise his own discretion pursuant to subsection 7.06(3) of the (QR&Os).

[6] The appeal shall be dismissed without costs, given that Captain Simms chose not to appear to oppose the AGC's appeal.

"Johanne Gauthier"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**APPEAL FROM AN ORDER OF THE HONOURABLE MADAM JUSTICE  
ELIZABETH HENEGHAN DATED JULY 12, 2016, DOCKET NO. T -983-15  
DOCKET: A-348-16**

**STYLE OF CAUSE: ATTORNEY GENERAL OF  
CANADA v. CAPTAIN DAVID  
SIMMS**

**PLACE OF HEARING: St. John's, Newfoundland and  
Labrador**

**DATE OF HEARING: JUNE 27, 2017**

**REASONS FOR JUDGMENT OF THE COURT BY: GAUTHIER J.A.  
DE MONTIGNY J.A.  
WOODS J.A.**

**DELIVERED FROM THE BENCH BY: GAUTHIER J.A.**

**APPEARANCE:**

M. Kathleen McManus FOR THE APPELLANT

**SOLICITORS OF RECORD:**

Nathalie G. Drouin FOR THE APPELLANT  
Deputy Attorney General of Canada  
Ottawa, Ontario