

Federal Court



Cour fédérale

**Date: 20160707**

**Docket: T-1284-15**

**Citation: 2016 FC 767**

[ENGLISH TRANSLATION]

**Montréal, Quebec, July 7, 2016**

**PRESENT: The Honourable Madam Justice St-Louis**

**BETWEEN:**

**SYLVAIN LAFRENIÈRE**

**Applicant**

**and**

**DIRECTOR GENERAL CANADIAN FORCES  
GRIEVANCE AUTHORITY  
THE MINISTER OF NATIONAL DEFENCE  
THE ATTORNEY GENERAL OF CANADA**

**Respondents**

**JUDGMENT AND REASONS**

I. Introduction

[1] Mr. Sylvain Lafrenière, the applicant, is seeking judicial review of the decision by Colonel J.R.F. Malo as the Final Authority (FA) in the Canadian Armed Forces (CAF) grievance

system. In his decision, rendered on June 29, 2015, the FA acknowledges that Mr. Lafrenière was aggrieved but nonetheless concludes that he is unable to grant him the remedy sought.

[1] Moreover, though he submitted an application under Part 5 of the *Federal Courts Rules*, SOR/98-106 (the Rules), Mr. Lafrenière requested, in his notice and his memorandum, 1) that the application be treated and proceeded with as an action based on subsection 18.4(2) of the *Federal Courts Act*, R.S.C., 1985, c. F-7 (the Act), presented in the appendix; 2) alternatively, that the Court render the decision that the FA should have rendered; 3) alternatively, that the Court split the case to order that it be transferred to the Director, Claims and Civil Litigation (DCCL) to determine and offer to the applicant adequate compensation, and to authorize Mr. Lafrenière, in case of disagreement with the submitted offer, to request that this Court determine an adequate amount for compensation; and, finally 4) that the Court order the respondents to pay legal expenses and extrajudicial fees and costs.

[2] In the hearing before this Court, Mr. Lafrenière stated that his request that the Court [TRANSLATION] “render the decision that should have been rendered” also included, as an alternative, a request to return the case to the FA for redetermination should the application for judicial review be allowed.

[3] For the reasons laid out below, the Court shall allow the application for judicial review and return the case to the FA for redetermination. However, the Court will not proceed with the application as an action under subsection 18.4(2) of the Act, nor will it split the case.

[4] Essentially, the Court finds that the FA failed to address the request for financial compensation Mr. Lafrenière made in his grievance and that this failure to address one of the issues raised in the grievance makes the decision unreasonable and justifies the case's referral to the FA for redetermination.

## II. Background

[5] On June 8, 2007, after suffering a knee injury, Mr. Lafrenière was under medical employment limitations. On January 16, 2008, he requested retention for three (3) years, which would allow him to complete fifteen (15) years of service in the CAF.

[6] On February 6, 2008, Mr. Lafrenière was transferred to a journalism position with the "Army News" unit and received only praise for his performance there.

[7] However, in July 2009, allegations of inappropriate behaviour were made against Mr. Lafrenière to the commanding officer of the QC 2 Cdn Div. According to these allegations, Mr. Lafrenière produced a DVD using the "Army News" unit's facility; he did not receive approval to receive sponsorships; he sold the DVDs; he used material protected by intellectual property rights; and his actions led to personal profit.

[8] On September 8, 2009, Mr. Lafrenière was summoned to the office of his superiors, who informed him that he was relieved of his duties as a journalist. However, his superiors did not tell him about the allegations against him and did not offer him an opportunity to explain himself.

Also, in the weeks that followed, his requests to meet with the commanding officer went unanswered.

[9] The same day, on September 8, 2009, the military police launched an investigation into the allegations of inappropriate conduct made against Mr. Lafrenière, but he only formally learned of it on October 22.

[10] On September 21, 2009, Mr. Lafrenière was assigned to the 2 Cdn Div HQ.

[11] On October 9, 2009, the commanding officer sent him a letter reiterating the information given on September 8 and informing him that his change in position was a preventive administrative measure, and that an investigation would be conducted on the production and distribution of the DVD. This letter was given to Mr. Lafrenière on October 22, 2009.

[12] In November 2009, Mr. Lafrenière's supervisors learned that the military police officer tasked with the investigation was on extended sick leave and the case had not been handed off to another investigator.

[13] On May 11, 2010, Mr. Lafrenière was transferred to the 12<sup>e</sup> Régiment blindé du Canada.

[14] On October 5, 2010, still having received no explanation for the termination of his duties as a journalist, Mr. Lafrenière filed a grievance. He requested that he be provided, in writing, with the reasons why 1) his position as a journalist was terminated; 2) he was under military

investigation; and 3) he had still not been questioned as part of the military police investigation that had been ongoing for over a year.

[15] Near the end of the year in 2010, a follow-up was initiated with the military police, but there were no meaningful results. On November 14, 2011, Mr. Lafrenière was transferred to the Valcartier Joint Personnel Support Unit (JPSU).

[16] On November 1, 2011, Mr. Lafrenière sent a demand letter to the CAF, and in February 2012, he filed a harassment complaint. On March 27, 2012, Major Éric Charland, Legal Officer, responded to the demand letter and stated his opinion that Mr. Lafrenière [TRANSLATION] “must exhaust the internal recourse mechanisms set out in the *National Defence Act* before initiating a claim or litigation (see in particular *Sandiford v. Canada*, 2007 FC 225, at paragraphs 28-29; *Villeneuve v. The Queen*, 2006 FC 456, at paragraph 27),” while on September 13, 2012, the closing letter for the harassment complaint was signed.

[17] In March 2012, the chain of command informed Mr. Lafrenière that the military police investigation had finished and the allegations against him had been deemed unfounded.

[18] On July 9, 2012, three (3) professionals from the Valcartier health centre signed a letter describing the impact the whole situation had had on Mr. Lafrenière’s mental health.

[19] On October 23, 2012, Mr. Lafrenière was discharged for medical reasons.

[20] On July 22, 2013, Brigadier-General Jean-Marc Lanthier, in his role as Initial Authority (IA), granted Mr. Lafrenière's grievance and, as requested, answered his three (3) questions as compensation.

[21] On October 4, 2013, after the IA's decision, Mr. Lafrenière amended his grievance. He added facts and requested, as compensation for moral damages and the effects on his physical and psychological security and his right to preserve his reputation, honour and dignity, 1) a letter of apology signed by military upper management; 2) a sum of \$400,000 to be adjusted and allocated on request; and 3) a sum of \$100,000 as punitive damages.

[22] The case was submitted to the Military Grievances External Review Committee (the Committee), which finds that the issue is to determine whether the measures taken by the complainant's chain of command complied with the principles of procedural fairness. On December 1, 2014, the Committee issued its findings and recommendations. It found that Mr. Lafrenière was aggrieved by a decision, an act or an omission in the CAF's cases.

[23] The Committee notes that the decision to release Mr. Lafrenière from his duties as a journalist falls more within the context of an administrative action taken under Defence Administrative Orders and Directive (DAOD) 5019-4, *Remedial Measures*, and DAOD 5019-2, *Administrative Review*, than relief from performance of military duty under the Queen's Regulations and Orders for the Canadian Forces (QR&O) 19.75. However, it finds that the requirements with regard to the principles of procedural fairness are the same. The Committee thus found that any decision that has an impact on the career of a military member, it is

necessary to at least 1) inform that member of the facts to be considered; 2) give him or her the opportunity to make representations; and 3) render a decision after consideration in which the reasons for the decision are explained.

[24] The Committee observed that 1) Mr. Lafrenière was not notified of the actions and facts in question that motivated the commanding officer's decision to release him from his duties as a journalist; 2) the commanding officer made the decision before meeting with Mr. Lafrenière, without giving him an opportunity to put forth his arguments and explanations, which is a grave breach of procedural fairness; and 3) the commanding officer's letter of October 9, 2009, only confirms that the decision was made, and moreover, that it did not reveal all of the reasoning behind the decision.

[25] The Committee then points out the lack of follow-up from the military police, the fact that the action taken against Mr. Lafrenière was inappropriate, and the lateness of the CAF's response to the demand letter of November 1, 2011, and notes that the investigation process did not fall within the competence of the military police.

[26] With regard to the financial compensation Mr. Lafrenière requested, the Committee notes that the Chief of the Defence Staff (CDS) does not have any authority to grant financial compensation. The Committee therefore makes two recommendations: 1) that the CDS acknowledge that the circumstances of this case were handled without regard for the principles of procedural fairness to which the complainant was entitled, and 2) that it transfer the grievance

case to the DCCL to evaluate whether the complainant can be financially compensated based on these breaches.

[27] Mr. Lafrenière then brought his grievance before the FA, which rendered its decision on June 29, 2015, and this is the decision being contested.

### III. Contested decision

[28] As mentioned above, the FA's decision was that Mr. Lafrenière was aggrieved, but it could not grant the compensation requested.

[29] The FA finds that it must [TRANSLATION] “determine whether the decision to release you from your position as a military journalist with the ‘Army News’ unit, based on allegations leading to an MP investigation, was reasonable and complied with the policies in force.”

[30] In its analysis, the FA examines 1) procedural fairness; 2) leadership in managing the complaint against Mr. Lafrenière; 3) the military police investigation; 4) the letter of apology requested as a remedy; and 5) the Committee's recommendation with regard to financial compensation.

[31] Regarding *procedural fairness*, the FA essentially finds that the Committee erred in its assessment of the content of the duty of fairness to Mr. Lafrenière. The FA specifically notes that Mr. Lafrenière was not relieved from military duty, that he served in the public interest and not his personal interests, that he was previously in a retention period, that allegations had been



made against him, and that there was confusion regarding whether QR&O 19.75 applied, but it did not. The FA ultimately found that the Committee exaggerated the right to procedural fairness that Mr. Lafrenière was to benefit from, since the approach of offering procedural fairness, though reassuring for management, is not a legal obligation.

[32] In terms of *leadership* in managing the complaint, the FA concluded that a number of errors were made when handling Mr. Lafrenière's case, and that the most flagrant breach was in the lack of transmission of information. The FA found that the breaches in question were not necessarily errors of law, but rather that the chain of command should have handled Mr. Lafrenière's case with much more diligence and compassion.

[33] Regarding *the military police investigation*, the FA found it unacceptable that the investigation lasted over two (2) years. It notes that the chain of command had no authority to require the military police to accelerate their investigation or to insist that Mr. Lafrenière be questioned, but nonetheless asserts that it should have followed up more thoroughly to resolve the situation as soon as possible and that the grievance process is not the correct forum for complaints about military police conduct.

[34] The FA then tackles the question of compensation. With regard to Mr. Lafrenière's request for a *letter of apology* from military upper management, the FA claims that ordering that a letter of apology be given could be equivalent to a violation of freedom of expression, and that apologies under duress are not authentic and hold no value. The FA offered a personal apology to Mr. Lafrenière for the delay in handling his case but did not grant the requested remedy.

[35] In the matter of *financial compensation*, the FA reacted exclusively to the Committee's recommendation to transfer the grievance case to the DCCL to have it evaluate whether Mr. Lafrenière could be financially compensated due to the breaches in question. After having reviewed the legislative support, the nature of the relationship between Mr. Lafrenière and the Crown, and the reasons behind the request for damages against the Crown, the FA ultimately found that Mr. Lafrenière did not establish sufficient evidence to conclude that the issue could lead to a claim against the Crown.

[36] Therefore, the FA limited itself to examining the value of the Committee's recommendation and did not in any way address the request for financial compensation made by Mr. Lafrenière in his amended grievance on October 4, 2013.

#### IV. Issues in dispute

[37] This Court must determine the appropriate standard of review and respond to the questions raised by the parties. The wording of the questions as proposed by the Attorney General of Canada seems more fair. Therefore, the Court must examine whether the FA's decision is reasonable and whether the remedies sought by Mr. Lafrenière can be granted.

V. Parties' Positions

A. *Position of the applicant, Mr. Lafrenière*

[38] Essentially, Mr. Lafrenière claims that the FA decision is incorrect and unreasonable for the five (5) reasons laid out below, and he claims that the request should be could be proceeded with as an action in order to compensate for the five-year delay between the grievance and the most recent decision, as well as the respondents' refusal to consider the demand letter that was submitted to them.

(1) The FA's decision is incorrect and unreasonable

- a) *The FA did not satisfy the legal requirement imposed upon it to provide reasons for its decision not to act on the findings and recommendations of the Committee.*

[39] Mr. Lafrenière submits that under subparagraph 29.13(2), presented in the appendix, of the *National Defence Act*, RSC, 1985, c. N-5, the FA is required to provide reasons for its decision if it does not act on a finding or recommendation of the Committee. Mr. Lafrenière's position is that the FA's decision does not satisfy the principles of justification, transparency and intelligibility set out in *Dunsmuir v. New Brunswick*, 2008 SCC 9, at paragraph 47.

[40] Mr. Lafrenière also claims that the FA erred in reformulating the question raised in his grievance and thereby distorted the very essence of that question, rendering its decision unreasonable or incorrect under law.

[41] Mr. Lafrenière argues that by modifying the question, the FA obliterated the central issue raised by the grievance, namely the violation of the principles of natural justice and the grave violation of his fundamental rights. The issues raised by the grievance necessarily involve reviewing violations of the principles of natural justice, including the right to be heard and the rule that no one should be the judge in his or her own cause. Mr. Lafrenière also argues that the very grievance process of the CAF contradicts the principle of natural justice that no one can be a judge in his or her own cause.

[42] Mr. Lafrenière argues that the FA's decision contains contradictory reasons, because the FA states that procedural fairness was respected and then finds that the chain of command committed grave breaches.

[43] Mr. Lafrenière submits that the Committee, as an administrative tribunal, enjoys a certain distance that encourages a greater objectivity that this Court should consider when evaluating the reasonableness of the reasons for the FA's decision.

- b) *The FA erred in its assessment of the content of the duty of procedural fairness.*

[44] Mr. Lafrenière argues that the FA did not consider important elements of the evidence submitted and reported by the Committee when it concluded, in contradiction with the Committee, that Mr. Lafrenière exaggerated his right to procedural fairness.

[45] Mr. Lafrenière also argues that the FA made an error in law when it made a distinction between a manual and a policy and when applying the QR&Os, which only codify the applicant's right to be heard.

- c) *The FA failed to pursue the challenges against the facts that arose from the evidence and that showed the breaches of the principles of natural justice and the applicant's fundamental rights by the chain of command.*

[46] Mr. Lafrenière argues that the FA omitted or refused to consider the serious, specific and consistent facts that he has presented. The FA therefore refused to exercise its jurisdiction, stating that the requested compensation could not be granted under the pretext that those responsible for the violation of Mr. Lafrenière's fundamental rights are military police representatives.

[47] Mr. Lafrenière also claims that it was incorrect not to consider the joint and several fault of the military police and the chain of command. The FA erred in not considering that the breaches allegedly committed by the military police are necessarily the responsibility of the single employer, the Department of National Defence.

- d) *The FA erred in omitting or refusing by omission to consider or report the crucial elements of the evidence brought up by the Committee.*

[48] Mr. Lafrenière referred to dozens of excerpts from the Committee's recommendations and findings, which it would not be useful to reproduce here.

- e) *The FA erred in omitting or refusing by omission to pursue the requested remedies.*

[49] Mr. Lafrenière claims that the FA erred in refusing to pursue the requested remedies when it received his grievance.

[50] Moreover, Mr. Lafrenière argues that the FA had the necessary authority to grant financial compensation under the *Canadian Forces Grievance Process Ex Gratia Payments Order* PC 2012-0861 [Order] adopted after the decision in *Canada v. Bernath*, 2007 FCA 400 (*Bernath*).

[51] Mr. Lafrenière argues that the FA therefore should have ruled that it had the authority to grant the financial compensation requested in the grievance and ruled on whether or not that compensation should be granted, and that failure to rule on these matters constitutes an error.

- (2) Proceeding with the case as an action

[52] Mr. Lafrenière relies on the Federal Court of Appeal decision in *Meggesson v. Canada* (Attorney General), 2012 FCA 175 to argue that the Court should have agreed to adjourn the hearing so the application could be proceeded with as an action. Mr. Lafrenière claims that the application for judicial review cannot grant the appropriate remedy in damages and that the transformation into an action is therefore justified.

B. *Position of the respondent, the Attorney General of Canada (AGC)*

[53] The AGC is the only respondent to appear, submit a memorandum and make a plea in the hearing for this case. The Director General, Canadian Forces Grievance Authority, did not appear, but Mr. Côté of the Judge Advocate General's office attended the hearing. The Minister of National Defence did not take part in the litigation.

[54] The AGC claims that the decision is reasonable and that remedy in damages is prohibited.

(1) Legal framework

[55] The AGC reiterated the legal framework governing the grievance procedure in the CAF and highlighted sections 12, 18, 29, 29.11 and 29.13 of the *National Defence Act*, RSC 1985, c. N-5, presented in the appendix, and chapter 7 of the QR&Os.

(2) Standard of review

[56] The AGC argues that the FA's decision must be reviewed according to the standard of reasonableness and cites *Moodie v. Canada*, 2009 FC 1217, at paragraph 18.

(3) Reasonableness of the decision

[57] The AGC argues that the FA's decision is reasonable and that Mr. Lafrenière is asking the Court to replace the FA's consideration of the evidence with its own, which it cannot do.

According to the AGC, Mr. Lafrenière did not have a right to a particular assignment, he lost no

benefits by being released from his position as a journalist, and he did not prove any breach of the principles of natural justice or procedural fairness.

[58] The FA was able to reject the Committee's findings and recommendations by substituting its own reasoned decision, and it made no error in this regard.

(4) Remedy in damages is prohibited

[59] The AGC argues in its memorandum that the claim of damages is inadmissible because 1) it is the wrong procedural vehicle, as Mr. Lafrenière cannot claim damages in the context of an application for judicial review; 2) the FA does not have the power to grant financial compensation based on a grievance being filed under section 29 of the *National Defence Act*, RSC 1985, c. N-5; 3) the grievance process was not designed to handle issues concerning rights protected by the Charter; 4) the remedy for defamation is prescribed (section 2929 of the *Civil Code of Québec*); and 5) compensation was already granted for the damages by the Pensions Tribunal.

[60] In the hearing, the AGC nuanced its position regarding the FA's authority to grant financial compensation and acknowledged that the FA did not address this issue in its decision.



VI. Standard of review

[61] The question of procedural fairness is subject to the standard of correctness, while the FA's decision must be examined under the standard of reasonableness (*Moodie v. Canada (Attorney General)*, 2015 FCA 87, at paragraph 52).

VII. Analysis

[62] In their memoranda and at the hearing, the parties raised and responded to a number of issues and arguments. However, one of these issues allows the resolution of the case, the quashing of the FA's decision, and a referral for a new determination.

[63] Namely, the FA's failure to address one of the requests raised by Mr. Lafrenière in his amended grievance on October 4, 2013, that of financial compensation, appears to be a fatal error. For the reasons described below, this omission renders the decision unreasonable.

[64] The Committee found that the FA did not have the authority to grant financial compensation, which is consistent with what the FCA confirmed in *Bernath*, cited above. This finding led the Committee to recommend that Mr. Lafrenière's grievance case be transferred to the DCCL so that it could assess the possibility of financially compensating him.

[65] The FA, meanwhile, did not address the matter of financial compensation, but rather limited itself to examining the Committee's recommendation to transfer Mr. Lafrenière's case to the DCCL.

[66] However, the *Bernath* decision no longer reflects the current state of the law in this matter, as confirmed by Mr. Justice Barnes in *Chua v. Canada (Attorney General)*, 2014 FC 285 (*Chua*), at paragraph 13, where he writes: “The legislative landscape has changed since the decisions in *Bernath*, above. The CDS now has the authority to award financial relief of up to \$100,000.00 and, until a grievor has exhausted all other forms of potential recovery, it is premature to consider a claim to civil damages even if it is based on allegations of Charter breaches.” This authority stems from the adoption of the Order.

[67] The Court refrains from speculating on the reasons which motivated the FA not to rule on its authority or on the granting or refusal of financial compensation. Regardless of these reasons, though, this omission constitutes an error because the FA must address all the issues in the grievance, and its failure to do so renders the decision unreasonable (*Bossé v. Canada (Attorney General)*, 2015 FC 1143, at paragraph 47). Moreover, the impact of this omission is exacerbated in this case by the fact that the FA is now authorized to decide whether a certain financial compensation is granted.

[68] However, since Mr. Lafrenière did not exhaust all other forms of remedy, the Court cannot consider the opportunity to proceed with the request as an action (*Chua*, at paragraph 13, and *Moodie v. Canada*, 2008 FC 1233, at paragraph 41, confirmed by *Moodie v. Canada (National Defence)*, 2010 FCA 6).

[69] In light of this result, it is not necessary to examine Mr. Lafrenière’s other arguments.

[70] Finally, the Court will fix the costs as a flat sum in favour of Mr. Lafrenière, but does not see anything in the behaviour of counsel for the respondents to justify awarding solicitor-and-client costs.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that:**

- 1) The application for judicial review is allowed.
- 2) The decision rendered on June 29, 2015, by Colonel J.R.F. Malo as the Final Authority (FA) is quashed.
- 3) The case is referred back to the FA for a new determination on the basis of these reasons.
- 4) The whole with costs in the amount of \$1000 in favour of Mr. Lafrenière.

“Martine St-Louis”

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Judge

Appendix

*Federal Courts Act,*  
RSC 1985, c F-7

**18.4** (1) Subject to subsection (2), an application or reference to the Federal Court under any of sections 18.1 to 18.3 shall be heard and determined without delay and in a summary way.

(2) The Federal Court may, if it considers it appropriate, direct that an application for judicial review be treated and proceeded with as an action.

*National Defence Act,*  
RSC 1985, c N-5

**12** (1) The Governor in Council may make regulations for the organization, training, discipline, efficiency, administration and good government of the Canadian Forces and generally for carrying the purposes and provisions of this Act into effect.

(2) Subject to section 13 and any regulations made by the Governor in Council, the Minister may make regulations for the organization, training, discipline, efficiency,

*Loi sur les Cours fédérales,* LRC 1985, c F-7

**18.4** (1) Sous réserve du paragraphe (2), la Cour fédérale statue à bref délai et selon une procédure sommaire sur les demandes et les renvois qui lui sont présentés dans le cadre des articles 18.1 à 18.3.

(2) Elle peut, si elle l'estime indiqué, ordonner qu'une demande de contrôle judiciaire soit instruite comme s'il s'agissait d'une action.

*Loi sur la défense nationale,* LRC 1985, c N-5

**12** (1) Le gouverneur en conseil peut prendre des règlements concernant l'organisation, l'instruction, la discipline, l'efficacité et la bonne administration des Forces canadiennes et, d'une façon générale, en vue de l'application de la présente loi.

(2) Sous réserve de l'article 13 et des règlements du gouverneur en conseil, le ministre peut prendre des règlements concernant l'organisation,

administration and good government of the Canadian Forces and generally for carrying the purposes and provisions of this Act into effect.

(3) The Treasury Board may make regulations

(a) prescribing the rates and conditions of issue of pay of military judges, the Director of Military Prosecutions and the Director of Defence Counsel Services;

(b) prescribing the forfeitures and deductions to which the pay and allowances of officers and non-commissioned members are subject; and

(c) providing for any matter concerning the pay, allowances and reimbursement of expenses of officers and non-commissioned members for which the Treasury Board considers regulations are necessary or desirable to carry out the purposes or provisions of this Act.

(4) Regulations made under paragraph (3)(a) may, if they so provide, have retroactive effect. However, regulations that prescribe the rates

l'instruction, la discipline, l'efficacité et la bonne administration des Forces canadiennes et, d'une façon générale, en vue de l'application de la présente loi.

(3) Le Conseil du Trésor peut, par règlement :

a) fixer les taux et conditions de versement de la solde des juges militaires, du directeur des poursuites militaires et du directeur du service d'avocats de la défense;

b) fixer, en ce qui concerne la solde et les indemnités des officiers et militaires du rang, les suppressions et retenues;

c) prendre toute mesure concernant la rémunération ou l'indemnisation des officiers et militaires du rang qu'il juge nécessaire ou souhaitable de prendre par règlement pour l'application de la présente loi.

(4) Tout règlement pris en vertu de l'alinéa (3)a) peut avoir un effet rétroactif s'il comporte une disposition en ce sens; il ne peut toutefois, dans le cas des juges militaires, avoir d'effet :

a) dans le cas de

and conditions of issue of pay of military judges may not have effect

(a) in the case of an inquiry under section 165.34, before the day referred to in subsection 165.34(3) on which the inquiry that leads to the making of the regulations is to commence; or

(b) in the case of an inquiry under section 165.35, before the day on which the inquiry that leads to the making of the regulations commences.

**18** (1) The Governor in Council may appoint an officer to be the Chief of the Defence Staff, who shall hold such rank as the Governor in Council may prescribe and who shall, subject to the regulations and under the direction of the Minister, be charged with the control and administration of the Canadian Forces.

(2) Unless the Governor in Council otherwise directs, all orders and instructions to the Canadian Forces that are required to give effect to the decisions and to carry out the directions of the Government of Canada or the Minister

l'examen prévu à l'article 165.34, avant la date prévue au paragraphe 165.34(3) pour le commencement des travaux qui donnent lieu à la prise du règlement;

b) dans le cas de l'examen prévu à l'article 165.35, avant la date du début de l'examen qui donne lieu à la prise du règlement.

**18** (1) Le gouverneur en conseil peut élever au poste de chef d'état-major de la défense un officier dont il fixe le grade. Sous l'autorité du ministre et sous réserve des règlements, cet officier assure la direction et la gestion des Forces canadiennes.

(2) Sauf ordre contraire du gouverneur en conseil, tous les ordres et directives adressés aux Forces canadiennes pour donner effet aux décisions et instructions du gouvernement fédéral ou du ministre émanent, directement ou indirectement, du chef d'état-major de la défense.

**29** (1) Tout officier ou militaire du rang qui s'estime lésé par une décision, un acte ou une omission dans les

shall be issued by or through the Chief of the Defence Staff.

**29** (1) An officer or non-commissioned member who has been aggrieved by any decision, act or omission in the administration of the affairs of the Canadian Forces for which no other process for redress is provided under this Act is entitled to submit a grievance.

(2) There is no right to grieve in respect of

(a) a decision of a court martial or the Court Martial Appeal Court;

(b) a decision of a board, commission, court or tribunal established other than under this Act; or

(c) a matter or case prescribed by the Governor in Council in regulations.

(2.1) A military judge may not submit a grievance in respect of a matter that is related to the exercise of his or her judicial duties.

(3) A grievance must be submitted in the manner and in accordance with the conditions prescribed in regulations made by

affaires des Forces canadiennes a le droit de déposer un grief dans le cas où aucun autre recours de réparation ne lui est ouvert sous le régime de la présente loi.

(2) Ne peuvent toutefois faire l'objet d'un grief :

a) les décisions d'une cour martiale ou de la Cour d'appel de la cour martiale;

b) les décisions d'un tribunal, office ou organisme créé en vertu d'une autre loi;

c) les questions ou les cas exclus par règlement du gouverneur en conseil.

(2.1) Le juge militaire ne peut déposer un grief à l'égard d'une question liée à l'exercice de ses fonctions judiciaires.

(3) Les griefs sont déposés selon les modalités et conditions fixées par règlement du gouverneur en conseil.

(4) Le dépôt d'un grief ne doit entraîner aucune sanction contre le plaignant.

(5) Par dérogation au paragraphe (4), toute erreur qui est découverte à la suite d'une enquête sur un grief peut être



the Governor in Council.

(4) An officer or non-commissioned member may not be penalized for exercising the right to submit a grievance.

(5) Notwithstanding subsection (4), any error discovered as a result of an investigation of a grievance may be corrected, even if correction of the error would have an adverse effect on the officer or non-commissioned member.

**29.11** The Chief of the Defence Staff is the final authority in the grievance process and shall deal with all matters as informally and expeditiously as the circumstances and the considerations of fairness permit.

**29.13** (1) The Chief of the Defence Staff is not bound by any finding or recommendation of the Grievances Committee.

(2) The Chief of the Defence Staff shall provide reasons for his or her decision in respect of a grievance if

(a) the Chief of the Defence Staff does not act on a finding or recommendation of the

corrigée, même si la mesure corrective peut avoir un effet défavorable sur le plaignant.

**29.11** Le chef d'état-major de la défense est l'autorité de dernière instance en matière de griefs. Dans la mesure où les circonstances et l'équité le permettent, il agit avec célérité et sans formalisme.

**29.13** (1) Le chef d'état-major de la défense n'est pas lié par les conclusions et recommandations du Comité des griefs.

(2) Il motive sa décision s'il s'écarte des conclusions et recommandations du Comité des griefs ou si le grief a été déposé par un juge militaire.

Grievances Committee;  
or

(b) the grievance was  
submitted by a military  
judge.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1284-15

**STYLE OF CAUSE:** SYLVAIN LAFRENIÈRE v. DIRECTOR GENERAL  
CANADIAN FORCES GRIEVANCE AUTHORITY,  
THE MINISTER OF NATIONAL DEFENCE, THE  
ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** QUÉBEC, QUEBEC

**DATE OF HEARING:** MAY 31, 2016

**JUDGMENT AND REASONS:** ST-LOUIS J.

**DATED:** JULY 7, 2016

**APPEARANCES:**

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Authority