

Federal Court



Cour fédérale

**Date: 20110128**

**Docket: T-1633-09**

**Citation: 2011 FC 100**

**Ottawa, Ontario, January 28, 2011**

**PRESENT: The Honourable Mr. Justice O'Keefe**

**BETWEEN:**

**MIHAI CODRIN**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review pursuant to subsection 18.1(4)(a) of the *Federal Courts Act*, R.S., 1985, c. F-7, of a decision of the Chief of Defence Staff (CDS), dated August 17, 2008, wherein the CDS denied the redress sought by the applicant.

[2] The applicant requests:

1. An order quashing the decision of the CDS;

2. An order compelling the Canadian Forces (CF) to grant the applicant the pay rates and retroactive commissioning as detailed in the enrolment message;
3. An order requiring the respondent to reimburse the applicant for costs; and
4. Such further and other order(s) as to this Honourable Court may seem just.

### **Background**

[3] Mihai Alexandru Codrin (the applicant) joined the Canadian Armed Forces on December 19, 2006, as an officer cadet under the Continuing Education Officer Training Plan (CEOTP).

[4] The applicant alleges that he was told by a military career counsellor that upon completion of the Basic Officer Training Program (BOTP), he would receive a retroactive promotion to second lieutenant and would be paid at the rate found at Table B, Level C of the Compensation Benefits Instruction (CBI), retroactive pay to the date of enrolment minus leave without pay (LWOP). He further alleges that this was confirmed by the recruiting centre staff on his enrolment day.

[5] On October 24, 2006, the Canadian Forces Recruiting Group Headquarters (CFRGHQ) issued a conditional offer of enrolment (COE) message. The COE offered that the applicant would be enrolled in the Canadian Forces Regular Force under the CEOTP. It further offered that the applicant would be:

- paid at the rate of Table A, Level D of the CBI 204.211(10)(b);
- enrolled in the rank of officer cadet; and
- commissioned in the rank of second lieutenant upon completion of the BOTP.

[6] On November 8, 2006, the Canadian Forces Recruiting Centre in Toronto (CFRC Toronto) advised the CFRGHQ that the applicant had accepted the October 24, 2006 offer.

[7] On December 19, 2006, the CFRC Toronto issued an enrolment of transfer posting instruction (the enrolment message) that authorized the applicant to be enrolled under the CEOTP and to be:

1. commissioned in the rank of second lieutenant upon successful completion of the BOTP retroactive to the date of his enrolment less LWOP; and
2. paid in accordance with CBI 204.211 Table B, Level C.

[8] The CEOTP is an officer entry plan for individuals who do not possess a university degree, but who are otherwise suitable candidates for officers and who commit to obtaining a degree. The Direct Entry Officer Plan (DEOP) is for individuals who already possess a degree on entry as officers into the CF. The rate of pay for officers in the rank of second lieutenant with no former non-commissioned service, who enter through the CEOTP is different to those who enter through the DEOP. The rate for the DEOP is set out in Table B, Level C and for the CEOTP at Table B, Level B.

[9] The applicant did not possess a university degree when he entered the CF.

[10] On August 2, 2007, the applicant was commissioned as a second lieutenant.

[11] The enrolment message was amended four times. The final amendment, on August 29, 2007, cancelled the first three and authorized the following amendment to the original enrolment message:

1. upon successful completion of the BOTP, the applicant was to be commissioned in the rank of second lieutenant;
2. the applicant would be paid in accordance with CBI 204.211(7)(b) Table A, Level B; and
3. the applicant would enter the promotion zone to lieutenant one year after the date on which he was commissioned at the rank of second lieutenant.

[12] In August 2007, the applicant received a message from the CF stating that the original enrolment message offer had been amended and his pay rate would be adjusted to Table B, Level B.

[13] On September 4, 2007, the applicant filed a Canadian Forces grievance (the grievance) pursuant to subsection 29(1) of the *National Defence Act*, R.S., 1985, c. N-5. He requested a change in his current pay level to what was indicated in his enrolment message and a retroactive commission to the date of enrolment minus LWOP.

[14] The initial authority was unable to determine the grievance within the time limit and forwarded the grievance to the CDS on September 28, 2007.

[15] On November 7, 2007, the grievance was forwarded to the Canadian Forces Grievance Board (CFGB). The CFGB provided the CDS its findings and recommendations on September 26, 2008.

[16] On August 17, 2009, the CDS released its decision denying the applicant the redress of the grievance.

### **CDS's Decision**

[17] The CDS denied the applicant the redress requested in the grievance.

[18] The CDS found that the December 16, 2006 enrolment message, which indicated the payable and level for the applicant and stated that the applicant's commission as second lieutenant would be retroactive to his enrolment date, was not consistent with CEOTP policy. The CDS noted that the CBI 204.211(7)(b) states that an officer cadet with no former non-commissioned member service, such as the applicant, should be paid at the rate found in Table A, Level B. As well, the Assistant Deputy Minister (Human Resources-Military) Instruction 09/05 states that candidates enrolled in the CEOTP will be at the rank of officer cadet until they complete the BOTP. It does not mention retroactive commissioning.

[19] The CDS noted that the enrolment message contained an error and stated that this was the reason for the amendment to the enrolment message.

[20] The CDS found that he did not have the authority to change the rate of pay for the applicant, as CF pay rates and conditions are set by the Treasury Board and listed in the CBI.

[21] The CDS further decided that he would not grant the retroactive pay to the applicant's enrolment date as this would treat the applicant in an advantageous manner compared with his CEOTP peers.

[22] The CDS found that he did not have the authority to settle the claim of negligent misrepresentation because he did not have the authority to accept liability on behalf of the Crown for a loss or damage arising out of, or occasioned by, the performance of service duties by CF members. He directed the applicant to contact the Director of Claims and Civil Litigation if he wished to pursue the claim for negligent misrepresentation.

[23] The CDS further found that he did not have the authority to determine any purported breach of contract or labour law in respect of the grievance because members of the CF Regular Force serve at pleasure and there is no employment contract between a member and the Crown.

[24] The CDS then addressed the concern raised by the CFGB that there is a systemic issue of misleading information given to enrolees in the CF. The CDS accepted some of the recommendations and rejected others. While these relate to a potential problem of misinformation in the CF recruitment process, the CDS stated that they did not have an impact on his consideration and determination of the redress of the grievance and they were provided to the applicant only to illustrate what actions have and will be taken.

[25] Ultimately, the CDS declined to grant the redress sought by the applicant.

### **Issues**

[26] The applicant submitted the following issues for consideration in his written submissions:

1. Whether the CDS acted without authority in rendering its decision?
2. Whether the CDS made the subject decision with a bias, violating the principle of natural justice?
3. Whether the CDS has partially denied the applicant the right to be fairly heard, violating a principle of natural justice?
4. Whether the CDS has ignored evidence supporting a claim of negligent misrepresentation?
5. Whether the CF has any obligation towards members once they are enrolled?
6. Whether the CF should be allowed to unilaterally modify an applicant's offered pay and entitlements after the applicant accepted and enrolled?

[27] I would rephrase the issues as follows:

1. What is the appropriate standard of review?
2. Did the CDS act within his jurisdiction in denying the redress of the grievance?
3. Was the applicant denied procedural fairness due to a lack of impartiality on the part of the CDS or was he denied the right to be heard?
4. Did the CDS err in declining to consider the applicant's claim against the Crown for negligent misrepresentation?

5. Did the CDS err in declining to address any contractual obligation on the part of the CF?

6. Did the CDS err in refusing to pay the applicant at the rate described in his enrolment message?

7. Did the CDS err in refusing to retroactively commission the applicant to the rank of second lieutenant?

### **Applicant's Written Submissions**

[28] The applicant submits that the CDS was biased when he rendered his decision because the CDS has a duty to ensure that all CF members of the same rank are treated uniformly. As such, the CDS could not assess the applicant's grievance in a neutral manner because the grievance requested redress which would set the applicant apart from other CF members of his rank. The applicant submits that the CDS' partiality is demonstrated by the assertion that the CDS would not grant the retroactive promotion because that would require the CDS to treat the applicant "in an advantageous manner compared to [his] CEOTP peers." The applicant submits that the CDS failed to consider all of the evidence supporting the grievance, due to this bias.

[29] The applicant submits that his contentions regarding the negligent misrepresentation against the Crown were not answered by the CDS.

[30] The applicant submits that the CF has obligations towards CF members which include the obligation to pay members and to provide medical care.



[31] The applicant submits that the CDS erred by refusing to allow the retroactive promotion and refusing to change the pay rate to that which was indicated in his enrolment message.

### **Respondent's Written Submissions**

[32] The respondent submits that the issues of jurisdiction and procedural fairness should be reviewed on the correctness standard. All other issues should be reviewed on the standard of reasonableness. This includes the question about whether the CDS should consider the claim of negligent misrepresentation since the CDS was interpreting its home statute and is an expert decision-maker. This also includes the question of whether there is a contractual obligation between the Crown and CF members because there is a privative clause and the CDS has special expertise over the administrative regime considered.

[33] The respondent submits that the CDS acted at all times within his jurisdiction in deciding to deny the redress of the grievance. He complied with the grievance process outlined in the *National Defence Act* and the Queen's Regulations and Orders for the Canadian Forces (QR&O). He submitted the grievance to the CFGB, he acted as a final authority in deciding the grievance and he considered and determined the grievance and advised the applicant in writing of his decision and reasons.

[34] The respondent submits that the standard of the duty of impartiality imposed on the CDS is the closed mind test. The respondent submits that the CDS met this standard by complying with the grievance process. The CDS made himself aware of the applicant's view of the facts and his

position. The CDS was also aware of the findings and recommendations of the CFGB. The CDS did not exhibit bias by declining to treat the applicant differently than other COETP recruits.

[35] The respondent submits that the applicant's right to be heard was respected at all times and is demonstrated through the various opportunities that the applicant was given to explain his position.

[36] The respondent submits that the CDS acted properly by declining to consider the applicant's claim against the Crown for negligent misrepresentation. The CDS interpreted article 19.41 of the QR&O a regulation promulgated under the *National Defence Act*. His interpretation of this article – that he does not have the authority to settle potential claims against the Crown – was transparent and intelligible and fell within a range of possible acceptable outcomes.

[37] The respondent submits that the jurisprudence is clear that there is no contractual relation between CF members and the Crown. The CDS' interpretation of the common law was within his particular expertise, was a reasonable interpretation and was, in fact, correct in law.

[38] The respondent submits that the CDS' decision to refuse to change the pay rate of the applicant was reasonable. The pay rates for CF members in the CEOTP are set by the Treasury Board pursuant to statute. The CDS is not given any discretion by statute to adjust this pay rate. The CDS provided these reasons to the applicant in his reasons for decision.

[39] The respondent submits that the CDS did not err in refusing to exercise his discretion to promote the applicant. Under the CEOTP, candidates who hold the rank of officer cadet are not ordinarily retroactively commissioned into the rank of second lieutenant. The CDS chose not to promote the applicant because to do so would be to treat him differently from other CEOTP peers. This use of his discretion was justified, transparent and intelligible within the CF grievance decision-making process. It falls within the range of possible acceptable outcomes.

### **Analysis and Decision**

#### [40] **Issue 1**

##### What is the appropriate standard of review?

The existence of a reasonable apprehension of bias would result in a breach of natural justice or procedural fairness. No deference is required in evaluating procedural fairness and the fairness of the decision will be reviewed on the standard of correctness (see *Armstrong v. Canada (Attorney General)*, 2006 FC 505, 291 F.T.R. 49 at paragraph 32. Questions of true jurisdiction, or *vires*, will also be reviewed on the correctness standard (see *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.R. 190 at paragraph 59).

[41] The questions of whether the CDS can accept liability for any alleged negligent misrepresentation of the Crown and whether members of the CF are in a contractual relationship with the Crown are both questions of law. While, typically, questions of law are reviewed on the standard of correctness, in this case, the standard of reasonableness should apply.

[42] For the question of negligent misrepresentation, the CDS was interpreting its home statute, the *National Defence Act*. The Supreme Court held in *Dunsmuir* above, that “[d]eference will usually result where a tribunal is interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity . . .” (at paragraph 54). In addition, where the decision-maker had special expertise regarding the discrete administrative regime, such as in the CF grievance process, then deference should apply (at paragraph 55). As such, the decision should be reviewed on the standard of reasonableness.

[43] For the question of the contractual relationship between the Crown and CF members, the CDS was applying the common law. The Supreme Court held in *Dunsmuir* above, that where there is a privative clause, as there is here, and where the question of law is within the specialized area of expertise of the decision-maker, such as the relationship between the CF and the Crown, then deference should apply (at paragraph 55).

[44] The issues of changing the applicant’s pay rate and denying him the retroactive promotion are issues of mixed fact and law and should be reviewed on the standard of reasonableness. In addition, the CDS is granted discretion by the *National Defence Act* which he used in denying the retroactive promotion of the applicant. As such, a certain level of deference is required (see *Hudon c. Canada*, 2009 FC 1092, 364 F.T.R. 49 at paragraph 15).

[45] On the standard of reasonableness, this Court should only intervene if the decisions of the CDS are outside “a range of possible, acceptable outcomes which are defensible in respect of the

facts and law” or the decision-making process lacks justification, transparency and intelligibility (see *Dunsmuir* above, at paragraph 47).

[46] **Issue 2**

Did the CDS act within his jurisdiction in denying the redress of the grievance?

The CDS acted within his statutory and regulatory jurisdiction when considering and denying the redress of the grievance. The CF grievance process is determined by the *National Defence Act*, the QR&O and the CF “Grievance Manual”. The CDS is required by section 29.12 of the *National Defence Act* and article 7.12(1)(a) of the QR&O to refer grievances regarding pay to the CFGB, which he did. Further, according to subsections 29.12(1) and 29.13(1) of the *National Defence Act*, the CDS is not bound by the findings of the CFGB. The CDS is required to act as the final authority on grievances of this nature as stipulated in subsection 29.14(a) of the *National Defence Act* and he must provide his determination and reasons in writing to the griever as noted in QR&O article 7.14(1). The CDS acted as the final authority when he considered and concurred, in part, with the findings and recommendations of the CFGB and issued his decision and reasons in writing to the applicant. He did not act outside of his jurisdiction in denying the redress of the grievance.

[47] **Issue 3**

Was the applicant denied procedural fairness due to a lack of impartiality on the part of the CDS or was he denied the right to be heard?

The Supreme Court of Canada held in *Cie pétrolière Impériale c. Québec (Tribunal Administratif)*, 2003 SCC 58, [2003] 2 S.C.R. 624 at paragraph 31, that the content of the duty of

impartiality will vary with the functions of the decision-maker and the nature of the question being decided. The duty varies between the higher test of reasonable apprehension of bias for those bodies which act in an adjudicative manner similar to that of courts and the lower closed mind test for those bodies which:

...perform multiple tasks and whose adjudicative functions are merely one aspect of broad duties and powers that sometimes include regulation-making power. The notion of administrative decision-maker also includes administrative managers, such as ministers or officials who perform policy-making discretionary functions within the apparatus of government.

[48] This content of the duty of impartiality is determined by evaluating the body of legislation that defines the functions of the decision-maker as well as the framework in which he or she carries out those functions (see *Pelletier c. Canada*, 2008 FCA 1, [2008] 3 F.C.R. 40 at paragraph 49).

[49] The duties of the CDS, outlined in section 18 of the *National Defence Act*, include the control and administration of the CF and issuing orders and instructions to the CF to give effect to the decisions and carry out the directions of the Government of Canada.

[50] There is a complete grievance process for the CF of which the CDS is the final authority for matters that must be referred to the CFGB under section 29.14 of the *National Defence Act*.

[51] The duties imposed on the CDS by the legislation including the *National Defence Act* and the QR&O are broad and include more than the judicial or quasi-judicial court-like functions of some administrative decision-makers. As such, the CDS is held to the lower standard of the duty of impartiality – that of the closed mind.

[52] The Supreme Court of Canada said of the closed mind test in *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1170, [1990] S.C.J. No. 137 (QL) at paragraph 94:

The party alleging disqualifying bias must establish that there is a prejudgment of the matter, in fact, to the extent that any representations at variance with the view, which has been adopted, would be futile. [...] In this regard it is important to keep in mind that support in favour of a measure before a committee and a vote in favour will not constitute disqualifying bias in the absence of some indication that the position taken is incapable of change.

[53] The CDS referred to and considered the comments made by the applicant to the CFGB during its investigative stage and the applicant's comments on its findings and recommendations. The CDS thus made himself aware of the applicant's view of the facts and the applicant's position. The CDS also referred in his decision to the findings and recommendations of the CFGB, of which he was clearly aware and with which he concurred in part. Regardless of any duty the CDS might have to maintain uniformity between officers, the CDS did not have a closed mind in deciding the grievance before him and in deciding not to treat the applicant differently than his peers.

[54] As well, I am of the opinion that the applicant's right to be heard was not breached. The applicant was given various opportunities to explain his position.

[55] **Issue 4**

Did the CDS err in declining to consider the applicant's claim against the Crown for negligent misrepresentation?

The QR&O are regulations promulgated for the *National Defence Act*. Article 19.41(1)(b) of the QR&O states that:

(1) No officer or non-commissioned member shall, without the authority of the Minister:

(b) accept liability on behalf of the Crown;

for a loss or damage arising out of or occasioned by the performance of service duties by the member or by another.

[56] The CDS was interpreting the regulations of his home statute in declining to address the applicant's claim of negligent misrepresentation against the Crown. He further indicated who the applicant could contact if he wished to pursue the claim. The CDS has expertise and experience in interpreting the QR&O and his interpretation of the limitations placed on his decision-making by article 19.41(1)(b) was justified, transparent, intelligible and fell within the range of acceptable outcomes.

[57] **Issue 5**

Did the CDS err in declining to address any contractual obligation on the part of the CF?

The legal principle that a member of the CF does not have a contractual relationship with the Crown has been repeated for over a century. The principle first appeared in the jurisprudence in *Mitchell v. R*, [1896] 1 Q.B. 121. Lord Esher M.R. held in that case at page 122:

... all engagements between those in the military service of the Crown and the Crown are voluntary only on the part of the Crown, and give no occasion for an action in respect of any alleged contract.

[58] This has been reiterated in more recent jurisprudence in *Pilon v. Canada* (1996), 119 F.T.R. 269, [1996] F.C.J. No. 1200, at paragraph 7:

...members of the military serve at the pleasure of the Queen and do not, therefore, have a contractual relationship with the Crown.



[59] The CDS stated in his decision that he could not make a determination about a purported breach of contract or violation of labour laws in the grievance before him because members of the CF are not in a contractual employment relationship with the Crown. The determination that contract law did not apply to the grievance was reasonable and correct in law.

[60] **Issue 6**

Did the CDS err in refusing to pay the applicant at the rate described in his enrolment message?

Subsection 35(1) of the *National Defence Act* stipulates that the rates of pay for officers shall be established by the Treasury Board.

[61] When the applicant enrolled in the CEOTP, he was determined not to have former commissioned service. As such, according to CBI 204.211(7)(b), during his time as an officer cadet, he should have received the rate of pay in Table A, Level B. As a second lieutenant, according to CBI 204.211(7)(a)(i), he should receive the rate of pay of Table B, Level B. The applicant was paid at these respective pay rates as an officer cadet and then as a second lieutenant.

[62] There is no discretion granted to the CDS in the *National Defence Act* or the QR&O to authorize a pay rate different from those above. The CDS declined to change the applicant's rate of pay because he found that there was no provision in a CBI to waive the criteria or make an exception and he could not override the rate set by the Treasury Board. This decision was reasonable and correct in law.

[63] **Issue 7**

Did the CDS err in refusing to retroactively commission the applicant to the rank of second lieutenant?

The promotion of an officer from officer cadet to second lieutenant is a discretionary decision of the CDS. Section 28 of the *National Defence Act* stipulates that officers may be promoted by the Minister or such authorities as prescribed by the Regulations. Promotion to any rank lower than brigadier-general requires the approval of the CDS according to QR&O article 11.01(2).

[64] No officer shall be promoted to a higher rank unless there is an appropriate vacancy in the total establishment for the member's component, the member is recommended by the appropriate authority and the member meets such promotion standards and such other conditions as the CDS may prescribe. However, QR&O article 11.02(2) states that "...in any given circumstance, the Chief of Defence Staff may direct that the requirement to meet any promotion standards be waived."

[65] The applicant met the basic requirement of entry into the CF under the CEOTP. He was not granted a higher rank, incentive pay category or time counting for promotion in recognition of previous service or training. As such, he was promoted to second lieutenant upon completing his BOTP, which was the normal course of commissioning.

[66] The CDS declined to use his discretion to waive the promotion standards and retroactively promote the applicant. His stated reason for declining to do so was that he did not want to treat the

applicant in an advantageous manner compared to his CEOTP peers whose effective commissioning dates have been granted in accordance with the applicable policies.

[67] The use of discretion in this context requires a level of deference from the Court. The decision of the CDS was justified, transparent and intelligible and falls within the range of acceptable possible outcomes and the court should not interfere with this use of discretion.

[68] While it is unfortunate that the applicant believed that he was joining the CF under different terms than those which he now receives, he has not shown that the decision made by the CDS was unreasonable or incorrect in law. As such, the judicial review should be dismissed.

[69] The respondent has requested costs. Because of the facts that gave rise to this application, I am not prepared to make an award of costs. The case resulted from incorrect information being given to the applicant.

**JUDGMENT**

[70] **IT IS ORDERED that:**

1. The application for judicial review is dismissed.
2. There shall be no award of costs.

“John A. O’Keefe”

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Judge

## ANNEX

**Relevant Statutory Provisions***Federal Courts Act, R.S., 1985, c. F-7*

18.1(4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal

(a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;

18.1(4) Les mesures prévues au paragraphe (3) sont prises si la Cour fédérale est convaincue que l'office fédéral, selon le cas :

a) a agi sans compétence, outrepassé celle-ci ou refusé de l'exercer;

*National Defence Act, R.S., 1985, c. N-5*

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

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.

28. Subject to section 22 and to regulations, officers and non-commissioned members may be promoted by the Minister or by such authorities of the Canadian Forces as are prescribed in regulations made by the Governor in Council.

28. Sous réserve de l'article 22 et des règlements, les officiers et militaires du rang peuvent être promus par le ministre ou les autorités des Forces canadiennes désignées par règlement du gouverneur en conseil.

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.

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

29.12(1) The Chief of the Defence Staff shall refer every grievance that is of a type prescribed in regulations made by the Governor in Council to the Grievance Board for its findings and recommendations before the Chief of the Defence Staff considers and determines the grievance. The Chief of the Defence Staff may refer any other grievance to the Grievance Board.

29.12(1) Avant d'étudier un grief d'une catégorie prévue par règlement du gouverneur en conseil, le chef d'état-major de la défense le soumet au Comité des griefs pour que celui-ci lui formule ses conclusions et recommandations. Il peut également renvoyer tout autre grief devant le Comité.

29.14 The Chief of the Defence Staff may delegate to any officer any of the Chief of the Defence Staff's powers, duties or functions as final authority in the grievance process, except

29.14 Le chef d'état-major de la défense peut déléguer à tout officier le pouvoir de décision définitive que lui confère l'article 29.11, sauf pour les griefs qui doivent être soumis au Comité des griefs; il ne peut toutefois déléguer le pouvoir de délégation que lui confère le présent article.

(a) the duty to act as final authority in respect of a grievance that must be referred to the Grievance Board; and

(b) the power to delegate under

this section.

35.(1) The rates and conditions of issue of pay of officers and non-commissioned members, other than military judges, shall be established by the Treasury Board.

35.(1) Les taux et conditions de versement de la solde des officiers et militaires du rang, autres que les juges militaires, sont établis par le Conseil du Trésor.

#### Queen's Regulations and Orders for the Canadian Forces

##### 7.12 – REFERRAL TO GRIEVANCE BOARD

##### 7.12 – RENVOI DEVANT LE COMITÉ DES GRIEFS

(1) The Chief of the Defence Staff shall refer to the Grievance Board any grievance relating to the following matters:

(1) Le chef d'état-major de la défense renvoie au Comité des griefs tout grief qui a trait aux questions suivantes :

(a) administrative action resulting in the forfeiture of, or deductions from, pay and allowances, reversion to a lower rank or release from the Canadian Forces;

a) les mesures administratives qui émanent de la suppression ou des déductions de solde et d'indemnités, du retour à un grade inférieur ou de la libération des Forces canadiennes;

##### 11.01 – AUTHORITY FOR PROMOTION

##### 11.01 – AUTORISATION DE PROMOTION

(1) The promotion of an officer to the rank of brigadier-general or to any higher rank requires the approval of the Minister on the recommendation of the Chief of the Defence Staff.

(1) La promotion d'un officier au grade de brigadier-général ou à tout grade supérieur est subordonnée à l'approbation du ministre sur recommandation du chef d'état-major de la défense.

(2) The promotion of a member to any rank lower than that of brigadier-general requires the approval of the Chief of the Defence Staff, except that the:

(2) La promotion d'un militaire à un grade inférieur à celui de brigadier-général exige l'approbation du chef d'état-major de la défense, sauf que :

(a) promotion of a member to

a) la promotion d'un militaire à

any rank lower than that of colonel may be approved by such officer as the Chief of the Defence Staff may designate; and

un grade inférieur à celui de colonel peut être approuvée par un officier désigné à cette fin par le chef d'état-major de la défense;

(b) promotion of an officer of the Reserve Force to the rank of colonel or lieutenant-colonel may be approved by such officer as the Chief of the Defence Staff may designate.

b) la promotion d'un officier de la force de réserve au grade de colonel ou de lieutenant-colonel peut être approuvée par un officier désigné à cette fin par le chef d'état-major de la défense.

19.41 – ADMISSION AND ACCEPTANCE OF LIABILITY

19.41 – AVEU OU ACCEPTATION DE RESPONSABILITÉ

(1) No officer or non-commissioned member shall, without the authority of the Minister:

(1) Sauf avec l'autorisation du ministre, aucun officier ou militaire du rang ne doit, à l'égard d'une perte ou d'un dommage découlant de l'exécution de fonctions militaires par lui ou par un autre :

...

...

(b) accept liability on behalf of the Crown;

b) accepter de responsabilité au nom de l'État.

for a loss or damage arising out of or occasioned by the performance of service duties by the member or by another.

Director General Compensation Directives – Compensation Benefits Instruction – Chapter 204

204.211(7) (Rate of pay – CEOTP)

204.211(7) (Taux de solde – PFOEP)

An officer to whom the CEOTP applies shall be paid, for each month after the month and year specified in the table, at the rate of pay for the officer's rank and

L'officier qui participe au PFOEP est rémunéré, pour chaque mois postérieur au mois et à l'année précisés au tableau, au taux de solde établi pour son



pay increment as follows:

1. for an officer in the rank of lieutenant or second lieutenant

1. with no former non-commissioned member service, in pay level B of Table "B" or "C" to this instruction, or

...

2. in the rank of officer cadet with no former non-commissioned member service, in pay level B of Table "A" to this instruction.

204.211(10) (Officer Cadet – former non-commissioned member)

An officer cadet who is appointed directly to that rank from a non-commissioned rank shall be paid:

(a) if the member was a non-commissioned member of the Regular Force, at the rate of pay which, including any upward adjustments to the rates of pay determined under subparagraphs (i) and (ii) that may be established from time to time, and any upward adjustments resulting from the reallocation of the last military occupation in which the member served as a non-

grade et son échelon de solde de la façon suivante :

1. dans le cas de l'officier au grade de lieutenant ou de sous-lieutenant :

1. au niveau de solde B visé au Tableau B ou C de la présente directive, s'il n'a effectué aucun service antérieur à titre de militaire du rang,

...

2. dans le cas de celui qui détient le grade d'élève-officier et qui n'a effectué aucun service antérieur à titre de militaire du rang, au niveau de solde B visé au Tableau A de la présente directive.

204.211(10) (Élève-officier – ancien militaire du rang)

L'élève-officier qui est nommé directement à ce grade à partir du grade de militaire du rang est rémunéré comme suit :

a) s'il était un militaire du rang de la Force régulière, au taux de solde le plus élevé des taux suivants, y compris toute augmentation aux taux de solde prévue en vertu des sous-alinéas i) et ii) qui peut être établie de temps à autre pour ce taux, ainsi que toute augmentation qui résulte de la réaffectation au poste antérieur dans lequel il servait comme militaire du rang dans un groupe de spécialité supérieur :

commissioned member to a higher trade group, is the greater of the rate of pay established for:

(i) the rank, pay increment, pay level and trade group held on the day immediately prior to the date of appointment to the rank of officer cadet, or

(ii) any higher pay increment to which the member would have become entitled had the member remained in the former rank, pay level and trade group as a non-commissioned member; and

(b) if the member was a former Regular Force member who re-enrolled or a member who transferred from the Reserve Force to the Regular Force, at the rate of pay, including any upward adjustments to the rates of pay, in CBI 204.30 (Pay – Non-commissioned members) for:

(i) the rank, pay level and trade group that they would have received had they enrolled directly as a non-commissioned member as determined in orders or instructions issued by the Chief of the Defence Staff, at the pay increment determined by CBI 204.015 (Pay Increments); or

i) le taux de solde établi pour le grade, l'échelon de solde, le niveau de solde et le groupe de spécialité qui lui étaient applicables le jour précédant immédiatement le jour de sa nomination au grade d'élève-officier,

ii) le taux de solde établi pour tout échelon de solde supérieur auquel il aurait eu droit pour son grade, son niveau de solde et son groupe de spécialité, s'il était demeuré dans son grade de militaire du rang;

(b) s'il était un ancien membre de la Force régulière qui s'est réenrôlé ou s'il a été transféré de la Force de réserve à la Force régulière, au taux de solde, y compris tout augmentation des taux de solde en vertu de la DRAS 204.30 (Solde – militaires du rang), établi comme suit :

ii) selon le grade, le niveau de solde et le groupe de spécialité établis s'il s'était enrôlé directement comme militaire du rang, suivant les ordres ou les directives publiés par le Chef d'état-major de la Défense, à l'échelon de solde établi en vertu de la DRAS 204.015 (Augmentations d'échelons de solde);

- |  |  |
|--|--|
| <p>(ii) any higher pay increment to which the officer would have become entitled under CBI 204.015 (Pay Increments) had the officer remained in the former rank, pay level and trade group as a non-commissioned member.</p> | <p>ii) selon tout autre échelon de solde plus élevé auquel l'officier aurait eu droit en vertu de la DRAS 204.015 (Augmentations d'échelons de solde) s'il était resté à son ancien grade, à son ancien niveau de solde et dans son ancien groupe de spécialité en qualité de militaire du rang.</p> |
|--|--|

Chief Military Personnel – Continuing Education Officer Training Plan – CF Military Personnel  
Instruction 09/05

4.6 Promotion and Career

Under the CEOTP

All candidates enrolled in the CEOTP shall hold the rank of OCdt/NCdt until completion of basic officer training, unless initially granted higher rank, Incentive Pay Category, or Time Counting for Promotion in recognition of previous service or training.

4.6 Promotion et carrière

En vertu du PFOEP

Tous les candidats enrôlés dans le PFOEP auront le grade d'élève-officier (élof)/aspirant marine (aspm) jusqu'à ce qu'ils aient terminé l'instruction de base des officiers, à moins d'avoir obtenu initialement un grade supérieur, une catégorie de prime de rendement (CPR) ou du temps comptant pour de l'avancement en reconnaissance de service ou d'instruction antérieurs.

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

**DOCKET:** T-1633-09

**STYLE OF CAUSE:** MIHAI CODRIN  
- and -  
ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** Winnipeg, Manitoba

**DATE OF HEARING:** September 14, 2010

**REASONS FOR JUDGMENT  
AND JUDGMENT OF:** O'KEEFE J.

**DATED:** January 28, 2011

**APPEARANCES:**

Mihai Codrin	FOR THE APPLICANT (ON HIS OWN BEHALF)
Susan Eros	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Mihai Codrin Winnipeg, Manitoba	FOR THE APPLICANT (ON HIS OWN BEHALF)
Myles J. Kirvan Deputy Attorney General of Canada Winnipeg, Manitoba	FOR THE RESPONDENT