

Federal Court



Cour fédérale

**Date: 20160831**

**Docket: T-273-15**

**Citation: 2016 FC 995**

**Ottawa, Ontario, August 31, 2016**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**CAPTAIN JARET RENNIE**

**Applicant**

**and**

**CHIEF OF DEFENCE STAFF OF THE  
CANADIAN ARMED FORCES AND  
DIRECTOR GENERAL CANADIAN  
FORCES GRIEVANCE AUTHORITY**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview and Background**

[1] On the evening of July 16, 2011, Captain Jaret Rennie [Capt. Rennie] was driving a rental car through a traffic circle in Victoria, British Columbia, when he drove over the planter sidewalk and knocked down several metal posts, causing approximately \$7,700 in damage to the vehicle. The RCMP was called, and they administered two roadside breath tests through two separate Approved Screening Devices [ASD]. On each test, the ASD indicated “Fail” which

means that Capt. Rennie had a blood alcohol concentration of one hundred milligrams of alcohol in one hundred millilitres of blood or more: twenty milligrams over the legal limit in subsection 253(1)(b) of the *Criminal Code*, RSC 1985, c. C-46. While Capt. Rennie disputes the results of the ASD tests, he admits that he drank two beers before driving that night.

[2] Capt. Rennie's collision set a number of proceedings in motion:

1. Because of provisions in British Columbia's Motor Vehicles Act, RSBC 1996, c 318, the RCMP officer on scene had to serve Capt. Rennie with a notice of driving prohibition. This notice suspended Capt. Rennie's licence for ninety days. It also caused him to become liable for an administrative monetary penalty. This provision has subsequently been struck down by the Supreme Court of Canada: *Goodwin v. British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46, aff'g *Sivia v. British Columbia (Superintendent of Motor Vehicles)*, 2014 BCCA 79, aff'g 2011 BCSC 1783.
2. From the record, it appears that Capt. Rennie was subject to court martial for violating the Code of Service Discipline under the National Defence Act, RSC 1985, c N-5 [*National Defence Act*], but these charges were withdrawn or otherwise discontinued.
3. Capt. Rennie was subject to an Administrative Review under Defence Administrative Orders and Directives [DAOD] 5019-2, a process that allows the chain of command to impose an administrative action—such as a transfer, reprimand, or counselling—in response to findings of certain types of misconduct. This Administrative Review concluded that Capt. Rennie had violated the *Criminal Code* prohibition on driving while impaired and that this constituted Alcohol Misconduct. A six-month term of Counselling and Probation [C&P] was imposed as a result.

[3] While there is no direct appeal route for an Administrative Review, section 29 of the *National Defence Act* allows any service member in the Canadian Forces to submit a grievance where there is no other redress available. The grievance is investigated and if any error is discovered, the error may be corrected. The grievance is first dealt with by the grievor's Commanding Officer or the relevant Director General at National Defence Headquarters [Initial Authority]. If the grievor is unsatisfied with the Initial Authority decision, he or she can appeal it

to the Chief of Defence Staff [CDS], who in turn may seek the non-binding recommendations of the Canadian Forces Grievance Board [Grievance Board] (presently the Military Grievance External Review Committee) before making a recommendation.

[4] In this case, Colonel J.R.F. Malo [Col. Malo], Director General of the Canadian Forces Grievance Authority, acted as Final Authority for the CDS. As there were procedural deficiencies before the Initial Authority and the Grievance Board, Col. Malo conducted a *de novo* review of whether Capt. Rennie had committed Alcohol Misconduct and if so, what the appropriate administrative action should be in response. In doing so, he came to the same conclusions as the original Administrative Review: Capt. Rennie had committed Alcohol Misconduct and the appropriate remedy was six months of C&P. It is this decision that is under review.

[5] Capt. Rennie argues that: (1) the hearing was unfair; (2) Alcohol Misconduct can only be found if a person is actually convicted of an offence under the *Criminal Code*; and (3) Col. Malo made a finding of Alcohol Misconduct using the wrong standard of proof and based on unreliable evidence that could not be tested. The CDS submits the evidence reasonably satisfied the requisite standard of proof and reasonably supported a finding of Alcohol Misconduct.

[6] Capt. Rennie seeks: (1) an order quashing the decision and substituting a finding that the penalty imposed was unwarranted and should be removed from his record along with all related documents; (2) in the alternative, an order quashing the decision and sending it back to be considered as Conduct Deficiency Involving Alcohol for remedial measures, if any. The CDS seeks a dismissal of the application for judicial review.

[7] For the reasons that follow I have determined that the Decision is reasonable and I dismiss the application.

[8] Relevant excerpts of the various DAODs referred to are contained in the attached Annex.

## II. **The Decision Under Review**

[9] On January 12, 2015, Col. Malo rendered the decision under review [Decision]. He found there was clear and convincing evidence that the Applicant's conduct on the evening of July 16, 2011 constituted Alcohol Misconduct, warranting administrative action.

[10] Before making a decision on Capt. Rennie's grievance, the CDS made a discretionary referral to the Grievance Board. The Grievance Board recommended that the Administrative Review decision be overturned because:

1. there was no proper evidence to conclude Capt. Rennie had committed the offence of impaired driving. The Grievance Board took the position that a finding of Alcohol Misconduct requires a criminal conviction, rather than an independent assessment that the Criminal Code was violated;
2. the Administrative Review relied on the results of the two ASD tests, but those tests would not be admissible evidence in a criminal trial; and
3. the grievance file did not contain any police report, handwritten notes, witness statements or any other direct evidence indicating that Capt. Rennie had committed Alcohol Misconduct.

[11] After the Grievance Board recommendation was issued, an analyst prepared a grievance synopsis for Col. Malo. In the course of preparing the synopsis, the analyst discovered that the Initial Authority and the Grievance Board did not have all the evidence that was before the Administrative Review, particularly the RCMP report and the Military Police report. She obtained this evidence and provided it to Capt. Rennie as part of a disclosure package along with

her analysis where she disagreed with the Grievance Board and recommended that the Administrative Review decision be upheld. Capt. Rennie submitted written representations about the newly disclosed evidence on June 9, 2014.

[12] In the Decision, Col. Malo began by confirming that he had received no comments from Capt. Rennie about the F&R and that he was considering the case *de novo*. He had reviewed the entire grievance file including the further disclosure sent to Capt. Rennie who he noted had provided further comments in response to that disclosure.

[13] Col. Malo first dealt with whether it was procedurally unfair that Capt. Rennie had not previously received the disclosure of the police reports. Col. Malo acknowledged that the lack of previous disclosure was an error but the additional evidence was disclosed by the grievance analyst prior to the final hearing, and Capt. Rennie was given an opportunity to evaluate and respond to it, which he did. Col. Malo confirmed he considered those representations. Col. Malo found the procedural errors were cured by the *de novo* review he conducted.

[14] After referring to the background facts, Col. Malo began his analysis by stating that he had to determine whether Capt. Rennie's actions met the definition of alcohol misconduct and whether issuing a C&P was appropriate.

[15] He then considered the Grievance Board position that a conviction for impaired driving under the *Criminal Code* was a prerequisite for a finding of Alcohol Misconduct. Turning to DAOD 5019-7, which contains the process for an Alcohol Misconduct finding, Col. Malo determined that "alcohol misconduct" requires establishing that an individual "exhibited conduct that constitutes an offence under the *Criminal Code* or the Code of Service Discipline" but does

not require an actual conviction for that offence. In doing so, he relied on the fact that DAOD 5019-7 has two separate procedures, one dealing with a member who has been tried for an offence and the other where the member was not tried for the offence. He also found that unlike a criminal trial, a finding of Alcohol Misconduct is based on the civil standard of proof on a balance of probabilities, though DAOD 5019-7 stipulates that the evidence must be clear and convincing.

[16] Col. Malo reviewed the evidence that the Grievance Board found was insufficient. He noted the RCMP and Military Police accident reports had not been before the Grievance Board or the Initial Authority. While that was an error, it was corrected by the subsequent disclosure to Capt. Rennie and receipt of his further submissions prior to consideration by Col. Malo.

[17] Col. Malo concluded the evidence was clear and convincing that Capt. Rennie engaged in conduct amounting to alcohol misconduct, specifically impaired driving under subsection 253(1)(a) of the *Criminal Code*, which made it an offence to operate a motor vehicle while his ability to operate the vehicle was impaired by alcohol.

[18] Col. Malo in coming to his conclusion accepted the following as facts:

- a. Early in the morning on 16 July 2011, you were involved in a single motor-vehicle accident, where you failed to properly navigate a traffic circle, driving up and over the planter sidewalk and mowing over several metal posts, causing severe damage to the front of the vehicle as well as to the undercarriage;
- b. After being called by the paramedics, the West Shore RCMP arrived;
- c. In their report, the RCMP recorded that they were called to the scene as a result of a complaint of a single-vehicle accident where Emergency Health Services

could smell alcohol coming from the only occupant, the driver;

- d. The RCMP also reported that you were slurring your words and that you said you had consumed two beers;
- e. The RCMP noted they had spoken to an individual who had heard the crash. The individual said that, upon exiting the vehicle, you told him you had consumed several drinks;
- f. The RCMP administered two ASD tests approximately three minutes apart, using two different instruments;
- g. You blew a “fail” on both tests; and
- h. You admit to having consumed some alcohol prior to entering your vehicle that evening.

[19] Col. Malo noted that Capt. Rennie challenged the accuracy of the ASD. He noted that Capt. Rennie insisted he was not impaired and the law under which he received his notice of prohibition was quashed as being unconstitutional. Col. Malo also noted the charges under the Code of Service Discipline did not proceed to a trial and acknowledged there were apparently some discrepancies in the ASD logs.

[20] Col. Malo went on to say his role was not “to say whether or not, with these technical issues, you would have been convicted of an offence”. He found his role was to weigh the evidence and determine whether, on a balance of probabilities, Capt. Rennie’s conduct constituted alcohol misconduct warranting a C&P. In determining that it did, Col. Malo said:

The facts in your case depict a CAF member who exhibited extremely poor judgement by consuming alcohol and then choosing to operate a rented vehicle, resulting in a single-vehicle accident. Whether or not your ASD results were accurate or slightly off, it is clear to me that you had a sufficient amount of alcohol in your system that evening to affect your judgement, as evidenced by the fact that you are unable to navigate a traffic circle with no other vehicles in the vicinity.

...

I find that this behaviour required immediate correction to ensure that it would never be repeated and I am satisfied that this result has been achieved through the C&P. I understand that you successfully completed your six-month monitoring and that you have continued to meet the conditions of your C&P since that time.

[21] On the issue of the appropriate administrative action, Col. Malo found Capt. Rennie's behaviour was not in keeping with Canadian Armed Forces values and it required immediate correction to ensure it would never be repeated. Col. Malo noted that Canadian Forces General Message 148-10 which accompanied the release of DAOD 5019-7 stated that the minimum remedial measure for Alcohol Misconduct will normally be C&P. Col. Malo found there did not appear to be any compelling circumstances that would warrant downgrading the minimum remedial measure nor, based on the evidence, was he prepared to quash the C&P.

### III. **Issues and Standard of Review**

#### A. *Issues*

[22] The issues as set out by counsel for Capt. Rennie are whether Col. Malo erred in:

- a. The administrative action selected;
- b. Considering unreliable and inadmissible evidence;
- c. Applying the incorrect standard of proof; and
- d. Providing inadequate reasons.

[23] While ultimately the parties agree one of the issues is whether the Decision was reasonable, Capt. Rennie also submits there is an issue of natural justice and procedural fairness relating to the evidence considered by the Col. Malo.



B. *Standard of Review*

[24] The CDS in determining which administrative action to apply is interpreting DAOD 5019-7, which is within his home statute. His finding involves questions of fact and questions of mixed fact and law. The standard of review is reasonableness: *Moodie v Canada (Attorney General)*, 2015 FCA 87 at para 51; *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 34.

[25] The issue of whether evidence that was unreliable and inadmissible was considered has two aspects. One is the allegation by Capt. Rennie that it was procedurally unfair to consider such evidence. Issues of procedural fairness are reviewable on the correctness standard: *Mission Institution v Khela*, 2014 SCC 24 at para. 79. The other aspect is that this is an administrative tribunal decision and hearsay evidence is admissible subject to the decision-maker determining the appropriate weight to be assigned to it: *Cambie Hotel (Nanaimo) Ltd. v British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2006 BCCA 119 at paras 28 and 35; *Canadian Recording Industry Association v. Society of Composers, Authors and Music Publishers of Canada*, 2010 FCA 322 at paras 20 – 22.

[26] If the evidence was not relevant or reliable, receiving it was procedurally unfair and the decision must be set aside. If it was relevant and reliable then how it was assessed is part of the reasonableness review of the Decision.

[27] Whether Col. Malo's reasons were inadequate is reviewable on a standard of reasonableness: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)* 2011 SCC 62 [*Nfld. Nurses'*] paras 14 and 22.

[28] In conducting a reasonableness review a reviewing court should look to both the process of articulating the reasons and to outcomes. If the decision-making process is justified, transparent and intelligible and the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law then it is reasonable: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47. Further, the reasons themselves need not include all the arguments, statutory provisions or jurisprudence: *Nfld. Nurses'* at para 16. If the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

#### IV. **Positions of the Parties and Analysis**

##### A. *The Administrative Action Selected*

###### (1) Capt. Rennie's Position

[29] Capt. Rennie argues that C&P was not an appropriate administrative action, in part because it was based on a finding of Alcohol Misconduct rather than Conduct Deficiency Involving Alcohol. The difference between the parties is a fundamental one. Capt. Rennie believes, as stated by the Grievance Board, that unless he is convicted of the criminal offence of impaired driving he cannot be guilty of Alcohol Misconduct. He was neither charged with, nor convicted of, impaired driving. Instead, the RCMP levied sanctions based on British Columbia provincial law.

[30] Because Capt. Rennie was only found to have violated provincial law, he submits that the only available finding under DAOD 5019-7 is the lesser one of Conduct Deficiency Involving Alcohol, which contemplates a provincial offence rather than criminal offence and generally

results in a less severe administrative action. He says the only rationale provided by Col. Malo for accepting Alcohol Misconduct as an appropriate classification was that Capt. Rennie's conduct could possibly fall under section 253(1)(a) of the Criminal Code because he admitted to having consumed alcohol earlier that evening. Capt. Rennie maintained that he was not intoxicated and, he alleges, there were no other reasonable indicators of alcohol impairment.

[31] Capt. Rennie also submits that DAOD 5019-2, which governs selection of the appropriate administrative action, requires the consideration of various factors such as the member's length of service, any previous conduct deficiencies and the leadership role played by the member none of which were considered by Col. Malo. He also says DAOD 5019-2 provides that a remedial measure of a C&P is normally part of progressive disciplinary action and it should be awarded only in exceptional circumstances that were not present in his case.

(2) Position of the CDS

[32] The CDS says the choice of appropriate administrative action arises under several DAODs all of which are issued under his authority and are within his specific area of expertise. His interpretation is therefore subject to a reasonableness review. He notes that in *Rompré v Canada (Attorney General)*, 2012 FC 101 at para 49 [*Rompré*], the Court said it must show deference to discretionary decisions of the CDS in determining the merits of grievances "because of his in-depth knowledge of the military environment and its operations".

[33] The CDS notes DAOD 5019-0 addresses Conduct and Performance Deficiencies. It requires the chain of command to take appropriate action if a member demonstrates deficiencies in either area. The actions can be either disciplinary under the Code of Service Discipline or, administrative, being a remedial measure imposed pursuant to DAOD 5019-4. DAOD 5019-7 is

an instructional order dealing with conduct involving alcohol. Under DAOD 5019-7 C&P is an acceptable outcome whether the conduct involved was Alcohol Misconduct or Conduct Deficiency Involving Alcohol. As a result, the CDS argues that acting as FA Col. Malo made a reasonable finding within the range of possible, acceptable outcomes.

(3) Analysis

[34] There are two streams in the CF in which conduct may be reviewed: the discipline stream and the administrative stream. The discipline stream is governed by Part III of the *National Defence Act*. It includes the Code of Service Discipline within which is the provision for trial by Court Martial and appeals to the Court Martial Appeal Court. The administrative stream is governed by DAODs which are part of the Policies and Standards issued by or under the authority of the Deputy Minister of Defence and the Chief of Defence Staff.

[35] In considering the definition of Alcohol Misconduct, both the Grievance Board and Capt. Rennie place their emphasis on the words “is an offence under the Criminal Code”. Col. Malo as FA and the DMCA as IA however emphasize the word “conduct”.

[36] DAOD 5019-0 addresses Conduct and Performance Deficiencies. It contains the policy direction that “CF members shall be held accountable for any failure to meet established standards of conduct and performance resulting from factors within their control.” If a CF member demonstrates conduct or performance deficiencies, DAOD 5019-0 states the appropriate action may involve disciplinary or administrative action or both.

[37] DAOD 5019-7 is entitled “Alcohol Misconduct”. It sets out a Standard of Conduct that is simple: “No CF member shall engage in alcohol misconduct.” The definition of Alcohol

Misconduct states that “Alcohol misconduct means any conduct, other than a CDIA, that is an offence under the Criminal Code or the Code of Service Discipline that includes the consumption or influence of alcohol as an element of the offence or as a contributing factor”.

[38] Alcohol Misconduct is also addressed under DAOD 5019-2 which governs an Administrative Review. It provides that an Administrative Review is to be held to determine the most appropriate administrative action when an incident occurs that calls into question the viability of a member’s continued service.

[39] When DAOD 5019-7 was released it was accompanied by a general message underscoring the significance of the new policy addressing Alcohol Misconduct. The second paragraph states:

ALCOHOL ABUSE AND ALCOHOL DEPENDENCE LEAD TO BEHAVIOUR THAT REFLECTS DISCREDIT ON THE CF AND ARE THEREFORE NOT TOLERATED. ANY CF MEMBER WHO ENGAGES IN ALCOHOL MISCONDUCT IS LIABLE TO DISCIPLINARY AND ADMINISTRATIVE ACTION (AA), INCLUDING RELEASE FROM THE CF

(uppercase letters in original)

[40] To underscore the importance of the new policy on Alcohol Misconduct , the message also stated in paragraph 4 that:

IF DMCA DETERMINES THAT AN AM OCCURRED, THE MINIMUM REMEDIAL MEASURE IMPOSED WILL NORMALLY BE COUNSELLING AND PROBATION (C AND P). AM OR CDIA SUBSEQUENT TO C AND P WILL NORMALLY RESULT IN COMPULSORY RELEASE FROM THE CF

(uppercase letters in original)

[41] Under “Process for Alcohol Misconduct”, DAOD 5019-7 stipulates in sub-heading “CF Member Not Tried for an Alcohol Misconduct Offence” that where no trial is held (either under the Code of Service Discipline or the *Criminal Code*) the Commanding Officer is required to forward to the Director of Military Careers Administration all information concerning the incident together with any conduct sheet concerning the member and a recommendation, with explanation, as to the administrative action, if any, that should be imposed. In my view this very clearly contemplates that an administrative action can be imposed in the absence of a criminal trial. Consequently, it was reasonable for the CDS to find that he could make an Alcohol Misconduct finding without Capt. Rennie being convicted of impaired driving.

[42] In my view, on review of the DAODs and the reasons given by the Col. Malo, he reasonably concluded that the appropriate administrative action was C&P given that it is stipulated in the general message as the minimum remedial measure for Alcohol Misconduct and he reasonably concluded in light of DAOD 5019-7 that a criminal conviction is not required in order to sustain a determination that alcohol misconduct occurred.

B. *Consideration of Unreliable and Inadmissible Evidence*

(1) Capt. Rennie’s Position

[43] Capt. Rennie says the ASD tests are unreliable because the regime under which they were administered was deemed to be unconstitutional. The result, he says, is the evidence of the ASD test results should have been given no weight. However, Capt. Rennie argues that only the ASD results were given any weight and no reference was made to consideration or weight placed on any other evidence than the ASD results and the Reports.

[44] Capt. Rennie also criticizes the grievance analyst for not conducting a criminal records background check of him and for not contacting the police officers or other witnesses for interviews or to obtain sworn statements. He objects that her analysis relied on evidence that was not tested for its veracity. This, he submits, was procedurally unfair to him.

(2) Position of the CDS

[45] Counsel for the CDS says the evidence upon which he relied as outlined in his decision meets the clear and convincing test in an administrative context where the standard is a balance of probabilities and the standard for admissibility is lower than in a criminal context. Given that DAOD 5019-4 is intended to assist a member in overcoming a conduct issue and is not designed to punish behaviour, he says the criminal standard of proof beyond a reasonable doubt is not applicable. Evidence that is inadmissible in the criminal context may be admissible in an administrative proceeding where the standard of admissible evidence is lower.

[46] The CDS states the situation in a conduct matter such as this is that of an employer reviewing the conduct of an employee and determining how best to manage the conduct. As there is a serious possible consequence of release from the CF, the quality of evidence is to be clear and convincing but the standard of proof is not altered from a balance of probabilities. Counsel points to the amount of evidence that was before Col. Malo who says he was not required to determine whether Capt. Rennie would have been convicted of an offence under the Criminal Code. He was to weigh the evidence and determine on a balance of probabilities whether Capt. Rennie's "conduct constituted alcohol misconduct warranting a C&P".

(3) Analysis

[47] Capt. Rennie relies on the Grievance Board reasons to urge a standard of proof and quality of evidence that is found in a criminal trial. The Grievance Board disparages the “folly of trying to ascribe criminal conduct to a member in an administrative forum”. The Grievance Board equates a fair process using reliable evidence with the need to be able to test the evidence and says that hearsay and unsworn statements are not acceptable even though the grievance review is an administrative process.

[48] The two ASD tests are the primary target of the unreliability allegation. Capt. Rennie’s representations to the IA outlined his concerns about the test results:

The “breath samples” described do not constitute clear and convincing evidence. There is no evidence that the devices were correctly calibrated, no evidence that a procedure was followed that would inhibit factors that would cause error (liquid alcohol in the mouth) and there was no opportunity for me to challenge these results.”

[49] While Capt. Rennie points to the unconstitutionality of British Columbia’s automatic roadside prohibition scheme, he uses this only indirectly to argue that the ASD is too unreliable to serve as the foundation for an Alcohol Misconduct finding. At no point did Capt. Rennie apply to either this Court or the CDS to have the ASD results excluded pursuant to section 24(2) of the *Canadian Charter of Rights and Freedoms*.

[50] However, even if the ASD results had been excluded, it would not matter: the ASD results are not necessary to come to a finding of impaired driving, and in fact Col. Malo did not rely on the ASD results in coming to that finding.



[51] It is important to note that the Alcohol Misconduct finding was not based on subsection 253(1)(b) of the *Criminal Code*, which makes it an offence to operate a motor vehicle with a blood alcohol concentration of more than eighty milligrams of alcohol per one hundred millilitres of blood. Rather, the finding was based on subsection 253(1)(a), which makes it an offence to operate a motor vehicle with any concentration of alcohol, so long as that alcohol impairs a person's ability to operate a motor vehicle.

[52] The test for impaired driving is set out in *R. v. Stellato* (1993), 12 OR (3d) 90 (CA), aff'd [1994] 2 SCR 478 [*Stellato*]. The provision does not require a minimum blood alcohol concentration, or a marked departure from sober behaviour. Rather, a trial judge must only find that an accused person's ability to operate a motor vehicle is impaired by alcohol, no matter how slight that impairment is. In *R. v. Andrews*, 1996 ABCA 23, the Alberta Court of Appeal pointed out that while a marked departure from sobriety is not a part of the offence, in determining what sort of evidence can convince a court beyond a reasonable doubt of impairment, observation of behaviour that deviates markedly from normal can be helpful.

[53] To conclude that Capt. Rennie committed Alcohol Misconduct, Col. Malo only needed to find on the balance of probabilities that Capt. Rennie's ability to operate a motor vehicle was impaired to any extent, and that this impairment was caused by alcohol.

[54] Col. Malo did not need to come to this conclusion based on the ASD test results. The ASD test results were not the only evidence. The occurrence of the accident was a fact. The extensive damage to the vehicle was a fact. That the vehicle ran over the traffic circle sidewalk and knocked down several metal posts was a fact. That Capt. Rennie consumed at least two beers before driving was an admitted fact. Given the severity of this one-driver accident, it was open to

Col. Malo to find a departure from sober behaviour that could indicate impairment. It was also open to Col. Malo to reject Capt. Rennie's explanation that the collision occurred because of unfamiliarity with the rental car and area and instead find, on the balance of probabilities, that it was evident that Capt. Rennie's alcohol consumption had impaired his ability to operate a motor vehicle.

[55] This is, in fact, what happened. Col. Malo did not make his finding based on the ASD results, but based on Capt. Rennie's demonstrated driving behaviour:

Whether or not your ASD results were accurate or slightly off, it is clear to me that you had a sufficient amount of alcohol in your system that evening to affect your judgement, as evidenced by the fact that you are unable to navigate a traffic circle with no other vehicles in the vicinity.

(my emphasis)

C. *Improper Standard of Proof*

(1) Capt. Rennie's Position

[56] Capt. Rennie submits that the requirement in DAOD 5019-7 of clear and convincing evidence for a finding of Alcohol Misconduct means the standard of proof is higher than a "simple" balance of probabilities. He criticizes the Initial Order for misstating the test as a balance of probabilities. He also submits Col. Malo failed to appreciate the higher standard mandated by the words clear and convincing: Applicant's Memorandum of Fact and Law at para 66.

[57] Capt. Rennie also argues that he was subjected to a reverse onus and was required to show he was not impaired by alcohol rather than the CF being required to show he was so impaired.

(2) Position of the CDS

[58] The CDS submits that when Capt. Rennie says a criminal conviction is required to find Alcohol Misconduct, he is not recognizing the distinction between the standard of proof in a criminal matter and proof in an administrative matter. DAOD 5019-7 states the evidence must be clear and convincing but the standard of proof is a balance of probabilities. In that regard, whether Capt. Rennie was convicted or even tried in a criminal court is irrelevant.

(3) Analysis

[59] Capt. Rennie's arguments regarding the quality of evidence and the standard of proof are intertwined. I am addressing them nonetheless as separate arguments since he has presented the issues separately.

[60] The only standard of proof in civil matters is proof on a balance of probabilities. In *F.H. v. McDougall*, 2008 SCC 53 [*McDougall*], Mr. Justice Rothstein considered the nature of evidence and the relationship of evidence to the standard of proof in a civil case in which, as here, there was also conduct that was criminal or morally blameworthy. He said at paragraph 40, "it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities". To satisfy proof on the balance of probabilities, the evidence must be scrutinized and found to be clear, convincing and cogent. Context is important as the inherent probabilities or improbabilities of the allegations or the seriousness of the consequences may impact how the standard of proof is met. The evidence must be scrutinized with care to determine whether it is more likely than not that an alleged event occurred: paras 40, 46 and 49.

[61] Col. Malo expressly rejected the Grievance Board position that proof beyond a reasonable doubt was required. He found DAOD 5019-7 requires proof on a balance of probabilities and, when more serious allegations are involved, requires the evidence to be “clear and convincing”.

[62] I am satisfied Col. Malo identified and applied the correct standard of proof. Col. Malo specifically recognized that he had to apply the balance of probabilities and that the evidence had to be clear and convincing. The evidence upon which Col. Malo relied to arrive at his decision was all undisputed. He found it to clearly and convincingly show Capt. Rennie’s ability to operate a motor vehicle was impaired.

[63] In *McDougall*, one of the questions was, if a judge failed to apply the correct standard of proof how would such failure be apparent in the reasons? The answer by Mr. Justice Rothstein at paragraph 54 was, “[w]here the trial judge expressly states the correct standard of proof, it will be presumed that the correct standard was applied because judges are presumed to know the law with which they work day in and day out.” Although Col. Malo was not acting as a trial judge, he is a recognized expert with in-depth knowledge of the military environment and its operations as established in *Rompré*. As such, he knows the law with which he works day in and day out.

[64] Capt. Rennie also submits he was subject to a reverse onus. The Grievance Board agreed in relation to the Administrative Review. However, it is Col. Malo’s *de novo* hearing, not the Administrative Review, that I am reviewing. Capt. Rennie’s counsel in oral argument said that the smell of alcohol and an admission of drinking is not evidence of impairment. But Col. Malo did not need to rely on that evidence to establish impairment. Capt. Rennie’s admission that he drank two beers before driving was sufficient for Col. Malo to conclude that Capt. Rennie’s

impairment was caused by alcohol. Col. Malo drew an inference from Capt. Rennie's driving that he was impaired, because he believed that Capt. Rennie's alcohol consumption was the most likely explanation for his driving. It is not a reverse onus to rely on that inference in the absence of any evidence—other than a bald claim that Capt. Rennie was unfamiliar with the vehicle and area—that could establish an alternate explanation for the collision.

D. *Failure to Provide Adequate Reasons*

(1) Capt. Rennie's Position

[65] Capt. Rennie objects to the reasons as they fail to specifically address the weight given to the evidence, his exemplary record and the choice of administrative action. Capt. Rennie submits his record was not taken into account and the reasons fail to take into account the factors outlined in DAOD 5019-7 or to weigh the evidence. This is particularly important as Capt. Rennie had an unblemished service record and the negative consequences of the C&P have been serious. He cites the Grievance Board's findings that "there should be a very high standard of procedural fairness and actual clear and convincing evidence when a member's career progression and very future in the CF is at stake, as it is for the grievor in this case."

[66] Capt. Rennie refers to DAODs 2017-1 and 5019-2 that together address the need to provide written reasons addressing all relevant issues and enable the member to understand why the administrative action was imposed. He says as his record was not taken into account but he was cited for exercising lack of judgment the Decision does not comply with the DAODs, including DAOD 5019-4 on remedial measures.

(2) Position of the CDS

[67] Counsel for the CDS submits Col Malo reviewed Capt. Rennie's record, leadership service and previous service when he explained why C&P was justified. He says the decision is intelligible as it is neither confusing nor unclear and it should be clear to Capt. Rennie that his poor judgment was a reason for rejecting his grievance.

[68] The CDS also relies on comments by Mr. Justice Binnie in *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59, to the effect that reviewing courts cannot substitute their own appreciation of the appropriate solution. There may be more than one such solution as long as the process and outcome fit comfortably with the *Dunsmuir* criteria.

(3) Analysis

[69] DAOD 2017-1 stipulates that before determining a grievance that has been referred to the Grievance Board, the Final Authority must disclose the synopsis and any new evidence, consider relevant documents and information, consider any representations by the grievor post-disclosure, determine the grievance and advise in writing of his decision, with reasons. Where a finding or recommendation of the Grievance Board is not acted upon, reasons must be provided.

[70] My review of the record satisfies me that all these requirements were met by Col. Malo. A synopsis was prepared and disclosed to Capt. Rennie together with the late evidence; all documents, including his personnel record and many letters and evaluations referencing Capt. Rennie's exemplary prior performance were in the grievance file as were all representations. Where Col. Malo disagreed with the Grievance Board, he explained why he disagreed. The decision, with reasons, was provided to Capt. Rennie. That Capt. Rennie disagrees with the outcome does not mean the DAOD was breached.

[71] DAOD 5019-2 addresses the procedural aspects of the Administrative Review. It does not apply to the grievance. The Administrative Review was done by the Director Military Careers Administration. In finding Alcohol Misconduct and imposing Counselling & Probation as the appropriate administrative action, the reasons set out the evidence relied upon, the standard of proof, the determination that a court finding of criminal charges was not required and, in compliance with DAOD 5019-2, the reason for imposing the administrative action.

[72] As Col. Malo conducted a *de novo* review, I will nonetheless consider whether he provided sufficient reasons per DAOD 5019-2 for upholding the Counselling & Probation administrative action.

[73] Col. Malo's reasons leave no doubt as to why he upheld the finding and administrative action. Col. Malo clearly set out that the circumstances of the incident, the directive in the general message stipulating Counselling & Probation as the minimum remedial measure for Alcohol Misconduct and that Capt. Rennie's "extremely poor judgment" on the night in question were the reasons for considering Counselling & Probation. Col. Malo also said Capt. Rennie's behaviour showed a "serious shortcoming" and the repercussions could have been grave. His behaviour was found not to be in keeping with Canadian Armed Forces values and it required immediate correction.

[74] Reasons need not make an explicit finding on each constituent element leading to their final conclusion. The validity of either the reasons or the result is not impugned by such a failure: *Nfld. Nurses'* at para 16. Col. Malo found there were no compelling circumstances to warrant downgrading the Counselling & Probation to a lesser remedial measure. He noted he was confident that Capt. Rennie's conduct deficiency had been overcome. He commended Capt.

Rennie for his “dedication to continuing a productive and upstanding career with the CAF.” This latter reference indicates Col. Malo considered the positive letters of reference and Capt. Rennie’s excellent prior personnel record. No further comment was necessary.

[75] In my view, the *de novo* hearing coupled with the lack of new information in the Reports was more than sufficient to cure any procedural defect that otherwise might have been caused by the late disclosure. Col. Malo directly addressed the late disclosure in his reasons. He noted that Capt. Rennie was given the Reports and provided with the opportunity to make representations, which he did make. He confirmed that he was considering the matter *de novo* and had received and considered Capt. Rennie’s additional submissions together with the entire grievance file.

[76] In *Walsh v Canada (Attorney General)*, 2015 FC 775, Mr. Justice de Montigny, as he then was, held at para 51 that “the thrust of the Federal Court of Appeal in McBride is that a *de novo* review will be sufficient to cure a breach of procedural fairness when the procedure, considered as a whole, was fair.” Considered as a whole, Capt. Rennie was provided with ample opportunity to plead his case. He made submissions not only to the Final Authority but throughout the entire process starting with the Administrative Review. Once the Reports were disclosed, Capt. Rennie was given ample time to perfect the grievance file before it was sent to Col. Malo for a decision. I note that Capt. Rennie has not pointed to any information in the Reports that was not previously known to him either from actual events, prior disclosures or through the discontinued discipline process.

[77] I am satisfied that the reasons provided by Col. Malo meet the *Dunsmuir* criteria. In that respect I am also mindful of the Supreme Court’s endorsement in *Nfld. Nurses’* of the following extract from Professor Dyzenhaus:



“Reasonable” means here that the reasons do in fact or in principle support the conclusion reached. That is, even if the reasons in fact given do not seem wholly adequate to support the decision, the court must first seek to supplement them before it seeks to subvert them. For if it is right that among the reasons for deference are the appointment of the tribunal and not the court as the front line adjudicator, the tribunal’s proximity to the dispute, its expertise, etc, then it is also the case that its decision should be presumed to be correct even if its reasons are in some respects defective.  
[Emphasis added.]

## V. Summary and Conclusion

[78] Whether the circumstances of the incident could fall within the definition of an alcohol-related offence, and thereby be considered Alcohol Misconduct is within the expertise of Col. Malo. He found, on the administrative standard of a balance of probabilities and not on the higher standard suggested by the Capt. Rennie and the Grievance Board, that the conduct of Capt. Rennie constituted impaired driving under subsection 253(1)(a) of the *Criminal Code*. The facts upon which he relied reasonably lead to that conclusion.

[79] Col. Malo considered the conduct of Capt. Rennie in driving after consuming alcohol and considered the extent of the accident. He then determined there was clear and convincing evidence that Capt. Rennie operated a motor vehicle while his ability to do so was impaired by alcohol. In arriving at that conclusion Col. Malo did not rely on the results of the two ASD tests nor on any hearsay evidence. He relied only on undisputed or admitted facts.

[80] When Col. Malo determined that Alcohol Misconduct had been established and confirmed Counselling & Probation as the appropriate Remedial Measure, he was interpreting several DAOD’s ranging from Conduct and Performance to Administrative Review and Alcohol Misconduct. The DAOD is an administrative order applying to all members of the Canadian Forces. It is without doubt one of the ‘home statutes’ for which Col. Malo is responsible as the

delegate of the CDS. As such, I am mindful that Madam Justice Abella has instructed reviewing courts when giving deference to a decision-maker to give “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”: *Nfld. Nurses*’ at para 13.

[81] I am satisfied from my review of the record and the reasons of Col. Malo that the Decision is reasonable. It meets the *Dunsmuir* criteria of being justified, intelligible and transparent as well as being defensible on the facts and law with a result that falls within the range of possible, acceptable outcomes.

[82] The application is dismissed.

[83] Neither party having sought costs, none are awarded.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application is dismissed without costs.

“E. Susan Elliott”

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Judge

**ANNEX****Defence Administrative Orders and Directives (DAOD) - 2000****DAOD 2017-1, Military Grievance Process****8. Duties of a Redress Authority****General**

8.1 A redress authority is a CAF officer who acts as either the IA or the FA.

...

**Duties of a Redress Authority**

8.7 A redress authority may in some circumstances need to consider the reasonableness of applicable laws, policies, orders, instructions and directives. The fact that a CAF member has been treated in accordance with applicable laws, policies, orders, instructions and directives does not automatically mean that the CAF member was treated fairly.

8.8 Each decision provided by a redress authority must:

- a. reflect an analytical method which produces a reasoned outcome that can be read, understood and assessed by the grievor;
- b. be fully grounded in relevant law, policy and equity as applicable; and
- c. explain why any issue raised by the grievor is not considered relevant and therefore will not be addressed.

8.9 The primary task of a redress authority is to determine whether the grievor has been aggrieved by the decision, act or omission in the administration of the affairs of the CAF which gave rise to the grievance.

8.10 A redress authority who considers that a grievor:

**Directives et ordonnances administratives de la Défense (DOAD) - 2000****DOAD 2017-1, Processus de grief militaire****8. Obligations de l'autorité de redressement****Généralités**

8.1 Une autorité de redressement est un officier des FAC qui agit à titre d'AI ou d'ADI.

...

**Obligations de l'autorité de redressement**

8.7 Une autorité de redressement peut, dans certaines circonstances, devoir tenir compte du caractère raisonnable des lois, des politiques, des ordonnances, des instructions et des directives applicables. Le fait qu'un militaire ait été traité conformément aux lois, politiques, ordonnances, instructions et directives applicables ne signifie pas automatiquement qu'il a été traité avec équité.

8.8 Chacune des décisions prises par une autorité de redressement doit :

- a. procéder d'une méthode analytique qui produit un résultat raisonné qui peut être lu, compris et évalué par le plaignant;
- b. être entièrement fondée sur le droit, les politiques ou l'équité, selon le cas;
- c. expliquer pourquoi une question soulevée par le plaignant n'est pas jugée pertinente, le cas échéant, et par conséquent ne sera pas traitée.

8.9 La principale tâche d'une autorité de redressement est de déterminer si le plaignant a été lésé par l'acte, la décision ou l'omission, dans le cours des affaires des FAC, ayant mené au grief.

8.10 L'autorité de redressement qui conclut que le plaignant :

- a. has been aggrieved, must then identify the appropriate redress; or
- b. was treated fairly in accordance with applicable laws, policies, orders, instructions and directives, should normally conclude that the grievor has not been aggrieved.

8.11 Redress authorities and their staffs must communicate with the grievor in the official language of the grievor's choice.

...

### **Procedural Fairness**

8.13 The scope of procedural fairness for administrative decisions is contextual, and varies based upon the nature of the decision, the context in which it is made, and the impact of the decision on the affected person or persons. The goal of procedural fairness within the CAFGS is to ensure that the grievor has the opportunity to participate meaningfully in the decision-making process. In the context of the CAFGS, the grievor has the right to:

- a. be given notice of the key issues and potential consequences of any decision to be made by the redress authority;
- b. be provided with all relevant documents and information to be considered by a redress authority;
- c. be provided with an opportunity to provide representations on the documents and information; and
- d. receive a well-explained, timely, reasonable and impartial determination of their grievance.

8.14 Procedural fairness:

- a. is the duty to act fairly; and

- a. a été lésé doit choisir le redressement approprié;
- b. a été traité avec équité conformément aux lois, politiques, ordonnances, instructions et directives applicables devrait normalement conclure que le plaignant n'a pas été lésé.

8.11 Les autorités de redressement et les membres de leur personnel doivent communiquer avec le plaignant dans la langue officielle choisie par le plaignant.

...

### **Équité procédurale**

8.13 L'étendue de l'obligation d'équité procédurale en ce qui concerne les décisions administratives est contextuelle et varie selon la nature de la décision, le contexte dans lequel elle est prise et ses répercussions sur la ou les personnes touchées. Dans le cadre du SGFAC, l'équité procédurale a pour but de garantir au plaignant la possibilité de participer de façon significative au processus décisionnel. Dans le contexte du SGFAC, le plaignant a le droit :

- a. d'être avisé des enjeux importants et des conséquences potentielles de toute décision pouvant être prise par l'autorité de redressement;
- b. de se faire remettre tous les documents et renseignements pertinents qui seront pris en considération par l'autorité de redressement;
- c. d'avoir l'occasion de présenter des observations sur les documents et les renseignements;
- d. de recevoir en temps opportun une décision bien expliquée, raisonnable et impartiale à l'égard de son grief.

8.14 L'équité procédurale :

- a. est l'obligation d'agir de manière équitable;

- b. includes the following four principles:
  - i. notice (of the issue or issues involved);
  - ii. disclosure (of the relevant information);
  - iii. an opportunity to make representations (to an unbiased decision-maker); and
  - iv. reasons for the decision.

...

### **Disclosure**

8.16 Disclosure allows a grievor to know the “case to meet”, even though the grievor initiates the process, by ensuring that the grievor is afforded the opportunity to see all the information that will be considered by the redress authority. The grievor must be asked to acknowledge receipt of the disclosed information and to indicate their intention to provide representations.

Note – Although all relevant information included in the grievance file must be considered by a redress authority in determining the grievance, disclosure is only required for information that has not been previously disclosed or is not already in the possession of the grievor.

...

### **Representations**

8.18 The opportunity for the grievor to provide representations allows the grievor to be heard by the decision-maker. In other words, the grievor is provided an opportunity to comment on the information that is before the redress authority, including comment on the potential decisions that could be made. This right also permits the grievor to submit to the redress

- b. comporte les quatre principes suivants :
  - i. avis (de l’enjeu ou des enjeux en cause);
  - ii. divulgation (des renseignements pertinents);
  - iii. possibilité de présenter des observations (à un décideur impartial);
  - iv. décision motivée.

...

### **Divulgation**

8.16 La divulgation permet au plaignant de connaître la preuve qu’il devra réfuter, bien que ce soit le plaignant lui-même qui enclenche le processus, en faisant en sorte que le plaignant ait l’occasion de prendre connaissance de l’ensemble de l’information qui sera prise en compte par l’autorité de redressement. Il faut demander au plaignant d’accuser réception de l’information divulguée et de faire connaître son intention de présenter des observations.

Nota – Bien que l’ensemble de l’information pertinente contenue dans le dossier de grief doive être prise en compte par l’autorité de redressement dans le règlement du grief, la divulgation n’est requise que pour l’information n’ayant pas été divulguée précédemment ou que le plaignant n’a pas déjà en sa possession.

...

### **Observations**

8.18 La possibilité pour le plaignant de présenter des observations lui permet d’être entendu par le décideur. En d’autres mots, le plaignant se voit offrir la possibilité de formuler des commentaires sur l’information dont dispose l’autorité de redressement, y compris sur les décisions qui pourraient être rendues. Ce droit permet également au

authority any relevant information that may be missing from the grievance file so that the redress authority can consider it in the determination of the grievance.

...

### **Reasons**

8.21 The grievance provisions of the NDA and QR&O Chapter 7 require many decisions within the CAF grievance process to be accompanied by reasons. This permits the grievor to understand what information was used by the redress authority and how the decision was reached.

8.22 A redress authority must:

- a. be able to set aside their personal or institutional preferences when considering and determining a grievance;
- b. consider the perspectives and positions of both the CAF decision-makers who had been involved in the subject of the grievance and the grievor, in view of relevant information in the grievance file; and
- c. be aware of any fairness-related shortcomings in the original decision-making process that should be addressed by conducting a "de novo" review of the matter grieved.

8.23 A de novo review is a full and fair reconsideration of the matter grieved, accompanied by all the procedural fairness steps above, based on a review of all the relevant information in the grievance file obtained through those steps. When conducting a de novo review in order to correct previous procedural fairness shortcomings, a redress authority:

- a. must not simply endorse the reasonableness of the original decision; and
- b. must come to their own conclusion about the appropriate CAF response to the circumstances of the grievor in view of the information in the

plaignant de porter à la connaissance de l'autorité de redressement toute information pertinente qui peut manquer au dossier de grief afin qu'elle puisse en tenir compte dans le règlement du grief.

...

### **Motifs**

8.21 Les dispositions de la LDN et du chapitre 7 des ORFC en matière de griefs exigent que de nombreuses décisions prises dans le cadre de la procédure de grief des FAC soient accompagnées de motifs. Cela permet au plaignant de comprendre quelle information a été utilisée par l'autorité de redressement et comment la décision a été prise.

8.22 L'autorité de redressement doit :

- a. être en mesure de faire abstraction de ses préférences personnelles ou institutionnelles lorsqu'elle examine et règle un grief;
- b. tenir compte du point de vue et de la position tant des décideurs des FAC ayant pris part à l'objet du grief que de ceux du plaignant, compte tenu de l'information pertinente contenue dans le dossier de grief;
- c. connaître les lacunes en matière d'équité, le cas échéant, du processus décisionnel original qui devraient être corrigées en procédant à un nouvel examen de l'objet du grief.

8.23 Un nouvel examen est un réexamen complet et équitable de l'objet du grief, accompagné de toutes les étapes d'équité procédurale énoncées précédemment, qui est fondé sur un examen de l'ensemble de l'information pertinente dans le dossier de grief obtenue au cours de ces étapes. Dans la conduite d'un nouvel examen visant à corriger des lacunes antérieures en matière d'équité procédurale, l'autorité de redressement :

- a. ne doit pas simplement entériner le caractère raisonnable de la décision originale;
- b. doit en arriver à ses propres conclusions sur la réponse appropriée que doivent donner les

grievance file and the applicable laws, policies, orders, instructions and directives.

8.24 When a redress authority is considering if an administrative action (e.g. remedial measures, administrative review or release) should be initiated or if the outcome of the initial process should be maintained, the authority must follow the procedural fairness requirements of the grievance process and not those of the regulation, policy, order, instruction or directive applicable to the administrative action.

...

## 10. Duties of the Final Authority

...

### Consideration and Determination of the Grievance

10.5 Whether or not the FA refers a grievance to the Grievances Committee, the FA must, in accordance with QR&O article 7.19, *Duties if Grievance Not Referred to Grievances Committee*, or QR&O article 7.24, *Action After Grievances Committee Review*:

- a. consider the requirement to prepare a synopsis and disclose it and any new information to the grievor;
- b. consider all relevant documents and information, and any representations made by the grievor following the disclosure process;
- c. determine the grievance;
- d. provide reasons in the decision letter for not acting upon a finding or recommendation of the Grievances Committee;

**Note** – The findings and recommendations of the Grievances Committee do not constitute a

FAC aux circonstances du plaignant au vu de l'information contenue dans le dossier de grief et des lois, politiques, ordonnances, instructions et directives applicables.

8.24 Lorsqu'une autorité de redressement examine si une mesure administrative (p. ex. mesures correctives, examen administratif ou libération) devrait être entreprise ou si le résultat de la procédure initiale devrait être maintenu, elle doit respecter les exigences d'équité procédurale de la procédure de grief et non celles du règlement, de la politique, de l'ordonnance, de l'instruction ou de la directive applicable à la mesure administrative.

...

## 10. Obligations de l'autorité de dernière instance

...

### Étude et règlement du grief

10.5 Que l'ADI renvoie ou non un grief au Comité des griefs, elle doit, conformément à l'article 7.19 des ORFC, *Obligations – Grief non renvoyé au Comité des griefs*, ou à l'article 7.24 des ORFC, *Mesures postérieures à l'examen du Comité des griefs* :

- a. examiner la nécessité de rédiger un sommaire et de le divulguer, ainsi que tout nouveau renseignement, au plaignant;
- b. examiner tous les documents et renseignements pertinents, et les observations présentées par le plaignant à la suite du processus de divulgation;
- c. régler le grief;
- d. indiquer dans la lettre de décision les raisons pour lesquelles elle n'a pas suivi les conclusions ou recommandations du Comité des griefs;

**Nota** – Les conclusions et recommandations du Comité des griefs ne constituent pas une



decision, and the FA is not bound by them.

e. advise in writing the grievor, the grievor's CO, if any, and the IA, of the decision with reasons; and

f. update the NGR.

### **Defence Administrative Orders and Directives (DAODs) - 5000**

#### **DAOD 5019-0, Conduct and Performance Deficiencies**

##### **2. Policy Direction**

###### **Context**

2.1 Collectively, CAF members have a core responsibility to the government and people of Canada to defend Canada and its interests. Individually, CAF members are responsible for their conduct and performance.

2.2 A conduct or performance deficiency occurs if a CAF member fails to meet the standards of conduct and performance established for CAF members.

###### **Policy Statement**

2.3 CAF members shall be held accountable for any failure to meet established standards of conduct and performance resulting from factors within their control.

###### **Requirements**

2.4 The chain of command or designated staff, as applicable, shall take appropriate action if a CAF member demonstrates conduct or performance deficiencies. Depending on the circumstances, the appropriate action may involve disciplinary or administrative action, or both.

2.5 If a CAF member has been charged with an offence under the *National Defence Act*, *Criminal Code* or other federal statute, the chain of command or designated staff may, regardless of the outcome of the offence charged, take administrative action to address any conduct or performance deficiencies

décision et ne lie pas l'ADI.

e. aviser par écrit le plaignant, son cmdt, le cas échéant, et l'AI, de la décision motivée;

f. mettre à jour le RNG.

### **Directives et ordonnances administratives de la Défense (DOAD) - 5000**

#### **DOAD 5019-0, Manquement à la conduite et au rendement**

##### **2. Orientation de la politique**

###### **Contexte**

2.1 Collectivement, les militaires sont responsables envers le gouvernement du Canada et la population canadienne de la défense du pays et de ses intérêts. Individuellement, les militaires sont responsables de leur conduite et de leur rendement.

2.2 Il y a manquement à la conduite et au rendement lorsqu'un militaire ne respecte pas les normes de conduite et de rendement établies pour les militaires.

###### **Énoncé de politique**

2.3 Les militaires sont tenus responsables de tout manquement aux normes de conduite et de rendement établies résultant de facteurs dépendant de leur volonté.

###### **Exigences**

2.4 Les militaires faisant partie de la chaîne de commandement ou tout autre personnel désigné, selon le cas, doivent prendre les mesures appropriées si un militaire fait preuve d'un manquement à la conduite ou au rendement. Selon les circonstances, ces mesures peuvent être de nature disciplinaire ou administrative, voire les deux.

2.5 Si un militaire est accusé d'une infraction en vertu de la *Loi sur la défense nationale*, du Code criminel ou d'une autre loi fédérale, et quel qu'en soit l'aboutissement, les militaires faisant partie de la chaîne de commandement

arising from the same circumstances.

2.6 The CAF shall provide education, counselling and treatment, as appropriate, to assist CAF members to prevent, correct or subsequently overcome conduct or performance deficiencies.

peuvent prendre des mesures administratives pour traiter tout manquement à la conduite ou au rendement émanant des mêmes circonstances.

2.6 Les FAC doivent offrir aux militaires, selon le cas, des services d'éducation, de counselling et de traitement, afin de prévenir, corriger ou subséquemment surmonter les manquements à la conduite ou au rendement.

**DAOD 5019-2, Administrative Review**

**5. Administrative Review Process**

...

**Standard of Proof and Evidence**

5.6 The standard of proof in an AR is a balance of probabilities as set out in the following table:

**DOAD 5019-2, Examen administratif**

**5. Processus d'examen administratif**

...

**Norme et éléments de preuve**

5.6 La prépondérance des probabilités est la norme de preuve applicable à l'EA, tel que l'indique le tableau suivant :

<b>The AA shall be satisfied that there is ...</b>	<b>that establishes on a balance of probabilities that an incident, special circumstance or professional deficiency has occurred ...</b>	<b>L'AA doit être convaincue qu'il y a...</b>	<b>établissant, selon la prépondérance des probabilités, un incident, des circonstances particulières ou une lacune professionnelle...</b>
clear and convincing evidence,	in an AR which may result in: <ul style="list-style-type: none"> <li>• release under Item 1(b), 1(d), 2, 5(d) or 5(f) in the Table to QR&amp;O article 15.01, <i>Release of Officers and Non-Commissioned Members</i>;</li> <li>• reversion in rank; or</li> <li>• a finding that the CAF member engaged in any activity described in</li> </ul>	des éléments de preuve clairs et convaincants	lorsque l'EA est susceptible de mener à : <ul style="list-style-type: none"> <li>•une libération en vertu des numéros 1b), 1d), 2, 5d) ou 5f) du tableau ajouté à l'article 15.01 des ORFC, <i>Libération des officiers et militaires du rang</i>;</li> <li>•un retour à un grade inférieur;</li> <li>•la conclusion</li> </ul>

	an offence: <ul style="list-style-type: none"> <li>◦ in the Code of Service Discipline; or</li> <li>◦ in any other federal legislation.</li> </ul>		que le militaire a pris part à une activité constituant une infraction : <ul style="list-style-type: none"> <li>◦ au code de discipline militaire;</li> <li>◦ à toute autre loi fédérale.</li> </ul>
reliable evidence,	in any other AR.	des éléments de preuve fiables	dans tous les autres cas d'EA.

### **Selection of Administrative Action**

5.7 The selection of administrative action shall be based upon consideration of the following:

- a. the facts of the present case;
- b. the CAF member's entire period of service, taking into account the CAF member's rank, military occupation, experience and position;
- c. the CAF member's previous conduct or performance deficiencies, if any; and
- d. the CAF member's leadership role, if any.

### **DAOD 5019-4, Remedial Measures**

#### **4. Requirements for Remedial Measures**

##### **Requirement for a Remedial Measure**

4.1 A remedial measure may be initiated if there is reliable evidence that establishes on a balance of probabilities that a CAF member has demonstrated:

- a. a conduct deficiency based on an applicable standard of conduct; or
- b. a performance deficiency whereby, over a reasonable period of time, the CAF member has not met the applicable standard

### **Sélection de la mesure administrative**

5.7 La sélection de la mesure administrative est fondée sur les éléments suivants :

- a. les faits entourant l'affaire;
- b. toute la période de service du militaire, en tenant compte de son grade, de son groupe professionnel militaire, de son expérience et de son poste;
- c. les écarts de conduite ou le rendement insuffisant antérieurs du militaire, le cas échéant;
- d. le rôle de leadership assumé par le militaire, le cas échéant.

### **DOAD 5019-4, Mesures correctives**

#### **4. Exigences préalables à la prise de mesures correctives**

##### **Exigence préalable à la prise d'une mesure corrective**

4.1 Une mesure corrective peut être entreprise s'il y a des éléments de preuve fiables qui établissent, selon la prépondérance des probabilités, que le militaire a :

- a. commis un écart de conduite en fonction d'une norme de conduite applicable;
- b. démontré un rendement insuffisant qui

of performance.

### **Identifying the Deficiency**

4.2 A deficiency shall be categorized as a conduct deficiency or a performance deficiency, but not both. Identification of the CAF member's deficiency serves to focus on the monitoring objectives and to facilitate any staff or third party review of the CAF personnel record.

4.3 If a CAF member demonstrates different deficiencies at the same time, each deficiency shall be dealt with separately (e.g. if a member demonstrates a performance deficiency and is involved in drug and alcohol abuse, the initiating authority could initiate an IC for alcohol misconduct, an IC for performance deficiency and C&P for prohibited drug use).

### **Determining the Appropriate Action**

4.4 In determining if a remedial measure should be initiated, an initiating authority shall consider:

- a. the potential consequences if a remedial measure is not initiated;
- b. whether another administrative action is more appropriate; and
- c. whether the deficiency would be more appropriately dealt with through disciplinary action.

### **Factors in Selecting a Remedial Measure**

4.5 An initiating authority shall consider the following factors before selecting a remedial measure:

- a. the facts of the case, including the significance and impact of the deficiency;
- b. the CAF member's entire period of service, taking into account the CAF

fait que, pour une période appréciable, le militaire n'a pas respecté une norme de rendement applicable.

### **Catégorisation du manquement**

4.2 Un manquement peut être catégorisé comme un écart de conduite ou comme un rendement insuffisant, mais pas les deux. La catégorisation du manquement du militaire sert à cerner les objectifs de surveillance et à faciliter l'examen du dossier personnel du militaire par l'état-major ou une tierce partie.

4.3 Si le militaire fait preuve de différents manquements au même moment, chaque manquement doit être traité séparément (p. ex. si un militaire démontre un rendement insuffisant et qu'il a des problèmes d'abus d'alcool et de drogues, l'autorité de mise en œuvre pourra entreprendre une PMG pour l'inconduite liée à l'alcool, une PMG pour le rendement insuffisant et une MG et S pour l'usage interdit de drogues).

### **Détermination de la mesure appropriée**

4.4 Pour déterminer s'il y a lieu d'entreprendre une mesure corrective, l'autorité de mise en œuvre doit :

- a. prendre en considération les conséquences possibles de l'absence de mesures correctives;
- b. examiner si une autre mesure administrative serait plus appropriée;
- c. examiner si le manquement serait plus adéquatement traité au moyen d'une mesure disciplinaire.

### **Facteurs déterminant la sélection d'une mesure corrective**

4.5 L'autorité de mise en œuvre doit tenir compte des facteurs suivants avant de sélectionner la mesure corrective :

- a. les faits entourant l'affaire, y compris l'importance et l'incidence du manquement;
- b. toute la période de service du militaire, en tenant compte de son grade, de son groupe

member's rank, military occupation, experience and position;

c. any conduct or performance assessment, evaluation or constructive criticism previously received by the CAF member in respect of the deficiency;

d. any previous deficiency substantially related to the current deficiency of the CAF member and the amount of time that has elapsed between the two (e.g. C&P is more likely to be initiated for a CAF member in respect of whom an RW was initiated six months ago for a related deficiency, than in respect of whom a similar RW was initiated 20 years ago); and

e. any relevant factors in associated policies or orders related to the specific deficiency.

professionnel militaire, de son expérience et de son poste;

c. toute évaluation de conduite ou de rendement, toute autre évaluation et toute critique constructive déjà reçue par le militaire à propos du manquement;

d. tout manquement antérieur qui est essentiellement relié au manquement actuel du militaire, et le temps qui s'est écoulé entre les deux (p. ex. un militaire qui a reçu un AÉ il y a six mois pour un manquement sera plus susceptible d'être assujéti à une MG et S pour un manquement similaire aujourd'hui que le militaire qui a reçu un AÉ il y a 20 ans pour un manquement similaire);

e. tout facteur pertinent d'une politique ou d'une ordonnance connexe reliée au manquement précisé.

### **Progression of Measures**

4.6 An initiating authority may select an appropriate remedial measure without progressing from IC to RW to C&P. If a CF member has demonstrated a conduct or performance deficiency, an initiating authority may review the CAF personnel record and determine that other administrative action is warranted (e.g. a CAF member whose CAF personnel record contains two IC and one RW could be considered for further administrative action without C&P being initiated). The determining factor is not the number of measures, but rather the overall character of the CAF member's service.

### **DAOD 5019-7, Alcohol Misconduct**

#### **2. Definitions**

##### **alcohol abuse (*abus d'alcool*)**

Alcohol abuse means a maladaptive pattern of repeated alcohol use as manifested by recurrent or significant adverse consequences as described in the *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition (Text

### **Gradation des mesures**

4.6 Une autorité de mise en œuvre peut sélectionner la mesure corrective appropriée sans être tenue de passer d'une PMG à un AÉ, puis à une MG et S. Si le militaire a commis un écart de conduite ou démontré un rendement insuffisant, l'autorité de mise en œuvre peut examiner le dossier personnel du militaire et déterminer que d'autres mesures administratives sont justifiées (p. ex. un militaire dont le dossier personnel contient deux PMG et un AÉ pourrait faire l'objet de mesures administratives autre qu'une MG et S). Le facteur déterminant n'est pas le nombre de mesures, mais plutôt le caractère global du service du militaire.

### **DOAD 5019-7, Inconduite liée à l'alcool**

#### **2. Définitions**

##### **abus d'alcool (*alcohol abuse*)**

Abus d'alcool désigne un mode inadapté et répétitif de consommation d'alcool qui entraîne des conséquences négatives récurrentes ou importantes, au sens du *Manuel diagnostique et statistique des troubles mentaux*, 4e édition, texte révisé.

Revision).

### **alcohol dependence (*dépendance à l'alcool*)**

Alcohol dependence means a physiological or psychological dependence on alcohol as manifested by tolerance or symptoms of withdrawal as described in the *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition (Text Revision).

Alcohol Misconduct (*inconduite liée à l'alcool*) Alcohol misconduct means any conduct, other than a conduct deficiency involving alcohol, that is an offence under the *Criminal Code* or the Code of Service Discipline that includes the consumption or influence of alcohol as an element of the offence or as a contributing factor, including, but not limited to, the following offences:

- impaired driving;
- impaired driving causing bodily harm or death;
- refusing to comply with a demand to provide a breath or blood sample;
- drunkenness under section 97 of the *National Defence Act* or an offence under QR&O article 19.04, *Intoxicants*, if dealt with at court martial, or at summary trial if a court martial election was given; and
- stealing, assault or sexual assault.

### **conduct deficiency involving alcohol (*écart de conduite lié à l'alcool*)**

A conduct deficiency involving alcohol means any conduct or performance involving alcohol that:

- is an offence under section 97 of the *National Defence Act* or QR&O article 19.04, if dealt with at summary trial and a court martial election was not given;
- is an offence under provincial or municipal law; or

### **dépendance à l'alcool (*alcohol dependence*)**

Dépendance à l'alcool désigne une dépendance physiologique ou psychologique à l'alcool qui se traduit par une tolérance ou par des symptômes de repli sur soi-même, au sens du *Manuel diagnostique et statistique des troubles mentaux*, 4e édition, texte révisé.

### **écart de conduite lié à l'alcool (*conduct deficiency involving alcohol*)**

Écart de conduite lié à l'alcool désigne toute conduite ou rendement lié à l'alcool étant :

- soit une infraction à l'article 97 de la *Loi sur la défense nationale* ou à l'article 19.04 des ORFC, *Boissons alcooliques*, si elle fait l'objet d'un procès sommaire et que le choix d'être jugé devant une cour martiale n'a pas été donné à l'accusé;
- soit une infraction à une loi provinciale ou à un règlement municipal;
- soit une mauvaise gestion des finances personnelles, ou toute autre forme de conduite ou de rendement inacceptable.

### **inconduite liée à l'alcool (*alcohol misconduct*)**

Inconduite liée à l'alcool désigne toute conduite, autre que l'écart de conduite lié à l'alcool, qui constitue, selon le *Code criminel* ou le Code de discipline militaire, une infraction ayant pour élément essentiel ou pour facteur contributif la consommation d'alcool ou l'effet de celui-ci. L'inconduite liée à l'alcool s'entend notamment des infractions suivantes :

- la conduite avec facultés affaiblies;
- la conduite avec facultés affaiblies causant des lésions corporelles ou la mort;
- le refus d'obtempérer à l'ordre de fournir un échantillon d'haleine ou de sang;
- l'ivresse visée à l'article 97 de la *Loi sur la défense nationale* ou une infraction à l'article 19.04 des ORFC, si l'affaire est jugée devant une cour martiale, ou qu'elle fait l'objet d'un

- demonstrates personal financial mismanagement or any other unacceptable conduct or performance.

procès sommaire et que le choix d'être jugé devant une cour martiale a été donné à l'accusé;

- le vol, les voies de fait ou l'agression sexuelle.

### 3. General Principles

#### Context

3.1 Alcohol abuse and alcohol dependence create widespread and serious problems in the CAF, harming basic social and military values and undermining security, morale, discipline and cohesion in the CAF.

3.2 Alcohol abuse and alcohol dependence lead to behaviour that reflects discredit on the CAF and are therefore not tolerated by the CAF.

3.3 Maintaining a healthy regard for alcohol is addressed through education and, if necessary, medical treatment.

#### Applicant for Enrolment, Re-engagement or Re-enrolment

3.4 A person who has engaged in alcohol misconduct may be refused enrolment, re-engagement or re-enrolment in the CAF.

#### Standard of Conduct

3.5 No CAF member shall engage in alcohol misconduct.

#### Consequences

3.6 A CAF member who engages in alcohol misconduct is liable to criminal, disciplinary and administrative action, including release.

3.7 Alcohol misconduct and conduct deficiency involving alcohol shall be dealt with in a timely fashion.

...

### 5. Process for Alcohol Misconduct

### 3. Principes généraux

#### Contexte

3.1 L'abus d'alcool et la dépendance à l'alcool causent des problèmes graves et répandus au sein des FAC, nuisent aux valeurs sociales et militaires fondamentales et minent ainsi la sécurité, le moral, la discipline et la cohésion dans les FAC.

3.2 L'abus d'alcool et la dépendance à l'alcool entraînent un comportement qui jette le discredit sur les FAC; par conséquent, ils ne sont pas tolérés par ces dernières.

3.3 Il est possible d'entretenir un sain rapport à l'alcool grâce à l'éducation et, si nécessaire, au moyen d'un traitement médical.

#### Candidat à l'enrôlement, au rengagement ou au réenrôlement

3.4 Une personne qui commet une inconduite liée à l'alcool peut se voir refuser l'enrôlement, le rengagement ou le réenrôlement dans les FAC.

#### Norme de conduite

3.5 Il est interdit aux militaires de commettre une inconduite liée à l'alcool.

#### Conséquences

3.6 Un militaire qui commet une inconduite liée à l'alcool est passible de poursuites criminelles, ainsi que de mesures disciplinaires et administratives, y compris la libération.

3.7 Les cas d'inconduite liée à l'alcool et d'écart de conduite lié à l'alcool doivent être réglés au moment opportun.

...

### 5. Procédure à suivre en cas d'inconduite liée

**Action by CO and DMCA**

5.1 After any report of a CAF member's alcohol misconduct or suspected alcohol misconduct, the CO shall:

- a. immediately notify DMCA and provide a sufficient description of the circumstances;
- b. obtain legal advice from the local JAG representative; and
- c. consider action under QR&O article 101.08, *Relief from Performance of Military Duty – Pre and Post Trial*.

5.2 Upon notification by a CO, DMCA shall initiate an administrative review (AR) as appropriate under DAOD 5019-2, *Administrative Review*.

5.3 Only DMCA, the Director General Military Careers (DGMC) and CMP may impose administrative action for alcohol misconduct. Any purported administrative action imposed by a CO in respect of alcohol misconduct is of no force or effect.

...

**CAF Member Tried for an Alcohol Misconduct Offence**

5.5 If a CAF member is tried for an alcohol misconduct offence, the CO shall obtain, upon the conclusion of the service tribunal or civil court proceeding, the documents listed in the following table:

**à l'alcool****Mesures que doivent prendre le cmdt et le DACM**

5.1 Lorsqu'une inconduite liée à l'alcool avérée ou soupçonnée, commise par un militaire, est signalée à un cmdt, celui-ci doit :

- a. aviser immédiatement le DACM et fournir une description suffisante des circonstances;
- b. obtenir l'avis juridique du représentant local du JAG;
- c. envisager de prendre des mesures conformément à l'article 101.08 des ORFC, *Retrait des fonctions militaires – Avant et après le procès*.

5.2 Dès qu'il en est avisé par un cmdt, le DACM doit entreprendre le processus d'examen administratif (EA), s'il y a lieu, conformément à la DOAD 5019-2, *Examen administratif*.

5.3 Seuls le DACM, le directeur général – Carrières militaires (DGCM) et le CPM peuvent imposer des mesures administratives en cas d'inconduite liée à l'alcool. Toute mesure administrative imposée par un cmdt relativement à une inconduite liée à l'alcool est inopérante.

...

**Militaire jugé pour inconduite liée à l'alcool**

5.5 Si le militaire est jugé pour inconduite liée à l'alcool, le cmdt doit obtenir, à la conclusion des procédures du tribunal militaire ou du tribunal civil, les documents indiqués dans le tableau suivant :

<b>If ...</b>	<b>obtain the following ...</b>	<b>Si...</b>	<b>il faut obtenir...</b>
the CAF member is convicted,	• the certificate of conviction or other document setting out the conviction (see QR&O article 19.61, <i>Certificate of Conviction</i> and QR&O	le militaire est déclaré coupable,	•le certificat de condamnation ou tout autre document indiquant la déclaration de culpabilité (voir l'article 19.61 des ORFC, Certificat de



	<p>article 19.62, <i>Action Following Conviction by Civil Authority</i>);</p> <ul style="list-style-type: none"> <li>• the form or other document setting out the sentence;</li> <li>• any probation order; and</li> <li>• any prohibition order.</li> </ul>		<p>condamnation et l'article 19.62 des ORFC, <i>Mesures à prendre après condamnation par une autorité civile</i>);</p> <ul style="list-style-type: none"> <li>•le formulaire ou tout autre document indiquant la sentence;</li> <li>•l'ordonnance de probation, le cas échéant;</li> <li>•l'ordonnance d'interdiction, le cas échéant.</li> </ul>
<p>the CAF member is discharged or found not guilty, or a stay of proceedings is directed,</p>	<ul style="list-style-type: none"> <li>•the entire court transcript; and</li> <li>• the decision of the service tribunal or civil court.</li> </ul>	<p>le militaire reçoit une absolution ou est déclaré non coupable ou l'arrêt des procédures est ordonné,</p>	<ul style="list-style-type: none"> <li>•la transcription intégrale des débats judiciaires;</li> <li>•la décision du tribunal.</li> </ul>

#### 5.6 The CO shall forward to DMCA:

- a. all the above applicable documents;
- b. any conduct sheet of the CAF member, updated as required;
- c. a summary of the evidence;
- d. the CO's recommendation, with explanation, as to administrative action, if any, that should be imposed in respect of the CAF member; and
- e. any other relevant information to assist in the AR.

#### **CAF Member Not Tried for an Alcohol Misconduct Offence**

5.7 If a CAF member is not tried for an alcohol misconduct offence, the CO shall forward to DMCA:

- a. all information concerning the reported

#### 5.6 Le cmdt doit transmettre au DACM :

- a. tous les documents susmentionnés pertinents;
- b. la fiche de conduite du militaire, le cas échéant, mise à jour si nécessaire;
- c. un résumé de la preuve;
- d. sa recommandation, accompagnée d'explications, concernant les mesures administratives qui devraient être imposées au militaire, s'il y a lieu;
- e. tout autre renseignement pertinent pouvant faciliter l'EA.

#### **Militaire non jugé pour inconduite liée à l'alcool**

5.7 Si le militaire n'est pas jugé pour inconduite liée à l'alcool, le cmdt doit transmettre au DACM :

- a. tous les renseignements concernant

incident;

- b. any conduct sheet of the CAF member;
- c. the CO's recommendation, with explanation, as to administrative action, if any, that should be imposed in respect of the CAF member; and
- d. any other relevant information to assist in the AR.

...

## 7. Administrative Action

### Evidence

7.1 Administrative action in respect of alcohol misconduct may be imposed only if there is clear and convincing evidence that the CAF member has engaged in alcohol misconduct.

7.2 Administrative action in respect of a conduct deficiency involving alcohol may be imposed only if there is reliable evidence that the CAF member has engaged in the conduct deficiency.

### Administrative Action if an AR is Conducted

7.3 Before determining appropriate administrative action, the approving authority, as set out in the AR Types table of DAOD 5019-2, shall consider all the evidence surrounding the incident. In weighing that evidence, the approving authority is required to consider the following:

- a. the facts of the present case;
- b. the CAF member's entire period of service, taking into account the CAF member's rank, military occupation, experience and position;
- c. the CAF member's previous conduct or performance deficiencies, if any;
- d. the CAF member's leadership role, if any;
- e. whether the CAF member's leadership

l'incident signalé;

- b. la fiche de conduite du militaire, le cas échéant;
- c. sa recommandation, accompagnée d'explications, concernant les mesures administratives qui devraient être imposées au militaire, s'il y a lieu;
- d. tout autre renseignement pertinent pouvant faciliter l'EA.

...

## 7. Mesures administratives

### Éléments de preuve

7.1 Les mesures administratives relatives à l'inconduite liée à l'alcool ne peuvent être imposées que s'il y a des éléments de preuve clairs et convaincants à l'effet que le militaire a commis une inconduite liée à l'alcool.

7.2 Les mesures administratives relatives à l'écart de conduite lié à l'alcool ne peuvent être imposées que s'il y a des éléments de preuve fiables à l'effet que le militaire a commis un écart de conduite.

### Mesure administrative en cas d'EA

7.3 Avant de déterminer les mesures administratives appropriées, l'autorité approbatrice mentionnée dans le tableau *Motifs d'EA* de la DOAD 5019-2 doit étudier tous les éléments de preuve entourant l'incident. Lorsqu'elle évalue les éléments de preuve, l'autorité approbatrice doit considérer :

- a. les faits entourant l'affaire;
- b. toute la période de service du militaire, en tenant compte de son grade, de son groupe professionnel militaire, de son expérience et de son poste;
- c. les écarts de conduite ou le rendement insuffisant antérieurs du militaire, le cas échéant;
- d. le rôle de leadership assumé par le militaire, le cas échéant;

capacity is compromised; and  
f. the ACF member's history of referral for medical assessment for similar incidents.

7.4 As a general principle, the appropriate administrative action is one that best reflects the degree of incompatibility between the CAF member's:

- a. alcohol misconduct or conduct deficiency involving alcohol; and
- b. continued service in the CAF.

7.5 Administrative action which may be imposed is set out in the AR Decisions block in DAOD 5019-2.

#### **Administrative Action if an AR is not Conducted**

7.6 If a CAF member has engaged in a conduct deficiency involving alcohol and an AR is not conducted, a CO may administer a remedial measure in accordance with DAOD 5019-4, *Remedial Measures*.

e. si la capacité de leadership du militaire est compromise;

f. les occasions auxquelles le militaire a été envoyé précédemment en consultation en vue d'une évaluation médicale pour des incidents semblables.

7.4 En règle générale, la mesure administrative appropriée est celle qui reflète le mieux le degré d'incompatibilité entre les deux situations suivantes :

- a. l'inconduite liée à l'alcool ou l'écart de conduite lié à l'alcool;
- b. le maintien en service du militaire au sein des FAC.

7.5 Les mesures administratives qui peuvent être imposées sont précisées dans le bloc *Décisions rendues à l'issue d'un EA* de la DOAD 5019-2.

#### **Mesure administrative en l'absence d'EA**

7.6 Si un militaire a commis un écart de conduite lié à l'alcool et qu'aucun EA n'est effectué, le cmdt peut administrer une mesure corrective conformément à la DOAD 5019-4, *Mesures correctives*.

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

**DOCKET:** T-273-15

**STYLE OF CAUSE:** CAPTAIN JARET RENNIE v CHIEF OF DEFENCE  
STAFF OF THE CANADIAN FORCES AND  
DIRECTOR GENERAL CANADIAN FORCES  
GRIEVANCE AUTHORITY

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 27, 2016

**JUDGMENT AND REASONS:** ELLIOTT J.

**DATED:** AUGUST 31, 2016

**APPEARANCES:**

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