Federal Court Cour fédérale

Date: 20161124

Docket: T-102-15

Citation: 2016 FC 1299

Ottawa, Ontario, November 24, 2016

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

CORPORAL (RET'D) PAUL STEMMLER

Applicant

and

CANADA (ATTORNEY GENERAL)

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Corporal (Retired) Paul Stemmler, joined the Canadian Armed Forces [CAF] in 1984, as a member of the Military Police [MP]. His duties at the MP included the conduct of investigations on various aspects of child pornography and the sexual exploitation of children. In April 2001, Cpl. Stemmler transferred out of the MP but continued to serve in the

CAF. By all accounts, Cpl. Stemmler was known as a competent, dedicated and hard-working soldier throughout his career in the CAF.

[2] In April 2009, Cpl. Stemmler was assigned Medical Employment Limitations [MELs], which breached the CAF principle of "universality of service" requiring that all members of the Canadian military be physically fit, employable and deployable for general operational duties. This breach triggered an administrative review to determine whether or not Cpl. Stemmler could continue to serve with the CAF.

[3] In January 2010, Cpl. Stemmler was authorized to remain in the CAF for a period of retention [POR] of three years scheduled to expire on January 11, 2013, when Cpl. Stemmler would be medically released from the CAF. A POR is typically put in place to help members of the CAF transition from the military to civilian life while still remaining gainfully employed. However, in May 2010, Cpl. Stemmler's release date was changed to November 26, 2010, effectively terminating his POR on that date and thus advancing his release from the CAF by a little more than two years.

[4] In November 2010, Cpl. Stemmler filed a grievance concerning his accelerated release date and the early termination of his POR, seeking as redress to be able to continue to serve the remainder of his POR until January 2013. He contended that the cancellation of his POR was improper. In a final decision rendered on October 30, 2015 by the Chief of the Defence Staff [CDS] General J.H. Vance, in his capacity as the final authority [FA] in the CAF grievance process, the CDS concluded that he was unable to grant the redress sought by Cpl. Stemmler and

to order his reinstatement in the CAF [the Decision]. However, recognizing that the process leading to the termination of Cpl. Stemmler's POR was unreasonable, the CDS agreed to grant an alternative remedy to Cpl. Stemmler, in the form of an *ex gratia* payment of $25,000.

[5] Cpl. Stemmler has applied to this Court to seek judicial review of the CDS Decision. He argues that, in his Decision, the CDS failed to deal with one of the specific remedies he was seeking, namely that the expiry of his POR in the CAF be restored to January 11, 2013. He claims that the Decision is therefore unreasonable. Cpl. Stemmler also contends that the reasons provided by the CDS in support of the *ex gratia* payment are insufficient and do not allow him to understand how the CDS arrived at the amount of $25,000 awarded to him. In his notice of application, Cpl. Stemmler indicated that he is seeking "an Order that the matter be remanded to the [CDS] for clarification and redetermination or such other remedy as the Court sees fit". In his memorandum, he asked this Court to quash the decision of the CDS and to declare his release from the CAF void *ab initio* or to issue any other order that the Court may deem appropriate.

[6] The sole issue to be determined in this application is whether the CDS Decision accepting Cpl. Stemmler's grievance but rejecting the specific POR restoration sought by Cpl. Stemmler and providing him with an *ex gratia* payment was reasonable.

[7] For the reasons that follow, while I sympathize with Cpl. Stemmler and deplore the unfortunate circumstances of his early release from the CAF, I must dismiss the application. I cannot conclude that the CDS Decision on Cpl. Stemmler's grievance was unreasonable or that the reasons supporting the granting of the *ex gratia* payment are inadequate. The Decision was

responsive to the evidence and the outcome is defensible based on the facts and the law. I find that it has the required attributes of justification, transparency and intelligibility and that it does not fall outside the range of possible, acceptable outcomes available to the CDS. There are therefore no sufficient grounds to justify this Court's intervention.

II. Background

A. *The Factual Context*

[8] Cpl. Stemmler joined the CAF in 1984. From 1984 to 2001, he was a member of the MP. In April 2001, he transferred out of the MP but continued to serve in the Canadian military for several years. As of 2002, he worked out of Cornwall, Ontario as a systems technician. In November 2007, due to the nature of his previous employment in the MP where his work had consisted of investigating the sexual exploitation of children, Cpl. Stemmler was diagnosed with Post-Traumatic Stress Disorder [PSTD], major depression and obsessive compulsive disorder. Cpl. Stemmler thus worked with reduced duties and sought treatment for his medical condition.

[9] In April 2009, Cpl. Stemmler was assigned MELs, which put him in violation of the CAF principle of "universality of service". In June 2009, Cpl. Stemmler requested to remain in the CAF for three years, under a POR. In January 2010, a three-year POR was therefore authorized by the Director of Military Careers Administration [DMCA], scheduled to expire on January 11, 2013.

[10] In April 2010, Cpl. Stemmler was informed that he would be transferred the following month from his unit in Cornwall to the Wing Telecommunications and Information Services Squadron [WTISS] located in Trenton, Ontario. At that time, Cpl. Stemmler had a conversation with Warrant Officer Forcier [the WO], his new supervisor in Trenton, discussing the state of his health and the fact he would be separated from his family when transferred in Trenton. These issues apparently caused concern to the WO. The following day, the WO had a conversation with Cpl. Stemmler's Commanding Officer [CO], where Cpl. Stemmler's work, family and health considerations were discussed. Later on that day, the Unit Warrant Officer [the UWO] from WTISS wrote to Cpl. Stemmler's Career Manager [CM] to inform him that the offer of service in Trenton was withdrawn due to, among other things, the unit's high stress environment.

[11] In May 2010, the CM responded, attempting to get the WTISS to reconsider. The CM said that if Cpl. Stemmler did not live up to expectations, the WTISS could contact the DMCA and ask that the retention at WTISS be terminated. In response, the UWO spoke with the CM and indicated that he offered the CM the option of posting Cpl. Stemmler to a vacant WTISS position, then lending him back to Cornwall where Cpl. Stemmler could serve the remainder of his POR. On May 11, 2010, the posting of Cpl. Stemmler to WTISS was cancelled. The following day, the acting DMCA approved a change to Cpl. Stemmler's release date to November 26, 2010, effectively terminating Cpl. Stemmler's POR on that date and advancing his release from the CAF by approximately two years.

[12] In November 2010, Cpl. Stemmler filed a grievance concerning his accelerated release date, seeking as redress to be able to continue to serve the remainder of his POR until January

2013. The grievance was filed with his CO, in his capacity as the Initial Authority [IA] in the CAF grievance process. The IA denied Cpl. Stemmler's grievance in June 2012, citing Cpl. Stemmler's medical and family issues, his imposed restriction status and his problems working in a team environment. The IA found that Cpl. Stemmler could no longer be advantageously employed in the CAF, which is a requirement for a POR.

[13] The matter was sent as a mandatory referral to the CAF Military Grievances External Review Committee [the MGERC], for its consideration. On March 20, 2012, the MGERC recommended that Cpl. Stemmler's grievance be upheld, that his release be void *ab initio* and Cpl. Stemmler be treated as if he had never been released, and that a new administrative review of his MELs be conducted to determine whether Cpl. Stemmler could continue to be retained or should be medically released.

[14] Cpl. Stemmler's grievance was then returned to the CDS, as the FA, including the findings and recommendations of the MGERC (which are, however, non-binding on the CDS). After considering Cpl. Stemmler's grievance *de novo*, the CDS accepted that Cpl. Stemmler's had been aggrieved but only agreed to grant an *ex gratia* payment of $25,000.

B. *The Legislative and Regulatory Framework*

[15] The relevant procedures and guiding principles of the CAF grievance process are established by sections 29 to 29.15 of the *National Defence Act*, RSC 1985, c N-5 [NDA] and by chapter 7 of the *Queen's Regulations and Orders for the Canadian Forces* [QR&Os]. The CAF grievance process has two levels of grievance authority: the IA and the FA.

[16] In *Bossé v Canada (Attorney General)*, 2015 FC 1143 [*Bossé*] at paras 22-23, Madame Justice Roussel summarized the various steps of this grievance process as follows:

> [22] An officer or non-commissioned member who has been aggrieved by any decision, act or omission in the administration of the affairs of the [CAF], for which no other process for redress is provided under the NDA, is entitled to submit a grievance. The grievance must be submitted in writing to the individual's CO, who will act as the IA for the grievance. If the CO is unable to act as the IA, the grievance will then be sent to the commander or officer holding the appointment of Director General, or above, at National Defence Headquarters, who is responsible to deal with the matter that is the subject of the grievance. If the grievance relates to a personal decision, act or omission of an officer who is the IA, then that officer must refer the grievance to the next superior officer who has the responsibility to deal with the subject-matter of the grievance, and that superior officer will act as the IA.
>
> [23] If the grievor disagrees with the decision of the IA, he may submit it to the Chief of Defence Staff [CDS] as FA for consideration and determination. Certain types of grievances must be referred by the CDS to the MGERC for its findings and recommendations, which are non-binding on the CDS. If the CDS does not act on the findings and recommendations of the MGERC, he must provide written reasons for his decision. Although the CDS is the FA in the grievance process, he may delegate, with certain exceptions, any of his powers, duties and functions as FA in the grievance process to an officer who is directly responsible to him. With the exception of judicial review to this Court, a decision of the FA in the grievance process is final and binding.

[17] This reflects the grievance process followed in Cpl. Stemmler's case.

[18] In the context of the CAF grievance process, the *Canadian Forces Grievance Process Ex Gratia Payments Order*, PC 2012-0861 [the Order] now provides the CDS with the statutory authority to make *ex gratia* payments. The Order states that the CDS "may authorize an *ex gratia* payment to a person in respect of whom a final decision is made under the grievance process

established under the [NDA]". This has been confirmed by the recent case law of this Court (*Kleckner v Canada (Attorney General),* 2016 FC 1206 at para 30; *Lafrenière c Canada (Autorité des griefs des Forces canadiennes),* 2016 CF 767 at para 6; *Chua v Canada (Attorney General),* 2014 FC 285 at para 13). The Order does not define or describe what an *ex gratia* payment can be, but indicates that the power to authorize such a payment is "subject to any conditions imposed by the Treasury Board".

[19] The Treasury Board's Conditions for the Exercise of *Ex Gratia* Authority under the Order [the TB Conditions] set out five specific requirements under which such payments can be made. Pursuant to those conditions, an *ex gratia* payment may only be authorized if (a) in the case of the CDS, the payment is in an amount that does not exceed $100,000; (b) in the case of an officer who is acting under section 2 of the Order, the payment is in an amount that does not exceed $2,000 or such lesser amount as may be specified by the CDS; (c) a legal opinion is received that states that there is no legal liability on the part of the Crown; (d) there is no other mechanism by which the grievance can be remedied, including under existing laws, regulations, instructions, policies or programs; and (e) the payment is not used to fill perceived gaps or to compensate for the apparent limitations in any act, order, regulation, instruction, policy, agreement or other government instrument.

[20] The full text of the Order and of the TB Conditions is reproduced in the attached Annex.

C. *The CDS Decision*

[21] In his Decision, the CDS first summarized the adjudication process followed by the CAF to deal with Cpl. Stemmler's grievance as well as the background facts concerning Cpl. Stemmler. The CDS specifically noted, at the outset of the Decision, that Cpl. Stemmler was seeking three specific remedies: 1) that the expiry of his POR be restored to January 2013; 2) that he be allowed to graduate from the Network Security and Administration program at Everest College; and 3) that he be permitted to serve the remainder of his POR either as Corporal at the CAF School of Aerospace Control Operations or as Master Corporal at the CAF base in Kingston or in the National Capital Region, given that he had received a promotion message.

[22] The CDS noted the MGERC's findings and recommendations but indicated that he did not fully agree with them and would explain the reasons in his Decision.

[23] The CDS then proceeded with his analysis of the termination of Cpl. Stemmler's POR. The CDS found that the evidence supported the conclusion that Cpl. Stemmler had known health issues that were being addressed appropriately and that he was ready to continue working in the CAF despite the challenges. The CDS added that "[t]he cancellation of [the] transfer to a unit that was overworked and understaffed seems to have arisen from non-medical staff drawing conclusions that [the] MELs were worse than specified by the rightful medical authorities". The CDS also noted that "other options were available to maintain [the] POR to January 2013". On that basis, the CDS found that the process that led to the termination of Cpl. Stemmler's POR "was unreasonable and that [Cpl. Stemmler] ha[s] been aggrieved". The CDS further found that

Cpl. Stemmler's right to procedural fairness had been violated by the fact that his POR was terminated without him being given the opportunity to respond to the concern that his MELs had changed. The CDS visibly regretted the situation. However, though he found that the cancellation of the POR was inappropriate, the CDS determined that it was not illegal and that the release of Cpl. Stemmler therefore had to stand.

[24] The CDS then specifically referred to the MGERC's recommendation to act as if Cpl. Stemmler's release from the CAF had never occurred. The CDS did not agree with the MGERC's conclusions. In support of his position, the CDS cited subsection 30(4) of the NDA, which specifies that the CDS does not have the authority to reinstate a member in the CAF, except in the particular circumstances set out in that provision. The CDS also indicated that he viewed the re-enrollment of Cpl. Stemmler as "impossible" due to the fact that his medical category was below the "universality of service" standard. The CDS was also satisfied that, since he was conducting a *de novo* examination of Cpl. Stemmler's grievance in his capacity as the FA, any previous failure in procedural fairness had been cured by this subsequent process.

[25] The CDS then turned his mind to the appropriate outcome. He first referred to the second and third remedies sought by Cpl. Stemmler in his grievance. Regarding the promotion to Master Corporal sought by Cpl. Stemmler, the CDS observed that it was not possible because Cpl. Stemmler was not medically eligible for promotion. The CDS determined that Cpl. Stemmler could not have been promoted to Master Corporal because he did not meet the applicable medical standards. As to the fees of Cpl. Stemmler's program at Everest College, the CDS noted that they had been reimbursed and that Cpl. Stemmler had been able to complete the program.

[26] The CDS then discussed Cpl. Stemmler's "re-enrollment" and his request that he be permitted to serve the remainder of his POR. The CDS acknowledged that "the appropriate remedy would have been for [him] to expedite [Cpl. Stemmler's] re-enrollment in the [CAF]", but indicated that this option was not available as Cpl. Stemmler could no longer serve in the CAF due to his medical limitations.

[27] Throughout the Decision, the CDS commented favorably on the good performance and willingness to work of Cpl. Stemmler. He highlighted his four positive personnel evaluation reports on file, including one for the 2009/2010 period, immediately prior to his proposed transfer to Trenton. The CDS also underlined that the entire matter took four years to adjudicate, and qualified this delay to treat Cpl. Stemmler's grievance as excessive and unacceptable. The CDS wrote that he was "deeply disappointed" that the Canadian military authorities chose to unexpectedly and unilaterally terminate Cpl. Stemmler's service. The CDS stated that, once the POR was approved, it should never have been cancelled unless Cpl. Stemmler's medical condition and associated MELs deteriorated to the point where service was no longer a viable option. The CDS also advocated that there should be a concrete process for the termination of a POR, as there might be valid reasons to terminate such a period in certain cases. However, he added that the process must be procedurally fair and include the member's perspective before a decision to change the terms of service is made. The CDS flagged this under a heading labelled "Systemic Issue" and asked that there be a follow-up on this matter.

[28] As a result, the CDS found that he was left with only one option, and decided to authorize the *ex gratia* payment of $25,000. The CDS specified that an *ex gratia* payment is a benevolent

payment made by the Crown, used only when there is no other statutory, regulatory or policy vehicle for the remedy, and that it is awarded in the public interest. It is discretionary in nature. Therefore, although the Crown did not have an obligation of any kind or any legal responsibility towards Cpl. Stemmler, the CDS was of the view that the circumstances of Cpl. Stemmler met the parameters to grant an *ex gratia* payment as set out in the Order and in the TB Conditions.

[29] In determining that he had the authority to grant such an *ex gratia* payment, the CDS noted that the power cannot be exercised "unless all conditions are met", and referred specifically to the fact that the *ex gratia* authority "cannot be used to fill seeming gaps in legislation or policy and does not represent payment of compensation for damages". The CDS thus authorized an *ex gratia* payment of $25,000, and expressed his profound regret and sadness over the manner in which Cpl. Stemmler was treated.

D. *The Standard of Review*

[30] It is well established that the applicable standard of review for decisions of the CDS acting as the FA in the CAF grievance process is reasonableness, given that the finding involves questions of fact and of mixed fact and law (*Moodie v Canada (Attorney General)*, 2015 FCA 87 at para 51; *Zimmerman v Canada (Attorney General)*, 2011 FCA 43 [*Zimmerman*] at para 21; *MacPhail v Canada (Attorney General)*, 2016 FC 153 [*MacPhail*] at paras 8-9; *Bossé* at para 25). Moreover, because of the highly specialized nature of the CAF grievance procedure and the particular expertise of the CDS who routinely renders decisions in this sphere, the CDS is entitled to a large degree of deference (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*] at para

13; *Higgins v Canada (Attorney General)*, 2016 FC 32 at paras 75-77).

[31] When reviewing a decision on the standard of reasonableness, the analysis is concerned "with the existence of justification, transparency and intelligibility within the decision-making process", and the decision-maker's findings should not be disturbed as long as the decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para 47). Under a reasonableness standard, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, and the decision is supported by acceptable evidence that can be justified in fact and in law, a reviewing court should not substitute its own view of a preferable outcome (*Newfoundland Nurses* at para 17).

III. Analysis

[32] At the hearing before this Court, counsel for Cpl. Stemmler conceded that Cpl. Stemmler was not eligible for reinstatement or re-enrollment in the CAF, and that Cpl. Stemmler is not disputing the CDS Decision in that respect. However, Cpl. Stemmler submits that the CDS Decision remains unreasonable and should be set aside by the Court as it failed to consider his request to restore his POR to January 11, 2013. He is thus asking that his effective release date be modified accordingly. Cpl. Stemmler also claims that the CDS provided insufficient explanations for the determination of the *ex gratia* payment of $25,000.

[33] For the reasons that follow, I cannot accede to Cpl. Stemmler's requests as I am not persuaded that the CDS erred or rendered a decision falling outside the range of possible, acceptable outcomes.

A. *The Decision Is Reasonable and the CDS Considered the Redress Sought*

[34] Cpl. Stemmler submits that it was unreasonable for the CDS not to address the issue of the restoration of his POR in the reasons, given that it was specifically listed as a grievance issue and was indeed expressly referred to by the CDS at the beginning of his Decision. Cpl. Stemmler claims that the CDS omitted to consider and to turn his mind to the particular remedy he had proposed regarding the POR, namely that the POR be changed and extended back to its original January 11, 2013 expiry date.

[35] Despite the able arguments put forward by counsel for Cpl. Stemmler, I do not agree with his reading of the CDS Decision in that respect.

[36] The Decision begins with the CDS acknowledging that one of the remedies sought is that "the expiry for your POR be restored to 10 January 2013 [sic]". I acknowledge that in the body of the Decision, the CDS did not explicitly use the terms "change" or "restoration" of the POR in discussing this redress sought by Cpl. Stemmler. However, when the Decision is read as a whole, as it should be, I conclude that it cannot be said that the CDS ignored the potential restoration of the initial expiry date of Cpl. Stemmler's POR. Far from it. In my view, this issue was clearly assessed when the CDS examined the possibility of reinstatement and re-enrollment of Cpl. Stemmler.

[37] Not only was the issue not ignored by the CDS in the Decision but, given the legislative framework governing the reinstatement and re-enrollment of CAF members and the obvious direct link between the POR restoration sought by Cpl. Stemmler and the need for his re-entry in the CAF, it was certainly not unreasonable for the CDS to address the issue of the POR through his analysis of the reinstatement and re-enrollment options open to Cpl. Stemmler.

[38] In his Decision, the CDS considered the possibility of reinstatement for Cpl. Stemmler. This refers to a measure implying that Cpl. Stemmler's release be treated "as if it had never occurred". Reinstating a person means putting that person back in the position that has been taken away from him or her. In this case, the CDS concluded that this possibility was barred by statute for Cpl. Stemmler, pursuant to subsection 30(4) of the NDA. In the same paragraph of the Decision, the CDS looked also at the possibility of re-enrollment. He stated that "[r]e-enrollment [will be] impossible due to the fact [Cpl. Stemmler's] medical history is below the universality of service (U of S) standard". Further on, the CDS reiterated that "the appropriate remedy would have been for me to expedite your re-enrollment in the CAF. This option, however, is not available as you can no longer serve in the CAF".

[39] I pause to underline that, in his grievance, the redress sought by Cpl. Stemmler had three components, that each of them was listed by the CDS in the Decision, and that each one was successively addressed. In his analysis, the CDS started by discussing the last two, namely the request for promotion and the support in completing the Network Administrator's program at Everest College. As to the first redress regarding the restoration of the POR, it was not by-passed by the CDS. I am instead satisfied that this change of the POR was considered by the CDS

through his discussion of the impossibility of reinstatement or re-enrollment. This is clearly not, in my view, a situation where it can be said that the CDS ignored or forgot a dimension of Cpl. Stemmler's request for redress.

[40] The change of the POR and the restoration of the January 11 2013 end-date sought by Cpl. Stemmler necessarily implied that he had either to be reinstated in the CAF for the period leading to his medical release from the military, or to be re-enrolled in the CAF. I fail to see how the notion of changing the POR end-date can be isolated from the notion of reinstatement or re-enrollment. Since Cpl. Stemmler had already been released from the CAF at the time of the CAF grievance process and of the CDS Decision, any decision to change his POR and to extend it back to the initial contemplated date of release of January 11, 2013 automatically meant that Cpl. Stemmler needed to be reinstated or re-enrolled in some capacity in the CAF in order to be able to benefit from the amended or initial POR. At the very least, it was not unreasonable for the CDS to consider and address this POR request from Cpl. Stemmler through the availability of the reinstatement and re-enrollment options.

[41] In his discussion of the appropriate outcome, the CDS prefaced his reasoning by writing "[b]efore I address the matters surrounding your POR […]". There is therefore no doubt, in my view, that the CDS expressly turned his mind to Cpl. Stemmler's request regarding the POR. In order to reset his initial, extended POR, Cpl. Stemmler would have had to be back in the CAF. As correctly stated by the CDS, the person seeking to re-enroll in the CAF must be apt to meet the medical standards of the Canadian military, which was not possible for Cpl. Stemmler due to his MELs ("re-enrollment […] being impossible due to the fact your medical category is below

the universality of service (U of S) standard"). Since Cpl. Stemmler did not meet those medical standards, the CDS concluded that he could not be re-enrolled and hence his POR could not be changed.

[42] The "universality of service" standard is a statutory principle found at subsection 33(1) of the NDA, whose validity has been confirmed and supported by case law (*Chua v Canada (Attorney General)*, 2015 FC 738 at para 48, referring to a trilogy of Federal Court of Appeal decisions, consisting of *Canada (Attorney General) v St. Thomas and Canadian Human Rights Commission* (1993), 109 DLR 671, *Canada (Human Rights Commission) v Canada (Armed Forces)*; *Husband, mise en cause*, [1994] 3 FC 188 and *Canada (Attorney General) v Robinson*, [1994] 3 FC 228). These decisions affirmed that the universality of service is a *bona fide* occupational requirement in the CAF. In this context, to infer that re-enrollment is impossible when there is a breach of the "universality of service" cannot be qualified as unreasonable.

[43] Similarly, the conditions for reinstatement are clearly set out in subsection 30(4) of the NDA. The statutory limitations of subsection 30(4) of the NDA and of section 15.50 of the QR&Os establish the conditions under which a release from the CAF may be cancelled. It is worth citing these provisions. Subsection 30(4) of the NDA reads as follows:

30 (4) Subject to regulations made by the Governor in Council, where	30 (4) Sous réserve des règlements pris par le gouverneur en conseil, la libération ou le transfert d'un officier ou militaire du rang peut être annulé, avec son consentement, dans le cas suivant :

(a) an officer or non-commissioned member has been released from the Canadian Forces or transferred from one component to another by reason of a sentence of dismissal or a finding of guilty by a service tribunal or any court, and	a) d'une part, il a été libéré des Forces canadiennes ou transféré d'un élément constitutif à un autre en exécution d'une sentence de destitution ou d'un verdict de culpabilité rendu par un tribunal militaire ou civil;
(b) the sentence or finding ceases to have force and effect as a result of a decision of a competent authority, the release or transfer may be cancelled, with the consent of the officer or non-commissioned member concerned, who shall thereupon, except as provided in those regulations, be deemed for the purpose of this Act or any other Act not to have been so released or transferred.	b) d'autre part, une autorité compétente a annulé le verdict ou la sentence. Dès lors, toujours sous réserve des règlements, il est réputé, pour l'application de la présente loi ou de toute autre loi, ne pas avoir été libéré ou transféré.

[44] Turning to section 15.50 of the QR&Os, it reiterates what is found in subsection 30(4) of the NDA and reads as follows:

15.50 (1) Subsection 30(4) of the National Defence Act provides:	15.50 (1) Le paragraphe 30(4) de la Loi sur la défense nationale stipule :
"30. (4) Subject to regulations made by the Governor in Council, where	«30. (4) Sous réserve des règlements pris par le gouverneur en conseil, la libération ou le transfert d'un officier ou militaire du rang peut être annulé, avec son consentement, dans le cas suivant :

a. an officer or non-commissioned member has been released from the Canadian Forces or transferred from one component to another by reason of a sentence of dismissal or a finding of guilty by a service tribunal or any court; and

a. d'une part, il a été libéré des Forces canadiennes ou transféré d'un élément constitutif à un autre en exécution d'une sentence de destitution ou d'un verdict de culpabilité rendu par un tribunal militaire ou civil;

b. the sentence or finding ceases to have force and effect as a result of a decision of a competent authority, the release or transfer may be cancelled, with the consent of the officer or non-commissioned member concerned, who shall thereupon, except as provided in those regulations, be deemed for the purpose of this Act or any other Act not to have been so released or transferred."

b. d'autre part, une autorité compétente a annulé le verdict ou la sentence. Dès lors, toujours sous réserve des règlements, il est réputé, pour l'application de la présente loi ou de toute autre loi, ne pas avoir été libéré ou transféré.»

(2) Subject to paragraph (3), where an officer or non-commissioned member has been released or transferred from one component to another by reason of a sentence of dismissal or a finding of guilty by a service tribunal or any court, and the sentence or finding ceases to have force and effect as a result of a decision of a competent authority, the Minister, within 18 months of the release or transfer, or the Governor in Council at any time, may, with the consent of the member, cancel the release or transfer.

(2) Sous réserve, de l'alinéa (3), lorsqu'un officier ou militaire du rang a été libéré ou muté d'un élément constitutif à un autre en raison d'une sentence de destitution ou d'un verdict de culpabilité rendu par un tribunal militaire ou toute cour et que la sentence ou le verdict cesse d'avoir effet par suite d'une décision d'une autorité compétente, le ministre, dans les 18 mois qui suivent cette libération ou mutation, ou le gouverneur en conseil en tout temps peut, avec le consentement de l'officier ou du militaire du rang, annuler cette libération ou mutation.

(3) The pay and allowances of an officer or non-commissioned member whose release or transfer is cancelled under paragraph (2) is subject to such deduction as may be imposed under paragraph (3) of article 208.31 (Forfeitures, Deductions and Cancellations - Where No Service Rendered).	(3) La solde et les indemnités d'un officier ou militaire du rang dont la libération ou la mutation est annulée en vertu de l'alinéa (2) sont sujettes à toute déduction qui peut être imposée aux termes de l'alinéa (3) de l'article 208.31 (Suppression, déduction et annulation lorsqu'aucun service n'est rendu).
(4) An officer or non-commissioned member whose release or transfer has been cancelled under paragraph (2) is entitled to the benefits described in CBI 209.99 (Entitlement to Transportation Benefits on Reinstatement - Regular Force) and 209.9942 (Movement of Dependants, Furniture and Effects - Members Reinstated - Regular Force).	(4) Un officier ou militaire du rang dont la libération ou la mutation a été annulée en conformité avec l'alinéa (2) a droit aux prestations mentionnées aux DRAS 209.99 (Droit aux indemnités de transport à la réintégration - force régulière) et 209.9942 (Déménagement de la famille, des meubles et des effets personnels des militaires réintégrés - force régulière).

[45] There is no question that Cpl. Stemmler's situation did not fit within the exceptions set out in those provisions. Therefore, the CDS did not err in finding that Cpl. Stemmler could not be reinstated. In other words, I do not find that the application of the relevant provisions of the NDA and of the QR&Os by the CDS in his consideration of the "matters surrounding [Cpl. Stemmler's] POR" was unreasonable.

[46] I accept that this does not make the early, unilateral termination of Cpl. Stemmler's POR more just or more acceptable. The CDS has indeed acknowledged that Cpl. Stemmler's procedural rights were not respected and that he was aggrieved by the process. But this is not what I have to decide on this application for judicial review. Instead, I have to determine if the

CDS Decision is reasonable and falls within the range of possible, acceptable outcomes, bearing in mind the high degree of deference that I must show to the CDS and his particular expertise.

[47] I acknowledge that, in light of the *Zimmerman* decision, the CDS acting as the FA has to give detailed reasons when he departs from findings and recommendations made by the MGERC. Here, ample reasons were given by the CDS to explain why his views differed from the MGERC's recommendations. In fact, the possibility of declaring Cpl. Stemmler's release void *ab initio* was clearly looked at and considered by the CDS in the Decision, and rejected by the CDS.

[48] The MGERC had invoked paragraph 108 of the *Dunsmuir* decision to find the statutory limitations of the NDA irrelevant and to conclude that the decision to release a CAF member in breach of a right of procedural fairness renders the decision void, as if it never occurred. The CDS considered this but disagreed with the MGERC's finding. The CDS did not subscribe to the MGERC's interpretation that paragraph 108 of *Dunsmuir* rendered the relevant legislation inapplicable. The Supreme Court's decision in *Dunsmuir* related to a breach of procedural fairness in the context of employment law and found that such breach led to the employment being deemed to have never ceased and to the office holder being entitled to unpaid wages and benefits from the date of the dismissal to the date of judgment. The CAF context is quite different, and the CDS concluded that the release of Cpl. Stemmler was lawful. Moreover, as cited by the CDS, the specific CAF context has been considered by the Federal Court of Appeal in *McBride v Canada (Attorney General)*, 2012 FCA 181 [*McBride*] at para 45, where the Court

found that the breach of a right to procedural fairness was "cured by these subsequent *de novo* hearings".

[49] Similarly, in *Walsh v Canada (Attorney General)*, 2015 FC 775 [*Walsh*], this Court rejected a request that the applicant's release be deemed void *ab initio* on the basis of procedural unfairness. In doing so, the Court observed that the reasons were clear and that the Court had to defer to the FA's "broad discretion when considering and determining grievances" (*Walsh* at para 43). The Court applied the teachings of the *McBride* decision (*Walsh* at para 51).

[50] The same situation prevailed here. Indeed, Cpl. Stemmler was provided with ample opportunity to plead his case. He made submissions not only to the FA but throughout the entire CAF grievance process. And the *de novo* examination of Cpl. Stemmler's case by the CDS cured any procedural fairness concerns.

[51] In my view, the CDS Decision on Cpl. Stemmler's POR is clear and intelligible. There is no need for redetermination as the CDS's conclusions on the appropriate remedy were detailed and reasonable. The CDS provided legally sufficient reasons as to why he accepted Cpl. Stemmler's grievance, why the CAF could not reinstate or re-enroll him, and why Cpl. Stemmler could not serve the remainder of his initial POR. In doing so, the CDS reasonably addressed the first redress sought by Cpl. Stemmler regarding the restoration of the January 11, 2013 POR expiry date.

[52] I also disagree with Cpl. Stemmler when he suggests that the reasons given by the CDS do not allow to figure out that the potential restoration of his initial POR expiry date was considered. To the contrary, the CDS went to great length to explain why Cpl. Stemmler could not be reinstated in the CAF, and could not be re-enrolled. Without reinstatement or re-enrollment, the return to the initial POR end-date of January 11, 2013 was not possible.

[53] This is not a situation like in *Zimmerman* where the CDS simply omitted to deal with the grievances raised by the grievor and failed to provide reasons (*Zimmerman* at para 25; *Morphy v Canada (Attorney General)*, 2008 FC 190 at paras 74, 75 and 78). Here, the CDS lived up to his obligation. I am able to determine, in light of the detailed reasons of the CDS and looking at the Decision as a whole, that the remedy contemplated by Cpl. Stemmler was considered and was not forgotten. It was dealt with by the CDS in its reasons. To conclude otherwise would require a narrow reading of the Decision that, in my view, would not be reasonable and would be blind to the extensive analysis conducted by the CDS, simply because he did not use the specific word "restoration". Stated otherwise, under a reasonableness standard, I am satisfied that the CDS dealt with this remedy sought by Cpl. Stemmler in his Decision.

[54] I agree with Cpl. Stemmler that he was entitled to know whether or not the possible restoration of his POR played a role in the CDS Decision to deny the remedies he was seeking. The issue was obviously central enough for the IA to address it in its decision. And I am satisfied that the question was also specifically and properly discussed in the CDS Decision.

[55] The Supreme Court's decision in *Newfoundland Nurses* has established that the courts must show deference to the reasons of a decision-maker and that an alleged insufficiency or inadequacy of reasons is no longer a stand-alone basis for granting judicial review. However, I agree that *Newfoundland Nurses* and its progeny is not an invitation to the Court to provide reasons that were not given, nor is it a license to guess what findings might have been made or to speculate as to what a decision-maker might have been thinking (*Komolafe v Canada (Minister of Citizenship and Immigration)*, 2013 FC 431 at para 11). Indeed, showing deference and giving respectful attention to the reasons offered in support of a decision of an administrative tribunal does not amount to a "'Carte blanche' to reformulate a tribunal's decision in a way that casts aside an unreasonable chain of analysis in favour of the court's own rationale for the result" (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 [*Alberta Teachers*] at para 54, citing *Petro-Canada v British Columbia (Workers' Compensation Board)*, 2009 BCCA 396 at para 56).

[56] I also accept that deference to the administrative decision-maker does not always involve upholding a tribunal's decision and can sometimes mean that the Court may have to first provide the decision-maker the opportunity to give its own reasons for the decision (*Alberta Teachers* at para 55; *Lemus v Canada (Citizenship and Immigration)*, 2014 FCA 114 at paras 28-29). In other words, deference may in some cases require that a matter be remitted back to a tribunal once an error is detected in order to give the tribunal the opportunity to reach its own conclusions rather than attempting to maintain a decision by substituting the reviewing court's opinion of the merits of the claim. In *Alberta Teachers*, Justice Rothstein indeed envisaged that: "[i]n some cases, it may be that a reviewing court cannot adequately show deference to the administrative decision

maker without first providing the decision maker the opportunity to give its own reasons for the decision. In such a case, even though there is an implied decision, the court may see fit to remit the issue to the tribunal to allow the tribunal to provide reasons" (*Alberta Teachers* at para 55). However, we are not in this type of situation here.

[57] The reasons are to be read as a whole, in conjunction with the record (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53; *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65 at para 3). In addition, a judicial review is not a "line-by-line treasure hunt for error" (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54). The Court should approach the reasons with a view to "understanding, not to puzzling over every possible inconsistency, ambiguity or infelicity of expression" (*Ragupathy v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 151 at para 15).

[58] The CDS Decision is owed a high degree of deference (*Walsh* at para 43). Given the broad discretion granted to the CDS in considering and determining grievances such as Cpl. Stemmler's and in identifying the appropriate remedies, and the detailed reasons provided, this is not a case where this Court should intervene.

B. ***The Reasons on the Ex Gratia Payment Are Sufficient***

[59] As a second ground of judicial review, Cpt. Stemmler pleads that the CDS did not adequately explain how he arrived at the *ex gratia* payment of $25,000 and that his decision in that respect is thus unreasonable.

[60] Again, I disagree. A review of the CDS Decision shows that the CDS provided detailed explanations on his choice of remedy. I agree with the Attorney General that the CDS's determination with regards to the *ex gratia* payment is transparent and intelligible on its face and does not require further clarification or interpretation. The findings of the CDS in that respect are legally defensible as they fall well within his specialized expertise, are supported with sufficient detail and echo the applicable requirements governing the granting of *ex gratia* payments. While Cpl. Stemmler may be disappointed with the amount, the CDS had the discretion to render such an award and, in doing so, he complied with the TB Conditions, including the first one simply requiring that the amount be no more than $100,000.

[61] For the reasons discussed above, the CDS did not find it possible to consider Cpl. Stemmler's release void *ab initio*, to reinstate or re-enroll him in the CAF, or to revive his initial POR expiry date. Authorizing an *ex gratia* payment was the only other option available for the CDS. In the Decision, the CDS took the time to carefully explain the nature of an *ex gratia* payment, specifying "that it is a benevolent payment made by the Crown and is used only when there is no other statutory, regulatory or policy vehicle for remedy". Furthermore, the CDS pointed to its discretionary nature. The CDS also indicated how the conditions imposed by the

Treasury Board for such a payment had been met in the case of Cpl. Stemmler: the payment does not exceed $100,000, there is no other mechanism by which Cpl. Stemmler's grievance can be remedied, and it does not represent a payment to fill perceived gaps or to compensate for damages flowing from limitations in legislation, regulations or policy.

[62] These TB Conditions exist to preclude the use of an *ex gratia* payment if there are other administrative remedies possible. Despite the sympathy he expressed for Cpl. Stemmler, the CDS was also careful not to attribute any liability onto the Crown. An *ex gratia* payment is indeed a wholly gratuitous payment for which no liability is recognized. It is a payment made by the government as an act of benevolence in the public interest.

[63] I accept that discretion cannot be equated with arbitrariness (*Montréal (Ville) v Montreal Port Authority*, 2010 SCC 14 [*Montréal*] at para 33). As the Supreme Court stated in that decision, the discretion granted to a decision-maker "must be exercised within a specific legal framework. […] The statute and regulations define the scope of the discretion and the principles governing the exercise of the discretion, and they make it possible to determine whether it has in fact been exercised reasonably" (*Montréal* at para 33).

[64] In the current case, the Order and the TB Conditions define the scope of the discretion and the principles governing the CDS's exercise of his *ex gratia* authority, and they serve to ensure that the discretion is indeed exercised within a "specific legal framework" (*Montréal* at para 33). I find that, in his Decision, the CDS followed this specific legal framework, specifically

reviewed the various elements set out in the TB Conditions and was satisfied that each of them was met.

[65] I observe that the determination of the actual amount of the payment was qualified as having to be "arbitrary" in an internal note contained in the certified tribunal record and referred to the CDS by Colonel Malo prior to the issuance of the CDS Decision. This note recommended that "a gift in the form of an *ex gratia* payment" be awarded to Cpl. Stemmler; it also stated that the "amount of the gift [was] entirely discretionary" and could not appear "as compensation (i.e., the amount cannot be reversed engineered to an existing payment regime- that would be evidence the payment is gap filling)", thus echoing the requirements described in the TB Conditions. Colonel Malo's note was not specifically mentioned by the CDS in the Decision, nor did the CDS refer to the payment amount awarded to Cpl. Stemmler as having to be arbitrary.

[66] The fact that the amount to be selected by the CDS under his *ex gratia* authority can fall at any point along the spectrum set out in the TB Conditions (i.e., between $0 and $100,000) does not mean that the CDS exercised his discretion arbitrarily in arriving at the amount of $25,000. I do not find that the CDS took into consideration an irrelevant consideration by concluding to this amount. He instead followed the requirements of the TB Conditions and, in his discretion, he granted an award within the prescribed range.

[67] Condition (e) of the TB Conditions states that the payment must not be "used to fill perceived gaps or to compensate for the apparent limitations in any act, order, regulation, instruction, policy, agreement or other government instrument". Since the *ex gratia* payment

cannot be used as compensation for apparent governmental limitations, the CDS had to base himself on considerations other than damages to compensate for the shortcomings of the CAF grievance process. He had to determine the amount himself, within the parameters set out in the TB Conditions and using his specialized expertise in military matters. I am satisfied that this is what the CDS did in the case of Cpl. Stemmler.

[68] As stated by Guy Régimbald in *Canadian Administrative Law,* Markham: LexisNexis, 2008 at 182-188, there are several grounds of review of a discretionary administrative decision: "[a discretionary decision] cannot be conducted in bad faith, arbitrarily or dishonesty [it] may also be quashed if the decision maker has considered irrelevant grounds in the decision-making process, or made the decision for a purpose other than that delegated by the enabling statute". Conversely, the failure of an administrative decision-maker to take into account a highly relevant consideration is just as erroneous as the improper importation of an extraneous consideration. None of this transpires from the Decision.

[69] It is true that, although detailed reasons explained why an *ex gratia* payment was authorized by the CDS, no reasons were offered as to the genesis of the specific amount actually granted. However, no irrelevant grounds were considered by the CDS in arriving at his payment amount of $25,000, no purpose other than what was delegated by the enabling legislative and administrative framework was imported into the CDS's analysis, and all relevant and applicable considerations were taken into account by the CDS. I am not convinced that, in those circumstances, it can be said that the CDS's exercise of his discretion within the limits established by the TB Conditions fell outside the range of possible, acceptable outcomes. The

failure to provide the additional explanations that Cpl. Stemmler would have hoped to see is not enough, in my view, to make the CDS's award of the *ex gratia* payment unreasonable.

[70] I acknowledge that a decision on whether or not to grant an *ex gratia* payment can be subject to judicial review (*Schavernoch v Canada (Foreign Claims Commission)*, [1982] 1 SCR 1092 at 1102; *Huard v Canada (Attorney General)*, 2007 FC 195 at para 81; *Kastner v Canada (Attorney General)*, 2004 FC 773 at para 23; *Schrier v Canada (Deputy Attorney General)*, [1996] FCJ No 246 (FCTD) at para 10). Here, the CDS Decision to grant the *ex gratia* payment is consistent with a reasonable interpretation of the Order and the TB Conditions, based on the evidence on the record, and meets the applicable standard of reasonableness.

[71] That said, I agree with the Attorney General that, irrespective of what the *ex gratia* payment ended up being in this case, the legal and policy instruments governing such payments are not the subject of this judicial review. As stated by this Court in *MacPhail*, the judicial review of the CDS Decision "does not and cannot encompass questions as to whether the TB's policy decision is fair or reasonable or whether the policy's impact upon the Applicant was just or unjust" (*MacPhail* at para 10). The subject of judicial review is the reasonableness of the CDS's disposition of Cpl. Stemmler's grievance. This Court does not have the power or authority to decide whether the *ex gratia* payment of $25,000 was just or unjust.

[72] I note that there are no judicial decisions pertaining to either the Order or the TB Conditions. However, as pointed out by the Attorney General, the TB Conditions closely resemble the conditions set out in the *Treasury Board Policy on Claims and Ex Gratia Payments*

which were judicially considered by this Court in *Sandiford v Canada (Attorney General)*, 2009 FC 862. In that decision, Mr. Justice Kelen observed that the Treasury Board directive arose out of a policy that is discretionary but did not have the force of law. In that case, Mr. Justice Kelen agreed that the Director of Claims and Civil Litigation should be accorded a high degree of deference regarding the discretionary policy. Similarly, in *Byer v Canada (Attorney General)*, 2002 FCT 518 [*Byer*], Madame Justice Tremblay-Lamer found that a "directive or policy does not have the force of law because it lacks the essential features of a regulation. The courts clearly do not intervene to enforce a rule which they consider to be essentially administrative in nature and scope. In the case at bar, the administrative policy is simply an internal rule of conduct made by the Treasury Board" (*Byer* at paras 37-38).

[73] As the Federal Court of Appeal said in *Copello v Canada (Minister of Foreign Affairs)*, 2003 FCA 295 [*Copello*] at paras 16 and 17, the exercise of a Crown prerogative is generally beyond the scope of judicial review, except when a right guaranteed by the Canadian Charter of Rights and Freedoms is violated (*Black v Canada (Prime Minister)* (2001), 54 OR (3d) 215 (Ont CA) [*Black*] at para 46). A court cannot review how the prerogative power was actually exercised if the question is "purely political in nature" (*Copello* at para 17; *Black* at para 50).

[74] The CDS decision to grant an *ex gratia* payment is consistent with a reasonable interpretation of the Order and the TB Conditions, and it suffices to conclude that it falls within the range of possible, acceptable outcomes. Doubtlessly, Cpl. Stemmler would have preferred to see more reasons explaining the amount of $25,000. But, in the context of the Order and the TB Conditions, the CDS did not have to go further in order to meet the requirements of a reasonable

decision. Given the high degree of deference to which the CDS is entitled, this is not a situation justifying the Court's intervention.

[75] The test for the sufficiency of reasons is whether the reasons are clear and intelligible and explain to the Court and the parties why the decision was reached. Reasons are sufficient if they "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" (*Newfoundland Nurses* at para 16). In order to provide adequate reasons, "the decision maker must set out its findings of fact and the principal evidence upon which those findings were based", as well as "address the major point in issue" and "reflect consideration of the main relevant factors" (*VIA Rail Canada Inc v National Transportation Agency*, [2001] 2 FCR 25 at para 22). This is exactly what the CDS did. As long as the reasons "allow the reviewing court to assess the validity of the decision", they will be sufficient (*Lake v Canada (Minister of Justice)*, 2008 SCC 23 at para 46).

[76] As I explained in *Canada (Minister of Citizenship and Immigration) v Abdulghafoor*, 2015 FC 1020 at paras 30-36 and *Al-Katanani v Canada (Citizenship and Immigration)*, 2016 FC 1053 at para 32, the law relating to the sufficiency of reasons in administrative decision-making has evolved substantially since *Dunsmuir*. In *Newfoundland Nurses*, the Supreme Court provided guidance on how to approach situations where decision-makers provide brief or limited reasons. Reasons need not be fulsome or perfect, and need not address all of the evidence or arguments put forward by a party or in the record (*Newfoundland Nurses* at paras 16 and 18). Reasonableness, not perfection, is the standard.

[77] Here, the reasons enable me to understand how the CDS reached its conclusion as they explain why the CDS could only grant an *ex gratia* payment and the criteria he had to follow in the exercise of his discretion to grant such remedy. The reasons are sufficient with regard to the test established by *Newfoundland Nurses*. There is no inadequacy of reasons.

IV. Conclusion

[78] I am not persuaded that the CDS Decision is unreasonable. The conclusions of the CDS represent a reasonable outcome based on the law and the evidence before the FA. On a standard of reasonableness, it suffices if the decision subject to judicial review falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. This is the case here. In addition, the CDS provided adequate reasons, both on the refusal of the restoration redress sought by Cpl. Stemmler and on the grant of the *ex gratia* payment. Therefore, even though I sympathize with Cpl. Stemmler and deplore the unfortunate circumstances surrounding his release from the CAF, I must dismiss his application for judicial review.

[79] Having regard to all the circumstances of this matter, and upon consideration of those factors set forth in Rule 400(3) of the *Federal Courts Rules*, SOR/98-106, there shall be no award of costs.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no award of costs.

"Denis Gascon"
Judge

ANNEX

The text of the *Canadian Forces Grievance Process Ex Gratia Payments Order* reads as follows:

1.(1) The Chief of the Defence Staff may authorize an *ex gratia* payment to a person in respect of whom a final decision is made under the grievance process established under the *National Defence Act*.	1.(1) Le chef d'état-major de la défense peut autoriser le versement d'un paiement à titre gracieux à toute personne visée par une décision définitive rendue dans le cadre de la procédure applicable aux griefs établie en vertu de la *Loi sur la défense nationale*.
(2) A payment under subsection (1) may only be authorized if the final decision is made on or after the day on which this Order comes into force.	(2) Le versement visé au paragraphe (1) ne peut être autorisé que si la décision définitive est rendue à la date d'entrée en vigueur du présent décret ou après celle-ci.
2. The Chief of the Defence Staff may delegate the power to authorize a payment under subsection 1(1) to an officer who is directly responsible to the Chief of the Defence Staff.	2. Le chef d'état-major peut déléguer à tout officier qui relève directement de lui le pouvoir d'autoriser le versement d'un paiement prévu au paragraphe 1(1).
3. The power to authorize a payment under subsection 1(1) is subject to any conditions imposed by the Treasury Board.	3. Le pouvoir d'autoriser le versement d'un paiement prévu au paragraphe 1(1) est assujetti aux conditions que fixe le Conseil du Trésor.

The Treasury Board conditions for the exercise of *ex gratia* authority under the *Canadian Forces Grievance Process Ex Gratia Payments Order* are as follows:

An *ex gratia* payment may only be authorized if:	Le versement d'un paiement à titre gracieux ne peut être autorisé que si les conditions suivantes sont réunies:
(a) in the case of the Chief of the Defence Staff, the payment is in an amount that does not exceed $100,000;	(a) dans le cas où l'autorisation est donnée par le Chef d'état-major de la Défense, le montant du versement ne dépasse pas 100 000 $;
(b) in the case of an officer who is acting under section 2 of the *Canadian Forces Grievance Process Ex Gratia Payments Order*, the payment is in an amount that does not exceed $2,000 or such lesser amount as may be specified by the Chief of the Defence Staff;	(b) dans le cas où l'autorisation est donnée par un officier qui agit en vertu de l'article 2 du *Décret relatif au versement de paiements à titre gracieux dans le cadre de la procédure des Forces canadiennes* applicable aux griefs, le montant du versement ne dépasse pas 2 000 $, ou tout autre montant inférieur que précise le Chef d'état-major de la Défense;
(c) a legal opinion is received that states that there is no legal liability on the part of the Crown;	(c) un avis juridique a été reçu selon lequel l'État n'a aucune obligation légale à l'égard de la situation pour laquelle un versement est envisagé;
(d) there is no other mechanism by which the grievance can be remedied, including under existing laws, regulations, instructions, policies or programs; and	(d) il n'existe aucun autre mécanisme permettant de régler le grief, notamment sous le régime des lois, règlements, directives, politiques et programmes actuels; et

(e) the payment is not used to fill perceived gaps or to compensate for the apparent limitations in any act, order, regulation, instruction, policy, agreement or other government instrument.	(e) le versement ne vise pas à combler des lacunes perçues ou à pallier l'insuffisance apparente d'une loi, d'un décret, d'un règlement, d'une instruction, d'une politique, d'une convention ou autre instrument gouvernemental.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-102-15
STYLE OF CAUSE:	CORPORAL (RET'D) PAUL STEMMLER v CANADA (ATTORNEY GENERAL)
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	JUNE 7, 2016
JUDGMENT AND REASONS:	GASCON J.
DATED:	NOVEMBER 24, 2016

APPEARANCES:

Joshua M. Juneau	FOR THE APPLICANT
Stephen Kurelek	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Michel Drapeau Law Office Ottawa, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT