Federal Court  Cour fédérale

Date: 20180117

Docket: T-57-16

Citation: 2018 FC 46

Ottawa, Ontario, January 17, 2018

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

CHRISTOPHER L. KREUTZWEISER

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 [Act], for judicial review of the decision of the Chief of the Defence Staff [CDS], dated November 27, 2015 [Decision], dismissing the Applicant's grievance of his medical release from the Canadian Armed Forces [CAF].

II. BACKGROUND

[2] The Applicant enrolled in the CAF on March 29, 2011. The CAF personnel file for the Applicant records that he was released from service on June 16, 2014. The reason for his release was that medical employment limitations [MELs] assigned to the Applicant by the CAF's Director of Medical Policy [D Med Pol] meant that the Applicant was not compliant with the CAF's principle of universality of service. He was therefore released under item 3(b) of art 15.01 of the *Queen's Regulations and Orders for the Canadian Forces* [QR&O]. The Applicant alleges that his release is the consequence of a campaign of harassment and retaliation by members of the CAF.

A. *Harassment Complaints*

[3] The Applicant's problems began in April 2011, shortly after his enlistment, when he alleges that two officers in his unit made anti-Semitic and anti-gay statements while endorsing fascism. After being turned down for placement as an officer cadet in June 2011, the Applicant expressed an intention to seek voluntary release from the CAF but retracted his intention the next day. The Applicant did seek voluntary release on medical grounds in October 2011, but was advised to submit a harassment complaint instead. In addition to the April incidents, the Applicant alleged that one of the officers who made pro-fascist statements threatened him with administrative release in response to the Applicant's request to be made an officer cadet, and sexually harassed him during a return drive from a different CAF base. The Applicant attempted to withdraw this complaint three days later. Consequently, the Applicant was charged with making a false accusation and faced the prospect of release from the CAF as an administrative

burden. The Applicant alleges that his initial complaint prompted a campaign of retaliation from members of his unit. He eventually submitted an expanded harassment complaint detailing all of his allegations on June 21, 2012.

B. *Medical History*

[4] The medical issues that led to the Applicant's release began in November 2011 when he attended the emergency room at Royal University Hospital in Saskatoon complaining of depression and suicidal thoughts. He was admitted to the hospital's psychiatric ward for five days before being discharged with diagnoses of adjustment disorder and narcissistic personality traits. On January 10, 2012, Major Jane Cruchley, a CAF doctor, examined the Applicant. Dr. Cruchley's report diagnosed the Applicant with adjustment disorder but found he was medically fit to continue service. Dr. Cruchley examined the Applicant again on March 27, 2012 and referred him to a psychiatrist.

[5] In February of 2012, the Applicant overdosed by taking all of his thyroid medication and was again hospitalized. Dr. Cruchley became aware of the Applicant's overdose by the time of her March 27, 2012 examination. Her notes from the examination indicate that she discussed the overdose with the Applicant and that he "decided to attempt suicide" and "feels that he is at high risk of suicide." Therefore, on April 3, 2012, Dr. Cruchley added an addendum to her January 10, 2012 report that described the overdose as a "serious suicide attempt," and referred to the Applicant's "extensive past history of psychiatric problems," and "strongly recommend[ed] that he not be re-enrolled… in the future."

[6] Between March and June of 2012, the Applicant was taken to hospital and either assessed and released or admitted on four occasions. The Applicant also continued to meet with CAF medical personnel. At one meeting on July 18, 2012, Dr. Arun Nayar diagnosed the Applicant with adjustment disorder but provided the Applicant with a chit indicating that he was "[f]it for regular duties." On July 25, 2012, Dr. Cruchley again met with the Applicant. She decided to await the results of reports from Dr. Brock and Dr. Prasad. The report from Dr. Brock is dated October 24, 2012 and diagnosed the Applicant with generalized anxiety disorder and "strongly recommended that he engage in long term therapy."

[7] On October 29, 2012, Dr. Cruchley completed a Periodic Health Assessment and concluded that the Applicant required medical follow-up more frequently than every six months, recommended he be assigned MELs in the geographic and occupational categories, and forwarded the matter to the D Med Pol for review.

[8] Between Dr. Cruchley's initial MELs recommendation and the Applicant's medical release on June 16, 2014, the Applicant was taken to hospital by Saskatoon police six times.

C. *Administrative Review*

[9] On February 5, 2013, the D Med Pol approved the recommended MELs and determined that the Applicant was at high risk of not complying with the universality of service principle. Hence, the Director Military Careers Administration [DMCA] began an administrative review [ARMEL] of the Applicant's assigned MELs. The Applicant was provided with a disclosure package on October 24, 2013. The Applicant wrote to the DMCA on November 20, 2013

declining the opportunity to submit representations. On December 3, 2013, the DMCA confirmed that the Applicant's assigned MELs did not comply with the CAF's universality of service principle and decided that the Applicant should be medically released no later than June 17, 2014.

D. *Grievance Process*

[10] On May 20, 2014, the Applicant grieved his medical release. He submitted a second grievance on June 16, 2014. In the second grievance, the Applicant wrote that "the first grievance is to object to my medical release, and to request future accommodation. The Primary purpose of this June 14 grievance is to remedy past treatment, through compensation and ADR resolution."

[11] The Applicant's commanding officer [CO] determined that he was not qualified to make judgments on the merits of the Applicant's medical release. Therefore, on June 12, 2014, the Canadian Forces Grievance Authority determined that the appropriate initial authority for the Applicant's grievance was the Director General Military Careers [DGMC].

[12] On October 30, 2014, the Director Military Careers Policy and Grievances 3 [DMCPG 3] provided the Applicant with disclosure and an opportunity to provide written submissions to the initial authority. The Applicant submitted written representations on November 20, 2014 and requested further time to review disclosure and submit further representations. The DMCPG 3 denied this request on November 28, 2014 and forwarded the grievance to the initial authority. On December 9, 2014, the DGMC, acting as initial authority, denied the Applicant's grievance.

[13] On December 28, 2014, the Applicant submitted his grievance to the CDS. As required by art 7.21(a) of the QR&O, the Applicant's grievance was referred to a Military Grievances External Review Committee [Committee].

E. *The Committee's Findings and Recommendations*

[14] Because the Decision accepts the Committee's findings and recommendations as its own, it is essential to review those findings.

[15] After laying out the facts and stating the positions of the Applicant and the initial authority, the Committee begins its analysis by explaining the universality of service principle. The liability of all CAF members to perform any lawful duty at all times is established by s 33(1) of the *National Defence Act*, RSC 1985, c N-5 [*NDA*]. This universality of service principle means that all CAF members must be able to perform basic military skills and be prepared for military conflicts arising at any time. CAF policy stipulates that meeting the universality of service principle requires being physically fit, employable, and deployable. The Committee explains that the principle is recognized by s 15(9) of the *Canadian Human Rights Act*, RSC 1985, c H-6 [*CHRA*], which makes the CAF's duty to accommodate subject to the universality of service requirement.

[16] The Committee states that on February 5, 2013, the D Med Pol reviewed the Applicant's medical documentation and assigned MELs in the geographic and occupational categories. The Committee notes that the D Med Pol's report specifies that the MELs were assigned due to "a chronic medical condition that is of HIGH RISK of not complying with the Universality of

Service." The geographic issue was that the Applicant required "regular medical follow-up more frequently than every six months" and was therefore not deployable. The occupational issue was that the Applicant was "unfit for work in a military operational environment" and was therefore not employable. Thus, the assigned MELs called into question the Applicant's ability to satisfy two of the three conditions of the universality of service principle.

[17] To clarify the definition of "unfit for work in a military operational environment," the Committee quotes extensively from submissions provided by the D Med Pol in a similar grievance. The quotation explains that the D Med Pol uses the phrase to refer to limitations "where a member, because of his medical condition, cannot withstand the rigours and demands of a stressful, operational and, quite often but not always, a deployed environment." In the mental health context, a CAF member who "may not be reliable, might have psychological triggers, or be unable in many ways, to maintain the ability to work in a mentally demanding setting" would be assigned MELs. The Committee finds these definitions relevant to understanding the mental health issues in the Applicant's grievance.

[18] The Committee explains that the assignment of MELs left the Applicant subject to an administrative review. According to s 4.5 of Defence Administrative Order and Directive [DAOD] 5019-2, a CAF member subject to administrative review is to be notified of the review, provided with disclosure, allowed to make representations, have the information he or she provides considered, and provided with the administrative review decision. The Committee's report reviews the procedural timeline of the Applicant's administrative review documented in his file and finds that the ARMEL complied with DAOD 5019-2.

[19] When considering the reasonableness of the ARMEL decision, the Committee provides a table listing the Applicant's interactions with military and civilian medical practitioners. The Committee finds that the references in the table establish that medical assessments took place before the ARMEL was initiated and this satisfies the Committee that the Applicant's situation was taken seriously. The Committee acknowledges that lack of medical training renders it incapable of determining whether the diagnoses are correct, but finds sufficient basis in the Applicant's file to justify the military doctors' conclusions that the Applicant's medical condition was incompatible with military service. The Committee notes that such decisions take into account the military contexts that are applicable to MELs. The proposition that the evaluation of a medical condition's effect on a CAF member's ability to perform military tasks is better left to military doctors is supported by the decision in *McBride v Canada (National Defence)*, 2012 FCA 181 at para 38 [*McBride*]. The Committee cannot find evidence that the decision was arbitrary, made in bad faith, or made with animosity towards the Applicant.

[20] The Committee also considers medical reports submitted by the Applicant after he was informed of the result of the ARMEL. Based on meetings between the Applicant and a CAF doctor, and CAF internal communications referencing the reports, the Committee finds no reason to believe that the reports were not considered before the Applicant's release. Because the Applicant was provided notice of the ARMEL decision, six months to gather additional reports, and was allowed to submit new information for consideration, the Committee concludes that the Applicant's medical release was reasonable and followed applicable CAF policy.

III. DECISION UNDER REVIEW

[21] The Decision states that the matter grieved is the Applicant's June 16, 2014 medical release from the CAF under item 3(b) of art 15.01 of the QR&O. The redress sought by the Applicant is to have his release considered *void ab initio* resulting in his reinstatement in the CAF.

[22] The Decision confirms that the grievance was referred to the Committee, that the Committee provided its findings and recommendations to the CDS, and that the Committee recommended that the grievance be denied. The CDS states that he considered the matter *de novo* and that his review consisted of the Applicant's grievance file, including the initial authority's decision and material that followed.

[23] Before analyzing the matter grieved, the CDS deals with a number of issues he considers preliminary. The CDS states that the grievance process is not the proper forum for the investigation of criminal accusations and that it would therefore be inappropriate for him to comment on the Applicant's allegations of criminal wrongdoing by members of the CAF. Regarding the Applicant's request that the CDS consider his grievance in light of past grievance decisions by the final authority, the Decision states that each grievance is considered individually and that grievors' privacy must be protected. Therefore, the CDS does not comment on other grievances and limits his analysis to the Applicant's medical release. The Decision notes the Applicant's allegations of discrimination and harassment by members of the CAF, but the CDS states that these allegations were investigated and determined to be unfounded. The Decision

finds no causal link between the Applicant's harassment complaint and the matter grieved. The CDS considers the Applicant's complaint to the Canadian Human Rights Commission [CHRC] the proper forum for his harassment concerns and therefore declines to address the Applicant's harassment allegations.

[24] The CDS concludes that the Applicant was treated fairly and in accordance with the applicable CAF rules, regulations, and policies. Therefore, the CDS is not prepared to grant the Applicant's requested redress.

[25] After briefly relating his understanding of the facts, the CDS accepts the findings of the Committee as his own. The CDS notes that the Applicant was diagnosed with adjustment disorder, narcissistic personality traits, and generalized anxiety disorder. The CDS finds that "[b]ased on [the Applicant's] many representations" there is enough medical and psychological information in the file to justify the D Med Pol's conclusion that the Applicant was unfit to serve on June 16, 2014.

[26] Regarding the conduct of the administrative review of the Applicant's MELs, the CDS finds that the review was conducted fairly and in accordance with CAF policy. The CDS points out that on March 18, 2013 the Applicant was notified of the administrative review of the MELs he was assigned. The CDS concludes that this provided the Applicant sufficient time to counter the review's findings. The CDS states that he is satisfied that the documents and assessments in the Applicant's file demonstrate that the matter was taken seriously and considered appropriately.

[27] The CDS also finds that, given the findings that the Applicant did not meet the universality of service requirement and that there was no breach of procedural fairness during the ARMEL, the Applicant was properly released from the CAF. The CDS then states that he does not have the authority to reinstate former members of the CAF after their release. Therefore, he cannot grant the Applicant's request to be reinstated. However, the CDS offers the following encouragement:

> I do not have the authority to reinstate former members once they have been released from the CAF. However, if you were to submit new documentation to prove that you have overcome your medical limitations, I would encourage you to submit your application for re-enrollment.

[28] The Decision ends by noting that there is no appeal from a decision of the CDS acting as final authority but advises the Applicant that he can have the Decision reviewed by the Federal Court and thanks the Applicant for his contribution to the CAF and to Canada.

IV. ISSUES

[29] The Applicant submits that the following are at issue in this application:

1. What is the standard of review to be applied to the CDS' jurisdictional and non-jurisdictional determinations?
2. Does the CDS have authority to deal with the Applicant's harassment complaint?
3. Does the CDS have jurisdiction to reinstate the Applicant?
4. Is the CDS' decision to adopt the Committee's findings correct or unreasonable?
5. Is the CDS' decision that the Applicant does not meet the universality of service requirement unreasonable?
6. Is the CDS' decision that the ARMEL process was properly conducted unreasonable?

7. Is the CDS' decision that the Applicant could not be reinstated in the CAF unreasonable?
8. Is the CDS' decision that the Applicant's harassment complaint has no causal link with his grievance unreasonable?

[30] The Respondent submits that the issues raised by the Applicant amount to the following:

1. What is the standard of review applicable to the Decision?
2. Is the Decision unreasonable?
3. Did the grievance process afford the Applicant sufficient procedural fairness?

V. STANDARD OF REVIEW

[31] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*], held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[32] The Applicant submits that in *Bossé v Canada (Attorney General)*, 2015 FC 1143 at para 25, this Court held that the standard of review on the merits of the CDS' decision when acting as final authority on a CAF grievance is reasonableness. But the Applicant points to *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61

[*Alberta Teachers*], where the Supreme Court of Canada reiterated that true questions of jurisdiction are to be reviewed on a correctness standard. The Applicant submits that the CDS' determination that he did not have jurisdiction to consider the Applicant's harassment complaint or reinstate the Applicant are true questions of jurisdiction subject to correctness review.

[33] The Respondent submits that decisions of the CDS acting as final authority in the CAF grievance process are questions of mixed fact and law to be reviewed under the reasonableness standard. See *Moodie v Canada (Attorney General)*, 2015 FCA 87 at para 51 [*Moodie*]; *Zimmerman v Canada (Attorney General)*, 2011 FCA 43 at para 21; *MacPhail v Canada (Attorney General)*, 2016 FC 153 at para 8. The Respondent says that the CDS' specialized expertise in CAF grievances should be afforded significant deference. See *Stemmler v Canada (Attorney General)*, 2016 FC 1299 at para 30 [*Stemmler*]; *Walsh v Canada (Attorney General)*, 2016 FCA 157 at para 14. The Respondent accepts, however, that questions of procedural fairness are reviewable under the correctness standard. See *Mission Institution v Khela*, 2014 SCC 24 at para 79 [*Khela*]; *Moodie*, above, at para 50; *Shannon v Canada*, 2015 FC 983 at para 37 [*Shannon*].

[34] As stated by the Respondent, questions of procedural fairness are reviewed on the standar of correctness. See *Khela*, above, at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43 [*Khosa*].

[35] The standard of review applicable to the CDS' determination of the substance of the Applicant's grievance is reasonableness. See *Moodie*, above, at para 51.

[36] The CDS' determination that he did not have authority to reinstate the Applicant is not a true question of jurisdiction. Rather, it is a question of statutory interpretation to be reviewed under the reasonableness standard. The Applicant is correct that *Alberta Teachers* held that true questions of jurisdiction are still subject to correctness review. This, however, is subject to the qualification that "true questions of jurisdiction will be exceptional": *Alberta Teachers*, above, at para 42. Justice Rothstein also held that "unless the situation is exceptional… the interpretation by the tribunal of 'its own statute or statutes closely connected to its function, with which it will have particular familiarity' should be presumed to be a question of statutory interpretation subject to deference on judicial review": *Alberta Teachers*, above, at para 34. This approach was followed by the Supreme Court of Canada in *Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47 at para 26. The CDS' decision that he lacks authority to reinstate the Applicant derives from his interpretation of s 30(4) of the *NDA*. Therefore, the presumption of reasonableness is not rebutted.

[37] The CDS' determination that the CHRC is the appropriate body to investigate the Applicant's harassment complaint, with potential adjudication of the complaint before the Canadian Human Rights Tribunal, is a question of the jurisdictional line between two specialized tribunals. Such a question still rebuts the presumption of reasonableness and continues to be subject to correctness review. See *Alberta Teachers*, above, at para 30; *Dunsmuir*, above, at para 61.

[38] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the

decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Khosa*, above, at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

VI. STATUTORY PROVISIONS

[39] The following provisions of the *NDA* are relevant in this application:

Right to grieve	**Droit de déposer des griefs**
29 (1) An officer or non-commissioned member who has been aggrieved by any decision, act or omission in the administration of the affairs of the Canadian Forces for which no other process for redress is provided under this Act is entitled to submit a grievance.	29 (1) Tout officier ou militaire du rang qui s'estime lésé par une décision, un acte ou une omission dans les affaires des Forces canadiennes a le droit de déposer un grief dans le cas où aucun autre recours de réparation ne lui est ouvert sous le régime de la présente loi.
…	…
Final authority	**Dernier ressort**
29.11 The Chief of the Defence Staff is the final authority in the grievance process and shall deal with all matters as informally and expeditiously as the circumstances and the considerations of fairness permit.	29.11 Le chef d'état-major de la défense est l'autorité de dernière instance en matière de griefs. Dans la mesure où les circonstances et l'équité le permettent, il agit avec célérité et sans formalisme.

Referral to Grievances Committee

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

…

Chief of the Defence Staff not bound

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

Reasons

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

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

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

…

Renvoi au Comité des griefs

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

…

Décision du Comité non obligatoire

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

Motifs

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

…

Decision is final

29.15 A decision of a final authority in the grievance process is final and binding and, except for judicial review under the *Federal Courts Act*, is not subject to appeal or to review by any court.

…

Reinstatement

30 (4) Subject to regulations made by the Governor in Council, where

(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

(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

Décision définitive

29.15 Les décisions du chef d'état-major de la défense ou de son délégataire sont définitives et exécutoires et, sous réserve du contrôle judiciaire prévu par la *Loi sur les Cours fédérales*, ne sont pas susceptibles d'appel ou de révision en justice.

…

Réintégration

(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) 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) 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.

deemed for the purpose of this Act or any other Act not to have been so released or transferred.	
…	…
Liability in case of regular force	**Obligation de la force régulière**
33 (1) The regular force, all units and other elements thereof and all officers and non-commissioned members thereof are at all times liable to perform any lawful duty.	33 (1) La force régulière, ses unités et autres éléments, ainsi que tous ses officiers et militaires du rang, sont en permanence soumis à l'obligation de service légitime.

[40] The following provision of the *CHRA* is relevant in this application:

Universality of service for Canadian Forces	**Universalité du service au sein des Forces canadiennes**
15 (9) Subsection (2) is subject to the principle of universality of service under which members of the Canadian Forces must at all times and under any circumstances perform any functions that they may be required to perform.	15 (9) Le paragraphe (2) s'applique sous réserve de l'obligation de service imposée aux membres des Forces canadiennes, c'est-à-dire celle d'accomplir en permanence et en toutes circonstances les fonctions auxquelles ils peuvent être tenus.

[41] The following provisions of the QR&O are relevant in this application:

7.06 – TIME LIMIT TO SUBMIT GRIEVANCE	**7.06 – DÉLAI POUR DÉPOSER UN GRIEF**
(1) A grievance shall be submitted within three months after the day on which the grievor knew or ought reasonably to have known of	(1) Tout grief doit être déposé dans les trois mois qui suivent la date à laquelle le plaignant a pris ou devrait raisonnablement avoir pris

the decision, act or omission in respect of which the grievance is submitted.

(2) A grievor who submits a grievance after the expiration of the time limit set out in paragraph (1) shall include in the grievance reasons for the delay.

(3) The initial authority or, in the case of a grievance to which Section 2 does not apply, the final authority may consider a grievance that is submitted after the expiration of the time limit if satisfied it is in the interests of justice to do so. If not satisfied, the grievor shall be provided reasons in writing.

…

7.21 – TYPES OF GRIEVANCES TO BE REFERRED TO GRIEVANCES COMMITTEE

For the purposes of subsection 29.12(1) of the *National Defence Act*, the final authority shall refer to the Grievances Committee any grievance relating to one or more of the following matters:

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

…

connaissance de la décision, de l'acte ou de l'omission qui fait l'objet du grief.

(2) Le plaignant qui dépose son grief après l'expiration du délai prévu à l'alinéa (1) doit y inclure les raisons du retard.

(3) L'autorité initiale ou, dans le cas d'un grief qui n'est pas visé par la section 2, l'autorité de dernière instance peut étudier le grief déposé en retard si elle est convaincue qu'il est dans l'intérêt de la justice de le faire. Dans le cas contraire, les motifs de la décision doivent être transmis par écrit au plaignant.

…

7.21 – CATÉGORIES DE GRIEFS DEVANT ÊTRE RENVOYÉS AU COMITÉ DES GRIEFS

Pour l'application du paragraphe 29.12(1) de la *Loi sur la défense nationale*, l'autorité de dernière instance renvoie au Comité des griefs tout grief qui a trait à l'une ou l'autre des questions suivantes:

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

…

15.01 – RELEASE OF OFFICERS AND NON-COMMISSIONED MEMBERS	**15.01 – LIBÉRATION DES OFFICIERS ET MILITAIRES DU RANG**
(1) An officer or non-commissioned member may be released, during his service, only in accordance with this article and the table hereto.	(1) Un officier ou militaire du rang ne peut être libéré au cours de son service militaire qu'en conformité du présent article et du tableau s'y rapportant.
…	…
Item 3	Numéro 3
Medical	Raisons de santé
Reasons for Release	Motifs de libération
…	…
(b) On medical grounds, being disabled and unfit to perform his duties in his present trade or employment, and not otherwise advantageously employable under existing service policy.	b) Lorsque du point de vue médical le sujet est invalide et inapte à remplir les fonctions de sa présente spécialité ou de son présent emploi, et qu'il ne peut pas être employé à profit de quelque façon que ce soit en vertu des présentes politiques des forces armées.

VII. ARGUMENT

A. *Applicant*

(1) Harassment Complaint

[42] The Applicant submits that the CDS had jurisdiction to consider his harassment complaint and apply the provisions of the *CHRA*. The Applicant points to *Tranchemontagne v Ontario (Director, Disability Support Program)*, 2006 SCC 14 at para 14 [*Tranchemontagne*],

where the Supreme Court of Canada stated that "statutory tribunals empowered to decide questions of law are presumed to have the power to look beyond their enabling statutes in order to apply the whole law to a matter properly in front of them." A majority of the Court therefore held that the Ontario Social Benefits Tribunal had to decide whether a provision of one of its governing statutes was rendered inapplicable by the Ontario *Human Rights Code*, RSO 1990, c H.19, since the tribunal was "presumed to have the jurisdiction to consider the whole law": *Tranchemontagne*, above, at para 40. The Applicant accepts that the issue before the CDS was his medical release, but says his release was a consequence of the harassment he suffered. Therefore, although the complaint may also be consider by the CHRC, the Applicant says the CDS could also consider and apply relevant provisions from the *CHRA*. The Applicant says that this jurisdiction is reinforced by DAOD 5516-0, Human Rights, which states that the Department of National Defence and the CAF are committed to respecting the rights of CAF members that are protected under the *CHRA*.

(2) Reinstatement

[43] The Applicant submits that the CDS has jurisdiction to declare his release *void ab initio* and to reinstate him. The Applicant acknowledges that reinstatement was statutorily barred in *Stemmler*, but argues that *Stemmler* is distinguishable because the grievor in *Stemmler* did not meet the universality of service requirement. The Applicant says that he has provided medical evidence of his suitability for military service which was not considered and that in such circumstances reinstatement is not barred. The Applicant points to an online summary of a previous CAF grievance, Case #2010-92, which indicates that the external grievance committee

in that case recommended to the CDS that the grievor's release be considered *void ab initio* and the grievor be treated as if he were never released.

(3) Acceptance of the Committee's Findings and Recommendations

[44] The Applicant submits that the Decision does not provide sufficient reasons for accepting the Committee's findings and recommendations and that this amounts to the CDS failing to conduct the required *de novo* hearing. Contrary to the CDS' statement that the Committee's findings were thorough, the Applicant says that the Committee failed to identify the conditions that could limit the Applicant's fitness for work in a military environment, ignored medical evidence that contradicted its findings, and made an incorrect finding of fact regarding the Applicant's alleged suicide attempt. The Applicant says that the Decision's blanket adoption of the Committee's findings fails to meet the standard for sufficiency of reasons articulated in *Law Society of New Brunswick v Ryan*, 2003 SCC 20, a decision rendered before the Supreme Court of Canada's more recent statements on the adequacy of reasons in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*]. However, in the context of a decision of the CDS, the Applicant points out that in *Stemmler*, above, at para 55, this Court held 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."

[45] The Applicant says that the Decision is unreasonable because it fails to acknowledge the deficiencies and contradictions in the Committee's findings. In these circumstances, only a

reasoned and detailed explanation that addresses these concerns could meet the sufficiency of reasons required. The Applicant submits that the failure to do so also amounts to a failure to conduct the required hearing *de novo*.

(4) Universality of Service

[46] The Applicant submits that the CDS' conclusion that he is unable to meet the universality of service requirement is unreasonable. The Decision does reference that the Applicant was diagnosed with adjustment disorder, narcissistic personality traits, and generalized personality disorder, and states that the CDS found enough evidence to justify the conclusion that the Applicant was unfit to serve in the CAF. But the Applicant says that the Decision ignored Dr. Cruchley's initial January 10, 2012 report and Dr. Nayar's July 18, 2012 report, both of which said that the Applicant could return to duties. The report by Dr. Helmer, which found that the Applicant's condition was treatable through continued therapy, and which the Applicant argues was commented on positively by Captain Ron Padua in 2014, is similarly ignored. The Decision does not comment on further reports by Dr. Rahmani, Dr. Lizon, and Dr. Blackshaw. The Applicant submits that the CDS' emphasis is on his medical conditions, instead of their effect on his ability to meet the requirements of military service, lacks transparency and intelligibility. He says that there is no analysis beyond reliance on the CDS' own expert, and no reasons provided for the D Med Pol's determination.

[47] The Decision notes the "many representations made" by the Applicant, but does not elaborate on what those representations were. The Applicant says that this prevents the Court's

determination of what facts the CDS relied on and contributes to the Decision's unreasonableness.

(5) Conduct of the ARMEL

[48] The CDS finds that the Applicant had "ample opportunity to submit medical evidence to counter the [administrative review's] findings" and observes that there was evidence in the Applicant's file that medical assessments had taken place. The Applicant interprets this as suggesting that the CDS found that the Applicant did not provide evidence. He says that such a finding is unreasonable even if the evidence he submitted was considered insufficient. Such a situation is distinguishable from *Shannon*, above, at para 53, as that decision held that the CDS is entitled to prefer the evidence of CAF experts where the decision has "fairly weighed the medical evidence." The Applicant says that the CDS fails to weigh the medical evidence that supported his position and is therefore not entitled to prefer the CDS' expert, particularly when some of the Applicant's evidence comes from other CAF doctors.

(6) Causal Connection between Harassment and Medical Release

[49] The Applicant also says that the record is replete with evidence of the harassment he suffered and demonstrates a causal connection between the harassment and his medical release. The Decision does not provide an explanation for finding that there is no causal link between the harassment, and the Applicant argues that such a finding is only available if the CDS considered the evidence and made findings of fact about whether the harassment occurred. The CDS' decision that he did not have jurisdiction to consider the harassment allegation precluded this

investigation and therefore suggests that such an investigation did not occur. The Applicant submits that to then find that there is no causal link between his harassment and his medical release is both a denial of natural justice and unreasonable.

(7) Remedy

[50] The Applicant requests the following relief:

a) An order staying his medical release from the CAF;

b) An order quashing the Decision;

c) An order directing the final authority to rehear the matter with guidance from this Court; and

d) Costs in the application.

B. *Respondent*

[51] The Respondent submits that, in addition to the Applicant's allegation that he was not afforded sufficient procedural fairness, the grounds of review raised by the Applicant can be summarized as four issues as follows:

1. The sufficiency of the CDS' reasons for accepting the Committee's findings and recommendations;
2. The CDS' decision to decline consideration of the Applicant's harassment complaint;
3. The CDS' reliance on the ARMEL and his finding that the Applicant did not meet the universality of service requirement; and
4. The CDS' determination that he did not have authority to reinstate the Applicant.

[52] The Respondent says that each of the above issues is reviewable under the reasonableness standard and that in each case the Decision is reasonable.

(1) Sufficiency of Reasons and Reliance on the Committee's Findings

[53] The Respondent submits that the CDS provides sufficient reasons for finding the Applicant's medical release reasonable and for accepting the Committee's findings and recommendations. The Respondent notes that the CDS is not bound by the Committee's findings and recommendations. Instead, s 29.13 of the *NDA* requires the CDS to provide his/her own reasons for departing from the Committee's findings and recommendations if he/she decides to do so. In *Riach v Canada (Attorney General)*, 2011 FC 1230 at para 44 [*Riach*], Justice Bédard considered the effect of this provision and held that "when the CDS is in agreement with the Board's findings and recommendations, he can endorse its reasoning without having to expand further." The Respondent says that along with accepting the Committee's findings, the CDS provides additional reasons for finding the Applicant's medical release reasonable. Specifically, the CDS accepts that: the Applicant was unfit to serve because he did not meet the universality of service principle; the process provided the Applicant sufficient time and opportunity to respond; abundant evidence in the Applicant's file established that medical assessments took place before CAF medical personnel concluded that the Applicant's assigned MELs were not compatible with military service; the administrative review followed CAF policies and was procedurally fair; and there is no authority for the CDS to reinstate the Applicant as redress in the grievance process.

[54] The Respondent submits that a decision-maker's reasons are to be read as a whole, in conjunction with the record that was before the decision-maker. Rather than looking for error, reasons should be approached with a view to understanding the decision-maker's reasoning. The

application of this approach when considering the sufficiency of the CDS' reasons when acting as final authority in the CAF grievance process was described by Justice Gascon in *Stemmler*, above, at paras 75-76. Justice Gascon observes that, so long as the reasons allow the reviewing court to assess the validity of the decision, "[r]easonableness, not perfection, is the standard." The Respondent says that the Decision is owed a high degree of deference given the discretion granted to the CDS in the CAF grievance process.

(2) The Applicant's Harassment Complaint

[55] The Respondent submits that the Applicant is seeking to have the CDS engage in a *de novo* review of the Applicant's 2011 harassment complaint rather than the issue grieved. Because the Applicant grieved his medical release, the record before the CDS related to that issue, not the Applicant's harassment complaint. The Respondent says that the record indicates that the harassment complaint was decided in February 2013 and was therefore beyond the time period for appeal or grievance. In exercising discretion as to whether to consider a grievance filed after the prescribed period, the CDS is not obliged to accept a grievor's explanations for the delay. See *Canada (Attorney General) v Beddows*, 2016 FCA 294 at para 51.

[56] The Respondent also submits that the CDS' decision that the CHRC is the correct forum for consideration of the Applicant's harassment complaint is reasonable. The Respondent states that substantially the same complaint is currently before the CHRC and CAF is not aware of any decision by the CHRC that the complaint could more appropriately be determined under the CAF grievance procedure. In these circumstances, the CDS' decision to decline consideration of the harassment complaint avoids duplicity of proceedings.

(3) Universality of Service

[57] The Respondent submits that the Decision is within the range of possible decisions open to the CDS because the record establishes that both the CDS and the Committee relied on expert medical opinion when determining that the Applicant did not meet the universality of service requirement. The Decision specifically notes that the Applicant was diagnosed with adjustment disorder, narcissistic personality traits, and generalized anxiety disorder. It relies on the D Med Pol's determination that the Applicant was unfit for work in a military environment, a matter wholly within the expertise of the D Med Pol. In the context of assessing health conditions against the needs of the CAF, the CDS may place greater weight on the opinion of military doctors. See *McBride*, above, at para 38; *Shannon*, above, at paras 52-53. Therefore, the Decision is reasonable when finding that the Applicant does not comply with the requirement of universality of service.

(4) Reinstatement

[58] The Respondent submits that the CDS could not consider reinstatement as a form of redress for the Applicant's grievance. Subsection 30(4) of the *NDA* sets out the specific circumstances which allow for reinstatement in the CAF. In *Stemmler*, above, at paras 43-45, Justice Gascon held that s 30(4) "establish[es] the conditions under which a release from the CAF may be cancelled" and that the CDS was not unreasonable in finding that a former CAF member could not be reinstated when he did not fit within the exceptions established in s 30(4). The Decision determines that the Applicant did not meet the universality of service requirement on June 16, 2014 and was properly released from the CAF. Since the Applicant did not fit into

the exceptions established in s 30(4) of the *NDA*, the CDS' finding that the Applicant could not be reinstated is reasonable.

(5) Procedural Fairness

[59] The Respondent submits that the duty of fairness was not breached in the grievance process. The Applicant was: notified of the change to his MELs; provided with all relevant materials; given the opportunity to respond to those materials; and did respond before his grievance was determined. The CDS then carried out a *de novo* assessment of the material in the Applicant's grievance file. The Respondent says that even if there had been a prior procedural fairness deficiency, the CDS' *de novo* examination would eliminate this concern. See *Stemmler*, above, at para 48, citing *McBride*, above, at para 45; *Schmidt v Canada (Attorney General)*, 2011 FC 356 at paras 19-22.

[60] The Respondent therefore requests that the application for judicial review be dismissed.

VIII. ANALYSIS

A. *Introduction*

[61] This is a fairly complex application in which the Applicant has chosen to represent himself. This choice has not worked to his disadvantage. His written materials are comprehensive and well-organized and, in his oral presentation at the hearing, he revealed himself to be very capable and highly articulate in both his command of the evidence and his knowledge of the applicable legal principles.

[62] The application is more complex than would normally be the case because, in addition to grieving and reviewing his release from CAF on medical grounds, the Applicant is also attempting to resolve a harassment grievance that is referred to in the Decision under review but which is also the subject of other proceedings. The Applicant attempted to amalgamate his harassment concerns with the release grievance but the CDS felt that this should not be done and confined his Decision to the medical release.

[63] The Applicant feels that the medical aspects of his grievance cannot be separated from the harassment issues and, in his oral presentation, had much to say on this point.

[64] My view is that it was both reasonable and correct for the CDS to leave the harassment issues to other proceedings and to focus on the medical release in his Decision. I say this for two principal reasons.

[65] First of all, the medical evidence before the CDS – which is now before me and which I will refer to in detail later – suggests a link between occupational stress and the Applicant's psychological state, but is not comprehensive or strong enough to allow any meaningful assessment of the relationship between the alleged harassment events and the medical diagnoses that lie behind the release. Any mention of the role of stressors and causation in the medical reports could, in most cases, only have been based upon the Applicant's self-reporting and, as yet, unproven allegation of harassment. Secondly, I don't think that the accommodation that the Applicant hoped to achieve as an alternative to release was available to him under the process

that culminated in the CDS' Decision to release him on the basis that, for medical reasons, he could not satisfy the universality of service principle enunciated in DAOD 5023-0.

[66] The harassment issues are fully acknowledged and dealt with by the Committee:

> The grievor maintains that not long after joining the CAF, he encountered difficulties within his unit and was encouraged to file a harassment complaint. The grievor submits that this resulted in significant stress that not only affected his health but also his trust in the Chain of Command (CoC). The grievor argues that this mistrust led to delays in his pursuit of professional treatment for his health condition.
>
> Further, the grievor alleges that being new to the military, when he subsequently faced the prospect of a Court Martial and the possibility of release, he misjudged command decisions that were harsh but protective of good order and discipline. He maintains that with his increased knowledge of military processes and norms, he is now motivated to rebuild lost trust and prove he is able to serve as an effective and disciplined soldier.

[67] The Applicant has not suggested that this is an inaccurate assessment of his allegations at the time, although he has presented a different characterization before me. However, it has to be borne in mind that the Committee's review is independent and arm's-length.

[68] The Committee report also makes it clear that DAOD 5023-1 stipulates that a CAF member who is not military-occupation qualified cannot be retained. There is no room for accommodation:

> DAOD 5023-1 specifies that in order to be employable, "a CF member is required to ... be able to perform the skill elements of common operational core tasks ... and be free of medical employment limitations that would preclude performance of core tasks" and in order to be deployable ... "is required to not have a medical or other employment limitation that would preclude deployment".

> If a member is unable to meet those standards, an AR must be conducted in order to determine whether the member should be "released ... or retained subject to employment limitations on a temporary, transitional basis", however, a "CF member who is not military-occupation qualified and is in breach of the minimum operational standards is not to be retained".
>
> [Emphasis added.]

[69] The Applicant had not questioned the intent and authority of these governing provisions. He appears to feel that more could have been done to help him in his early years in the CAF. However, the issue before the Committee and the CDS was whether the medical evidence supported that the Applicant could not satisfy the universality of service principle and whether the assessment process had been appropriately followed. The independent and arm's-length Committee review concluded that "the decision to medically release the grievor was reasonable and made in accordance with applicable policy" and recommended "that the grievance be denied." The CDS, after a full *de novo* review, saw no reason to disagree with the Committee.

[70] The Applicant has raised a range of issues in this review which I will deal with in sequence. In the end, however, the question for the Court is whether the conclusions of the Committee and the CDS on the medical release issue was reasonable, given the medical evidence that was behind the release and the process that was followed to reach the final determination, and whether the Applicant was afforded the requisite procedural fairness during the course of this process. For reasons that follow, I have to conclude that the Decision was both reasonable and procedurally fair. In saying this, I am not pronouncing in any way upon the Applicant's harassment allegations which I understand he is pursuing in other forums.

B. *Jurisdiction to Deal with Harassment*

[71] On this issue, the Applicant's complaint is as follows:

> 52. Here, the question before the [CDS] involved the medical release of the Applicant. As will be discussed below, the Applicant faced the risk of a medical release in no small part due to the harassment suffered by the Applicant. Although the Canadian Human Rights Commission may also consider this question, there is little to no doubt that consideration of the relevant provisions of the *Canadian Human Rights Act* was within the jurisdiction of the [CDS] to consider and apply.
>
> 53. *Defence Administrative Orders and Directives*, 5516-0, Human Rights, specifically applies to all employees of the Department of National Defence. DAOD 5516-0 notes in its policy statement at Section 2.3 that the Department of National Defence and the CAF are committed to ensuring fair, respectful treatment with dignity; providing a workplace free from discrimination, and respecting all rights protected under the *Canadian Human Rights Act*. It further notes that the DND and CAF, in Section 2.4, must promote the principles of the Act.
>
> 54. The Applicant respectfully submits that [the CDS] was incorrect when he ruled that the Canadian Human Rights Commission was the only forum to voice these concerns. [The CDS] was incorrect that he did not have jurisdiction to apply the *Canadian Human Rights Act*.

[72] The Applicant may ascribe his medical problems to alleged harassment, but the harassment itself was not before the CDS.

[73] The grievance before the CDS was with regards to the Applicant's release from the CAF under art 15.01 (Release of Officers and Non-Commissioned Member), item 3(b) of the QR&O. The Applicant contended that he should not have been released on June 16, 2014 and he asked that the release be reconsidered.

[74] The CDS pointed out the following:

> **Preliminary Issues**. You have made several accusations of criminal wrongdoing by members of the CAF. The grievance process is not the proper forum to have these legal matters investigated. QR&O article 5.01 states:
>
> > **5.01 — GENERAL RESPONSIBILITIES OF NON-COMMISSIONED MEMBERS**
> >
> > A non-commissioned member shall:
> >
> > …
> >
> > (e) report to the proper authority any infringement of the pertinent statutes, regulations, rules, orders and instructions governing the conduct of any person subject to the Code of Service Discipline".
>
> As such, it would not be appropriate for me to comment on your allegations. I will therefore only consider the administrative issues surrounding your 3(b) medical release, which is the subject of your grievance.
>
> [Footnotes omitted.]

[75] It also appears from the record that the Applicant's harassment complaint is already being dealt with or is in the process of being dealt with. The Certified Tribunal Record [CTR] at 0543 to 0544 suggests that the harassment complaint was decided in February 2013 and that the Applicant's CO is dealing with the Applicant's request for an extension of time to appeal the decision. See the letter from the Applicant's lawyer (CTR 0543-0544) that references Lt. Col. Groves' February 19, 2013 letter, and Lt. Col. Groves' reply (CTR 0560-0561) which also references the February 19, 2013 letter that informed the Applicant that the complaint was closed as "reference C." Also, the list of references to the Applicant's second grievance letter,

dated June 16, 2014, includes "Ref. L: 5085-1-52567-12001, 'Statement of Allegations and Closure Letter' LCol Groves, 19 Feb 13" (CTR at 0164 and 0669).

[76] It also appears that the Applicant has placed his harassment complaint before the CHRC. Article 7.27(1) of the QR&O provides that "[a]n initial or final authority shall suspend consideration of a grievance if the grievor initiates any of the following in respect of the matter giving rise to the grievance: (a) and action; (b) a claim; or (c) a complaint under an Act of Parliament, other than the *National Defence Act*." Article 7.27(2) provides that consideration of the grievance shall resume "[i]f the action, claim or complaint has been discontinued or abandoned before a decision on its merits and the initial or final authority has received notice to this effect." And, art 7.27(3) provides that "[i]f the action, claim or complaint is resolved in whole or in part, the grievor shall immediately inform the initial or final authority of the resolution and provide them with a copy of it." So even if the CDS has concurrent jurisdiction to consider a grievance of a harassment decision, consideration must be suspended once a complaint to the CHRC is made.

[77] Under these circumstances, it would have been inappropriate for the CDS to address the substance of the Applicant's harassment allegations because of the duplicity of proceedings but, in any event, it was reasonable for the CDS to take the position that the nature of the grievance and the materials before him related specifically to the release and not to the harassment allegations. And, as the Committee pointed out, DAOD 5023-1 specifies that a "CAF Member who is not military-occupation qualified and is in breach of the minimum operational standards is not to be retained." There is no evidence or authority before me that this mandatory

requirement can be mitigated or avoided by accommodation consideration and/or the cause of a member's problems, although that does not mean that such matters cannot be considered in other proceedings.

[78] The CDS explains clearly why the harassment issues are not part of the grievance before him and why the causal connection that the Applicant asserts has not been established:

> In your representation to the Committee, you allege that members of the CAF discriminated and retaliated against you. More specifically, you refer to a series of events that occurred in April and June 2011, while you were employed with the 737 (Saskatoon) Communications Squadron (737 (Saskatoon) Comm Sqn). Your commanding officer (CO) investigated your harassment complaint and determined that it was unfounded, following which your CO considered charging you with making false declarations. After it came to light that you were having mental health issues, the charges were withdrawn. I find that there is no causal link between your harassment complaint and your current grievance. Furthermore, I note that you have submitted a complaint with the Canadian Human Rights Commission, which is the proper forum to voice these concerns. Consequently, I will not address these allegations in my determination of this grievance.

[79] Given the medical evidence before the CDS, it was not unreasonable for the CDS to conclude that a sufficient causal link had not been established. It is true that reports do draw a connection between occupational stress and the Applicant's psychological state. For instance, the Lizon Report says "[h]e is experiencing problems with anxiety that may well be caused by the stressful work situation and unresolved issues regarding his future career with the army" (CTR at 0621). Dr. Lizon's Axis I diagnosis is "[g]eneralized anxiety related to work situation. Adjustment Disorder with Anxious mood." The Blackshaw Report does not diagnose any Axis I disorders but states that the Applicant's "personality traits, combined with the stress of his treatment in the Armed Forces, led to several episodes diagnosed as Adjustment Disorder during

the period of time from October 2011 to February 2013" (CTR at 0651). Notably, the Brock Report specifically states that "[t]he current workplace harassment he described has served to trigger and exacerbate many of these feelings" (CTR at 0765). And later, "it appears that the perceived harassment that he experienced from his Cpt. and Sgt. in his unit coupled with the subsequent series of events following his initial request for a voluntary release (i.e., interview, harassment complaint, withdrawal of complaint, charges, etc.) led to some emotional decompensation" (CTR at 766). On the other hand, the Helmer Report only diagnoses Axis II characterological problems and specifically states "[t]hese characterological issues are very separate from the interpersonal harassment he has experienced in the Military" (CTR at 0267).

[80] Any references in these reports to possible causal connections between the Applicant's medical conditions and his treatment in the CAF are based upon self-reporting by the Applicant and cannot establish a causal link until such time as the Applicant establishes that the alleged harassment events actually occurred. The Applicant is dealing with this causal connection in a separate harassment complaint that was not before the CDS, and the CDS, reasonably in my view, declined to duplicate proceedings or to accept that a causal link had been established.

[81] As I have already pointed out, the harassment issue was also fully acknowledged and addressed by the Committee, whose assessment the CDS, after a full *de novo* review, accepted and endorsed.

C. *Jurisdiction to Reinstate*

[82] The Applicant says that the CDS did have the jurisdiction to reinstate him. He says that the CDS had the power to declare his release *void ab initio* and to direct that he be treated as if he had never been released.

[83] This is not a material issue in the present application because the CDS reasonably found that the Applicant was properly released from the CAF. Consequently, the release was not *void ab initio*. In addition, I think the Applicant is simply misreading the CDS' Decision.

[84] In dealing with the reinstatement request, the CDS concluded as follows:

> *Reinstatement in the Canadian Armed Forces*. I have determined that, effective 16 June 2014, you did not meet the CAF's universality of service requirement. I have also determined that your AR (MEL) was conducted in accordance with the applicable CAF policies. Based on my review of your file, I am satisfied that procedural fairness was properly followed during your AR (MEL). Consequently, I find that you were properly released from the CAF. In some of your subsequent representations, you requested that you be reinstated in the Res F. I do not have the authority to reinstate former members once they have been released from the CAF. However, if you were to submit new documentation to prove that you have overcome your medical limitations, I would encourage you to submit your application for re-enrollment.

[85] Clearly, the CDS is saying that, if the Applicant has been properly released, then the CDS has no power to simply reinstate him, but the Applicant could apply for re-enrollment if his medical issues can be resolved.

[86] In *Stemmler*, above, the Court made it clear that a CDS does not have the authority to reinstate except in the circumstances set out under s 30(4):

> [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 | 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. |

to have been so released or transferred.

[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	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.»

or transferred.”

(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

(4) Un officier ou militaire du rang dont la libération ou la mutation a été annulée en

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).	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.

[87] The Applicant's situation does not fit within the circumstances of s 30(4).

[88] The Applicant seeks to distinguish his situation from *Stemmler* in the following way:

> 56. In *Stemmler v Canada (Attorney General)*, 2016 FC 1299 ("*Stemmler*"), the CDS there notes that, pursuant to subsection 30(4) of the *National Defence Act*, re-instatement was barred by statute. However, the reason for this ruling was due to the finding that *Stemmler* was below the Universality of Service. Here, the Applicant put forward sufficient medical evidence regarding his suitability for service. Here, the Applicant's evidence was not considered nor were reasons given for the lack of consideration. Therefore, in the present case, re-instatement was a possibility not barred by statute.

[89] This does not raise an issue in this case because the grievance was denied on the basis that "effective 16 June 2014, you did not meet the CAF's universality of service requirement."

So whether or not the CDS was wrong about his jurisdiction to reinstate is irrelevant. As a general proposition, *Stemmler*, above, suggests that he was not wrong.

D. *Unreasonableness*

[90] The Applicant alleges that the Decision of the CDS is unreasonable for a variety of reasons.

(1) Failure to Provide Sufficient Reasons

[91] On this point, the Applicant's essential argument is as follows:

> 59. Although [the CDS] stated that he found [the Committee's] analysis thorough, he failed to provide sufficient reasons for why this may be the case. As noted by the Applicant in his review of the findings of the [Committee], the [Committee]:
>
> a. Failed to identify any triggers or stressors that could limit one's fitness to work in a military environment;
>
> b. Failed to consider the findings of Major Cruchley and Doctor Nayar in their determination of whether the Applicant satisfied the universality of service;
>
> c. Failed to properly consider Doctor Rahmani's statements regarding the Applicant's medical condition;
>
> d. Incorrectly noted that the Applicant had attempted suicide, contrary to evidence before them;
>
> e. Failed to consider Doctor Lizon's assessment that the Applicant's medical condition was due to workplace stressors and was not a significant impairment;
>
> f. Failed to consider Doctor Blackshaw's suggestion that therapy could be provided in a way that allows the Applicant to continue his work;

> g. Relied upon the statement by Captain Strawson that the Applicant's medical condition was not going to change, which was directly contradicted by other evidence before the [Committee];
>
> h. Failed to consider Doctor Helmer's statement that the Applicant's disorder was treatable, and that this was supported by Captain Padua;
>
> i. Failed to consider Doctor Helmer's report stating that the Applicant had not been given sufficient assistance with his grievance;
>
> …
>
> 63. The decision by [the CDS] to accept the findings of the [Committee] without explaining for deficiencies in their findings, the multiple contradictions in their findings, their failure to examine and consider expert medical evidence before them, fails to meet any standard of sufficient reasons.
>
> 64. The Applicant respectfully submits that it was not reasonable for [the CDS] to rely upon the findings of the [Committee] without providing a reasoned, detailed explanation for the various concerns with the [Committee] report, and that his failure to do so resulted in an unreasonable determination, which should result in the quashing of the decision.
>
> 65. The Applicant further respectfully submits fundamentally, however, that it was not correct for [the CDS] to rely on the findings of the [Committee] because, as he stated, he was required by law to conduct a hearing *de novo* and consider evidence anew. He did not do that.

[92] A similar complaint was made in *Stemmler*, above, where the Court set out the general approach to assessing the sufficiency of reasons:

> [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.

[93] The Applicant is inviting the Court to assume here that the Committee – an independent, arm's-length body – and hence the CDS, disregarded the factors which he outlines above in para 59 of his Memorandum. Some of these assertions are inaccurate and some of them are taken out of context and fail to take into account the full record of evidence that was before the Committee.

[94] For example, the Applicant's medical record between 2011 and 2014 reveals the following:

> 9. Between November 2011 and February 2013, the Applicant was hospitalized or sought psychiatric assessment and treatment on a voluntary and non-voluntary basis:
>
> a. November, 2011 — the Applicant attended the emergency room at Royal University Hospital (RUH) complaining of depression with suicidal thoughts for the preceding three

weeks. He was admitted to the Dube Centre at RUH for five [days] (CTR at 0648);

b. February, 2012 — the Applicant attended the emergency room at St. Paul's Hospital in Saskatoon, Saskatchewan seeking medical attention for an overdose of medication (CTR at 0649, 0759);

c. March, 2012 — the Applicant was admitted voluntarily to the Dube Centre at RUH for five days, with a diagnosis of Adjustment Disorder (CTR at 0649);

d. April, 2012 — the Applicant refused to voluntarily attend the hospital after being extremely resistant to [psychological] assessment and alluding to thoughts of harming himself. He was subsequently transported to hospital by the military police, assessed and released (CTR at 0604-0605);

e. May 10, 2012 — Saskatoon Police Service (SPS) transported the Applicant to RUH in Saskatoon, Saskatchewan for voluntary psychiatric assessment (CTR at 0655);

f. June 8-11, 2012 — the Applicant was admitted to RUH when he presented with depressive symptoms and suicidal ideas. The final diagnosis included generalized anxiety disorder and depression as well as narcissistic and passive aggressive personality traits. The Applicant was prescribed Venlafaxine XR, Seroquel, and Zopiclone on discharge and instructed to take medications on a daily basis (CTR at 0754-0755);

g. November 15, 2012 — SPS transported the Applicant to RUH for voluntary psychiatric assessment (CTR at 0656);

h. December 15, 2012 — SPS transported the Applicant to RUH for voluntary psychiatric assessment (CTR at 0656);

i. December 19, 2012 — SPS arrested the Applicant under The *Mental Health Act* and transported him to RUH for mandatory psychiatric assessment (CTR at 0656);

j. December 24, 2012 — SPS arrested the Applicant under The *Mental Health Act* and transported him to RUH for mandatory psychiatric assessment (CTR at 0656);

k. February 15, 2013 — SPS transported the Applicant to RUH for voluntary psychiatric assessment (CTR at 0656);

> l. February 21, 2013 — SPS arrested the Applicant under The *Mental Health Act* and transported him to RUH for mandatory psychiatric assessment (CTR at 0656). The Applicant threatened to set himself on fire and later stated he was attempting to "communicate the depth of his despair" (CTR at 0649).
>
> [Footnotes omitted.]

[95] In relation to points raised in the Respondent's Memorandum, the Applicant points out the following that are relevant to the issues before me.

(a) Para 9(j) – he was not arrested under the *Mental Health Act* but was taken into custody. Nothing in the record supports the Applicant's assertion. It appears that he requested two letters from Saskatoon Police detailing his interactions with them, one dated June 6, 2014 (CTR at 0655-0656) and another dated April 30, 2014 (CTR at 0752-0753). Both letters describe the December 24, 2012 occurrence as "arrested under the Mental Health Act and transported to RUH for a mandatory psychiatric assessment";

(b) Para 10(c) – there was no suicide attempt. He has no history of attempted suicide. See the Lizon Report (CTR at 0621) and Rahmani Report of November 2014(CTR at 0294).

While it is plausible that the overdose was not a suicide attempt, this is entirely based on the Applicant's later description of his knowledge of the potential effects of his thyroid medication. However, in his first meeting with Dr. Cruchley after the overdose, on March 27, 2012, it seems that he indicated that it was a suicide attempt: "In Feb 2012 the member was feeling very stressed as he had to go into his unit the next day. He was worried about possible criminal charges along with the administrative charges. He was also worried that his chain of command would make up false accusations against him. He decided to attempt suicide by taking a whole month's worth of his thyroid medications, thinking that it would give him a heart attack. He was treated in ER at St Paul's with charcoal and spent the night being monitored for cardiac arrhythmias. His ECG was abnormal overnight but was okay in the morning and he was discharged. Since then he feels that he is at high risk of suicide" (CTR at 0270). This is what led to Dr. Cruchley adding the April 2012 addendum to her January report that describes the overdose as a serious suicide attempt. His next assessment with Dr. Klym on April 17, 2014 records: "Suicide attempt in Feb overdose of thyroid med, and now says he realizes it was not likely to be lethal and he could have done something more lethal. Difficulty answering question of intent about thyroid med overdose and he is concerned it may be seen as a depression or attempt to avoid his duty" (CTR at 0271). So it appears that even if the overdose was not a suicide attempt, the Applicant was attempting to obscure this from CAF doctors in its immediate aftermath because it might have indicated that he was trying to avoid duty;

(c) Para 11(a) – this is a selective presentation of the evidence from the Garcea Report which leaves out the findings that are all in the normal range. See CTR 0594-0596. The Report suggests normal behaviour.

The Applicant is correct here. The Applicant does score in the problematic range for Obsessive-Compulsive but his other scores are normal and the report is generally very positive. But the Garcea Report is of limited value as it is aimed at assessing cognitive and academic abilities and seems intended to discern whether academic accommodation is required. Being from May 2011, it also predates the Applicant's mental health issues manifesting later that fall;

(d) Para 11(b) – the Brock Report suggest "traits" which are not a "disorder."

Dr. Brock does diagnosis the Applicant with generalized anxiety disorder on Axis I (but ruled out brief psychotic disorder). The borderline and self-defeating personality traits are Dr. Brock's Axis II diagnosis;

(e) Para 11(c) – Vrbancic Report – the focus is on suicide attempts which never occurred. There is no mention of the information in this report that suggests he is suitable for military service.

Dr. Vrbancic is generally very positive though the report mostly deals with cognitive functioning and does not provide a DSM diagnosis. The full context for her comments on suicidal ideation appear in her discussion of emotional functioning as follows: "On a test of emotional functioning, Mr. Kreutzweiser endorsed items reflecting minimal levels of psychological distress, characterized by feelings of being punished, loss of energy, irritability and not concentrating as well.
Mr. Kreutzweiser also admitted to suicidal ideation, but denied intent" (CTR at 0654). Also, for clarity, though dated January 9, 2013, it would make more sense that this report was actually completed in January 2014 based on the all the other dates and events it describes. For instance, the report says the date the Applicant was seen was December 30, 2013;

(f) Para 11(e) – Helmer Report – demonstrated he should have received accommodations.

The Helmer Report disagrees with the other Axis I diagnoses: "It is also likely that given no medication has really helped that this presentation does not represent an Axis I disorder. This would rule out previous diagnoses of Major Depressive Disorder, Major Depressive Disorder (Chronic), Obsessive Compulsive Disorder or Generalized Anxiety Disorder. [para break] The DSM-5 diagnosis is a rule out any brief psychotic disorder. The diagnosis is nil on Axis I. The diagnosis on Axis II is a Mixed Personality Disorder with Borderline Features, Narcissistic Features and Passive Aggressive Features." For the Axis II traits "[t]he recommendation would be psychotherapy for characterological problems that involve narcissism, passive aggression, and borderline features…. This psychotherapy would not have to be continuous, though it would have to be intensive and there could be "psychotherapy holidays" built into taking such course of treatment. In view of the treatability of

this disorder, Mr. Kreutzweizer [*sic*] would be fit for Military service." All quotes from CTR at 0638;

(g) Para 11(g) – The Respondent is just selecting the most negative aspects of the Blackshaw Report – there is no mention of the positive statements about no abnormalities.

Dr. Blackshaw does state that "there were no abnormalities of perception or thought process." She diagnoses no Axis I disorders but does diagnose borderline and narcissistic personality traits (presumably on Axis II). She recommends "continued intensive psychotherapy focused on moderating maladaptive personality traits and enhancing adaptive coping skills." Her conclusion is that "therapy is likely to sustain Mr. Kreutzweiser's recent improvements and allow him to continue his work in the Armed Forces." (CTR at 0651);

(h) Paras 15-16 – The Applicant alleges that he declined to submit representations during his ARMEL as a result of pressure put on him in the harassment complaint to discourage him from proceeding.

I don't see anything in the record supporting this. The closest evidence is in the Applicant's submissions to the Committee, CTR at 0087, where he alleges that "[i]n 2013, the Officer-in-Command of 38 Signal Regiment was Captain John Kitely. The Captain spent several months blocking my attempts to submit my medical appeal. I prepared a final document appealing my release dated November 20th, 2013. Captain Kiteley threatened me repeatedly in our October and November 2013 visits…." Even if this affected his ARMEL, the procedural defect would have been cured by the ability to provide later submissions and have them considered before release. And the only new medical report dated before the conclusion of the ARMEL was a letter from Dr. Rahmani which provided Dr. Rahmani's opinion that the Applicant was "capable of working and performing his duties" but still diagnosed generalized anxiety disorder and noted that he refused to use medications (CTR at 0613);

(i) Para 35(d) – The Applicant says that medical reports contradict the assertion that there was no causal link between the harassment complaint and his medical release. See Lizon Report, May 2014, CTR at 0621, "generalized anxiety disorder related to work situation." This is based upon self-reporting. See Helmer Report, CTR at 637, Applicant not given proper assistance, etc. I don't really see relevance to present application;

(j) Para 35(e) – The Applicant says he was released from hospital in February 2013 and there was no hospitalization in 2014, so this shows he was recovering;

(k) Para 35(j) – The Applicant says he did disclose new information after the release establishing that there had been a breach of procedural fairness. The Rahmani Report, November 2014, CTR 0288-0296, which he discussed at length in his grievance documents relates to the Applicant's medical condition and does not bear on fairness issues. Regarding the February 23, 2015 – Memorandum to CDS – Request for AO, CTR

0975-0981, it seems to me that the Applicant is talking about the harassment process when he requests an Assisting Member.

The letter conflates issues related to the Applicant's medical grievance and his harassment complaint. For instance, para 14 states that "CAF mbrs have denied me an AO or WRA at some point in each of the following years: 2011, 2012, 2013, 2014, and 2015." The earliest an Assisting Member could have been assigned regarding his medical release was after the MELs were assigned in February 2013. It is unclear whether the Captain Sliwowski referred to was the Assisting Member on the Applicant's May grievance, his unaccepted June grievance, or the harassment complaint. Most of the Applicant's complaints seem to be related to the June 2014 grievance not being accepted for consideration (see para 19). But the Applicant's Memorandum at paras 26-27 and CTR 0897-0898 suggest that Warrant Officer Boire was Assisting Member regarding grievance of the medical release. Warrant Officer Boire was also who Captain Padua emailed in June 2014 regarding the D Med Pol's response to Dr. Helmer's report (CTR at 0205-0206). Captain William Lee was later appointed as Assisting Member for the medical release grievance (CTR at 0050). The Applicant continued to complain about his inability to contact Captain Lee (CTR at 0009-0015). The Applicant also references a letter from Padre Jim Halmarson (CTR at 0200). It offers very general statements of support but the closest it comes to substantiating the Applicant's procedural fairness allegations is the following: "Although I do not agree with all of his analysis of the CF's shortcomings in dealing with his concerns, I do believe that the CF has not always been honest or open in its dealings with Chris L. Kreutzweiser's contentions concerning harassment";

(l) Para 65 – The Applicant says he also made complaints about harassment in June 2012 and in 2014 – so there was no time restriction.

The record suggests that the June 2014 grievance submission has never been accepted for consideration because it attempts to seek redress for more than one decision (CTR at 1016). Presuming investigation of the harassment complaint concluded on February 19, 2013, the six-month time limit for grievance would have expired on August 19, 2013. That is why the letter from the Applicant's lawyer, dated August 19, 2013 (CTR at 0543) says "[w]e realize that the time limit expires this date for an appeal… [but] ask that you kindly accept this as our formal appeal." Other than the CO's response (CTR at 0560) there is nothing in the record showing whether a grievance was subsequently accepted for consideration. Regardless, this would have to be a grievance of the decision that the harassment complaint was unfounded, and not the Decision that the Applicant should be medically released;

(m) Para 66 – The Applicant says his counsel wrote within the six month period asking Committee to suspend the May 20, 2014 grievance – because he wanted an Assisting Member to be appointed. The Committee would not suspend. I don't see this as particularly relevant because the Committee was only looking at the medical release.

I do not see on the record a letter from the Applicant's counsel addressed to the Committee. He did ask for an extension to respond to the disclosure he received at the initial authority stage (CTR at 0784). He also requested an extension to respond to the Committee's findings and recommendations before the file was forwarded to the CDS and continued his complaints about lack of a satisfactory Assisting Member (CTR at 0019);

(n) The Applicant says that the doctors were clear on the connection between the discrimination and harassment and the Applicant's health issues. See Blackshaw Report – Applicant's affidavit, Exhibit C1, para 24 Adjustment Disorder.

Dr. Blackshaw diagnoses no Axis I disorders. In her diagnostic impression she states that "[i]t is possible that the past symptoms of depression and anxiety arose out of or were manifestations of Mr. Kreutzweiser's underlying maladaptive personality traits. These personality traits, combined with the stress of his treatment in the Armed Forces, led to several episodes diagnosed as Adjustment Disorder during the period from October 2011 to February 2013" (CTR at 0248);

(o) The Rahmani Report, CTR at 0288-0296, awards him 80/100 – the Applicant says this report should have been considered because it reveals he was being held to an unreasonable standard.

The 80/100 score in this report is the Axis V global assessment. But Dr. Rahmani still diagnoses the Applicant with Generalized Anxiety Disorder on Axis I. For the question "Do you expect further medical improvement?" he checks the "no" box. This report is dated November 14, 2014 (CTR at 0296), after the Applicant's June 16, 2014 release.

[96] None of the Applicant's points here change the reasonableness of the Decision. Most of them simply dispute the Respondent's characterization of the evidence rather than any findings of the Committee. In 2012, the discharge report from RUH and the Brock Report both diagnose the Applicant with generalized anxiety disorder, as does Dr. Rahmani in 2013. Even in 2014, by the time he appears to be less symptomatic, Dr. Rahmani continues to diagnose him with generalized anxiety disorder and Dr. Lizon's diagnosis is generalized anxiety related to work situation. The two reports that do not diagnose an Axis I disorder, by Dr. Helmer and Dr. Blackshaw, still recommend therapy to deal with characterological Axis II issues. The Applicant's suggestion that he was being held to a higher standard by Department of National

Defence [DND] doctors has to be considered in the context of his documented history of psychological issues when faced with stressful situations. Further, the final paragraph of the Committee's quote from the D Med Pol, CTR at 0063, suggests that characterological issues are not excluded from "medical" limitations where they affect reliability:

> In addition a member with Mental Health [MH] or behavioural issues may not be reliable, might have psychological triggers, or be unable in many ways, to maintain the ability to work in a mentally demanding setting. This could be due to a current or past MH history (high risk of recurrence), medications or inappropriate behaviour, present or past; impulsiveness, inability to control behaviour within certain conditions or setting, would also apply here. These members would also be given such employment limitations.
>
> (Emphasis added.)

The procedural concerns the Applicant raises are simply impossible to evaluate based on the evidence. Part of the problem is that he perceives most disagreement with his perspective of events or interpretation of regulations as instances of obstruction. Ultimately, it is clear that he has been able to make extensive submissions throughout the process that have been considered and addressed.

[97] The same record also reveals that the Applicant was assessed by CAF medical personnel because he was experiencing ongoing mental health issues:

> 10. Between 2012 and 2014, the Applicant was seen by CAF medical personnel on several occasions due to matters relating to his ongoing mental health issues:
>
> a. January 10, 2012 — Major Cruchley (MD) conducted a medical examination in anticipation of release and assessed the Applicant as having adjustment disorder with mixed anxiety and depressed mood **[secondary to stress at work]**.

The report included an observation that the Applicant was medically fit for re-enrollment (CTR at 0268-0269);

b. March 27, 2012 — Major Cruchley assessed the Applicant as having adjustment disorder and referred him to a psychiatrist for assessment (CTR at 0270);

c. April 3, 2012 — Major Cruchley amended her January 10, 2012 report to include previously unknown psychiatric history that included a suicide attempt in February 2012. She strongly recommended that the Applicant not be re-enrolled in the CAF. She states: "This member has serious psychiatric issues and I would strongly recommend that he not be re-enrolled in the Canadian Forces in the future" (CTR at 0552);

d. April 17, 2012 — Dr. Klym assessed the Applicant as having adjustment disorder with anxiety and referred him to an outside counselling agency (CTR at 0271); **[Regarding paras b, c, and d, see my comments about the Applicant's overdose and its initial description as a suicide attempt]**;

e. May 29, 2012 — Dr. Klym assessed the Applicant with adjustment disorder with anxiety and advised that she would refer him for further assessment relating to his disorder (CTR at 0272);

f. June 19, 2012 — Major Cruchley assessed the Applicant [as having a] personality disorder. The Applicant was scheduled to see Dr. Brock, a doctoral psychologist, on June 27, 2012. It was noted in the report that the Applicant had seen a psychiatrist, Dr. Prasad, twice, but that no report was on the chart (CTR at 0748);

g. July 18, 2012 — Dr. Nayar assessed the Applicant with adjustment disorder and noted a plan to involve supportive therapy. She also provided a Chit "fit for regular duties" (CTR at 0273);

h. July 25, 2012 — Major Cruchley assessed the Applicant as having adjustment disorder with depressed mood but that she would await the results of Dr. Brock and Dr. Prasad prior to proceeding with a plan (CTR at 0274);

i. February 4, 2014 — Captain Strawson assessed the Applicant as having personality disorder. An addendum was added to the report that took into account the June 10, 2014 letter of the Applicant's psychiatrist, Dr. Rahmani, but that it was not indicative of a significant change in the Applicant's

medical status (CTR at 0201); **[The letter referenced by Captain Stawson appears to be Dr. Rahmani's November 19, 2013 letter, CTR at 0199, as prior to the addendum Captain Strawson lists his plan as "discuss new letter from Dr. Rahmani with higher." Since that was presumably written on February 4, 2014, it must relate to the earlier letter. That said, the June letter, CTR at 0203, is even less substantive than the November letter.]** and

j. February 20, 2014 — Dr. Nayar examined the Applicant and assessed him as having anxiety and borderline personality feature. The report notes that the Applicant took a month's worth of medication but the Applicant denied it was a suicide attempt. Dr. Nayar encouraged the Applicant to continue with treatment (CTR at 0221-0222). **[From the report: "overdose took a month's worth of levothyroxine, treated with charcoal and monitored overnight. Member denies that his was a suicide attempt and he just wanted to make himself sick as he was having problems at the unit. He was trying to avoid work as he was being investigated for false statements and he thought there was some kind of retaliation. He thought that by taking an overdose he would be ill and on sick leave. beginning Friday, February 03, 2012."]**

[Footnotes omitted.]

[98] In addition to this, as the Respondent points out, the Applicant himself submitted a series of reports and assessment before the CDS as part of the grievance process:

a. Psycho Educational Assessment by Dr. Garcea, a registered psychologist ("the Garcea Report"), dated May 4, 2011. The assessment discussed the Applicant's obsessive compulsiveness [and] found that he agreed to having thoughts, impulses, and actions that were unremitting and irresistible and of an unwanted nature (CTR at 596); [**In addition to my comments above about the general lack of value to this report, the test in which the Applicant showed symptoms of obsessive compulsiveness "is a measure of current psychological symptom status with a time frame of 'the last seven days including today.'"]**

b. Psychological Assessment Report written by a registered doctoral psychologist, Dr. Brock, dated October 24, 2012.

Dr. Brock reviewed the Applicant's psychological history and noted that he suffered from significant mental health symptoms from 1996 to 2001 and was hospitalized three times for one month each time for treatment. The Applicant's history included a 2006 drug overdose that he was hospitalized for. The Applicant was diagnosed with generalized anxiety disorder and borderline and self-defeating personality [traits] with a strong recommendation that he engage in long term therapy (CTR at 0756-0767); [**Mention of the previous overdose is at CTR 0758.]**

c. Neuropsychological Test Report written by a Neuropsychologist, Dr. Vrbancic, dated January 9, 2013. The report noted that the Applicant admitted to suicidal ideation, but denied intent. Dr. Vrbancic recommended that the Applicant continue with supportive psychotherapy to assist with management of stress (CTR at 0652-0654); [**The full context of the recommendation is "Mr. Kreutzweiser can be reassured that he is doing very well from a cognitive perspective, and is encouraged to keep employing the strategies that he already has in place to optimize his functioning, and to continue with supportive psychotherapy to help him better manage his personal stress…"]**

d. A letter from Dr. Rahmani, the Applicant's psychiatrist, dated November 19, 2013 diagnosing the Applicant with Generalized Anxiety Disorder. Dr. Rahmani stated that the disorder is treated by psychotropic medications and counselling. He noted that the Applicant refused to use medications but had recently agreed to try counselling. A referral was made to mental health services (CTR at 0613);

e. Psychological assessment by Dr. Helmer with the Saskatoon Health Region's Mental Health and Addiction Services ("the Helmer Report"), dated May 20, 2014. Dr. Helmer diagnosed the Applicant with Mixed Personality Disorder with Borderline Features, Narcissistic Feature and Passive Aggressive Features with a recommendation of psychotherapy (CTR at 0638). In consultation with Captain Padua, a physician with the CAF, Dr. Helmer suggested the Applicant attend 30 to 40 psychotherapy sessions for treatment (CTR at 0519; see also CTR at 0205-0206); **[In addition to Captain Padua's report at CTR 0519, the CTR at 0205-0206 has an email, dated June 4, 2014, from Captain Padua to Warrant Officer Boire, who I believe was the Applicant's Assisting Member at the time. The**

relevant portion reads: "2. I have reviewed member's latest assessment by last medical specialist. It is a very good assessment and have sent up a note to DMED POL to review it. The medical specialist [Dr. Helmer] came back from holidays this week and I was able to talk with him yesterday. He confirms member has a medical condition and is treatable after which he could return to military service. I ask how long this would take and he said approx. 30 to 40 sessions. However he said that his is only an assessment and is not actively treating the member."]

f. Psychiatric Assessment by Dr. Lizon, a civilian psychiatrist, dated May 23, 2014. Dr. Lizon diagnosed the Applicant with Generalized anxiety [related to work situation] and adjustment disorder with anxious mood. The treatment plan included continued meetings with Dr. Lizon to review the Applicant's mental state and assess any need for medication or other therapeutic intervention (CTR at 0621-0622);

g. Psychiatric Assessment by Dr. Blackshaw, a Consultant Psychiatrist at RUH, dated June 6, 2014. Dr. Blackshaw diagnosed the Applicant with Borderline and Narcissistic Personality traits that include intense emotional reactions and previously involved self-destructive behaviour in response. Dr. Blackshaw acknowledged that medication had not proven to be helpful but recommended "continued intensive psychotherapy" (CTR at 0651);

h. A letter from Dr. Rahmani, dated June 10, 2014 confirming his November 19, 2013 diagnosis of Generalized Anxiety Disorder. However, unlike his November 19 letter, Dr. Rahmani stated that medication was not essential for treatment and that the Applicant could choose counselling depending on his needs (CTR at 0619);

i. Social Work Report by Maria Badrock, a social worker with CAF, dated June 11, 2014. Ms. Badrock provided supportive counselling to the Applicant on several occasions, however no dates are provided and she recommended a referral to Dr. Brock, a psychologist, for follow up therapy. She further recommended that the Applicant engage in long term therapy to focus on addressing his psychological and interpersonal difficulties and anxiety (CTR at 0512).

[Footnotes omitted.]

[99] Other evidence included the following:

(a) On October 29, 2012, Dr. Cruchley recommended that the Applicant be assigned MELs in the geographic and occupational categories and that he required medical follow-up more frequently than every six months (CTR at 0841);

(b) On February 5, 2013, the D Med Pol assigned MELs because of a chronic medical condition that is of high risk of not complying with the universality of service principle. The assigned MELs included "requires medical follow-up more frequently than every six months" and "unfit for work in a military operational environment" (CTR at 0590);

(c) On March 18, 2013, the DMCA advised the Applicant that an ARMEL would be conducted (CTR at 0816);

(d) On October 24, 2013, the Applicant acknowledged receipt of a disclosure package and being briefed on the ARMEL process and indicated that he would submit written representations to be considered by the DMCA (CTR at 0812);

(e) On November 20, 2013, the Applicant indicated to the DMCA that he would not be submitting written representations for consideration in the ARMEL (CTR at 0806);

(f) On December 3, 2013, the DMCA decided to release the Applicant from the CAF for medical reasons under item 3(b) of art 15.01 of the QR&O with a release date of no later than June 17, 2014 because his assigned MELs did not comply with the universality of service principle and he was not qualified at the basic level in his trade that would allow for a period of retention (CTR at 0802);

(g) The CAF assigned a case worker to advocate for the Applicant during the medical release process and assist with the redress of his grievance (CTR at 0208);

(h) On May 20, 2014, the Applicant grieved his medical release from the CAF (CTR at 0986-0989);

(i) On June 16, 2014, the Applicant was released from the CAF (CTR at 0399);

(j) On June 20, 2014, the Applicant submitted a second grievance seeking compensation and alternative dispute resolution related to multiple issues regarding his harassment complaint and medical release but clarified that the primary purpose of his May 2014 grievance was to object to his medical release (CTR at 0991);

(k) In a letter dated October 30, 2014, the DMCPG 3 advised the Applicant that his grievance would be submitted to the initial authority and provided a synopsis of the grievance along with disclosure of the information to be considered by the initial authority (CTR at 0553);

(l) On November 20, 2014, the Applicant submitted written representations to the initial authority and requested that the DMCPG 3 extend the time for providing written

representations by ninety days so that he could respond to new medical and social work information he had obtained and submitted to the initial authority (CTR at 0494);

(m) On November 28, 2014, the DMCPG 3 denied the Applicant's request for an extension of time, assured the Applicant that sufficient time would be taken to review the materials he submitted and that expert review from the D Med Pol would be sought where required, and informed the Applicant that CAF Grievance Authority staff were reviewing the consolidation of his May 2014 and June 2014 grievances (CTR at 0480);

(n) On December 9, 2014, the DGMC, acting as initial authority, denied the Applicant's May 2014 grievance and determined that his medical release was appropriate and complied with CAF policy (CTR at 0329-0330);

(o) On December 28, 2014, the Applicant submitted his May 2014 grievance to the CDS for final authority decision (CTR at 0403);

(p) On February 2, 2015, the Applicant's grievance was referred to the Committee for its review (CTR at 0058);

(q) The Applicant provided written representations and documents to the Committee dated January 22, 2015 (CTR at 0385), April 6, 2015 (CTR at 0333), April 15, 2015 (CTR at 0276), April 18, 2015 (CTR at 0224), April 19, 2015 (CTR at 0180), April 23, 2015 (CTR at 0074), and May 23, 2015 (CTR at 0136);

(r) On June 18, 2015, the Committee found that the Applicant's May 2014 grievance should be denied (CTR at 0069);

(s) On June 19, 2015, the CAF Grievance Authority provided the Applicant with a copy of the Committee's findings and recommendations, disclosed the entire grievance file to him, and informed him that he may provide comments and relevant documents for consideration by the CDS within twenty-one days of receipt of these materials (CTR at 0053);

(t) On June 25, 2015, (CTR at 0848) the Applicant provide additional materials for the CDS to consider including letters to the CDS (CTR at 0849), the Minister of National Defence (CTR at 0853), and the Premier of Saskatchewan (CTR 0863);

(u) On June 30, 2015, the Applicant acknowledged receipt of the Committee's findings and requested a ninety day extension of time to submit further comments to the CDS (CTR at 0049-0051);

(v) The Applicant was provided with an extension of time until August 14, 2015 to submit additional comments and documents to the CDS (CTR at 0028);

(w) On July 13, 2015, the Applicant submitted comments and additional documents to the CDS for consideration (CTR at 0036). The submissions make numerous allegations of criminality by CAF members and civilian mental health experts including accusations of sedition, terrorism, fraud, intimidation, extortion, and retaliation (CTR at 0036-0043);

(x) On July 23, 2015, the CAF Grievance Authority denied the Applicant's request for a further extension until October 23, 2015 (CTR at 0018); and

(y) By the conclusion of the grievance process, the CAF provided the Applicant with an Assisting Member and a point of contact within CAF through whom he could communicate with his Assisting Member (CTR at 0017).

[100] The CDS, after a *de novo* review of all of this evidence, agreed with the reasons and conclusions of the Committee and accepted them as his own. If the CDS disagrees with the Committee's findings, then he/she has to provide reasons for that disagreement, but if he/she is in agreement, the CDS can adopt the Committee's reasons and does not have to provide additional reasons for that agreement. The reasons for this are obvious. See s 29.13 of the *NDA* and *Riach*, above:

> [44] The CDS could have limited himself to stating that he was in agreement with the Board's findings and recommendations without further expanding. Article 7.14 of the QR&O states that after having received the Board's findings and recommendations, the CDS must consider and determine the grievance and must advise the grievor of the "determination and the reasons for it." However, section 29.13 of the Act provides that the CDS is not bound by the Board's findings and recommendations but if he chooses to depart from them, he is required to include the reasons for doing so. I understand from these provisions that when the CDS is in agreement with the Board's findings and recommendations, he can endorse its reasoning without having to expand further.

[101] It is also clear that, in assessing reasonableness, the reasons of the CDS have to be read as a whole in conjunction with the whole record that was before the decision-maker. See *Newfoundland Nurses*, above, at para 15.

[102] In the Decision, the CDS makes it quite clear how he approached and decided the Applicant's grievance:

> As the final authority (FA), I have considered your case *de novo*. In other words, any previous decision has been set aside and I have made a new determination on the matter you brought forward in your grievance.
>
> This review consisted of your entire grievance file, which includes your original grievance, the initial authority decision rendered on 9 December 2014, and other information that followed. I note you requested that your grievance be forwarded to DGCFGA for FA consideration on 28 December 2014. DGCFGA received your documentation on 12 January 2015.

[103] The Committee also gives a detailed account of the whole process that led to the conclusion that the Applicant could not satisfy the universality of service principle and so had to be released.

[104] On the basis of a *de novo* examination of the whole record, the CDS provides the following general summary of his reasons and conclusions:

> As the Committee states quite correctly, there is substantial evidence in your grievance file that medical consultations and assessments had taken place before DND physicians came to the conclusion that your medical conditions were not compatible with military service. While I fully understand that you may have wanted to continue serving as a soldier in the CAF, I must agree with the Committee. I especially note that, based on the documents and the assessments in your grievance file, your situation was taken seriously and was given appropriate consideration. As well, you did not provide any proof that procedural fairness had been breached during your AR (MEL), nor did you bring forth any new medical information in support of your contentions. Like the Committee, I find that your AR (MEL) was conducted fairly and in accordance with all applicable CAF policies.

[105] Because the CDS also adopts the reasons of the Committee, those reasons must also be taken into account when assessing reasonableness:

> **ANALYSIS**
>
> The grievor was assigned permanent MELs deemed to be non-compliant with the U of S principle. These MELs ultimately led to the grievor's medical release which the grievor maintains was inappropriate and is the subject of this grievance. The file contains over 700 pages where the grievor made multiple comprehensive submissions in support of his position.
>
> **Universality of Service Principle**
>
> Subsection 33(1) of the *National Defence Act* provides that all members of the CAF are at all times liable to perform any lawful duty. This is commonly referred to as the U of S principle.
>
> The liability to perform any lawful duty means that, regardless of a member's trade or CAF occupation, members must be able to perform a core of basic military skills and must be prepared for military conflicts that may arise at any time. It is a universal liability for operational duty, commonly referred to as the "soldier first" principle, to be able to respond to precisely those kinds of events.
>
> This principle is enunciated in DAOD 5023-0, Universality of Service, which provides that all "CF members are liable to perform general military duties and common defence and security duties" which include "the requirement to be physically fit, employable and deployable for general operational duties".
>
> Further, the unique situation of the CAF and the fundamental importance of this statutory authority is recognized in subsection 15(9) of the *Canadian Human Rights Act* (CHRA). This subsection establishes that the CAF's duty to accommodate members, under subsection 15(2) of the CHRA, is subject to the principle of U of S and states:
>
> > Universality of service for Canadian Forces
> >
> > (9) Subsection (2) is subject to the principle of universality of service under which members of the Canadian Forces must at all times and under any circumstances perform any functions that they may be required to perform.

Medical Employment Limitations

D Med Pol is the corporate authority tasked to impartially review the medical files of all CAF members, and when appropriate, assign permanent medical categories and employment limitations. D Med Pol, on behalf of the Surgeon General, acts as the interface between the assessing physicians, the Base/Wing Surgeons, and DMCA, the latter being responsible for making a determination with respect to ARs.

On 5 February 2013, following D Med Pol's review of the grievor's medical documentation, the following medical categories were assigned to the grievor, representing changes to his geographic and occupational categories (pp.27, 28):

V Vision	CV Colour Vision	H Hearing	G Geographic	0 Occupational	A Air Factor
4	1	1	4	4	5

On the same date, the grievor was assigned MELs by D Med Pol (pp.27, 141). In the medical statement issued by D Med Pol, it specified that the MELs had been assigned due to "a chronic medical condition that is of HIGH RISK of not complying with Universality of Service". The condition required "regular medical follow-up more frequently than every six months" and the grievor was assessed as being "unfit [to] work in a military operational environment" (p.141).

Thus, the medical categories/limitations in issue related to the following:

G - requires regular medical follow-up more frequently than every six months;
O - unfit work in a military operational environment.

Consequently, this called into question the grievor's ability to meet two of the three conditions necessary to satisfy the U of S principle. The grievor was not "employable" due to being unfit to work in a military operational environment and was not "deployable" since he was assessed as requiring regular medical follow-ups more frequently than every six months. The evidence on file does not address the third condition, being the grievor's physical fitness level.

The Committee recently considered a similar grievance wherein the member was also assigned the MEL "unfit for military

operational environment". Given the lack of any clear definition or understanding of the scope of this MEL, the Committee contacted D Med Pol who explained (p.776):

> We are using the "military operational environment" limitation in certain circumstance [sic] where a member, because of his medical condition, cannot withstand the rigours and demands of a stressful, operational and, quite often but not always, a deployed environment.
>
> A military *operational* environment could also be one, such as Leitrim or CJOC HQ, where it is not a deployed setting, but there are significant stressors that deal with deployed and operational matters; however, a member with a broken leg, for instance, would still be able to work at Leitrim or CJOC if he could withstand the mental and psychological demands of that environment.
>
> In most instances, "the field" is considered an operational environment from a health care provider perspective. There may however be circumstance [sic] where it is acceptable to have someone with MELs of unfit military operational environment de me [sic] employed in a field environment, depending on the task and the nature of this specific field.
>
> In addition, a member with Mental Health [MH] or behavioural issues may not be reliable, might have psychological triggers, or be unable in many ways, to maintain the ability to work in a mentally demanding setting. This could be due to a current or past MH history (high risk of recurrence), medications or inappropriate behavior, present or past; impulsiveness, inability to control behavior within certain conditions or setting, would also apply here. These members would also be given such employment limitations.

I find this information of relevance in understanding the present grievance which raises past and present mental health issues that are not always easily understood or visibly obvious but may be subject to certain triggers or stressors that could perceivably limit one's fitness to work in a military operational environment.

> DAOD 5023-1 specifies that in order to be employable, "a CF member is required to ... be able to perform the skill elements of common operational core tasks ... and be free of medical employment limitations that would preclude performance of core tasks" and in order to be deployable ... "is required to not have a medical or other employment limitation that would preclude deployment".
>
> If a member is unable to meet those standards, an AR must be conducted in order to determine whether the member should be "released ... or retained subject to employment limitations on a temporary, transitional basis", however, a "CF member who is not military-occupation qualified and is in breach of the minimum operational standards is not to be retained".
>
> I note that in the grievor's case, he enlisted in the P Res on 29 March 2011 (p.449) but due to a foot injury sustained on 14 May 2011 (p.23), while participating in a sports activity with his unit, he was unable to attend BMQ training. The grievor never did attend BMQ training and was not military-occupation qualified. In fact, he had less than two years in the P Res at the time of the assigned MELs.
>
> Therefore, with the assignment of the grievor's MELs, he did not meet two out of three conditions necessary to satisfy the U of S principle. As a result, the grievor was in breach of the minimum operational standards set out in DAOD 5023-1 and therefore subject to an AR/MEL.
>
> [Footnotes omitted.]

[106] Some of the failures alleged by the Applicant – as set out above – are not failures at all when the full record is considered. For example, the Applicant suggests that the Committee "[f]ailed to consider Doctor Helmer's statement that [his] disorder was treatable," but the Committee's findings and recommendations specifically notes that "[t]he psychologist, Dr. D. Helmer, suggests that the grievor's mental health disorder was treatable with 30 to 40 counselling sessions" and finds that it is probable that Captain Padua forwarded this report to the D Med Pol for review. When read as a whole, it is entirely transparent, intelligible and justifiable

why the Committee and the CDS reached their conclusions on why the Applicant's medical condition was not compatible with military service. Some of the evidence may have suggested otherwise, but this evidence was not left out of account and it was not persuasive when the whole record was examined. This was pointed out in the Committee decision that was adopted by the CDS, who also references some of the reports. Given the structure of these decisions and the detail provided, the Court cannot presume that any of the evidence referred to by the Applicant was overlooked. Even the final report by Dr. Rahmani, which the Committee does not appear to consider because it was dated after the Applicant's release, still diagnosed the Applicant with generalized anxiety disorder and could not have tipped the balance in his favour. The overwhelming message from the evidence when it is examined in its totality is that the Applicant suffered from certain medical conditions that would require long-term psychiatric treatment, even if they could be alleviated in time, and the Applicant's medical condition meant that the physicians of the CAF had a reasonable basis to conclude that "the grievor's medical condition was not compatible with military service." The civilian doctors provided evidence, but it was for the CAF to decide whether the medical evidence meant that the Applicant could tolerate and fulfil "the specific limitations applicable to military life that may not be applicable in the civilian work place." He was unable to meet the universality of service principle. In this full context, the reasons were clearly not inadequate.

(2) The Universality of Service Principle

[107] The Applicant complains that, in reaching his Decision, the CDS does not discuss or explain the evidence that was before him that spoke in support of a finding that the Applicant was fit for service. The Applicant was examined and assessed by different doctors at different

times and sometimes their reports conflict and suggest different diagnoses and treatments. Neither the CDS nor the Committee are medical experts. They are not in a position to take up and assess the differences in medical reports and are entitled to rely upon the assessments of CAF medical personnel as to whether the evidence, overall, shows that a member can or cannot satisfy the universality of service principle. See *Shannon*, above, at paras 52-53. The CDS makes it clear that he is fully aware of the different medical assessments when he concludes that:

> The Director Medical Policy, my medical expert, has determined that you were "unfit [for] work in a military operational environment." Based on your many representations, I find there is enough medical and psychological information in your grievance file for Department of National Defence (DND) physicians to conclude that, on 16 June 2014, you were unfit to serve as a soldier in the CAF.
>
> [Emphasis added.]

[108] "Enough" does not imply that all of the medical evidence says the same thing. Given the number of doctors who have examined the Applicant at different times, it would be strange if every report was consistent. This is why the CDS says that there is "enough medical and psychological information… to conclude… you were unfit to serve as a soldier in the CAF." Given the evidence before the D Med Pol and the CDS, I cannot say that this conclusion was unreasonable. The CDS does not have to discuss in detail and somehow reconcile every report with every other report.

[109] As I point out below, many of the medical reports that support the Applicant's position are specifically addressed at the Committee level.

[110] For reasons given above, the full record is addressed and reasons are provided as to why any evidence that may have suggested that the Applicant was fit for universality of service could not overcome that preponderance of evidence that he was unfit.

(3) The ARMEL – Contrary Evidence

[111] The Applicant further argues that the CDS' conclusion that the ARMEL was properly conducted was unreasonable.

[112] He says that significant medical testimony and evidence was on file in support of the Applicant, and although the CDS can prefer his own expert, he is required to assess all the evidence before him, and provide reasons why the other evidence was not considered or weighed:

> 77. In *Shannon v Canada*, 2015 FC 983, the Federal Court notes that the CDS is entitled to prefer the reports and opinions of their own experts over that of external physicians at para. 52, with the note that the CDS "*fairly weighed the medical evidence*" at para. 53. However, this in no way allows the decider of fact to give no reasons or explanation for why that medical evidence is preferred, and why the other medical evidence has no value, particularly when that medical evidence, as in part in this case, is provided by other medical professionals within the CAF.
>
> [Emphasis in original.]

[113] As I have set out above, the CDS, in his own Decision, makes it clear that he is fully aware that there is some evidence in the file that could support the Applicant's position but the preponderance of the evidence is sufficient for the conclusion that the Applicant is unfit to serve:

> *Did You Meet the Universality of Service Requirements for the Canadian Armed Forces?* According to the information in your

> grievance file, you have been diagnosed through psychiatric assessment as suffering from adjustment disorder and narcissistic personality traits. Additionally, you were found to be suffering from generalized anxiety disorder. The Director Medical Policy, my medical expert, has determined that you were "unfit [for] work in a military operational environment." Based on your many representations, I find there is enough medical and psychological information in your grievance file for Department of National Defence (DND) physicians to conclude that, on 16 June 2014, you were unfit to serve as a soldier in the CAF.
>
> *Was Your Administrative Review/Medical Employment Limitations Properly Conducted?* On 18 March 2013, you were given a notification that an AR (MEL) was being initiated. On 24 October 2013, the results of DMCA's intentions were disclosed to you and you were given the opportunity to make a representation in response. On 12 December 2013, you were advised of your impending medical release from the CAF, which would occur no later than 17 June 2014, under item 3(b). A year has now gone by since your release from the CAF. I believe this has given you ample opportunity to submit medical evidence to counter the AR (MEL) findings.
>
> As the Committee states quite correctly, there is substantial evidence in your grievance file that medical consultations and assessments had taken place before DND physicians came to the conclusion that your medical conditions were not compatible with military service. While I fully understand that you may have wanted to continue serving as a soldier in the CAF, I must agree with the Committee. I especially note that, based on the documents and the assessments in your grievance file, your situation was taken seriously and was given appropriate consideration. As well, you did not provide any proof that procedural fairness had been breached during your AR (MEL), nor did you bring forth any new medical information in support of your contentions. Like the Committee, I find that your AR (MEL) was conducted fairly and in accordance with all applicable CAF policies.

[114] In the Committee findings, which the CDS accepts as his own, evidence that supports the Applicant is specifically set out and reasons are given why there is "sufficient detailed medical and psychological information on file for the physicians at the Department of National Defence

(DND) to arrive at the conclusion that the grievor's medical condition was not compatible with military service."

[115] The Committee (and hence the CDS) explains that the DND evidence is to be preferred because "[s]uch a decision necessarily takes into account the specific limitations applicable to military life that may not be applicable in the civilian workplace."

[116] The Committee then elaborates on these reasons by referring to *McBride*, above:

> I note that in the matter of *McBride*, Justice Luc Martineau, writing for the Federal Court of Canada, found:
>
> > I am not persuaded that it is the role of a civilian physician to second-guess the judgment of a military physician as to the effect of a medical condition on a member's ability to perform core military tasks. The civilian physician can provide a second opinion as to the diagnosis and prognosis for recovery, and he or she may offer comments with respect to the effect of that condition on a member's ability to function in civilian life. However, I accept the Canadian Forces' submission that it is not the role of a civilian physician to apply the criteria set out in CFP 154 [Medical Standards] and its affiliated policies to a member of the Canadian Forces. ...
>
> Given that CAF members have unlimited liability, the CAF has a higher duty to ensure that its members are able to meet the standards required to carry out their duties. In this case, I find that this was not a hasty decision made with little information over a short period of time; just the opposite. Furthermore, I find no evidence of an arbitrary decision made in bad faith or with any animosity against the grievor. It is based on policy and the specific needs of the CAF.
>
> I find that the DMCA's decision to release the grievor following the conduct of the AR was reasonable.
>
> [Footnotes omitted.]

[117] The Committee (and hence the CDS) then goes on to address medical reports that supported the Applicant in the post-ARMEL phase:

> **Post Administrative Review Actions**
>
> The policy and procedures governing release from the CAF are set out in Chapter 15 of the QR&O. Since the grievor was assigned permanent MELs that were not compliant with the U of S principle, the DMCA concluded that the grievor should be released under item 3(b) of the Table to article 15.01 of the QR&O. Item 3(b) provides the following:
>
> > 3. Medical
> >
> > (a) ...
> >
> > (b) On medical grounds, being disabled and unfit to perform his duties in his present trade or employment, and not otherwise advantageously employable under existing service policy.
>
> According to QR&O articles 15.05 and 15.06, a medically unfit member is to be released as soon as possible and not more than six months after the release decision.
>
> As of 12 December 2013, the grievor had received the message advising of DMCA's decision to release him effective 17 June 2014, i.e. approximately six months later. The message also advised that if the grievor's medical fitness improved, he could submit further information for medical review. Referenced in the table above are a number of reports found in the grievance file that were submitted on behalf of the grievor following notification of and in response to DMCA's decision.
>
> In a report, dated 15 May 2014, from Dr. R. Padua, then Base Surgeon at 15 Wing Moose Jaw, it is noted that the grievor had instructed his psychiatrist to forward his notes for review and had subsequently met with Dr. Padua to discuss his situation and available redress. In his report following the meeting, Dr. Padua indicates that he will e-mail D Med Pol as to the member's options. In a second report, dated 3 June 2014, Dr. Padua includes the findings of an assessment received from and discussed via telephone with an Adult Community Mental Health Psychologist who is not actively treating the grievor but who provided an assessment upon the grievor's request.

The psychologist, Dr. D. Helmer, suggests that the grievor's mental health disorder is treatable with 30 to 40 counselling sessions. In this second report, Dr. Padua states his plan to discuss the grievor's case with D Med Pol. He also notes that the grievor is to be assessed by the new acting Wing Surgeon, who will also review a Social Work Report that is being completed, and any required information will then be passed on to D Med Pol.

In a subsequent e-mail from Dr. Padua, dated 4 June 2014, to the grievor's Reserve Regiment and copied to the new Wing Surgeon, Dr. M. Strawson, Dr. Padua provides an update on the grievor's situation. Dr. Padua refers to Dr. Helmer's report as a very good assessment that was sent to D Med Pol for review. However, he indicates that the assessment does not outline any specific treatment plan and the concern is whether or not the grievor is actively receiving treatment as there is an indication that he has refused treatment in the past. Dr. Padua stresses the importance of confirming any active treatment and obtaining a prognosis as to when it is believed that the grievor will be well. He notes that D Med Pol has previously expressed concern as to whether the grievor will be better prior to his release date.

In a report, dated 23 May 2014, Dr. M. Lizon, psychiatrist, indicates that upon initial assessment of the grievor, she finds his problems to be related to anxiety and a stressful work situation. Her treatment plan is to meet with the grievor one to two more times to further review his mental state and assess any need for medication or other therapeutic intervention. In a psychiatric assessment, dated 6 June 2014, Dr. S. Blackshaw notes that she has previously seen the grievor in November 2012 when she recommended ongoing psychotherapy. Upon reassessment, Dr. Blackshaw recommends continued psychotherapy focused on moderating maladaptive personality traits and enhancing adaptive coping skills. Dr. Blackshaw advises that therapy could be provided periodically with breaks of up to several months in order to sustain the grievor's improvements and allow him to continue his work in the CAF. In a report dated 10 June 2014, consulting psychiatrist Dr. M. Rahmani reports that medical treatment is not essential to treating the grievor's disorder but that he may choose to attend counselling depending on his needs. Finally, a Social Work Report, dated 11 June 2014, provided by M. Badrock, strongly recommends that the grievor engage in long term therapy with a focus toward addressing his psychological difficulties, interpersonal difficulties and anxiety reduction.

I find no reason to believe that these reports were not reviewed prior to the grievor's release. I note that Dr. Strawson met with the

> grievor on 7 May 2014 to discuss his medical release, at which time he assured the grievor that any new or supporting information would be considered (p.644). Further, in a letter from Dr. Strawson to the grievor's Officer-in-Command (referenced in the grievor's submissions as having been sent on 11 June 2014, receipt of the most recent psychiatric report, dated 10 June 2014, is confirmed and noted as providing information regarding assessment, diagnosis and recommended treatments. In the same letter, Dr. Strawson concludes that the nature of the grievor's medical condition, which led to his then pending release, had not changed nor was it going to change in the near future. Dr. Strawson further advises that the grievor was being released on 17 June 2014 and that while the grievor was welcome to submit additional medical information, it was unlikely that it would change the process in place. He does note that if there was an improvement in the grievor's medical condition over time and with appropriate treatment, the grievor would be welcome to reapply for military service.
>
> Similar to the AR/MEL review, I find that the CAF was fair and reasonable in its review of the grievor's medical information following the AR decision. The CAF provided the grievor with an additional six months from the time of the DMCA decision until his eventual release. During this period, the grievor was allowed to submit additional information for consideration. However, it appears that none of the extra reports changed the grievor's assessment as being unable to meet the U of S principle, a condition to serve in the CAF.
>
> I find that the decision to medically release the grievor was reasonable and made in accordance with applicable policy.
>
> **RECOMMENDATION**
>
> I recommend that the grievance be denied.
>
> [Citations omitted.]

[118] The Applicant cannot now say that contrary evidence was not acknowledged and discussed, or that full reasons were not given for the evidence that was preferred.

E. *Procedural Fairness*

[119] Most of the Applicant's complaints about a lack of procedural fairness are related to the harassment side of his complaint and will become relevant as and when that complaint is dealt with. As regards the medical release that is the subject of the Decision, the Applicant was given full notification of the medical issues at play and a full opportunity to respond in the significant way that he did respond. The Applicant's position was that his medical condition did not require release and he submitted a significant body of medical evidence to try and convince the D Med Pol to change its mind. The fact that he didn't succeed in this effort does not mean that his submissions were not reviewed and assessed before he was finally released. The Committee report makes it clear that they were.

JUDGMENT in T-57-16

THIS COURT'S JUDGMENT is that

1. The application is dismissed with costs to the Respondent.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-57-16
STYLE OF CAUSE:	CHRISTOPHER L. KREUTZWEISER v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	SASKATOON, SASKATCHEWAN
DATE OF HEARING:	OCTOBER 25, 2017
JUDGMENT AND REASONS:	RUSSELL J.
DATED:	JANUARY 17, 2018

APPEARANCES:

Christopher L. Kreutzweiser	ON HIS OWN BEHALF
Chris Bernier	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Saskatoon, Saskatchewan	FOR THE RESPONDENT