Federal Court  Cour fédérale

Date: 20231110

Docket: T-1792-22

Citation: 2023 FC 1497

Ottawa, Ontario, November 10, 2023

PRESENT: Mr. Justice McHaffie

BETWEEN:

KARINE BOLDUC

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This application concerns two related Situational Assessments dated July 15, 2022, prepared by the then Chief of Staff of the Office of the Judge Advocate General [OJAG] of the Canadian Armed Forces [CAF], Colonel Robin Holman.[1] In the Situational Assessments, Col Holman concluded that the matters raised in Karine Bolduc's harassment complaint against a

[1] Col Holman has since been named Judge Advocate General and promoted to the rank of Brigadier-General. As the events and decisions at issue in this case arose when he held his former positions and rank, I will adopt the parties' convention of referring to him as Col Holman.

superior officer, Lieutenant Colonel Sara Collins, did not meet the applicable criteria for harassment. Ms. Bolduc seeks judicial review of those decisions, claiming they were unreasonable and unfair.

[2] For the reasons below, I agree with Ms. Bolduc that this application for judicial review is not moot as it relates to the first of the two Situational Assessments. Although Ms. Bolduc was released from the CAF before the Situational Assessments were issued, the matters raised in this aspect of her harassment complaint continue to have relevant consequences and there remains a live controversy. However, I agree with the Attorney General that the application for judicial review is moot as it relates to the second Situational Assessment, which addresses aspects of Ms. Bolduc's complaint that no longer present a tangible or concrete dispute.

[3] On the merits of the application, I conclude that the first Situational Assessment was unreasonable because Col Holman did not conduct the necessary assessment at this stage of the proceedings, namely whether "the allegations as stated, and if founded, meet the definition of Harassment." In particular, his assessment of whether the conduct in question was "improper" did not account for Ms. Bolduc's allegation that LCol Collins willfully withheld information from a potential employer for the improper purpose of retaliating against Ms. Bolduc. However, I do not accept the other arguments Ms. Bolduc presented on this application for judicial review, including those alleging bias on the part of Col Holman and abuse of process arising from delay.

[4] The application for judicial review is therefore allowed in part. The first Situational Assessment is quashed and sent back for redetermination.

II. Issues and Standards of Review

[5] The various issues raised by the parties on this application for judicial review can be categorized as follows:

A. Is this application for judicial review moot and, if it is, should the Court exercise its discretion to nonetheless hear the application?

B. Should portions of Ms. Bolduc's affidavits be struck or disregarded as going beyond relevant and admissible evidence on an application for judicial review?

C. Are the Situational Assessments unreasonable, and in particular:

   (1) In the first Situational Assessment, did Col Holman unreasonably conclude that the facts alleged did not constitute "improper conduct"?

   (2) In the second Situational Assessment, did Col Holman unreasonably conclude that the facts alleged did not constitute a "series of incidents, or one severe incident which had a lasting impact on" Ms. Bolduc?

D. Are the Situational Assessments void for having been reached in a procedurally unfair manner, and in particular:

   (1) Did the delay in issuing the Situational Assessments amount to an abuse of process?

   (2) Were the Situational Assessments made in bad faith or tainted by bias?

   (3) Should Ms. Bolduc have been given an opportunity to provide further information before the second Situational Assessment was issued?

[6] Issues (A) and (B) pertain to whether the Court will hear the application for judicial review, and the admissible evidence on that review. These issues are for the Court's determination and are not subject to any administrative law standard of review: *Dinan v Canada (Transport)*, 2022 FC 106 at para 8, citing *Budlakoti v Canada (Citizenship and Immigration)*, 2015 FCA 139 at paras 28(1), 37.

[7] Issues (C) and (D) pertain to the Situational Assessments themselves. Ms. Bolduc contends that the Court should review the Situational Assessments *de novo*. She argues that if she had been able to grieve the Situational Assessments under section 29 of the *National Defence Act*, RSC 1985, c N-5, the grievance would have involved a *de novo* review: *McBride v Canada (National Defence)*, 2012 FCA 181 at para 45. However, she was unable to file a grievance because she left the CAF before the Situational Assessments were issued. Ms. Bolduc argues the Court should conduct a *de novo* review in place of that in the grievance process, particularly since the Situational Assessments should have been issued before her departure.

[8] I disagree. The Situational Assessments are amenable to judicial review in the absence of an alternative remedy in the form of a grievance procedure: *Federal Courts Act*, RSC 1985, c F-7, ss 2 ("federal board, commission or other tribunal"), 18, 18.1. However, the unavailability of a grievance procedure does not give this Court the jurisdiction to effectively conduct a replacement grievance. Nor can it turn this application for judicial review into a grievance. This proceeding remains an administrative law judicial review seeking equitable remedies to supervise the exercise of statutory authority by a federal decision maker. The Court's jurisdiction to review the Situational Assessments and the grounds on which it may grant relief are defined

by sections 18 and 18.1 of the *Federal Courts Act* and the principles of administrative law. I therefore agree with Ms. Bolduc's alternative position, and that of the Attorney General, namely that the usual administrative law standards of review apply.

[9] In particular, issue (C) relates to the substance of the Situational Assessments. Such issues are generally reviewed on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25. In reviewing a decision for reasonableness, the Court adopts a "reasons first" approach that evaluates the decision maker's justification for its decision to assess whether it is internally coherent and rational, and is justified in relation to the facts and law that constrain the decision maker: *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8, citing *Vavilov* at paras 12, 15, 24, 84–85.

[10] Issue (D) raises questions of procedural fairness, including those of abusive delay and bias: *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 at para 38. In the context of judicial review, these issues are reviewed on a standard akin to the correctness standard "even though, strictly speaking, no standard of review is being applied": *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 (see also *Abrametz* at paras 26–30, applying the correctness standard to abuse of process in the context of a statutory appeal). Whether termed "correctness" or "no standard of review," the question the Court asks in assessing matters of procedural fairness is whether the procedure was fair having regard to all of the circumstances: *Canadian Pacific* at para 54.

III. Background

A. *The Underlying Complaint*

[11] Ms. Bolduc is a lawyer. Before enlisting in the CAF in 2018, she worked for the federal Department of Justice [DoJ]. Between 2018 and her voluntary release from the military on July 3, 2022, Ms. Bolduc worked as a legal officer in the OJAG, where she initially held the rank of Captain before being promoted to Major, her rank when she was released. Upon her release, she returned to the DoJ, where she continues to work.

[12] In April 2022, Ms. Bolduc filed a harassment complaint against LCol Collins, who was her supervisor at the OJAG between September 2019 and August 2021. The complaint was brought in accordance with two documents addressing workplace harassment in the CAF: (i) Defence Administrative Order and Directive 5012-0, Harassment Prevention and Resolution [DAOD 5012-0]; and (ii) the Harassment Prevention and Resolution Instructions [Instructions]. DAOD 5012-0 sets out the CAF's general policy with respect to harassment, while the Instructions provide complementary guidance and procedural direction to be used in conjunction with DAOD 5012-0.

[13] DAOD 5012-0 sets out the following definition of harassment:

> Improper conduct by an individual, that offends another individual in the workplace, including at any event or any location related to work, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises objectionable act(s), comment(s) or display(s) that demean, belittle, or cause personal humiliation or embarrassment, and any act of intimidation or threat. It also includes harassment within the meaning of the

> *Canadian Human Rights Act* […]. Harassment is normally a series of incidents but can be one severe incident which has a lasting impact on the individual. Harassment that is not related to grounds set out in the *Canadian Human Rights Act* must be directed at an individual or at a group of which the individual is known by the harassing individual to be a member.

[14] Based on this definition, DAOD 5012-0 and the Instructions each set out a list of six criteria that must be met for harassment to have occurred:

> a. improper conduct by an individual;
>
> b. individual knew or ought reasonably to have known that the conduct would cause offence or harm;
>
> c. if the harassment does not relate to a prohibited ground of discrimination under the *Canadian Human Rights Act*, the conduct must have been directed at the complainant;
>
> d. the conduct must have been offensive to the complainant;
>
> e. the conduct may consist of a series of incidents, or one severe incident which had a lasting impact on that complainant; and
>
> f. the conduct must have occurred in the workplace.

[15] Ms. Bolduc's harassment complaint pertained primarily to LCol Collins' response to an inquiry from the Human Resources Branch of the DoJ as part of a competition for a management position Ms. Bolduc was seeking, and to surrounding events between May and November 2021.

[16] In 2021, in light of ongoing health issues, Ms. Bolduc started looking for opportunities outside the CAF. She applied for a management position at the DoJ and had an interview in June to assess her qualifications in certain key competencies. After the interview, the DoJ sought to validate the results with her then current manager, LCol Collins. The validation process

consisted of an email from the DoJ dated July 21, 2021, which set out a preliminary assessment based on the interview and asked LCol Collins whether she (i) agreed with the preliminary results, or (ii) did not agree with the preliminary results and would like to advocate for a change. The preliminary assessment indicated Ms. Bolduc had been assigned a "Meets" rating in respect of four of the six listed competencies, and a "Did not meet" rating in the remaining two competencies.

[17] LCol Collins initially responded to the DoJ's email on July 21, expressing concern about whether Ms. Bolduc would see her responses. After a call with the DoJ, LCol Collins responded to the validation request email in the morning of July 23. That response contained two paragraphs. The first confirmed she was Ms. Bolduc's supervisor and described aspects of Ms. Bolduc's role. In the second, LCol Collins expressed her understanding that her comments would be summarized and communicated to Ms. Bolduc, and could be obtained through an access to information request. Because of these concerns, LCol Collins said she was "reluctant to provide specific feedback," and that in the absence of greater certainty concerning confidentiality, she would not comment on or challenge the results of the preliminary assessment.

[18] After a further call with the DoJ, LCol Collins provided a revised response in the afternoon of July 23. That response included the same first paragraph, but the second paragraph simply stated that LCol Collins had "no recommended changes to the preliminary assessment below."

[19] Ms. Bolduc's complaint asserts that in responding as she did, LCol Collins willfully abstained from providing knowledge she had about Ms. Bolduc's employment performance. The complaint refers in particular to (i) LCol Collins' prior positive assessments of Ms. Bolduc's performance; (ii) a Vice Chief of the Defence Staff Commendation awarded to Ms. Bolduc in June 2021; and (iii) Ms. Bolduc's Personnel Evaluation Report [PER], signed by LCol Collins just days before the July 23 response, which included positive comments and did not identify any areas of concern or areas to improve. Ms. Bolduc alleges that LCol Collins intentionally withheld this positive information as a way of retaliating against her for an allegation that LCol Collins was a "toxic leader," which had been brought to the attention of LCol Collins' superiors in early May 2021. According to Ms. Bolduc, although she was not the source of the allegation, LCol Collins believed she was, and directly accused her of this in a conversation on May 6, 2021.

[20] Ms. Bolduc's harassment complaint alleges there was a "clear shift" in their relationship beginning in early May, after the allegations of toxic leadership arose. In particular, the complaint refers to an incident on May 3 in which LCol Collins reacted angrily to an email from Ms. Bolduc, went to the office of one of Ms. Bolduc's colleagues, Major Rhonda Klassen, and said "I'm going to dock her PER!" The complaint also refers to another statement by LCol Collins, made after Ms. Bolduc went on medical leave later in May, in which LCol Collins told Maj Klassen that Ms. Bolduc "lacks resilience." The complaint alleges that the "dock her PER" and "lacks resilience" comments, addressed to a colleague, also constitute harassment.

[21] In October 2021, Ms. Bolduc applied for another position within the DoJ, and again asked LCol Collins to act as a reference. LCol Collins' email response to Ms. Bolduc, dated October 16, 2021, first indicated that she had not needed to provide any information for the last DoJ competition. It then noted that with respect to this new request, "we can't ignore that there were some issues" during Ms. Bolduc's time under LCol Collins' supervision, such that any performance review would take into account her "remarkable achievements as well as some areas of concern." Ms. Bolduc asserts that this was the first time any criticism of her performance had been brought to her attention. Subsequent requests that LCol Collins explain the "areas of concern" went unanswered.

[22] On November 9, 2021, the DoJ wrote again to LCol Collins with respect to the first competition, advising her there had been an error in the original validation request, in that one of the competencies in which Ms. Bolduc had received a "Meets" rating should have indicated she received a "Did not meet" rating. LCol Collins was asked whether her validation remained the same. Eight minutes after receiving the request, LCol Collins responded that the typo did not change her earlier comment and that she had no changes to recommend.

[23] In mid-November, 2021, having received no response to her inquiry about what the "areas of concern" were, Ms. Bolduc turned to her new supervisor, Lieutenant Colonel Nadine Dery, to seek a way forward. Efforts by LCol Dery and others to resolve the matter were unsuccessful.

[24] On March 22, 2022, Ms. Bolduc formally requested voluntary release from the CAF, citing her medical condition, an offer received from the DoJ (not the management position) and, as the "third and most important reason," the unresolved issues she had experienced in dealing with members of OJAG leadership.

[25] Ms. Bolduc filed her harassment complaint on April 1, 2022. The complaint recites the foregoing narrative, among other details and allegations, and attaches a series of supporting documents. It presents submissions as to why the circumstances meet the six criteria for harassment set out in DAOD 5012-0 and the Instructions. It ends with a proposed resolution that includes requests that LCol Collins retract and explain her email of October 16, 2021; explain why she was concerned about Ms. Bolduc having access to her feedback and why she chose not to provide information to the DoJ in respect of the first competition; prepare a formal letter to the Human Resources Branch of the DoJ in respect of her response to the first competition; and undertake training in the areas of workplace harassment, mental health awareness, and leadership. It also includes a request that the OJAG provide the name of another person to act as a reference in place of LCol Collins.

B. *Process Leading to the Situational Assessments*

[26] DAOD 5012-0 and the Instructions set out the roles, authorities, and responsibilities of various individuals in respect of harassment prevention and complaints in the CAF, including those of "responsible officer" [RO]. In addition to other responsibilities relating to harassment prevention, training, and intervention, the RO has a significant role in the handling of harassment complaints.

[27] In particular, the Instructions set out the steps the RO must take on receipt of a complaint. This includes a series of steps described in section 4.3 of the Instructions as the "initial action," which includes addressing any immediate health or safety concerns; putting a stop to any ongoing unacceptable behaviour; and acknowledging receipt of the complaint, which should take place within five working days under normal circumstances.

[28] After completing the initial action, the RO is tasked with completing a Situational Assessment. The parties agree that section 4.5 of the Instructions governed the handling of Ms. Bolduc's complaint and the preparation of the Situational Assessments. Given its relevance, I reproduce it in its entirety here:

> **4.5 SITUATIONAL ASSESSMENT (SA)**
>
> Upon completing the initial action, the RO will complete a written Situational Assessment (SA). The SA must be conducted by the RO and cannot be delegated. The SA is focused on answering the following two questions:
>
> a) Does the complaint contain all the elements required to proceed (see 4.6.1 Criteria of the Definition below); and
>
> b) Do the allegations as stated, and if founded, meet the definition of Harassment?
>
> The SA will lead to one of three possible outcomes. The reasons underlying the RO's decision must be set-out in the SA. These are:
>
> a) the harassment criteria are met;
>
> b) the harassment criteria are not met; or
>
> c) there is the possibility of an offence under the *Criminal Code* or *Code of Service Discipline*, in which case, the appropriate authority needs to be engaged (i.e. Military Police, Civilian Police, JAG).
>
> The SA is to be completed using only the information received in the allegations from the Complainant. This finalizes the SA step. The Respondent's submission is not to be considered during the

> SA phase but at a later stage once it is determined that the harassment criteria are met and that an investigation may be required.
>
> The RO will ensure that the SA is completed and sent to both the Complainant and Respondent within 14 calendar days following the receipt of the complaint. If the RO is unable to complete the SA within 15 calendar days, he or she must inform both the Complainant and Respondent of the delay and include when the SA will be completed. If after 21 calendar days of submitting the complaint, the Complainant has not received any communication from the RO regarding the completion of the SA, he or she can advise the next level in the Chain of Command (CoC). The CoC may then decide to direct the RO to complete the SA or take any action deemed appropriate, and [in accordance with] these Instructions.
>
> > **Note:** The RO may have to conduct additional situational assessments as new information comes to light during a subsequent procedure related to the complaint. This new information must be shared with the Complainant and the Respondent in writing. The RO will document in writing all his/her decision(s) including the reasons for arriving at the decision.
>
> [Emphasis added.]

[29] In accordance with DAOD 5012-0, the RO in charge of Ms. Bolduc's complaint was the Chief of Staff of the OJAG. At the time, the Chief of Staff was Col Holman, who was also the Acting Judge Advocate General. Ms. Bolduc's complaint was forwarded to Col Holman's office on April 4, 2022.

[30] The Instructions also define the role of "Harassment Advisor." At the time of Ms. Bolduc's complaint, the Harassment Advisor at the OJAG was deployed, so a new Harassment Advisor had to be identified to support Col Holman with respect to the complaint.

After taking the requisite training, Lieutenant Commander Kathryn Aubrey-Horvath was named to act as Harassment Advisor on April 25.

[31] On April 27, Col Holman emailed Ms. Bolduc, formally acknowledging receipt of the complaint. This was beyond the five workdays for acknowledgment of receipt set out in section 4.3 of the Instructions. It was also already beyond the 14 calendar days for providing the Situational Assessment. Col Holman's April 27 email acknowledged the delay, which he attributed in part to the time it took to identify a Harassment Advisor, but primarily to his own workload as Chief of Staff and Acting Judge Advocate General, and to the length and complexity of the complaint and supporting materials. For these latter reasons, Col Holman indicated he did not anticipate being able to complete the Situational Assessment before May 30.

[32] Given her pending departure from the military, Ms. Bolduc sought updates on the timing of the Situational Assessment in late May, and again in mid-June. On June 15, 2022, Ms. Bolduc filed a grievance regarding Col Holman's failure to complete the Situational Assessment within the timelines set out in the Instructions. Her grievance noted that the Instructions gave her the option of advising the next level in the Chain of Command, but that since Col Holman was also Acting Judge Advocate General, he had no superior officer within the OJAG. The grievance also noted Ms. Bolduc's concerns about her ability to grieve after her release from the CAF, which had been approved with an effective release date of July 3, 2022.

C. *The Situational Assessments*

[33] On July 15, 2022, Col Holman signed two Situational Assessments, which were then emailed to Ms. Bolduc and LCol Collins on August 5, 2022. The first Situational Assessment addressed Ms. Bolduc's allegations regarding LCol Collins' responses to the DoJ, while the second addressed LCol Collins' "dock her PER" and "lacks resilience" comments. In each, Col Holman summarized the allegations in the complaint and then, in tabular form, gave and explained his assessment of whether the allegations met each of the six criteria for harassment set out in DAOD 5012-0 and the Instructions.

(1) Situational Assessment 1

[34] In the first Situational Assessment, Col Holman concluded that the allegations in Ms. Bolduc's complaint regarding LCol Collins' responses to the DoJ met five of the six criteria for harassment, but did not meet the first one (improper conduct). The Situational Assessment gives Col Holman's explanation for this conclusion. In it, Col Holman summarizes the nature of the DoJ inquiries, including the two possible responses of agreeing or disagreeing with the preliminary assessment, and states that LCol Collins "concurred" with the assessment. He sets out Ms. Bolduc's position as being that LCol Collins should have disagreed with the assessment and provided examples in support. He then gives his reasons for not accepting Ms. Bolduc's position, namely: (i) Ms. Bolduc sought LCol Collins' agreement to act as a reference as her current supervisor, stating that she would be grateful if LCol Collins agreed to speak with the Human Resources Branch at DoJ; and (ii) in an earlier email from January 22, 2022, Ms. Bolduc

acknowledged that LCol Collins, as a supervisor, had discretion in terms of the content of a reference and had the right to give the reference she considered appropriate.

[35] The Instructions provide that even if the harassment criteria are not met, a matter may be considered a "workplace conflict." If the RO concludes that this is the case, they are to take steps to rectify the issue separate from the harassment process. As neither DAOD 5012-0 nor the Instructions contain a definition of "workplace conflict," Col Holman inferred that the term meant "conflict in the workplace that does not meet the 6 criteria for harassment." He found there was a "workplace conflict," referring in particular to Ms. Bolduc's concerns about LCol Collins' participation in the DoJ process and her view of her accomplishments, the October 16 email referring to "areas of concern," and LCol Collins' subsequent refusal to describe those areas of concern.

[36] To address the workplace conflict, Col Holman considered it appropriate to direct LCol Collins to complete training in workplace harassment, mental health awareness, and leadership, as Ms. Bolduc had requested in her complaint, and as LCol Collins had volunteered to do upon reading the complaint. However, Col Holman saw no need to take further action in response to Ms. Bolduc's other requests, namely those for support from the OJAG in future DoJ competitions and those seeking explanations from LCol Collins. Col Holman considered the former unnecessary since Ms. Bolduc had been released from the CAF and joined the DoJ. With respect to the latter, Col Holman said that, based on the information provided by Ms. Bolduc, he had "a full understanding of the actions of LCol Collins and [saw] little benefit to attempting to compel her to justify them."

(2) Situational Assessment 2

[37] In the second Situational Assessment, Col Holman concluded the "dock her PER" and "lacks resilience" comments met five of the six criteria for harassment, including improper conduct, but did not amount to a "series of incidents or one severe incident." Citing the discussion of this criterion in the Instructions, Col Holman concluded that the two remarks, which he recognized were inappropriate, did not amount to "repeated and persistent behavior towards an individual to torment, undermine, frustrate or provoke a reaction from" Ms. Bolduc.

[38] Again, however, Col Holman found that the comments and the way they affected Ms. Bolduc amounted to a workplace conflict. He identified the actions to be taken to resolve and prevent this workplace conflict as having already been "[d]escribed in Situational Assessment 1," namely the training to be completed by LCol Collins.

[39] The two Situational Assessments were sent to Ms. Bolduc and LCol Collins on August 5, 2022. On February 14, 2023, Ms. Bolduc withdrew the grievance she had filed on June 15, 2022, having concluded that the issuance of the Situational Assessments rendered it moot.

IV. Analysis

A. *Mootness*

[40] The applicable framework for addressing concerns of mootness is set out in *Borowski v Canada (Attorney General)*, 1989 CanLII 123 (SCC), [1989] 1 SCR 342. There, Justice Sopinka for the Supreme Court of Canada set out a two-step analysis: (1) determine whether the "tangible and concrete dispute has disappeared and the issues have become academic," such that the case has become moot; and (2) if so, decide whether the court should exercise its discretion to hear the case nonetheless: *Borowski* at p 353.

[41] The Attorney General submits that this application has become moot since Ms. Bolduc received her requested voluntary release from the CAF on July 3, 2022. As there is no longer a working relationship between Ms. Bolduc and LCol Collins, the Attorney General argues that there is no longer a live controversy and that the Court's decision will have no practical effect on the parties' rights. To support this argument, the Attorney General cites three decisions of this Court in which applications for judicial review arising from harassment complaints by former employees were found to be moot, *Snieder v Canada (Attorney General)*, 2016 FC 468 [*Snieder (2016)*], *Snieder v Canada (Attorney General)*, 2020 FC 693 [*Snieder (2020)*], and *Joshi v Canada (Attorney General)*, 2022 FC 1581.

[42] I do not agree that Ms. Bolduc's release from the military renders this application moot as it relates to the first Situational Assessment. Contrary to the Attorney General's submissions, there remains a potential practical and legal impact arising from Ms. Bolduc's underlying

complaint and thus from this application for judicial review. As Ms. Bolduc underscores, she is still employed by the DoJ and intends to continue competing for positions, including management positions, within the DoJ. The substance of Ms. Bolduc's complaint pertains to how and why LCol Collins, who was her immediate supervisor in the CAF for almost two years, responded to inquiries in the context of an employment competition. Her complaint seeks remedies regarding the participation of LCol Collins and the OJAG in future competitions. As Ms. Bolduc submits, LCol Collins remains the best-placed person to provide information regarding her performance for this period. While the Attorney General argues that the passage of time diminishes the value of this reference, I cannot agree that an employment reference from an immediate supervisor for a two-year period slightly over two years ago is irrelevant. I also agree with Ms. Bolduc that the negative outcome of the 2021 competition, and whether her results in that competition were affected by conduct amounting to harassment, may continue to be relevant in future assessments within the DoJ.

[43] Nor can I accept the Attorney General's argument that the issue of mootness is affected by the fact that Ms. Bolduc provided the names of two other managers before giving LCol Collins' name. The evidence shows that Ms. Bolduc was initially asked to provide the names of two managers who had supervised her for at least six months, which she did by identifying two other individuals, her supervisor at the OJAG before September 2019 and her supervisor at the DoJ prior to her enlistment. However, I agree with Ms. Bolduc that the fact that the DoJ insisted on conducting the validation with LCol Collins attests to the relevance of her involvement, regardless of whether others might also speak to her performance.

[44] In this regard, the situation differs from those in *Snieder* and *Joshi*. In *Snieder (2016)* and *Snieder (2020)*, the underlying harassment complaint was specifically about the poisoned work environment that a fellow CAF officer had created: *Snieder (2016)* at para 1; *Snieder (2020)* at para 4. Since Capt Snieder had retired, the other officer had been posted outside Canada, and there was no evidence of any ongoing harassment, this Court twice found applications for judicial review to be moot (given the unusual circumstances of the case, the CAF had voluntarily redetermined the matter despite the Court having dismissed the first application as moot): *Snieder (2016)* at para 12; *Snieder (2020)* at paras 9, 22–23. In *Joshi*, the employment relationship had similarly come to an end, and Ms. Joshi had conceded there was no longer a live controversy between her and the respondent, her former spouse, despite the ongoing personal relationship between them: *Joshi* at paras 2–3, 34–36. In neither of these cases could the ongoing conduct of the complainant's former supervisor affect the complainant's future employment prospects. This is a central aspect of Ms. Bolduc's complaint and of the relief she seeks.

[45] I reach the opposite conclusion with respect to Ms. Bolduc's application for judicial review as it relates to the second Situational Assessment. That Situational Assessment pertains only to two incidents, in which LCol Collins made inappropriate remarks about Ms. Bolduc to another officer. Ms. Bolduc alleged that these remarks were contrary to LCol Collins' obligation to "help create and maintain safe and healthy workplaces that are free from harassment and discrimination." As in *Snieder*, the complaint as it relates to these remarks pertained specifically to the workplace environment. Further, the only remedy requested in Ms. Bolduc's complaint relevant to these allegations was to require LCol Collins to undertake training, which has apparently been done: *Borowski* at pp 354–355. The remaining requests all related to the issue of

Ms. Bolduc's employment performance. Since there is no longer a workplace relationship between Ms. Bolduc and LCol Collins which might be affected by any further comments of this nature, and no remedy requested in respect of them that has not already been implemented, I conclude this aspect of Ms. Bolduc's application is moot.

[46] I also conclude that the Court should not exercise its discretion to nonetheless decide these aspects of the application. Even accepting that there remains an adversarial context, concerns about judicial economy, the absence of any broader issues of public interest, and the importance of restraint in the exercise of the Court's judicial oversight function all speak against deciding the matter: *Borowski* at pp 358–363; *Snieder (2016)* at paras 14–18; *Snieder (2020)* at paras 26–28; *Joshi* at paras 39–41. Col Holman's determination that LCol Collins' "dock her PER" and "lacks resilience" comments did not amount to a "series of incidents or one severe incident" and that they therefore amounted to "workplace conflict" but not harassment is a fact-specific one that has neither any ongoing effects nor any impact beyond the complaint. The Court will not exercise its discretion to decide whether that determination was reasonable and procedurally fair despite its mootness.

[47] I note that in each of the *Snieder* decisions, the Court underscored that their decision should not be taken as suggesting that situations of harassment in the CAF should escape judicial review simply because the complainant has left the CAF: *Snieder (2016)* at para 17; *Snieder (2020)* at para 26. Ms. Bolduc highlights this concern, noting that a finding of mootness would have precisely this effect. In the current case, the concern is attenuated, as the primary thrust of

Ms. Bolduc's complaint—the allegations regarding LCol Collins' responses to the DoJ—is not moot.

B. *Admissible Evidence*

[48] The role of the Court on an application for judicial review is to review the lawfulness of an administrative decision in the context in which it was made. For this reason, the factual record on judicial review is generally limited to the facts and documents that were before the initial decision maker: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 16–19. There are some exceptions to this general rule. For example, evidence may be filed on judicial review to provide general background, address issues of procedural fairness, or highlight the absence of evidence before the decision maker: *Access Copyright* at para 20.

[49] In addition to these limitations, affidavits filed on an application for judicial review are subject to the same rules as affidavits on any application, including that they be confined to facts within the deponent's personal knowledge: *Federal Courts Rules*, SOR/98-106, Rule 81(1). This means, among other things, that an affidavit should contain neither inadmissible hearsay evidence nor impermissible argument: *Coldwater First Nation v Canada (Attorney General)*, 2019 FCA 292 at paras 18–19, 39, 48–55; *Rainy River First Nations v Bombay*, 2022 FC 1434 at paras 31–32, 36. At the same time, the "nature and practical exigencies of a proceeding" can affect the admissibility of evidence and, in particular, whether certain hearsay evidence is considered necessary: *Coldwater First Nation* at para 55. Evidence filed on an application for judicial review that does not comply with these limitations may be struck or simply ignored:

Rainy River First Nations at para 36; *Sharanek v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 751 at para 12.

[50] The Attorney General cites a number of passages in Ms. Bolduc's affidavits as containing argument, opinion, hearsay, and/or evidence that was not before Col Holman in making his decisions. They also properly criticize Ms. Bolduc's attachment of another person's affidavit in a different matter before this Court as an exhibit to her affidavit: *Rainy River First Nations* at para 35, citing *ME2 Productions, Inc v Doe #1*, 2019 FC 214 at para 97.

[51] I need not address each of the passages identified by the Attorney General individually, as most of them are of little, if any, relevance to the issues on this application. Some of the passages identified as argumentative simply repeat allegations regarding LCol Collins' motivations made in Ms. Bolduc's complaint, while some go well beyond the evidence that was before Col Holman or the issues in this proceeding. I will simply ignore those aspects of Ms. Bolduc's affidavits and supporting exhibits.

[52] Having dealt with these preliminary matters, I turn to the heart of this application for judicial review, namely Ms. Bolduc's challenges to the Situational Assessments, and in particular the first Situational Assessment.

C. *Reasonableness*

(1) The finding that LCol Collins' conduct was not improper

[53] Col Holman's explanation for concluding that LCol Collins' conduct was not improper is set out above at paragraph [34]. Setting aside the aspects of the explanation that simply provide the background facts and Ms. Bolduc's position, Col Holman's reasons for his conclusion were essentially that Ms. Bolduc had sought LCol Collins' agreement to act as a reference, and that Ms. Bolduc recognized that a supervisor has discretion as to the content of a reference.

[54] In my view, this reasoning does not reflect what the Instructions require of a Situational Assessment. Section 4.5 of the Instructions states that the Situational Assessment is focused on assessing whether the complaint contains all the elements required to proceed, and whether "the allegations as stated, and if founded, meet the definition of Harassment" [emphasis added]. While Col Holman characterized Ms. Bolduc's allegations as being that LCol Collins should have provided a positive recommendation, the "allegations as stated" in the complaint go well beyond this. The allegations, in essence, are not simply that LCol Collins should have provided a positive recommendation, but that LCol Collins intentionally withheld positive information that she had, to Ms. Bolduc's detriment, in order to retaliate against Ms. Bolduc for the "toxic leadership" allegations she believed derived from her.

[55] There is evidently a world of difference between a supervisor validating a negative performance assessment because it reflects their genuinely held view and a supervisor doing so contrary to their genuinely held view for purposes of retaliation or reprisal. Conduct that is

facially proper or lawful may become improper if it is undertaken for an ulterior improper purpose. Col Holman's explanation of why he found LCol Collins' response to the DoJ was not improper essentially ignored the primary allegation that this response was not a genuinely held view but a false one that withheld positive information deliberately to harm and retaliate against Ms. Bolduc. Col Holman's explanation provides no indication that he considered whether the conduct would be improper if LCol Collins had been acting in the manner and for the purpose alleged.

[56] This is not to say that allegations in the complaint regarding LCol Collins' motivations or conduct have been proven. They remain allegations. The purpose of the investigation process is to assess whether the allegations are founded. However, this is not the purpose of the Situational Assessment as described in the Instructions. To the contrary, the Instructions provide that the Situational Assessment is only to assess whether the allegations "if founded" meet the definition of harassment. This is underscored by the indication in section 4.5 of the Instructions that the Situational Assessment is to be completed using "only the information received in the allegations from the Complainant," and that the respondent's submission "is not to be considered during the SA phase but at a later stage once it is determined that the harassment criteria are met and that an investigation may be required."

[57] It appears Col Holman may have considered it his role to assess whether the allegations in the complaint regarding LCol Collins' motivation were founded. As he stated in considering the remedies requested by Ms. Bolduc, Col Holman concluded that he had "a full understanding of the actions of LCol Collins and [saw] little benefit to attempting to compel her to justify

them." Regardless, it remains the case that Col Holman's assessment of whether LCol Collins' conduct was improper failed to consider the allegations of deliberate withholding of information for an improper motive, and therefore failed to assess whether "the allegations as stated, and if founded, meet the definition of Harassment." The reasons therefore did not conform with the "legal and factual constraints" that bore on the decision, rendering it unreasonable: *Vavilov* at paras 99, 101, 105, 108. It can also be said that by not addressing these central issues, the reasons failed to "meaningfully grapple with key issues or central arguments" raised by Ms. Bolduc in the complaint: *Vavilov* at para 128.

[58] I therefore conclude that the determination in the first Situational Assessment that LCol Collins' conduct was not improper was unreasonable. As this was the only criterion for harassment that Col Holman found not to be met, the determination that the allegations did not meet the definition of harassment is similarly unreasonable.

(2) "*Ultra vires*"

[59] Ms. Bolduc also alleges that the Situational Assessment was not in fact prepared by Col Holman, but by another officer, contrary to the statement in section 4.5 of the Instructions that "[t]he SA must be conducted by the RO and cannot be delegated." Ms. Bolduc alleges that Colonel Marla Dow, then Deputy Judge Advocate General for Administrative Law went beyond her role of providing legal advice to Col Holman and actually made the decision, which Ms. Bolduc alleges renders it *ultra vires*. This argument is untenable.

[60] Ms. Bolduc points to three pieces of evidence to support her contention that Col Dow made or definitively influenced the Situational Assessments. First, Ms. Bolduc states in her affidavit that LCol Dery told her on June 29 that Col Dow had read the complaint and would be conducting the Situational Assessments. This statement, as it goes to the truth of its contents, is hearsay and Ms. Bolduc has not shown why it falls within an exception to the rule against hearsay evidence. In any case, LCol Dery's understanding on June 29 does not demonstrate that Col Dow in fact conducted the Situational Assessments.

[61] Nor does the second piece of evidence, which is a redacted email, dated June 29, 2021, from Col Dow to Col Holman, entitled "Advice WRT Harassment Complaint" and marked solicitor-client privilege. Notably, Associate Judge Tabib reviewed the unredacted version of the email and concluded that the exchange was for the dominant purpose of Col Holman seeking and receiving legal advice from Col Dow, upholding the Attorney General's claim of solicitor-client privilege.

[62] The third piece of evidence on which Ms. Bolduc relies is Col Holman's request that LCmdr Aubrey-Horvath, the Harassment Advisor, research the obligations flowing from leader/supervisor to subordinate. Ms. Bolduc contends that this shows Col Holman's view was "heading in a certain direction" but his decisions went "the complete opposite direction." Having reviewed the documents in question, I see no merit in Ms. Bolduc's contention. Indeed, even if Col Holman's view changed during the decision making process, which has not been shown, this does not support an inference that the decisions were made by someone else.

D. *Procedural Fairness*

[63] Ms. Bolduc argues that in addition to being unreasonable, Col Holman's decisions were made in a procedurally unfair manner. While I need not decide these issues given my conclusion that the first Situational Assessment was unreasonable, I consider that I should nonetheless address Ms. Bolduc's allegations of bad faith and delay [Issues D(1) and D(2)], given the nature of these allegations. I will not address the third procedural fairness issue [Issue D(3)], which relates solely to the second Situational Assessment, which I consider moot.

(1) Bad faith and delay

[64] Ms. Bolduc alleges the Situational Assessments were made in bad faith because Col Holman did not complete them in a reasonable timeframe, and because they are "plainly unreasonable." She argues that the Instructions set out clear and short time frames to conduct a Situational Assessment and that Col Holman "deliberately delayed" his decisions.

[65] An allegation of bad faith is a serious allegation, going to an administrative decision maker's integrity and ability to act impartially. As Ms. Bolduc submits, bad faith has been described as covering "acts committed deliberately with intent to harm," and "acts that are so markedly inconsistent with the relevant legislative context that a court cannot reasonably conclude that they were performed in good faith": *Entreprises Sibeca Inc v Frelighsburg (Municipality)*, 2004 SCC 61 at para 26.

[66] There is quite simply no evidence to reasonably support Ms. Bolduc's allegation that Col Holman was acting in bad faith.

[67] It is clear that the Situational Assessments took longer to produce than the timelines set out in the Instructions. Contrary to Ms. Bolduc's assertions, however, there is no indication that the delay was deliberate on the part of Col Holman or that it derived from bad faith on his part.

[68] In addition to the delay itself, Ms. Bolduc points to an inquiry by Col Holman at the outset of the process as to how Ms. Bolduc's upcoming release from the CAF would affect the process. In my view, it is not surprising that Col Holman, who was aware of Ms. Bolduc's pending departure from the OJAG, would want to know how or whether that departure would affect the complaint and investigation process, particularly as it appeared that he would not be able to complete the Situational Assessments within the dates set out in the Instructions. LCmdr Aubrey-Horvath responded to Col Holman with the advice that "[t]he Harassment Complaint process does not change after the Complainant has released." I see nothing in this exchange, or the subsequent timing of the Situational Assessments, to suggest bad faith.

[69] Nor do I see any evidence of bad faith in the timing of the release of the Situational Assessments. As noted above, Col Holman signed the Situational Assessments on July 15, 2022, but did not send them out by email until August 5, 2022. The record contains no direct explanation for this three-week delay, which is certainly a lengthy one in the context of a process that is supposed to take 14 days in total. Ms. Bolduc asks the Court to infer that it was related to

a request from LCol Collins that Col Holman not release the Situational Assessments within 72 hours of either her wedding anniversary in mid-July or her birthday at the end of July.

[70] Even if this was the reason for Col Holman's delay in sending out the Situational Assessments, I cannot conclude that respecting the timing request of the respondent to a harassment complaint is an indication of bad faith. Although not actively involved in the Situational Assessment process, LCol Collins was a party to the complaint, being named as the individual against whom the complaint was made. Ms. Bolduc underscores in her submissions the emotional toll of the proceedings on her and her family. In my view, it would not have been inappropriate for Col Holman to also take into account the emotional toll of the complaint on LCol Collins, if this is in fact what happened. While Ms. Bolduc uncharitably characterizes this as "cater[ing] to the emotional pleas of LCol Collins," and goes so far as to assert that the timing was "dictated by the personal schedule" of LCol Collins, I do not see it as any sign of bad faith on the part of Col Holman that would in any way impact the validity of the decisions. In any case, the delay in relaying the decisions to Ms. Bolduc did not change the substance of the decisions, which were made and signed in mid-July.

[71] Nor does the unreasonableness of the first Situational Assessment point to the existence of bad faith. While acts that are "markedly inconsistent with the relevant legislative context" may lead to a conclusion of bad faith, this does not mean that every decision maker who makes a decision that is "unreasonable," as that term is understood in modern administrative law, was acting in bad faith. While I have concluded that Col Holman's determination that the allegations

in the complaint did not meet the criteria of improper conduct was unreasonable, I see no indication that it was made in bad faith.

[72] I therefore conclude that Ms. Bolduc's allegations of bad faith are not made out.

[73] Ms. Bolduc also asserts that the total delay in issuing the Situational Assessments amounts to an abuse of process, citing the Supreme Court of Canada's decision in *Abrametz*. In that case, the Supreme Court of Canada confirmed that delay in an administrative proceeding can amount to an abuse of process where either (1) the fairness of a hearing is compromised by the delay impairing a party's ability to answer a complaint against them; or (2) significant prejudice has come about due to inordinate delay: *Abrametz* at paras 40–42, citing *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at paras 102, 122, 132. With respect to the second of these, Justice Rowe for the majority of the Court in *Abrametz* reiterated the three-part analysis from *Blencoe*, which requires that the delay (i) be inordinate; (ii) have directly caused significant prejudice; and (iii) amount to an abuse of process, in the sense of being manifestly unfair to a party or otherwise bringing the administration of justice into disrepute: *Abrametz* at para 43. Ms. Bolduc contends that each of these requirements is met in this case.

[74] I need not address each of these elements, as I conclude Ms. Bolduc has not established the existence of significant prejudice. Ms. Bolduc alleges she has been prejudiced through the loss of a right to grieve the Situational Assessments, and through the emotional toll caused by the delay. With respect to the former, while Ms. Bolduc was unable to file a grievance relating to the merits of the Situational Assessments owing to her release from the military, she was still able to

challenge the Situational Assessments, as this application for judicial review attests. She has not pointed to any substantive or procedural differences between the grievance and judicial review processes that would arise to the level of "significant prejudice." While Ms. Bolduc refers to the judicial review process being costly and taking time and effort, the Court has no evidence before it to assess whether such differences amount to significant prejudice.

[75] With respect to the allegations of emotional toll, Ms. Bolduc has filed no evidence to demonstrate that the delay has caused a significant emotional or psychological prejudice. The doctrine of abuse of process requires *proof* of significant prejudice: *Abrametz* at para 67. While Ms. Bolduc made brief submissions about the emotional impact of the proceeding, her affidavits do not give evidence of "significant psychological harm": *Abrametz* at para 69. Further, the Supreme Court in *Abrametz* was clear that any such harm must arise from the delay itself and not simply from the administrative proceedings or the issues underlying the proceedings: *Abrametz* at paras 67–69. Ms. Bolduc refers to the delay exacerbating and extending the effects of the stress caused by LCol Collins, and the fact that LCol Collins' actions contributed to her health issues. Any impacts of the conduct that forms the basis of the complaint are not themselves the result of the delay in rendering the Situational Assessments.

[76] I therefore conclude that Ms. Bolduc has not established that the delay in issuing the Situational Assessments constituted an abuse of process, without having to determine whether the delay was "inordinate" or whether it was manifestly unfair or brought the administration of justice into disrepute.

(2) Bias

[77] In addition to alleging Col Holman acted in bad faith, Ms. Bolduc alleges he demonstrated bias and ought to have recused himself. She argues that as Chief of Staff of the OJAG, he was involved in informal attempts at resolving the issues prior to the complaint, he had prior knowledge about the matter as a result, and he based his decisions on information beyond the scope of what he was allowed to consider. She also argues that as Acting Judge Advocate General, Col Holman was the senior officer within the OJAG, so any complaint about his conduct as RO would effectively be made to him.

[78] Ms. Bolduc's allegations of bias based on Col Holman's dual role as RO and Chief of Staff/Acting Judge Advocate General can be quickly dismissed on two grounds. First, Ms. Bolduc was entirely aware that Col Holman, as the RO, was involved in initial attempts to resolve the issue and subsequently became responsible for preparing the Situational Assessments. She was also aware that Col Holman was the RO because he was Chief of Staff of the OJAG, and that he was also the Acting Judge Advocate General. However, she did not raise with Col Holman any concern that these multiple "hats" led to a conflict of interest or a reasonable apprehension of bias, and she did not ask him to recuse himself. As the Federal Court of Appeal has recently confirmed, allegations of bias must be raised with the decision maker at the first opportunity before they can be entertained by a Court on appeal or judicial review: *Firsov v Canada (Attorney General)*, 2022 FCA 191 at para 61; *Cyr v Batchewana First Nation of Ojibways*, 2022 FCA 90 at para 70; *Love v Canada (Privacy Commissioner)*, 2015 FCA 198 at para 27, citing *Canada (Human Rights Commission) v Taylor*, [1990] 3 SCR 892 at pp 942–943.

[79] Second, the Instructions themselves provide for the RO's involvement at multiple stages in a proceeding. Section 3.5.2.1 provides that the RO is responsible for "intervening promptly to resolve any apparent harassment situations that they become aware of, whether or not a complaint has been made," while section 3.5.2.2 sets out the RO's responsibility for completing the Situational Assessment. Where overlapping duties are authorized by a statutory scheme, the common law doctrine of reasonable apprehension of bias will not override that scheme: *Ocean Port Hotel Ltd v British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001 SCC 52 at paras 42–43. While the Instructions are not themselves statutory, they are the authority that sets out the process for harassment complaints in the CAF. Ms. Bolduc has not challenged the Instructions or the roles that they assign to the RO. To the contrary, she relies on them as establishing the operative rules governing her complaint.

[80] This leaves Ms. Bolduc's argument that Col Holman was biased because he improperly relied on extraneous information. Ms. Bolduc refers to the length of the certified tribunal record, which she alleges shows Col Holman "had knowledge of, and had before him and considered a significant volume of information" that went beyond her complaint. However, the mere fact that a decision maker has other knowledge does not demonstrate they improperly relied on it, still less that they were biased.

[81] Beyond this general reference to information he previously had, Ms. Bolduc has failed to identify any extraneous information Col Holman improperly relied on in completing the Situational Assessments. Ms. Bolduc's written memorandum of fact and law refers to no such information. In oral submissions, Ms. Bolduc referred to Col Holman's use of the word

"concurred," said to have come from LCol Collins, and to Col Holman's reference to her email of January 22, 2022. However, even if LCol Collins did use the word "concur," which the Court has been unable to find in the record, the sole use of this particular synonym for "agree" in his decision cannot possibly show bias. As for the January 22, 2022 email, it was attached to Ms. Bolduc's complaint. While Ms. Bolduc claims it was attached for other reasons, there is no merit to the argument that referring to the document shows bias.

[82] The remainder of Ms. Bolduc's arguments about bias essentially go to the merits of the decisions, including arguments that Col Holman ignored or mischaracterized evidence. Again, while I have found that the first Situational Assessment was unreasonable, Ms. Bolduc's arguments are far from persuading me that Col Holman was biased or showed a reasonable apprehension of bias.

E. *Remedy*

[83] In addition to the usual remedy of quashing the Situational Assessments, Ms. Bolduc asks this Court to conduct a *de novo* review of her harassment complaint, on grounds that "it is evident that the OJAG would be unable to conduct an objective and fair assessment, having already failed at the task." I have concluded above that Ms. Bolduc has not established bias on the part of Col Holman. Still less has she established that all of the OJAG would be unable to conduct an objective and fair assessment such as might possibly merit the Court declining to send a matter back for redetermination: see *Canada (Health) v The Winning Combination Inc*, 2017 FCA 101 at paras 64–65.

[84] In any event, as noted at the outset, Col Holman has recently been named Judge Advocate General and promoted to Brigadier-General. There is therefore a new Chief of Staff at the OJAG. At the hearing of this application, Ms. Bolduc stated that her concerns about widespread bias did not extend to the new Chief of Staff.

[85] Given my findings regarding Ms. Bolduc's allegations of bias, I conclude it is not necessary to make any order beyond the usual order quashing the first Situational Assessment and remitting it for redetermination by a different appropriate officer. Given the delays in the issuance of the first Situational Assessment, the subsequent passage of time during the conduct of this application for judicial review, and the short time frames set out in the Instructions for the completion of the Situational Assessment, the redetermination should be conducted in an expedited manner.

[86] As I have concluded that this application is moot as it pertains to the second Situational Assessment, the second Situational Assessment will not be set aside, and no new Situational Assessment needs to be completed with respect to the "dock her PER" and "lacks resilience" comments as independent grounds of harassment. For clarity, however, this conclusion should not be taken as removing these comments from consideration as part of Ms. Bolduc's harassment complaint. The complaint identifies and raises these comments as part of the factual context relevant to LCol Collins' responses to the DoJ and as evidence of her improper motivation. They continue to form part of the complaint and should be considered in this context both in the first Situational Assessment and in any resulting investigation.

[87] Ms. Bolduc also seeks her costs of this application, as does the Attorney General. Although not successful on all of her arguments, Ms. Bolduc was successful on a central aspect, namely the reasonableness of the first Situational Assessment. I therefore conclude that Ms. Bolduc should recover her out-of-pocket disbursements.

[88] However, I conclude that no award of costs in addition to recovery of disbursements is warranted, for two reasons. First, self-represented litigants are generally not awarded counsel fees, even if they are lawyers: *Sherman v Canada (Minister of National Revenue)*, 2003 FCA 202 at para 49. Self-represented litigants may, however, be awarded a moderate allowance above their disbursements to reflect the time and effort they devoted to preparing and presenting their case, and insofar as they forewent other remunerative activities: *Sherman* at paras 47–52; *Haynes v Canada (Attorney General)*, 2023 FC 1076 at para 59. In this case, as in *Haynes*, there is no evidence that Ms. Bolduc forewent any other remunerative activities to present this case: *Haynes* at paras 60–61. Second, even if such an award were otherwise appropriate, I would have some reluctance granting additional costs given the unfounded and serious allegations of bad faith and bias raised by Ms. Bolduc.

V. Conclusion

[89] The application for judicial review is therefore allowed in part. The first Situational Assessment is set aside and this aspect of Ms. Bolduc's harassment complaint is remitted for redetermination by a different appropriate officer. Ms. Bolduc is entitled to her recoverable out-of-pocket disbursements.

[90] Finally, at the request of the Attorney General, with the consent of Ms. Bolduc, and in accordance with Rule 303 of the *Federal Courts Rules*, the style of cause in this proceeding is hereby amended to name the Attorney General of Canada as the sole respondent, in place of "The King in the Right of Canada (Chief of Defence Staff)" and "The King in the Right of Canada (Judge Advocate General)."

JUDGMENT IN T-1792-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed in part. The first Situational Assessment of the applicant's harassment complaint, dated July 15, 2022, is set aside and remitted for redetermination by a different appropriate officer.
2. The respondent shall pay to the applicant her recoverable out-of-pocket disbursements.
3. The title of proceedings is amended to name the Attorney General of Canada as the sole respondent.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1792-22
STYLE OF CAUSE:	KARINE BOLDUC V ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	OCTOBER 25, 2023
JUDGMENT AND REASONS:	MCHAFFIE J.
DATED:	NOVEMBER 10, 2023

APPEARANCES:

Karine Bolduc	ON HER OWN BEHALF
Bahaa Sunallah	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT