Cour fédérale

Federal Court

Date: 20120523

Docket: T-1183-10

Citation: 2012 FC 625

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, May 23, 2012

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

GUY VÉZINA

Applicant

and

CHIEF OF THE DEFENCE STAFF AND ATTORNEY GENERAL OF CANADA

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Chief of the Defence Staff (CDS) rendered on June 15, 2010, in which the CDS partially upheld the applicant's two grievances by determining that he was on attached posting rather than temporary duty and finding that the travel allowance to which he was entitled must be calculated using 47 km as the distance between his place of residence and his place of work instead of 41 km.

I. Facts

[2] The applicant is a member of the Reserve Force and is part of the 6th field regiment (6th FR). His place of residence is in the Municipality of L'Ange-Gardien. The applicant was employed at the Land Force Quebec Area Training Centre (LFQA TC) in Valcartier from May 29 to August 12, 2006, and from May 7 to August 11, 2007, for two temporary assignments as sub-unit commander. Valcartier is located 47 km from the applicant's place of residence. The applicant travelled from his place of residence to his place of work every day during these two employment periods.

[3] On December 12, 2006, the applicant filed a grievance with the Commander of the 6th FR, claiming the travel allowance for temporary duty (also "temporary service") in accordance with the terms of the Treasury Board of Canada Secretariat Travel Directive (TD) and the Canadian Forces Temporary Duty Travel Instruction (CFTDTI) for the aforementioned period in the summer of 2006.

[4] On May 22, 2007, the applicant filed a second grievance, this time with the Commander of the LFQA TC, claiming the travel allowance for temporary duty in accordance with the terms of the TD and the CFTDTI as well as meal expenses for the aforementioned period in the summer of 2007.

[5] On November 21, 2008, the initial authority responded to the grievance of May 22, 2007, by granting the applicant a travel allowance for a distance of 41 km, in accordance with Compensation and Benefits Instruction 209.045 (CBI). The initial authority rendered a

similar decision on November 25, 2008, in respect of the applicant's grievance of December 12, 2006.

[6] In its decision, the initial authority allowed that the applicant was on temporary duty during the periods covered by his grievances, but concluded that he was in the same geographic zone as his home unit. He therefore should not have been entitled to travel expenses; however, his right to such expenses was acknowledged, since the CDS set aside that restriction.

[7] On February 23, 2009, the applicant challenged the initial authority's two decisions before the CDS, seeking the allowances and compensation originally claimed in his grievances.

[8] On May 6, 2009, the Canadian Forces Grievance Board (CFGB) sent the applicant the files for his grievances of December 12, 2006 and May 22, 2007. On August 2, 2009, the applicant forwarded his additional submissions on his two grievance files to the CFGB grievance officer.

[9] On November 16, 2009, the CFGB conveyed its findings and recommendations to the applicant in respect of his grievances, and enabled him to forward additional submissions. For the very first time in the grievance process, the CFGB set aside the finding of temporary duty rendered by the initial authority, and determined that the applicant's home unit was the LFQA TC and not the 6th FR, and consequently ruled that Valcartier was a

temporary place of work since it was located in the applicant's headquarters area insofar as his home unit, the LFQA TC, is located within the geographical limits of Valcartier.

[10] On June 15, the CDS rendered his decision.

II. Impugned decision

[11] First, the CDS noted that the TD does not apply to persons whose travel is governed by another policy. In this case, the Treasury Board had authorized allowances and expenses for CF members in accordance with the terms of the CBI. As a result, the CDS concluded that there is no inconsistency between the TD and the CFTDTI and that the CBI therefore applies to the applicant's situation.

[12] Subsequently, the CDS examined the applicant's status in order to determine whether he was on "temporary duty" or "attached posting". To this end, the CDS defined "attached posting" as an "assignment for a period of less than one year during which the member temporarily serves in a location other than the one to which he is normally deployed". The criteria for an attached posting are as follows:

> - The member will be serving temporarily at a unit or in an environment where allowances peculiar to that environment are payable;
>
> - There is no requirement for financial support other than the cost of travel (to and from the attached posting) for the member and/or allowances payable to the member because of separation from his family or personal effects;
>
> - Move of dependants, furniture and personal effects is prohibited; and

> - The commanding officer of the unit to which a member is attached posted shall have authority over the member as though the member had been posted.

Applicant's record, CDS decision, pages 19 and 20.

[13] On the basis of this definition, the CDS determined that the applicant had continued to hold a class "A" reserve position while he was temporarily assigned to class "B" service. The CDS pointed out that it is impossible to be both on "temporary duty" and "attached posting" in the same location. The CDS then concluded that the applicant was on attached posting and may not benefit from the allowances applicable to temporary duty.

[14] The CDS noted that both the initial authority and the CFGB determined that the applicant was eligible for travel assistance pursuant to CBI 209.045. The CDS agreed with their opinions on the matter. However, it granted the applicant travel assistance based on the exact distance between his place of residence and his place of work, i.e. 47 km and not the approximate calculation of 41 km made by the initial authority.

[15] The CDS acknowledged that he does not have a mandate to authorize expenses other than those approved by the policies and directives of the Canadian Forces. Consequently, he cannot grant the applicant the interest and additional allowances he was claiming.

[16] Finally, the CDS agreed with the applicant about the fact that he belongs to the 6th FR, notwithstanding the CFGB's comments that he belongs to the LFQA TC.

Nonetheless, the CDS is of the opinion that such error of definition does not have any bearing on the analysis and outcome of the applicant's grievances.

III. Issues

[17] The applicant raised several issues in his memorandum and oral submissions. After carefully examining the file, I am of the view that the disposition of this judicial review is based on the following issues:

(a) What is the applicable standard of review?

(b) Could the applicant raise a lack of procedural fairness, i.e. the fact that the CDS raised a new argument in his decision to which the applicant did not have an opportunity to make submissions?

(c) Is the TD applicable in this case and, if so, is it incompatible with National Defence's CFTDTI and CBI?

(d) Did the CDS err by concluding that the applicant was on attached posting and not temporary duty during the periods covered by his grievances?

(e) Did the CDS err by denying the claim for payment of interest and the additional allowance provided for by the *Civil Code of Québec*, RSQ c C-1991?

IV. Analysis

(A) *What is the applicable standard of review?*

[18] The decisions of the CDS in respect of grievances are final and binding (*National Defence Act*, RSC, 1985, c N-5, section 29.11 (the Act)). Furthermore, it is important to consider the fact that the CDS interprets and applies the policies and rules that he has made and for which he is responsible. These are precisely the types of decisions that are subject to

the reasonableness standard, in accordance with *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 (*Dunsmuir*). The reasonableness standard was the standard of review chosen by my colleague Justice Boivin in *Zimmerman v Canada (Attorney General)*, 2009 FC 1298 at paragraphs 23 to 25, 358 FTR 139, and explicitly agreed with by the Federal Court of Appeal (2011 FCA 43 at paragraph 21 (available on CanLII)).

[19] It does not apply to the issue of whether the CDS erred by refusing to grant interest on the amounts awarded under his decision and the allowance provided for by the *Civil Code of Québec*. That issue must be assessed by applying the correctness standard since that argument essentially raises a question of law and jurisdiction.

(B) *Could the applicant raise a lack of procedural fairness, i.e. the fact that the CDS raised a new argument in his decision for which the applicant did not have an opportunity to make submissions?*

[20] The applicant claimed for the first time in his memorandum that the CDS had breached the rules of procedural fairness by declaring that the applicant was on attached posting during the two temporary employment periods covered by the grievances. These grounds were never raised in the notice of application for judicial review.

[21] Rule 301(*e*) of the *Federal Court Rules*, SOR/98-106, specifies that the notice of application for review must include "a complete and concise statement of the grounds intended to be argued". The Court has repeatedly held that it will not consider new grounds

of review that have not been invoked in the notice of application (see, for example, *Hickey v Canada (Department of Fisheries and Oceans)*, 2006 FC 998 at paragraph 34, 298 FTR 253; *Campos Shimokawa v Canada (Minister of Citizenship and Immigration),* 2006 FC 445 at paragraph 31, 147 ACWS (3d) 863). This is to prevent the respondent from being prejudiced by not being given an opportunity to address a new issue in an affidavit (see *Métis National Council of Women v Canada (Attorney General)*, 2005 FC 230 at paragraph 49, 265 FTR 162).

[22] In this case, the issue of procedural fairness was never raised in the notice of application for review, as established upon careful reading of such notice. Consequently, I accept the respondents' argument that there is no reason to consider this issue.

[23] In any event, the evidence in the record establishes that there was no breach of the principles of procedural fairness. In fact, the applicant knew full well (or at least should have known) that it was important to establish whether he was on attached posting or temporary duty in order to determine the allowances claimed. In its findings and recommendations, the CFGB noted the following:

> [TRANSLATION]
> The grievor referred to A-PM-245-001/FP001 (February 1, 2005) – *Military Human Resources Records Procedures* – which contains the administrative provisions to be met for a member to be on attached posting. The grievor indicated that the member's consent had to be obtained through a procedure set out in this policy and that that had not been done in his case.
>
> [Emphasis added]

> Applicant's affidavit and documentary exhibits, Exhibit C, at page 3

[24] This excerpt clearly shows that the applicant had made submissions to the CFGB for the purpose of proving that he was on temporary duty and not on attached posting. Furthermore, in a letter to the CDS dated February 23, 2009, the applicant expressed his dissatisfaction with the initial authority's decision as follows:

> [TRANSLATION]
> Inappropriate application of the directives on attached posting provided for in ref. A. This policy contains the administrative provisions to be met for an attached posting, which requires the member's consent and cannot be done without his knowledge, and specific documentation to put it into effect;
>
> [Emphasis added]
>
> Applicant's affidavit and documentary exhibits, Exhibit F, at page 000077

[25] This excerpt shows once again that the applicant himself raised the issue of his status during the employment periods in question. Consequently, he was at liberty to raise the issue of procedural fairness in his notice of application for review if he deemed that he had not been given an opportunity to make suitable submissions in that respect. Since he failed to do so, this Court can consider only the grounds for judicial review set out in his application.

(C) *Is the TD applicable in this case and, if so, is it incompatible with National Defence's CFTDTI and CBI?*

[26] The applicant alleges that there are inconsistencies between the specific rules that establish the travel allowances payable to CF members and the general rules that establish the travel assistance payable to public service employees. More specifically, the applicant alleges that the CBI and CFTDTI, which apply to CF members, contradict the TD, which applies to public service employees.

[27] It is true that sections 12 and 35 of the Act give the Treasury Board the power to regulate the pay, allowances and reimbursement of expenses of officers and non-commissioned members and to prescribe their allowances and expenses. These sections read as follows:

12. (1) The Governor in Council may make regulations for the organization, training, discipline, efficiency, administration and good government of the Canadian Forces and generally for carrying the purposes and provisions of this Act into effect.	12. (1) Le gouverneur en conseil peut prendre des règlements concernant l'organisation, l'instruction, la discipline, l'efficacité et la bonne administration des Forces canadiennes et, d'une façon générale, en vue de l'application de la présente loi.
…	…
(3) The Treasury Board may make regulations	(3) Le Conseil du Trésor peut, par règlement :
(a) prescribing the rates and conditions of issue of pay of military judges;	a) fixer les taux et conditions de versement de la solde des juges militaires;

(b) prescribing the forfeitures and deductions to which the pay and allowances of officers and non-commissioned members are subject; and

b) fixer, en ce qui concerne la solde et les indemnités des officiers et militaires du rang, les suppressions et retenues;

(c) providing for any matter concerning the pay, allowances and reimbursement of expenses of officers and non-commissioned members for which the Treasury Board considers regulations are necessary or desirable to carry out the purposes or provisions of this Act.

c) prendre toute mesure concernant la rémunération ou l'indemnisation des officiers et militaires du rang qu'il juge nécessaire ou souhaitable de prendre par règlement pour l'application de la présente loi.

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

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

Reimbursements and allowances

(2) The payments that may be made to officers and non-commissioned members by way of reimbursement for travel or other expenses and by way of allowances in respect of expenses and conditions arising out of their service shall be determined and regulated by the Treasury Board.

Indemnités

(2) Les indemnités payables aux officiers et militaires du rang au titre soit des frais de déplacement ou autres, soit des dépenses ou conditions inhérentes au service sont fixées et régies par le Conseil du Trésor.

[28] It must be emphasized, however, that the Act does not give the Treasury Board exclusive regulatory power, since section 13 acknowledges that the Department of National Defence has the power to make regulations in respect of any matter attributed expressly to the Treasury Board in section 12:

13. Where in any section of this Act, other than section 12, there is express reference to regulations made or prescribed by the Governor in Council or the Treasury Board in respect of any matter, the Minister does not have power to make regulations pertaining to that matter.	13. Le ministre ne peut prendre de règlements dans les domaines où la présente loi, ailleurs qu'à l'article 12, attribue explicitement des pouvoirs réglementaires au gouverneur en conseil ou au Conseil du Trésor.

[29] Furthermore, the purpose of the TD (which is not a regulation within the meaning of sections 12 and 13 of the Act) "is to ensure fair treatment of employees required to travel on government business". Its provisions are intended to ensure that public service employees do not incur out-of-pocket expenses, but do not have the effect of providing any additional source of income or remuneration whatsoever. To that end, the application of the TD is as follows:

> This directive applies to public service employees, exempt staff and other persons travelling on government business, including training. It does not apply to those persons whose travel is governed by other authorities.
>
> Respondent's book of authorities, tab 6, at page 0269

[30] However, CF members are governed by other authorities. The CBI is a policy that governs "questions of the balance and allowances, reimbursements of travel expenses, and other expenses incurred for military reasons by members of the CF [Canadian Forces]"

(Applicant's record, volume 1 of 4, tab 8, at page 0160). In this respect, CBI Chapter 209 and the CFTDTI adopted under its authority deal specifically with matters regarding travel and transportation expenses. It is moreover significant that the CFTDTI generally has the same form, content and structure as the TD. The CDS did not err by concluding that the TD does not apply where other specific directives fully govern the travel expenses of CF members.

[31] This interpretation is borne out by the first paragraph of the Policy Framework of the CFTDTI, which reads as follows:

> Section 1 – Policy Framework
>
> (1) Base/Wing Commanders, Commanding Officers and other designated members are responsible for the application of the Canadian Forces Temporary Duty Travel Instruction (CFTDTI). The CFTDTI provides the Treasury Board (TB) approved policy for CF members on temporary duty (TD) travel and/or Attached Posting. Similar travel for employees of the Public Service is governed by the National Joint Council (NJC) Travel Directive.

[32] The CDS could therefore conclude, as he did, that the TD does not apply to persons whose travel is governed by other authorities. The applicant was on the wrong track when he tried to refer to the definitions set out in the TD and to ignore the definitions stemming from the CBI.

[33] The applicant also attempted to assert that there were inconsistencies in the very framework of the CFTDTI, and more specifically between paragraphs 2.3 and 2.4.

According to the applicant, while paragraph 2.3 establishes the precedence of the CFTDTI, paragraph 2.4 gives precedence to the TD. These paragraphs set out the following:

> 2.3 Application
>
> The CFTDTI applies to all CF members on TD and while proceeding to and from an attach posting. It does not apply to members on relocation, local health care travel, imposed restriction, separation expense or DCDS operations (unless the member is on TD). In the event of any conflict between the CFTDTI and other instructions or regulations made by TB [Treasury Board], the CFTDTI prevails.
>
> [Emphasis added]
>
> 2.4 Authority of the Treasury Board
>
> Payments made to members by way of reimbursement for TD travel are determined and regulated by TB. The CFTDTI is issued to members on behalf of the CDS and sets out the approved payments determined and regulated by the TB, and provides administrative instruction for members and units.

[34] I do not find this argument convincing. It is difficult to believe that the CDS could have contradicted himself in such an obvious manner. On the contrary, these two paragraphs seem to me to be completely reconcilable. Far from contradicting paragraph 2.3, paragraph 2.4 specifies that the amount of the allowances is set out by the Treasury Board, while the circumstances under which a CF member is entitled to receive such amounts are governed by the CFTDTI.

(D) *Did the CDS err by concluding that the applicant was on attached posting and not temporary duty during the periods covered by his grievances?*

[35] The applicant claimed that the CDS erred by concluding that he was on attached posting rather than temporary duty during his temporary employment at Valcartier in 2006 and 2007.

Relying on Chapter 7, Annex C of the Military Human Resources Records Procedures (A-PM-245-001/FP-001), the applicant claims that the three conditions required for a posting were not met in his case, that is: (1) the authorization of the commander of the home unit and the posting unit; (2) the consent of the member transferred; and (3) the posting must be the subject of a message written according to regulatory requirements to emphasize the formal authority of the attached posting to the parties involved.

[36] This argument was refuted by Chief Warrant Officer Guy Pelletier, a grievance analyst with the office of the Director General – Canadian Forces Grievance Authority. In his affidavit, Chief Warrant Officer Pelletier noted that the applicant's Military Personnel Record Résumé included the code "ASG/ATT" for the periods covered by his grievances. This code stands for "Assignment/Attached posting", as it appears in the Action/Reason Code Reference Guide filed in support of his affidavit as Exhibit A.

[37] Furthermore, Chief Warrant Officer Pelletier pointed out (on the basis of Chapter 7, Annex C of the Military Human Resources Records Procedures) that a member on attached posting leaves his home unit (i.e. the location where he normally works) for a period of less than one year for an assignment with another Canadian Forces unit, which becomes his attached posting unit. Unlike a member on temporary duty, a member on attached posting holds a position within an attached posting unit. The member on attached posting reports to the commander of the attached posting unit for the duration of his attached posting, unlike the member on temporary duty who continues to report to the commander of his home unit for the duration of his temporary duty outside his home unit. Yet the applicant held a position in Valcartier during the summers of 2006 and 2007, as

indicated on the "Canadian Forces Task Plans & Operations" forms attached to the affidavit of Chief Warrant Officer Pelletier as Exhibit F. This is another factor that tends to show that the applicant was on attached posting at the LFQA TC in Valcartier during the periods covered by his grievances.

[38] As for the fact that there was no explicit attached posting message in the applicant's file, Chief Warrant Officer Pelletier testified that the "Canadian Forces Task Plans & Operations" forms often substituted for an attached posting message and that there was frequently no other message documenting the posting. Likewise, the applicant arguably consented to these attached postings, which were promotions, even though there is no explicit written document to that effect in his file. During the hearing, the applicant mentioned that he would not have accepted the positions at Valcartier had he have known that they were attached postings and not temporary duties. Apart from the fact that this is inadmissible testimony, there is no reference to this assertion in the file, and the applicant certainly did not make such a statement in the submissions he forwarded to the CFGB after reading its findings and recommendations.

[39] Considering all these circumstances, the CDS could reasonably conclude that there were sufficient factors to establish that the applicant was on attached posting. This is clearly a possible, acceptable outcome which is defensible in respect of the facts and the law, within the meaning of *Dunsmuir* cited above.

[40] Since the applicant was not on temporary duty when he held the positions at Valcartier, he could not claim the allowances set out in the CFTDTI. As previously mentioned, the CDS

nonetheless concluded that the applicant met the requirements for travel assistance set out in CBI 209.045 and granted him reimbursement for the distance he travelled between his place of residence and his place of work, i.e. 47 km (instead of the 41 km he had been granted by the initial authority on the basis of an approximate calculation). Once again, this decision is, in my view, in accordance with the applicable policies and regulations, and is therefore perfectly reasonable.

(E) *Did the CDS err by denying the claim for payment of interest and the additional allowance provided for by the Civil Code of Québec?*

[41] The applicant claimed that the CDS should have awarded him interest on the amounts granted under his decision, as well as the additional allowance provided for by the *Civil Code of Québec* from the filing of his grievances in 2006 and 2007. Yet his memorandum contains only one paragraph in that respect in which he merely asserts that "the CDS rendered an illegal decision by concluding that the interest and additional allowances claimed by the applicant could not be paid to him" (paragraph 31). During the hearing, he was scarcely more explicit about the legal merit of this application.

[42] Under these circumstances, it would be inappropriate for the Court to go into vague theoretical considerations to confirm or deny the applicant's contention. Suffice it to say that neither section 36 of the *Federal Courts Act*, RSC 1985, c F-7, on which the applicant vaguely based his argument, nor section 31 of the *Crown Liability and Proceedings Act*, RSC1985, c C-50, authorizes interest to be granted in a situation like the present one. These sections read as follows:

Federal Courts Act, RSC 1985, c F-7	*Loi sur les Cours fédérales*, LRC 1985, c F-7
36. (1) Except as otherwise provided in any other Act of Parliament, and subject to subsection (2), the laws relating to prejudgment interest in proceedings between subject and subject that are in force in a province apply to any proceedings in the Federal Court of Appeal or the Federal Court in respect of any cause of action arising in that province.	36. (1) Sauf disposition contraire de toute autre loi fédérale, et sous réserve du paragraphe (2), les règles de droit en matière d'intérêt avant jugement qui, dans une province, régissent les rapports entre particuliers s'appliquent à toute instance devant la Cour d'appel fédérale ou la Cour fédérale et dont le fait générateur est survenu dans cette province.
Prejudgment interest — cause of action outside province	Intérêt avant jugement — Fait non survenu dans une seule province
(2) A person who is entitled to an order for the payment of money in respect of a cause of action arising outside a province or in respect of causes of action arising in more than one province is entitled to claim and have included in the order an award of interest on the payment at any rate that the Federal Court of Appeal or the Federal Court considers reasonable in the circumstances, calculated	(2) Dans toute instance devant la Cour d'appel fédérale ou la Cour fédérale et dont le fait générateur n'est pas survenu dans une province ou dont les faits générateurs sont survenus dans plusieurs provinces, les intérêts avant jugement sont calculés au taux que la Cour d'appel fédérale ou la Cour fédérale, selon le cas, estime raisonnable dans les circonstances et :
(a) where the order is made on a liquidated claim, from the date or dates the cause of action or causes of action arose to the date of the order; or	a) s'il s'agit d'une créance d'une somme déterminée, depuis la ou les dates du ou des faits générateurs jusqu'à la date de l'ordonnance de paiement;
(b) where the order is made on an unliquidated claim, from the date the person entitled gave notice in writing of the claim to	b) si la somme n'est pas déterminée, depuis la date à laquelle le créancier a avisé par écrit le débiteur de sa demande

the person liable therefor to the date of the order.

Interest on special damages

(3) Where an order referred to in subsection (2) includes an amount for special damages, the interest shall be calculated under that subsection on the balance of special damages incurred as totalled at the end of each six month period following the notice in writing referred to in paragraph (2)(b) and at the date of the order.

Exceptions

(4) Interest shall not be awarded under subsection (2)

(a) on exemplary or punitive damages;

(b) on interest accruing under this section;

(c) on an award of costs in the proceeding;

(d) on that part of the order that represents pecuniary loss arising after the date of the order and that is identified by a finding of the Federal Court of Appeal or the Federal Court;

(e) where the order is made on consent, except by consent of the debtor; or

jusqu’à la date de l’ordonnance de paiement.

Dommages-intérêts spéciaux

(3) Si l’ordonnance de paiement accorde des dommages-intérêts spéciaux, les intérêts prévus au paragraphe (2) sont calculés sur le solde du montant des dommages-intérêts spéciaux accumulés à la fin de chaque période de six mois postérieure à l’avis écrit mentionné à l’alinéa (2)b) ainsi qu’à la date de cette ordonnance.

Exceptions

(4) Il n’est pas accordé d’intérêts aux termes du paragraphe (2) :

a) sur les dommages-intérêts exemplaires ou punitifs;

b) sur les intérêts accumulés aux termes du présent article;

c) sur les dépens de l’instance;

d) sur la partie du montant de l’ordonnance de paiement que la Cour d’appel fédérale ou la Cour fédérale, selon le cas, précise comme représentant une perte pécuniaire postérieure à la date de cette ordonnance;

e) si l’ordonnance de paiement est rendue de consentement, sauf si le débiteur accepte de les payer;

(f) where interest is payable by a right other than under this section.	f) si le droit aux intérêts a sa source ailleurs que dans le présent article.
Judicial discretion	Discrétion judiciaire
(5) The Federal Court of Appeal or the Federal Court may, if it considers it just to do so, having regard to changes in market interest rates, the conduct of the proceedings or any other relevant consideration, disallow interest or allow interest for a period other than that provided for in subsection (2) in respect of the whole or any part of the amount on which interest is payable under this section.	(5) La Cour d'appel fédérale ou la Cour fédérale, selon le cas, peut, si elle l'estime juste compte tenu de la fluctuation des taux d'intérêt commerciaux, du déroulement des procédures et de tout autre motif valable, refuser l'intérêt ou l'accorder pour une période autre que celle prévue à l'égard du montant total ou partiel sur lequel l'intérêt est calculé en vertu du présent article.
Application	Application
(6) This section applies in respect of the payment of money under judgment delivered on or after the day on which this section comes into force, but no interest shall be awarded for a period before that day.	(6) Le présent article s'applique aux sommes accordées par jugement rendu à compter de la date de son entrée en vigueur. Aucun intérêt ne peut être accordé à l'égard d'une période antérieure à cette date.
Canadian maritime law	Droit maritime canadien
(7) This section does not apply in respect of any case in which a claim for relief is made or a remedy is sought under or by virtue of Canadian maritime law.	(7) Le présent article ne s'applique pas aux procédures en matière de droit maritime canadien.

Crown Liability and Proceedings Act, RSC 1985, c C-50	*Loi sur la responsabilité civile de l'État et le contentieux administratif*, LRC 1985, c C-50

Prejudgment interest, cause of action within province

31. (1) Except as otherwise provided in any other Act of Parliament and subject to subsection (2), the laws relating to prejudgment interest in proceedings between subject and subject that are in force in a province apply to any proceedings against the Crown in any court in respect of any cause of action arising in that province.

Prejudgment interest, cause of action outside province

(2) A person who is entitled to an order for the payment of money in respect of a cause of action against the Crown arising outside any province or in respect of causes of action against the Crown arising in more than one province is entitled to claim and have included in the order an award of interest thereon at such rate as the court considers reasonable in the circumstances, calculated

(*a*) where the order is made on a liquidated claim, from the date or dates the cause of action or causes of action arose to the date of the order; or

(*b*) where the order is made on an unliquidated claim, from the date the person entitled gave notice in writing of the

Intérêt avant jugement — Fait survenu dans une province

31. (1) Sauf disposition contraire de toute autre loi fédérale, et sous réserve du paragraphe (2), les règles de droit en matière d’intérêt avant jugement qui, dans une province, régissent les rapports entre particuliers s’appliquent à toute instance visant l’État devant le tribunal et dont le fait générateur est survenu dans cette province.

Intérêt avant jugement — Fait non survenu dans une seule province

(2) Dans une instance visant l’État devant le tribunal et dont le fait générateur n’est pas survenu dans une province ou dont les faits générateurs sont survenus dans plusieurs provinces, les intérêts avant jugement sont calculés au taux que le tribunal estime raisonnable dans les circonstances et :

a) s’il s’agit d’une créance liquide, depuis la ou les dates du ou des faits générateurs jusqu’à la date de l’ordonnance de paiement;

b) si la créance n’est pas liquide, depuis la date à laquelle le créancier a avisé par écrit l’État de sa demande jusqu’à la date de l’ordonnance de paiement.

claim to the Crown to the date of the order.

Special damages and pre-trial pecuniary losses

(3) When an order referred to in subsection (2) includes an amount for, in the Province of Quebec, pre-trial pecuniary loss or, in any other province, special damages, the interest shall be calculated under that subsection on the balance of the amount as totalled at the end of each six month period following the notice in writing referred to in paragraph (2)(*b*) and at the date of the order.

Exceptions

(4) Interest shall not be awarded under subsection (2)

(*a*) on exemplary or punitive damages;

(*b*) on interest accruing under this section;

(*c*) on an award of costs in the proceeding;

(*d*) on that part of the order that represents pecuniary loss arising after the date of the order and that is identified by a finding of the court;

(*e*) where the order is made on consent, except by consent of the Crown; or

Perte antérieure au procès ou dommages-intérêts spéciaux

(3) Si l'ordonnance de paiement accorde une somme, dans la province de Québec, à titre de perte pécuniaire antérieure au procès ou, dans les autres provinces, à titre de dommages-intérêts spéciaux, les intérêts prévus au paragraphe (2) sont calculés sur le solde du montant de la perte pécuniaire antérieure au procès ou des dommages-intérêts spéciaux accumulés à la fin de chaque période de six mois postérieure à l'avis écrit mentionné à l'alinéa (2)*b*) ainsi qu'à la date de cette ordonnance.

Exceptions

(4) Il n'est pas accordé d'intérêts aux termes du paragraphe (2) :

a) sur les dommages-intérêts exemplaires ou punitifs;

b) sur les intérêts accumulés aux termes du présent article;

c) sur les dépens de l'instance;

d) sur la partie du montant de l'ordonnance de paiement que le tribunal précise comme représentant une perte pécuniaire postérieure à la date de cette ordonnance;

e) si l'ordonnance de paiement est rendue de consentement, sauf si l'État accepte de les

payer;

(*f*) where interest is payable by a right other than under this section.

f) si le droit aux intérêts a sa source ailleurs que dans le présent article.

Judicial discretion

(5) A court may, where it considers it just to do so, having regard to changes in market interest rates, the conduct of the proceedings or any other relevant consideration, disallow interest or allow interest for a period other than that provided for in subsection (2) in respect of the whole or any part of the amount on which interest is payable under this section.

Discrétion judiciaire

(5) Le tribunal peut, s'il l'estime juste, compte tenu de la fluctuation des taux d'intérêt commerciaux, du déroulement des procédures et de tout autre motif valable, refuser l'intérêt ou l'accorder pour une période autre que celle prévue à l'égard du montant total ou partiel sur lequel l'intérêt est calculé en vertu du présent article.

Application

(6) This section applies in respect of the payment of money under judgment delivered on or after the day on which this section comes into force, but no interest shall be awarded for a period before that day.

Application

(6) Le présent article s'applique aux sommes accordées par jugement rendu à compter de la date de son entrée en vigueur. Aucun intérêt ne peut être accordé à l'égard d'une période antérieure à cette date.

Canadian maritime law

(7) This section does not apply in respect of any case in which a claim for relief is made or a remedy is sought under or by virtue of Canadian maritime law within the meaning of the *Federal Courts Act*.

Droit maritime canadien

(7) Le présent article ne s'applique pas aux procédures en matière de droit maritime canadien, au sens de la *Loi sur les Cours fédérales*.

[43] Section 36 of the *Federal Courts Act* cannot be used to claim prejudgment interest within the framework of the internal grievance settlement process available to CF members since this process is not an action before "the Federal Court of Appeal or the Federal Court" within the meaning of this provision. The Court is seized with an application for judicial review of a decision by a federal board, and not a claim for damages stemming from a cause giving rise to an action against the Crown.

[44] Finally, the applicant briefly refers to Chapter 1016-10 of the Financial Administration Manual, which specifies in section 2 that "An expense claim form is considered an invoice and shall be processed in accordance with current expenditure management policies." Contrary to what the applicant claims, this provision does not create a contract and is clearly insufficient to give rise to entitlement to interest, especially since the "Purpose" of the Manual states in respect to the policy that "nor does it identify specific entitlements".

[45] The CDS was therefore justified in deciding that he did not have the authority to grant the applicant interest. In the absence of clear policies or directives in that respect, it was not for the CDS to override Crown immunity.

V. Conclusion

[46] For these reasons, I am of the opinion that the application for judicial review brought by the applicant should be dismissed with costs.

JUDGMENT

THE COURT RULES that the application for judicial review is dismissed with costs.

"Yves de Montigny"

Judge

Certified true translation
Monica F. Chamberlain

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1183-10
STYLE OF CAUSE:	GUY VÉZINA v CHIEF OF THE DEFENCE STAFF AND ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Québec, Quebec
DATE OF HEARING:	December 7, 2011
REASONS FOR JUDGMENT AND JUDGMENT:	DE MONTIGNY J.
DATED:	May 23, 2012

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