Federal Court of Appeal  Cour d'appel fédérale

Date: 20150407

Docket: A-272-14

Citation: 2015 FCA 87

CORAM: **RYER J.A.**
WEBB J.A.
NEAR J.A.

BETWEEN:

ANTHONY MOODIE

Appellant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on February 18, 2015.

Judgment delivered at Ottawa, Ontario, on April 7, 2015.

REASONS FOR JUDGMENT BY: NEAR J.A.

CONCURRED IN BY: RYER J.A.
WEBB J.A.

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REASONS FOR JUDGMENT

NEAR J.A.

I. Introduction

[1] The appellant, Anthony Moodie, served in the Canadian Forces (CF) from 1995 to 2005. In September 2003, he began the Common Army Phase (CAP) course 0309 at the Infantry School Combat Training Centre in Gagetown, New Brunswick. In November 2003, a Progress Review Board (PRB) at the School returned the appellant to his unit as a "training failure". The

PRB deemed the appellant a "training failure" because the appellant was unable to complete the performance objectives (PO) of the course.

[2] The appellant filed a number of complaints with the CF concerning his failure of the CAP course. He ultimately submitted these complaints, in the form of a formal grievance, to the Chief of the Defence Staff (CDS) for determination.

[3] On November 23, 2010, the CDS dismissed the appellant's grievance. The appellant subsequently applied to the Federal Court for judicial review of this decision. In a decision issued May 6, 2014, Justice Boivin dismissed the application (2014 FC 433). This is an appeal of that decision.

[4] For the reasons that follow, I would dismiss the appeal.

II. Facts and Judicial History

A. *Facts*

[5] The issues in this appeal mainly concern the appellant's failure of PO 103, "Conduct a Reconnaissance Patrol". However, the appellant also had difficulty with PO 102 ("Conduct Defensive Operations"), PO 109 ("Supervise Army Physical Fitness Training"), and PO 118 ("Instruct Personnel").

[6] The appellant failed his first and second attempts of PO 103 on November 15, 2003 and November 20, 2003, respectively. After the appellant's second failed attempt, a PRB was convened. The PRB granted the appellant a third attempt, which he undertook on November 24. However, logistical problems occurred such that the attempt could not be considered legitimate. In light of these circumstances, which were beyond the appellant's control, the PRB granted the appellant a fourth attempt. Again the appellant failed. As a result, on November 25, 2003, the PRB decided to return the appellant to his unit as a "training failure".

[7] On December 3, 2003, the appellant filed a complaint with the Infantry School Commandant, Lieutenant Colonel Pearson. In this complaint, the appellant alleged: that he had been assessed differently than other students, that staff actively sought to have him fail, and that he should have passed PO 103. The Commandant considered the appellant's complaint to be a formal redress of grievance and asked the School's Chief Standards Officer (CSO) to investigate.

[8] On December 4, 2003, the appellant filed a second complaint, in which he alleged that members of the Directing Staff (DS) had harassed him. However, the appellant withdrew this complaint after being informed that it did not meet the necessary criteria for a complaint of harassment.

[9] On December 10, 2003, the Commandant denied the appellant's redress of grievance. The report of the CSO was issued two days later, on December 12, 2003. In his report, the CSO outlined the results of the investigation that he conducted on December 4 and 5, 2003, and recommended that the appellant's redress of grievance be denied.

[10] In March 2004, the appellant filed an official application for redress of grievance with the CDS. The first level in the CDS grievance process is a determination by an Initial Authority (IA). However, the appropriate IA – the Commander of the Combat Training Centre – did not receive the appellant's redress of grievance until October 5, 2004. The delay in transferring the appellant's grievance to the IA occurred because the first IA that had been appointed was perceived as having a conflict of interest.

[11] On October 12, 2004, the IA sent the appellant a disclosure package containing all of the documents that he would consider in coming to his decision. The appellant made written submissions in response on November 15, 2004.

[12] On December 3, 2004, the IA denied the appellant's redress of grievance. In his decision, the IA focused on the appellant's main argument, which concerned the failure of PO 103. The IA determined that the appellant had, in fact, failed all of his attempts.

[13] Meanwhile, on December 1, 2004, the appellant had re-submitted a complaint of harassment. The appellant made two allegations in this complaint. The appellant alleged that a DS told him that he failed PO 118 because of his "thick heavy accent". The appellant also alleged that the same DS assessed him in a manner inconsistent with the course standards in an effort to ensure his failure of PO 103. On December 14, 2004, the Responsible Officer (RO), the acting Commandant of the Infantry School, rejected this complaint.

[14] On March 31, 2005, the appellant submitted his redress of grievance for final adjudication before the CDS, who is deemed to be the final authority (FA). The appellant included in his grievance new complaints – namely, complaints about the procedures followed by the other decision-makers who had assessed his grievance.

[15] The first step at the FA level requires assessment of the complaint by the Canadian Forces Grievance Board (CFGB), an independent body established to impartially review grievances referred to the CDS.

[16] The appellant's grievance was sent to the CFGB on July 6, 2005. On August 5, 2005, the CFGB informed the appellant that his grievance was being processed, and included a copy of the complete grievance file.

[17] On October 25, 2005, the appellant was released from the CF. The appellant disputes the CDS' finding that the grounds for the appellant's release were unrelated to his failure of the CAP course.

[18] By way of letter dated June 20, 2007, the CFGB informed the appellant that his grievance had been investigated by a Grievance Officer at the CFGB, and disclosed to the appellant all of the information that it would consider in completing its report for the CDS. The appellant made written submissions in response on July 20, 2007.

[19] On September 25, 2007, the CFGB issued its report recommending that the CDS dismiss the appellant's grievance. The CFGB's findings and recommendations were forwarded to the appellant two days later, on September 27, 2007.

[20] Meanwhile, on July 6, 2007, the appellant had initiated an action in damages in the Federal Court based upon the same set of facts (Court file no. T-1248-07). On May 27, 2008, Prothonotary Milczynski dismissed the action on the ground that the *National Defence Act*, R.S.C. 1985, c. N-5 (*NDA*) and the *Queen's Regulations and Orders for the Canadian Forces* (*QR&O*) establish an exclusive statutory scheme for the resolution of service-related disputes.

[21] On August 12, 2008, the appellant sent the CDS written submissions in response to the report of the CFGB. On September 16, 2008, the Director General of the Canadian Forces Grievance Authority (CFGA) informed the appellant that the processing of his grievance was being suspended until the final resolution of his Federal Court action, pursuant to *QR&O* 7.16.

[22] The Prothonotary's decision to dismiss the appellant's action was ultimately upheld by both the Federal Court (2008 FC 1233, [2008] F.C.J. No. 1601 (QL)) and this Court (2010 FCA 6, 399 N.R. 14).

[23] In the interim, on March 31, 2009, the CFGA provided additional disclosure to the appellant pursuant to *Canadian Forces Administration Orders* (*CFOA*) 19-32. *CFOA* 19-32 requires the FA to disclose to the complainant all information not already in the complainant's possession prior to the determination of a grievance.

B. *Decision of the CDS*

[24] On November 23, 2010, the CDS dismissed the appellant's grievance.

[25] The CDS' decision addresses four main issues: the appellant's failure of PO 103; the appellant's alleged failure or incompletion of other POs; the appellant's harassment claims; and the appellant's procedural fairness concerns.

(1) Failure of PO 103

[26] The CDS first addressed the appellant's failure of PO 103. He agreed with the CFGB that the appellant had been accurately and fairly assessed. The CDS did not agree with the appellant, who had argued that he should have passed on his third and fourth attempts.

[27] The CDS determined that the appellant's third attempt could not be considered a legitimate attempt due to the logistical problems that had occurred, particularly the lack of an "occupied objective", which is required under the CAP training plan. In addition, the CDS was satisfied that the appellant would have failed his third attempt even if the logistical problems had not occurred. The CDS noted that the appellant had failed to meet five of the PO's ten "leadership" requirements, when a score of eight is required to obtain a pass. The CDS was nevertheless satisfied that the PRB's decision to grant the appellant a fourth attempt was warranted.

[28] The CDS was not satisfied, however, that the appellant met the standard for PO 103 on his fourth attempt. The CDS remarked that many of the appellant's complaints regarding the alleged unfairness of his assessment were simply disagreements with the assessor as to the effectiveness of the appellant's behaviour. The CDS explained that, according to the assessor's notes, the appellant made poor strategic and navigational choices. Furthermore, while the appellant did ultimately reach the objective, he was discovered by the "enemy" troops and was unable to complete the required activities at the objective, despite a reset from the assessor. The appellant also failed seven of the ten leadership requirements.

[29] The CDS determined that the appellant's allegation that his evaluation form was fraudulently altered to change his "pass" to a "fail" was lacking in both credibility and corroborating evidence. As a result, the CDS was satisfied that the "pass" notation was a simple clerical error that was later corrected to a "fail".

[30] The CDS rejected the appellant's contention that there were no demonstrations or DS-led patrols for PO 103. The CDS found that the appellant had not adduced enough evidence to support this contention. Furthermore, even if he had, this would not have resulted in an automatic pass.

(2) Failure or Incompletion of other POs

[31] Next, the CDS addressed the appellant's alleged failure or incompletion of other POs. The CDS found that it was unnecessary to determine whether the appellant had successfully completed POs 102, 109, or 118, because the appellant was returned to his unit solely as a result

of failing PO 103. Since the CDS was satisfied that the appellant had, in fact, failed PO 103, the outcome of the other POs was irrelevant.

[32] The CDS also acknowledged that the appellant's Member's Personnel Record Resume (MPRR) erroneously indicated that he passed the CAP course. However, the CDS refused to investigate the reason for this clerical error. Instead, he simply agreed with the CFGB that this entry should be corrected.

(3) Harassment Claims

[33] The CDS then addressed the appellant's harassment claims.

[34] According to *Defence Administrative Orders and Directive* (*DOAD*) 5012-0:

> Harassment is any improper conduct by an individual that is directed at and offensive to another person or persons in the workplace, and that the individual knew or ought reasonably to have known would cause offence or harm.
>
> …
>
> Conduct involving the proper exercise of responsibilities or authority related to the provision of advice, the assignment of work, counseling, performance evaluation, discipline, and other supervisory/leadership functions *does not constitute harassment*.
>
> (emphasis in original)

[35] The CDS canvassed the three allegations of harassment made by the appellant and found that two of these allegations did not meet the above definition of harassment.

[36] The first allegation was that the assessor for PO 118 stated that the other candidates could not understand the appellant due to his "thick heavy accent". The CDS first noted that no evidence of this statement was found in the course record. He nevertheless determined that even if this statement had been made, it would not have constituted harassment because noting communication deficiencies is part of a proper evaluation.

[37] The second allegation was that the assessor for the appellant's third attempt of PO 103 had set him up to fail. The CDS concluded that the concerns pertaining to this patrol had largely been resolved by the granting of a fourth attempt, and that any specific concerns about the platoon commander had not been particularized enough to warrant further investigation by the RO.

[38] The CDS found that the appellant's third allegation, that he was held to higher assessment standards than other students and was given unfavourable leadership chits without justification, could have met the definition of harassment. However, the CDS agreed with the RO that the appellant had provided insufficient information on which to base further investigation or a finding of harassment.

(4) Procedural Fairness

[39] Finally, the CDS addressed the appellant's procedural fairness concerns.

[40] With respect to delay, the CDS acknowledged that the seven-year delay between the events in question and the final adjudication of the appellant's grievance was unusually long.

The CDS also acknowledged that the delay of approximately six months to transmit the appellant's grievance to the proper IA was not in accordance with the ten-day period stipulated by *QR&O* 7.05.

[41] The CDS determined, however, that the need to find an IA without a conflict of interest explained the initial delay, and that the appellant had failed to demonstrate that he had experienced any prejudice as a result. The CDS also observed that all subsequent decisions were rendered within the required time limits, where such limits existed, and that the delay between 2008 and 2010 was caused by the appellant's Federal Court action. The CDS therefore concluded that there had been no unreasonable or unexplained delays in the processing of the appellant's grievance.

[42] With respect to disclosure, the CDS agreed with the appellant that a redress authority is required to disclose all documents put before it prior to making a decision. The CDS did not agree with the appellant, however, that this process had not been followed. Having reviewed the entire grievance file, the CDS was satisfied that the appellant had obtained disclosure of all documents that were, in fact, used to adjudicate the grievance at both the IA and FA levels. He was also satisfied that the appellant had been granted sufficient opportunities to make submissions on these documents.

[43] The CDS also addressed the appellant's argument that it was unfair for the IA and the CFGB to have focused only on the "crux" of the grievance. The CDS noted that he had attempted to be as complete as possible in his review of the appellant's lengthy and complex

grievance, but agreed with the CFGB that it is sometimes necessary to narrow the scope of a grievance. The CDS further noted that the appellant had failed to specify any major issue that the CFGB had neglected. The CDS also remarked that further investigation into certain issues, such as how or why certain clerical errors occurred, would have no impact on his ultimate finding on the grievance.

C. *Federal Court Decision*

[44] The Federal Court judge dismissed the appellant's application for judicial review. The Judge concluded that there was no breach of procedural fairness in the processing of the appellant's grievance, and that it was reasonable for the CDS to dismiss the grievance.

III. Positions of the Parties

[45] The appellant submits that the Federal Court judge erred in concluding that procedural fairness was respected during the grievance process and that the decision of the CDS was reasonable.

[46] In his Memorandum of Fact and Law, the appellant also asserted that the Judge displayed a reasonable apprehension of bias in his conduct of the judicial review hearing. At the hearing of this appeal, however, the appellant withdrew this submission and conceded that there was no basis upon which to assert bias against the Judge. I agree.

[47] The respondent submits that the appellant's procedural entitlements were respected during the grievance process and that the decision of the CDS was reasonable.

IV. Issues

[48] The issues in this appeal are:

1. Was the appellant denied procedural fairness during the grievance process?

2. Did the CDS determine the substance of the appellant's grievance appropriately?

V. Standard of Review

[49] Sitting in appeal from a decision of the Federal Court on an application for judicial review, this Court must ask whether the Judge correctly chose and properly applied the standard(s) of review. This has been described as "stepping into the shoes" of the Federal Court (*Agraira v. Canada (Public Safety and Emergency Preparedness*), 2013 SCC 36 at paras. 46-47, [2013] 2 S.C.R. 559).

[50] Issues of procedural fairness are reviewable on the correctness standard (*Mission Institution v. Khela*, 2014 SCC 24 at para. 79, [2014] 1 S.C.R. 502). Correctness is therefore the standard of review applicable to the first issue in this case.

[51] The standard of review applicable to the second issue is reasonableness. The issues raised in the appellant's grievance required the CDS to consider questions of mixed fact and law

and questions of fact. As such, the standard of review is presumed to be reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 51, [2008] 1 S.C.R. 190 [*Dunsmuir*]). Moreover, this Court has previously held that decisions of the CDS concerning grievances are reviewable on the reasonableness standard (*Zimmerman v. Canada (Attorney General)*, 2011 FCA 43 at para. 21, 415 N.R. 13).

[52] The Judge correctly selected the standards of review applicable to the issues before him: he held that correctness was the standard applicable to issues of procedural fairness (at para. 43), and that the substantive decision of the CDS was reviewable on the standard of reasonableness (at para. 44).

VI. Analysis

A. *Procedural Fairness*

[53] The appellant submits that he was denied procedural fairness in five respects. The Federal Court judge considered and rejected each of these arguments in the appellant's application for judicial review. I agree with the Judge's disposition of these issues, and will address each argument in turn.

(1) Terms of Reference

[54] The appellant submits that it was a breach of procedural fairness for the investigations into his complaints to have proceeded without terms of reference, despite the requirement under *DOAD* 7002-2 that such terms be established. In the appellant's view, this failure caused the

investigation by the first IA and the re-investigation by the second IA to lack direction and transparency, and prevented him from knowing whether his complaints were being properly addressed.

[55] The respondent submits that the appellant's concerns pre-date the actual decision under review, which is the decision of the CDS on the formal grievance submitted to him in March 2004. The respondent also submits that the procedures set out in *DOAD* 7002-2 do not apply to the CF grievance process. Rather, this process is governed by the *NDA* and the *QR&O*.

[56] The Judge was not convinced that *DOAD* 7002-2 applied to the appellant's complaints, which were, from the beginning, treated as grievances. He also found that, even if *DOAD* 7002-2 did apply, the appellant had not explained how the lack of terms of reference impaired his ability to know the case that he had to meet, or impacted the fairness of his grievance.

[57] I agree with the Judge's alternative conclusion. The appellant has only made bald assertions about the impact of this alleged procedural flaw on the fairness of the grievance process. There is therefore no basis upon which I can conclude that there was procedural unfairness in this respect.

(2) Timing of the Investigation Decision

[58] The appellant submits that the timing of the investigation decision reveals a breach of procedural fairness. The appellant argues that the investigation into his complaint by the Chief Standards Officer was not complete until December 12, 2003, which was two days after the

Commandant issued his decision dismissing the appellant's complaint. The appellant alleges that this discrepancy demonstrates a reasonable apprehension of bias on the part of the Commandant. He also alleges that his right to procedural fairness was breached because he was not given an opportunity to respond to the investigation report.

[59] There is no merit to this argument. First, the alleged discrepancy does not exist. Although the investigation report is dated December 12, 2003, the report indicates that the investigation took place on December 4 and 5, 2003 (at p. 235, Appeal Book, Vol. II). Second, even if such a discrepancy existed, it is of no import because the appellant's complaint was referred for re-investigation. I do not accept the appellant's argument that this alleged discrepancy still amounts to a breach of procedural fairness even though the matter was referred for re-investigation because the CDS, in coming to his decision, relied on all of the reports connected to the complaint.

(3) Disclosure

[60] The appellant submits that procedural fairness was not respected during the grievance process because he did not receive proper disclosure. The appellant claims that the respondent breached paragraph 13 of *CFOA* 19-32, which requires a redress authority to provide a complainant with copies of "any correspondence or any other documents to be reviewed" before considering a complaint.

[61] The appellant submits that the disclosure made to him on October 12, 2004 and March 31, 2009 was insufficient. The appellant claims that he cannot be sure that the October 12, 2004

disclosure was complete, as it did not include a list of documentation. The appellant also claims that the March 31, 2009 disclosure did not contain the evidence that had been previously disclosed to him, or evidence that had been requested of a certain Captain Niles.

[62] The appellant submits that it was improper for the CDS to have determined that the disclosure requirements had been met on the basis that it was not clear that the IA had used information not disclosed to the appellant in coming to its decision.

[63] The appellant also submits that the issue of disclosure has persisted since the issuance of the CDS' decision. The appellant alleges that the respondent has improperly refused disclosure on the basis that the documents that the appellant was seeking were not referenced in the decision of the CDS.

[64] The respondent submits that its disclosure to the appellant was more than adequate. The respondent notes that the CDS addressed this issue in his decision, and found that there were no documents used by the IA that had not been disclosed to the appellant (at p. 614, Appeal Book, Vol. III).

[65] I agree with the respondent. The appellant does not point to any specific documents that were not disclosed to him but were relied upon during the grievance process. I cannot see any reason for finding that the CDS' conclusion on this issue was incorrect. Furthermore, this Court can only consider whether the CDS' decision on disclosure was correct. Events subsequent to the decision of the CDS are beyond the scope of this appeal.

(4) Witnesses

[66] The appellant submits that he was denied procedural fairness because he was unable to collect the evidence necessary to support his claim – namely, witness statements from others taking the CAP course – and that this impacted his right to a fair hearing.

[67] The appellant states that he was unable to collect such statements himself because the Commandant separated students at the CAP course who had failed from the others, and because the Commandant did not assist the appellant in collecting such statements. The appellant argues that he was entitled to such assistance according to Chapter 7 of the *QR&O, CFOA* 19-32, section 29.21 of the *NDA*, and the CF Grievance Manual.

[68] The Judge concluded that, based on the record and based on the speculative nature of the appellant's allegations, the appellant had failed to demonstrate how the respondent's disclosure or use of witness evidence was inadequate. He held that the respondent did not have to disclose to the appellant every document remotely relevant to the grievance. Rather, the respondent had to disclose the information that it was going to consider in making its decision so that the appellant could know the case against him.

[69] Again, I agree with the Judge. I cannot see any basis upon which this Court should intervene with the CDS' decision in this respect.

(5) Delay

[70] Finally, the appellant submits that he was denied procedural fairness due to the delay he experienced during the grievance proceedings.

[71] The appellant submits that the decision of the IA, dated December 3, 2004, was issued ten months after the deadline required under the *QR&O*. The appellant notes that it also took over two years for the chairperson of the CFGB to provide its findings and recommendations to the CDS and assign the file to the CDS for review. The appellant further notes that, in his submissions to the respondent on March 31, 2005, he discussed the impact that the delays in processing his grievance were causing, including the stagnation of his career in the CF and his future employment prospects.

[72] The appellant submits that the CDS' analysis on the issue of delay is flawed in two respects.

[73] First, the appellant argues that the CDS erred in finding that the appellant's grievance was filed in 2004.

[74] In my view, this is not an error. Although the appellant launched his original complaint regarding the CAP course in December 2003, he filed his official application for redress of grievance with the CDS in March 2004. Moreover, even if this Court were to consider this to be an error, the appellant has not explained how this error affected the fairness of the CDS' decision. I cannot see how the CDS' analysis of the delay in the appellant's case would have

been substantially different had the CDS considered the timeline to have begun four months earlier, at the time of the appellant's original complaint.

[75] Second, the appellant argues that the CDS erred in finding that the appellant was not prejudiced by the delay because the IA made its decision before the appellant was released from the CF. The appellant acknowledges that consideration of his grievance was suspended due to his action in the Federal Court. Nonetheless, he submits that the delay from the date he launched his initial complaint to the final decision of the CDS is a breach of procedural fairness because the recollection of witnesses who should have been interviewed has been significantly impaired, and because the relief he was originally seeking is no longer available to him, given his release from the CF.

[76] I also cannot accept this argument. I agree with the Judge that the appellant has not demonstrated that the delay in processing his grievance was "so oppressive as to taint the proceedings" (at para. 70, Federal Court decision). This is the appropriate test to determine whether delay incurred in administrative proceedings amounts to a breach of procedural fairness, as set out in *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 S.C.R. 307:

> [115] I would be prepared to recognize that unacceptable delay may amount to an abuse of process in certain circumstances even where the fairness of the hearing has not been compromised. … It must however be emphasized that few lengthy delays will meet this threshold. I caution that in cases where there is no prejudice to hearing fairness, the delay must be clearly unacceptable and have directly caused a significant prejudice to amount to an abuse of process.
>
> …
>
> [121] To constitute a breach of the duty of fairness, the delay must have been unreasonable or inordinate (Brown and Evans, *supra*, at p. 9-68). There is no

> abuse of process by delay *per se*. The respondent must demonstrate that the delay was unacceptable to the point of being so oppressive as to taint the proceedings.

B. *Reasonableness of the CDS' Decision*

[77] The appellant challenges the substantive decision of the CDS in two respects.

[78] First, the appellant submits that the decision is unreasonable given that questions still remain as to how and why his grade on PO 103 was changed from a pass to a fail. The appellant argues that, based on the facts, it was unreasonable for the CDS to conclude that this was simply a clerical error.

[79] In making this submission, the appellant has asked this Court to re-weigh the evidence that was before the CDS. That is beyond the scope of this Court's role on judicial review, which is to assess the reasonableness of the CDS' decision. The CDS considered this issue and came to the conclusion that the "pass" originally indicated on the appellant's evaluation form was a clerical error (at p. 608, Appeal Book, Vol. III). This conclusion was reasonably open to the CDS based on the record before him. It was also reasonable for the CDS to decline any further investigation into the details surrounding this clerical error, given his conclusion that the appellant had in fact failed PO 103.

[80] Second, the appellant submits that the CDS' conclusion on the issue of harassment is unreasonable. The appellant contends that the CDS acknowledged that the elements of harassment were present but concluded that there was inadequate evidence to find that harassment had in fact occurred. The appellant argues that the RO should have conducted a

proper investigation, and that the CDS erred in adopting the RO's conclusion notwithstanding the lack of proper investigation.

[81] The appellant has again asked this Court to reconsider a heavily fact-dependent conclusion. Moreover, the appellant has mischaracterized the CDS' decision. As discussed above, the CDS canvassed all three allegations of harassment made by the appellant. The CDS concluded that two of the three allegations did not meet the definition of harassment, but found that the appellant's third allegation – that he was held to higher assessment standards than other students and was given unfavourable leadership chits without justification – may have met the definition of harassment. However, the CDS agreed with the RO that the appellant had not provided sufficient information on which to base a finding of harassment. This was a conclusion reasonably open to the CDS.

[82] In my view, the decision of the CDS is reasonable. The decision to dismiss the appellant's grievance falls within the range of reasonable outcomes, defensible in respect of the facts and the law, and the reasons given by the CDS for doing so are justifiable, transparent, and intelligible (*Dunsmuir*, supra at para. 47).

VII. Conclusion

[83] The Federal Court judge did not err in his selection or application of the standards of review to the decision of the CDS. The appellant's procedural entitlements were respected during the grievance process, and the decision of the CDS to dismiss the grievance was reasonable. I would therefore dismiss the appeal, with costs.

"David G. Near"

J.A.

"I agree
C. Michael Ryer J.A."

"I agree
Wyman W. Webb J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-272-14
APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE BOIVIN DATED MAY 6, DOCKET NUMBER T-2186-10	
STYLE OF CAUSE:	ANTHONY MOODIE v. THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	FEBRUARY 18, 2015
REASONS FOR JUDGMENT BY:	NEAR J.A.
CONCURRED IN BY:	RYER J.A. WEBB J.A.
DATED:	APRIL 7, 2015

APPEARANCES:

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Stewart Phillips	FOR THE RESPONDENT

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