Federal Court  Cour fédérale

**Date: 20230704**

**Docket: T-1683-21**

**Citation: 2023 FC 919**

**Ottawa, Ontario, July 4, 2023**

**PRESENT: Mr. Justice Pentney**

**BETWEEN:**

**MAJOR (RET'D) JOHN S. BEDDOWS**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

# JUDGEMENT AND REASONS

## I. Introduction

[1] Major (ret'd) John S. Beddows served in the Canadian Armed Forces for 34 years. In November 2012, he was posted to Afghanistan where he served as J2 (the senior Intelligence Officer) with the Canadian Task Force as part of Operation ATTENTION, ROTO 2. As Major (ret'd) Beddows acknowledges, this was a difficult posting.

[2] In May 2013, Major (ret'd) Beddows was repatriated from Afghanistan prior to the scheduled end of his posting based on a report from his Commanding Officer, Colonel Steven MacDonald, which in turn referred to negative ratings based on events that occurred in theatre, as well as allegations of sexual harassment and a weapons offence that had been levelled against Major (ret'd) Beddows [Maj.(r) Beddows]. In March 2014, Maj.(r) Beddows filed a grievance, claiming that the process had been unfair and that his repatriation was unjustified. This launched the lengthy process that has landed his case before this Court.

[3] Following some procedural wrangling, which will be discussed in more detail below, the grievance was referred to the Military Grievance External Review Committee [the External Review Committee], which found that the allegations in his grievance were well founded, and recommended a variety of remedial steps. This report was referred to the Acting Chief of Defence Staff [A/CDS], General Wayne Eyre, for decision as the Final Authority [FA] in the grievance process.

[4] On October 18, 2021, the A/CDS issued his decision, which largely mirrors the External Review Committee's findings. The specifics of the decision are discussed in greater detail below. At this stage, it is sufficient to note that the A/CDS found that Maj.(r) Beddows' repatriation was unfair, and that his Commanding Officer [CO] and others generated several of the negative reports against him in order to build a case to justify the unwarranted decision to send him back to Canada, likely because of a personality conflict. The A/CDS also concluded that the proper process was not followed regarding the management of Maj.(r) Beddows' performance of his

duties, nor in the repatriation decision or the handling of the sexual harassment complaint. The A/CDS granted Maj.(r) Beddows many of the remedial measures he had requested.

[5] Maj.(r) Beddows seeks judicial review of the decision. He claims that the process was not fair, several of the findings made – and not made - by the A/CDS, are not consistent with the evidence in the record, and he also questions whether the A/CDS had the legal authority to act as FA in his case, because the *National Defence Act*, RSC 1985, c N-5. [NDA], reserves that authority to the CDS.

[6] The core of Maj.(r) Beddows' position is that in light of the wrongdoing that was found by the A/CDS, the Canadian Armed Forces [CAF] should be required to take the necessary steps to fully and finally clear his name, to restore his reputation, and to undo some of the harm that was caused to him and his family. He also wants to ensure that those who have wronged him are held accountable for their actions, through appropriate military investigations according to the rules and standards that govern their conduct.

[7] After carefully reviewing the record, and considering the submissions made by the parties and having given the matter considerable and careful deliberation, I am granting his application for judicial review in part. I find that the A/CDS's failure to explain why he did not order any financial compensation, or direct that a public letter of apology be provided to be unreasonable. While I am not persuaded that the process was unfair or that other aspects of the decision are unreasonable, as that term is understood under the Canadian law of judicial review, I have

concluded that the absence of any analysis of these two elements is unreasonable, in view of the fact that they were central aspects of Maj.(r) Beddows' claim from the very beginning.

[8] In the reasons that follow, I will lay out the history and background of this case in more detail, and then review the issues and legal framework that applies, before turning to a review of the evidence and arguments submitted by the parties.

## II. Background

[9] On June 21, 1986, Maj.(r) Beddows enrolled in the Canadian Armed Forces, and at the relevant period for the matter before the Court, he was serving as an Intelligence Officer at the rank of Major.

[10] On November 2, 2012, Maj.(r) Beddows was posted to the J2 position with the National Command and Support Element and deployed to Afghanistan in Operation ATTENTION, ROTO 2. During that posting, a number of events occurred that resulted in his repatriation from Afghanistan earlier than its scheduled end. The timing and sequence of events is important, for reasons that will become clear below, and therefore it is important to review this in some detail.

[11] In December 2012, one of Maj.(r) Beddows' subordinates shared his password(s) for accounts on the classified network system that the Intelligence Section used, so that other members of the section would have access while he was on leave. Although sharing of passwords was against CAF communication security policy, the practice developed during the

previous ROTO, and Maj.(r) Beddows had authorized it to ensure timely access to intelligence information in situations where personnel were absent. This breach of policy resulted in an investigation. Subsequently, a common email account was created for the J2 section and Maj.(r) Beddows directed that the practice of sharing passwords cease.

[12] Toward the end of January 2013, a member of the J2 section under Maj.(r) Beddows' command reported to the Camp Sergeant Major [CSM] that he was frustrated with Maj.(r) Beddows' leadership, and that there were morale issues in the section. The CSM decided to appoint one of Maj.(r) Beddows' subordinates as the new J2 Sergeant Major and directed him to conduct an informal investigation into the situation in the section and to meet with Maj.(r) Beddows to inform him of issues that needed to be addressed.

[13] Several events occurred on April 28, 2013 that set the stage for the decision to repatriate Maj.(r) Beddows. First, a sexual harassment complaint naming him as the wrongdoer was submitted to Maj.(r) Beddows's CO. The essence of the complaint is that Maj.(r) Beddows allegedly made comments about the female complainant's appearance and stared at her inappropriately, making her feel uncomfortable. The complainant alleged that she no longer felt comfortable being in the same room with him, even when other people were around. Maj.(r) Beddows did not receive a copy of this complaint at this time, but he was advised of it by his CO.

[14] Second, Maj.(r) Beddows was issued a Personal Development Report (essentially a performance evaluation) that noted several strengths as well as areas for development. Third, he

was issued a Recorded Warning for performance deficiency relating to his failure to take action as the Commander of the J2 section to stop the sharing of passwords for the classified network. Although the RW notes that the issue had already been addressed, Maj.(r) Beddows was directed to take a more active role as leader of his section to prevent any further breaches of communication security policy.

[15] Maj.(r) Beddows says that on the following day he was removed from his position as J2, his personal weapons were confiscated, and he was directed to not have any further contact with his former subordinates.

[16] On May 3, 2013, Maj.(r) Beddows received a Notice of Intention to Initiate Repatriation, which stated that it was based on the Personal Development Report and the Recorded Warning that had been issued to him on April 28, 2013. The next day, a Military Police investigation was commenced regarding Maj.(r) Beddows' alleged misuse of his weapon. He was said to have drawn his pistol and waved it at his personal computer on or about March 10, 2013.

[17] Two days later, on May 5, 2013, Maj.(r) Beddows submitted his written response to the Repatriation Notice, stating that the Personal Development Report and Recorded Warning had only been issued six days prior to the issuance of the Notice and so he had not had time to address any of the issues raised in the Development Report, and the password-sharing incident that formed the basis for the Recorded Warning had been addressed four months earlier. He argued that these issues were not a sufficient basis to warrant repatriating him from the posting. In addition, Maj.(r) Beddows stated that the other allegations mentioned by the CO (referencing

the sexual harassment allegation and the alleged misuse of a weapon incident) had not been disclosed to him in writing, and therefore he was unable to respond to them. Maj.(r) Beddows did not request reinstatement to the J2 position but instead asked that he be allowed to remain in theatre at a different location until the investigations into these allegations were completed.

[18] The following day, May 6, 2013, the CO submitted a Repatriation Request Form to the Commander of the Canadian Contribution Training Mission – Afghanistan, stating: "[Maj.(r) Beddows] has been displaying below average leadership and poor decision making resulting in a loss of confidence from his subordinates and superiors." That same day, the CSM and the subordinate he had asked to conduct the investigation into the section's morale provided written statements regarding the issues and actions taken in late January 2013. The CSM's report noted that after the subordinate's investigation and meeting with Maj.(r) Beddows, he had noted a major improvement in the attitude and morale of personnel in the section.

[19] On May 7, 2013, the CO issued a Security Clearance Reliability Status Change of Circumstance Report, stating that the Chain of Command had determined that Maj.(r) Beddows had exercised poor judgment and a lack of trustworthiness. As a consequence of this, Maj.(r) Beddows was denied access to all network computer systems in theatre with the exception of the Defence Wide Area Network.

[20] The following day, May 8, 2013, Maj.(r) Beddows submitted a response to the CO's repatriation request. He argued that the issues raised in the Development Report and Recorded Warning had been addressed and the allegations, which were apparently under investigation,

were unproven and should not lead to his repatriation. Despite this, Maj.(r) Beddows indicated that, given all of the circumstances, he believed it was not in his or his family's best interest for him to remain in theatre, and he requested a Category A repatriation (for career or administrative activities instead of Category D (a repatriation when the member's continued presence is or could potentially be detrimental to the operational effectiveness of the deployed force).

[21] On May 9, 2013, a Category D Repatriation Order, signed by the Commanding Officer, Canadian Contribution Training Mission – Afghanistan, was issued to Maj.(r) Beddows ordering his immediate repatriation. The Order stated that Maj.(r) Beddows' Chain of Command had lost confidence in his ability to perform effectively in theatre and that the circumstances met the criteria for a Category D repatriation.

[22] The following day, May 10, 2013, Maj.(r) Beddows was repatriated from Operation ATTENTION – ROTO 2.

[23] To complete the background, it is necessary to outline the steps taken on the harassment complaint and the investigation into the alleged misuse of a weapon.

[24] On the harassment complaint, although the complaint was dated April 28, 2013, Maj.(r) Beddows only received a copy on June 3, 2013, after his repatriation to Canada. Following some back and forth over who would take responsibility for dealing with the complaint, it was decided that Canadian Joint Operations Command Headquarters would take the lead. On January 21, 2014, Maj.(r) Beddows received clarification on the four allegations of harassment to which he

was asked to respond. He provided his response on February 5, 2014, denying all of the allegations.

[25] On March 7, 2014, the investigation into the harassment complaint was closed, finding that harassment did not occur. The report indicated that following a situational assessment, three of the four allegations were found to not meet the criteria for harassment, and that there was insufficient evidence to conclude that the fourth incident had occurred. On that basis, the CO responsible for the matter found that harassment had not occurred, and closed the file. However, the Officer went on to "remind [Maj.(r) Beddows] to be conscious of his actions and comments and think about how they may be interpreted negatively, regardless of his intent."

[26] Regarding the alleged weapons offence, on October 2, 2013, the Military Police investigation found that the incident was “Founded Not Cleared”, and there is no indication of any follow-up being taken in relation to the incident.

[27] As noted earlier, Maj.(r) Beddows filed a grievance about his repatriation on May 26, 2014. He said that his CO in theatre had a bias against him as demonstrated by his dismissive and disrespectful treatment of him in front of his subordinates. Maj.(r) Beddows provided statements from colleagues in theatre confirming this pattern of mistreatment by the CO. He argued that this bias tainted the way the CO handled the allegations made against him regarding his performance, as well as the sexual harassment allegation and the alleged weapons incident. Maj.(r) Beddows sought a variety of measures to repair the damage done to his reputation and career.

[28] In early November 2014, the Initial Authority rejected Maj.(r) Beddows' grievance because it had been submitted six months past the time limit. Maj.(r) Beddows then submitted additional information explaining why he delayed filing his grievance, and requested that it be accepted in the interests of justice. Maj.(r) Beddows explained that he had previously submitted a written a request for Redress of Grievance, which therefore met the time limit for submission. In February 2015, the Final Authority rejected Maj.(r) Beddows' grievance because it was filed after the time limit. Maj.(r) Beddows sought judicial review of this decision, and in October 2015, this Court granted his application and returned the matter for reconsideration by a different decision-maker. The Federal Court of Appeal upheld the outcome of this decision in November 2016, but for different reasons (which are not relevant to the current matter). The Court of Appeal returned the matter to the CDS for reconsideration, but did not award costs.

[29] Maj.(r) Beddows then filed a second grievance on February 17, 2017, seeking reimbursement for his legal fees associated with the appeal of the refusal to accept his first grievance. This was denied by the CDS acting as FA, and Maj.(r) Beddows' application for judicial review was refused by this Court and his appeal to the Court of Appeal was dismissed.

[30] On May 5, 2017, Maj.(r) Beddows' original grievance regarding his repatriation from Afghanistan was referred to the External Review Committee. Its decision, issued on February 21, 2018, is largely mirrored by the final decision of the A/CDS, which is reviewed in some detail in the next section, and so it will not be reviewed here. At this point, it is sufficient to note that the Committee largely agreed with the claims set out in the grievance, and recommended a range of remedial measures to redress the harms done to Maj.(r) Beddows.

[31] One final point should be mentioned noting here: on October 10, 2020, Maj.(r) Beddows retired from the CAF and ended his military service.

[32] With this background, we turn to the decision of the A/CDS on Maj.(r) Beddows' grievance.

## III. Decision Under Review

[33] On October 18, 2021, the A/CDS acting as FA in the grievance process issued his decision upholding Maj.(r) Beddows' grievance and granting a number of remedies that he had sought. This decision forms the basis for the application for judicial review before the Court.

[34] The decision begins by describing Maj.(r) Beddows' grievance: "You contend that your removal and repatriation were unsubstantiated and inappropriate, and that, as a result, your career and reputation suffered grievous harm." The decision then outlines the redress sought, before tracing the most recent aspects of the procedural history, noting that Maj.(r) Beddows had the opportunity to make submissions to him on the Review Committee's report and recommendations. The A/CDS confirmed that as the FA, he had considered the case *de novo*: "In other words, any previous decision has been set aside, and I have made a new determination on the matter…"

[35] The A/CDS indicated that despite the fact that the grievance was originally filed beyond the legislated time limit, he had decided to accept it, in the interests of justice. The decision then sets out a succinct summary of the findings:

> After considering your grievance, I determine that you have been aggrieved and I am prepared to partially grant the redress you seek. I find that in addition to not being accorded the procedural fairness that is warranted, there is a discrepancy between the facts concerning the timing of events and the allegations that you "[had] been displaying below average leadership and poor decision making[,] resulting in a loss of confidence from [your] subordinates and supervisors."° As such, I find that, on a balance of probabilities, the manner in which you were repatriated to Canada was unfair. Consequently, I am prepared to grant redress to remedy your situation as best I can.

[36] The A/CDS then listed the remedies he was granting, including re-categorizing the repatriation to a Category A, removing the Personal Development Report and Recorded Warning from Maj.(r) Beddows' personnel file, and removing other records relating to the deployment, including the harassment complaint and investigation.

[37] The A/CDS's key findings can be grouped under the relevant incidents or actions that relate to the grievance, which are set out below.

A. *The Repatriation decision*

[38] The A/CDS finds that the decision did not comply with CAF policy because Maj.(r) Beddows was denied procedural fairness in that he was not provided with sufficient information

about all of the grounds relied on in making the decision, nor was he provided a reasonable opportunity to provide representations. The decision goes on to state:

> Moreover, I find, as did the Committee, that much of the reasoning used to reach their decision is seriously flawed and that it was more likely than not influenced by a negative personal bias held against you by your superior. I agree with the Committee that the chain of command's lack of proper and timely intervention raises doubts as to the necessity and urgency to repatriate you months after many of the events had occurred. As a result, I determine that you have been aggrieved by the maladministration of your repatriation from theatre.

B. *Was repatriation justified in the circumstances?*

[39] The A/CDS conducted an independent review of the grounds on which the repatriation decision was based.

[40] Starting with the Recorded Warning, the A/CDS found that CAF policy was not followed because it was not issued within a reasonable period of time after the password-sharing incident, and Maj.(r) Beddows was not given time to overcome any identified deficiencies, since the Notice of Intention to Repatriate was issued to him the day after he received the Recorded Warning. The delay between the incident and the Warning, contrasted with the speed with which it was followed by the Repatriation Notice, led the A/CDS to question the intent behind it. The A/CDS agreed with the External Review Committee that “it is more likely the chain of command issued you the Recorded Warning to ‘build a case’ to support their predetermined decision to repatriate you from theatre.” In addition, the A/CDS noted that Maj.(r) Beddows had taken proactive steps to find a technical solution to the problem he had inherited from the previous

rotation, and had rectified it. The Recorded Warning was therefore null and void, and the A/CDS ordered it to be removed from Maj.(r) Beddows personnel files.

[41] On the merits of the decision to repatriate Maj.(r) Beddows, the A/CDS noted that four main reasons were cited by Maj.(r) Beddows' chain of command to justify the decision: the password-sharing event; concerns regarding Maj.(r) Beddows' leadership of the J2 section; the harassment complaint; and the weapons incident. In light of his previous findings that the Recorded Warning was null and void, the A/CDS stated he would not consider the password-sharing incident in assessing the repatriation decision.

[42] Regarding the issues of morale and dissension in the J2 section, the A/CDS listed his concerns with the approach that was taken to address these matters. The fact that the CSM took it upon himself to appoint one of Maj.(r) Beddows' subordinates as the J2 Sergeant Major, and then directed him to conduct an investigation and meet with Maj.(r) Beddows to discuss these issues, gave rise to three concerns. First, it likely undermined Maj.(r) Beddows' credibility as a leader in the eyes of his subordinates. Second, the CSM overstepped his bounds: "It was highly unprofessional, not to mention inappropriate, to have a subordinate conduct an investigation into your leadership and then proceed to counsel you on your shortcomings." Third, the A/CDS found that Maj.(r) Beddows' supervisor had a personal bias against him, which manifested in part by being distant and failing to provide support, guidance, or mentorship. The A/CDS noted that Maj.(r) Beddows had taken some responsibility for the leadership challenges he encountered early on in the deployment, but also that he had worked to overcome them. The improved morale within the section was noted by the CSM in his report to the CO.

[43] The A/CDS expressed some concern that Maj.(r) Beddows was not aware of the morale problems in his section, stating that "(a)s a leader, you ought to have sensed that morale was poor in your organization and taken proactive measures to correct it". Despite this, he concluded that this did not excuse the actions taken by the chain of command, which he found had "severely undermined [Maj.(r) Beddows'] ability to effectively lead [his] section and that the situation deteriorated as a result."

[44] In relation to the harassment complaint, the A/CDS determined that Maj.(r) Beddows' chain of command in theatre had mishandled the matter, and that the severity of the allegations were "greatly exaggerated and that they were used as a means to support and justify your repatriation."

[45] Finally, on the weapons misuse incident, the A/CDS noted that the allegation was that Maj.(r) Beddows had unholstered his pistol and waved it at his computer on March 10, 2013. However, the incident was not reported until May 4, 2013, and when asked why, the member who witnessed it stated that he had not viewed Maj.(r) Beddows as dangerous and he did not want to put himself in a position that could be perceived to be a conflict of interest. However, the member stated, "[a]fter talking to the [CSM], he convinced me to report the incident because Maj Beddows had several complaints against him from different members…"

[46] The A/CDS noted that the Military Police investigation did not result in any charges, but rather the matter was "Founded Not Cleared", which he understood to mean that the events occurred as described. While acknowledging that any weapons offence is serious and cannot be

condoned, the A/CDS found that "the act of soliciting the report almost two months after the incident had occurred to be evidence that your chain of command was building a case to justify their predetermined decision to have you repatriated." He concluded that the incident, as reported, was insufficient to justify Maj.(r) Beddows' repatriation.

[47] As for Maj.(r) Beddows' allegation that he had been subject to harassment by his supervisor, LCol MacDonald, the A/CDS found that no harassment complaint was filed about these alleged incidents, and thus he was not in a position to render a decision on that aspect of the matter.

[48] Having concluded that Maj.(r) Beddows had been mistreated by his chain of command, and that his repatriation from Afghanistan was not justified, the A/CDS turned to the appropriate redress. Noting that Maj.(r) Beddows had submitted a lengthy, detailed and growing list of requested redress measures, the A/CDS found that the ultimate decision rests with him as the FA in the grievance process. The following remedies were ordered:

- Repatriation Category: will be changed from "D" to "A" and all documentation concerning the original repatriation decision to be removed from Maj.(r) Beddows' files;

- Removal of Documentation: all documentation pertaining to Maj.(r) Beddows' early repatriation will be removed from his files; in addition, the Recorded Warning,

Personal Development Report and Security Clearance/Reliability Status Change of Circumstances Report are removed from his files;

[49] The A/CDS declined to order a number of redress measures that Maj.(r) Beddows had requested, including:

- Requests for Investigation: the A/CDS refused to order investigations into the conduct of Maj.(r) Beddows' former CO and the complainant in the harassment investigation. On the harassment allegation, the A/CDS stated:

> With respect to the harassment complainant, I see no reason to initiate an investigation into the complainant's conduct. I realize that you were taken aback and were personally affronted by the submission of her complaint against you. However, l must remind you that it was her fundamental right to submit such a claim. While, in this instance, the harassment complaint process was fraught with errors, I find that the complaint process was eventually concluded in accordance with policy

- In relation to the conduct of Maj.(r) Beddows' former supervisor, the A/CDS concluded:

> …I see no evidence in your file that would lead me to conclude that [LCol MacDonald's] actions were malicious or criminal in any way. I find that, on a balance of probabilities, the personality conflict between the two of you led to an erosion of trust and seeded his loss of confidence in, and bias towards, you. Once confidence and trust are lost, they are extremely difficult to regain. For this reason, and based on the fact that these events occurred more than nine years ago, I see little value in ordering an investigation at this time and will therefore not order one.

- Theatre Personnel Evaluation Report/Reconvening of 2013 Merit Board: Maj.(r) Beddows claimed that these events harmed his opportunity for promotion, and asked that the 2013 Merit Board be reconvened to properly assess his performance and potential. The A/CDS agreed that the 2012-2013 Performance Evaluation Report was likely tainted by the unfair treatment, and ordered that it be removed from his files and replaced with a Report showing that Maj.(r) Beddows was exempt from evaluation during this period. Based on this, the A/CDS also directed that an assessment take place to determine whether a supplementary Merit Board was required, but declined to call one immediately.

- Financial Compensation: Maj.(r) Beddows had requested the pay, allowances, and financial benefits he lost as a consequence of the early repatriation, including the tax-free status he lost by being forced to leave Kabul, Afghanistan early. The A/CDS declined to grant this, because he "[does] not have the authority to grant pay, allowances and financial benefits under these circumstances."

- Opportunity to Share Lessons Learned: Maj.(r) Beddows had asked to be given a formal opportunity to contribute to the ROTO 2 After Action Report and lessons learned, however, the A/CDS found that this had been rendered moot by the significant passage of time and the end of the Canadian mission in Afghanistan.

- Request for Promotion and Restoration of Credibility and Reputation: Maj.(r) Beddows had requested a promotion to the rank of Lieutenant-Colonel, with an

> effective date of January 1, 2016. Noting that competition for promotion to LCol is intense, and based on his review of Maj.(r) Beddows' performance reports from before and after his deployment, the A/CDS concluded that he would not have scored high enough for promotion in 2016. While the A/CDS recognized that based on his review of the file, Maj.(r) Beddows was a strong performer with strong potential, he also noted "some self-admitted lapses in leadership during [Maj.(r) Beddows'] deployment." Overall, the A/CDS found that Maj.(r) Beddows' performance evaluations were "progressive and strong, but they were not exceptional." Based on this, he declined to order a promotion.

[50] In summary, the A/CDS acknowledged that he had not granted Maj.(r) Beddows all of the redress he had sought, but stated, "I sincerely believe that what I have granted you is fair."

[51] Maj.(r) Beddows seeks judicial review of this decision.

## IV. Issues and Standard of Review

[52] Maj.(r) Beddows raises three main issues: that the decision is unreasonable on several different grounds; that he was denied procedural fairness because of a failure to make full disclosure; and that the A/CDS did not have the legal authority to make the decision in question. This is a useful way to group the submissions that Maj.(r) Beddows put before the Court, and I will address them in that order.

[53] The standard of review that applies to the merits of the decision is reasonableness, under the framework set out by the Supreme Court of Canada in *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[54] There are many dimensions to judicial review under the reasonableness standard as articulated in *Vavilov* and applied in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*]. The most important guideposts for this case are that the review must begin with the reasons for decision, and assess whether the decision-maker (here, the A/CDS) applied the right law to the important facts of the case, and whether the decision-maker's chain of reasoning is internally coherent and rational. Put another way, the relevant law and the key facts of the case establish the space within which the decision must be made (*Vavilov* at paras 85, 99; *Canada Post* at para 31). If a review indicates that the decision-maker went outside of that box, by applying the wrong law, or not taking into account the most important relevant facts, then the decision may be found to be unreasonable.

[55] In addition, the process of analysis must show that the decision is justified. This includes whether a reviewing court can follow the internal logic of the decision and understand how the decision-maker came to its conclusion (*Vavilov* at paras 81, 85). One way of describing this was set out by Justice Rennie in *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 at paragraph 11, when he stated that a reasonable decision is one where a reviewing court can "connect the dots on the page [so that] the lines, and the direction they are headed, may be readily drawn." If there are no dots, or their direction is not clear, then the decision may well be found to be unreasonable.

[56] The burden is on the Applicant to satisfy the Court "that any shortcomings or flaws relied on… are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100, cited with approval in *Canada Post* at para 33). A reviewing court is not to supplement its own reasons or make findings of fact that were not made by the decision-maker (*Vavilov* at para 97).

[57] In addition, prior case-law has confirmed that the CDS is entitled to a high degree of deference from the reviewing Court: *Higgins v Canada (Attorney General)*, 2016 FC 32 at paras 75-77, followed in *Bond-Castelli v Canada (Attorney General)*, 2020 CF 1155 [*Bond-Castelli*] at para 31, followed in *Filizola v Canada (Attorney General)*, 2021 FC 1368 [*Filizola*] at para 45. Under this approach, "a wide margin of appreciation must be accorded to the FA in exercising its grievance jurisdiction" (*Bond-Castelli* at para 31, followed in *Filizola* at para 45).

[58] Questions of procedural fairness attract a standard that is similar to correctness. The ultimate question to be answered by a reviewing Court is whether the procedure was fair in all the circumstances, and that this is similar to correctness review (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific*] at paragraphs 54 and 56.

[59] On the issue of whether the A/CDS acted beyond his statutory authority in making the decision under review, no standard of review will be applied because the matter is being raised for the first time before the Court. Maj.(r) Beddows raises a binary question: either the A/CDS had the requisite authority or he did not..

[60] One final administrative matter arose regarding the style of cause. The style of cause will be amended, with immediate effect, to reflect that the appropriate respondent in this matter is the Attorney General of Canada, rather than "Canada (Attorney General) as representative of General Wayne Eyre, Acting Chief of Defence Staff of the Canadian Armed Forces". This has no practical impact on the nature or scope of the proceeding, nor does it limit the remedies the Court can award if it upholds the application.

## V. Analysis

### A. *Is the decision unreasonable?*

[61] Maj.(r) Beddows submits that the decision is unreasonable because:

i. the A/CDS's finding that his CO did not act with "malice" is not consistent with the evidence;

ii. the extraordinary delay in the process has compounded the injustice and demonstrates both a failure to apply the law and bad faith on the part of the Chain of Command; and

iii. the failure to provide him full redress has perpetuated the wrongdoing.

[62] I will discuss these claims in turn, starting with a summary of the parties' arguments before conducting my own analysis.

#### (1) The finding that the CO did not act with malice

[63] Maj.(r) Beddows argues that the reasoning behind the finding that LCol MacDonald did not act with malice is seriously flawed and cannot be allowed to stand. He contrasts the ongoing reputational damage he and his family have suffered with the fact that LCol MacDonald received a prestigious posting to Washington D.C., despite the findings made by the A/CDS.

[64] In connection with his grievance, Maj.(r) Beddows had asked for an investigation into the "actions, conduct and treatment" of LCol MacDonald to determine whether his treatment, including his actions towards Maj.(r) Beddows and execution of administrative processes to repatriate him satisfied the criteria for breach of service discipline, including criminal harassment and abuse of subordinates as defined by the Queen's Regulations and Orders [QR&O].

[65] Maj.(r) Beddows notes that the A/CDS found that the actions of LCol MacDonald were motivated by bias, involved an attempt to bolster a pre-determined decision by soliciting reports and complaints from Maj.(r) Beddows' subordinates, and exaggerated the gravity of the allegations made against him, all of which was contrary to CAF rules and policies. In light of these findings, Maj.(r) Beddows submits that the conclusion that LCol MacDonald did not act with malice cannot stand. He says that he was the J2 for ROTO 2, the Senior Intelligence officer for the mission, and was wrongfully removed from this career-defining posting in an unwarranted and unfair manner. At the hearing, Maj.(r) Beddows stated that these actions are the very definition of malice.

[66] In support of his argument that the wrongdoing by LCol MacDonald was more than sufficient to warrant an investigation, Maj.(r) Beddows points to the evidence of colleagues who

observed the CO's treatment of him during the deployment. These statements corroborate his claims that he was mistreated by his CO, who treated him in a demeaning manner and criticized him openly in front of subordinates, all of which is contrary to CAF policy. Maj.(r) Beddows claims that the evidence supports the conclusion that LCol MacDonald deceived his superiors when he advanced the Repatriation Report based on complaints he had instigated, and whose gravity he greatly exaggerated. He says that the Chain of Command did not catch this or prevent it, and so they acted on the basis of these unjustified claims.

[67] Maj.(r) Beddows submits that the A/CDS's decision softens the findings of the External Review Committee regarding the sexual harassment complaint. The decision fails to mention that the Committee Report found that the "essential elements of a [sexual harassment] complaint… are not present, nor do the allegations, as stated, meet the definition of harassment, in my view." He argues that by not referring to the totality of the External Review Committee's findings, the A/CDS failed to give proper effect to the misuse of the harassment process that was relied on by his Chain of Command in the repatriation process.

[68] Additionally, Maj.(r) Beddows submits that the A/CDS's finding that he had not submitted a harassment complaint relating to LCol MacDonald's conduct was wrong. He points to the copy of the harassment complaint he filed that is in the record before the Court.

[69] Based on the totality of this, Maj.(r) Beddows argues that the finding that LCol MacDonald did not act with malice is unreasonable, and this is important because the A/CDS cited this as a basis for not ordering an investigation into the CO's conduct. On this point, Maj.(r)

Beddows asked the Court to issue a directed verdict requiring the FA to make findings that his CO had acted with deliberate malice against him, that the decision be changed to state this clearly and unequivocally, and that all documents prepared by the CO must be assessed on that basis.

[70] The Respondent contends that the decision is reasonable, noting that it is a lengthy, detailed, and thorough review of Maj.(r) Beddows' grievance, which largely upheld his complaints. As a general matter, the Respondent asserts that the redress granted by the A/CDS is responsive to his findings about the circumstances surrounding Maj.(r) Beddows' repatriation from theatre.

[71] On the specific issue of the failure to find malice, the Respondent points out that the A/CDS clearly found that the manner in which Maj.(r) Beddows was repatriated from Afghanistan was not in accordance with CAF policies, and was based on flawed reasoning that was more likely than not influenced by a negative personal bias. The Respondent argues, however, that while the A/CDS acknowledged he had the authority to order an investigation, he found that there was no evidence that LCol MacDonald's actions towards Maj.(r) Beddows were "malicious or criminal in any way." Instead, he found that the mistreatment Maj.(r) Beddows experienced was the result of a personality conflict, which led to his CO's loss of confidence in and bias towards him. Because of this and the fact that the incident had occurred nine years ago, the A/CDS declined to order an investigation, a decision that the Respondent submits was reasonable in the circumstances.

[72] Dealing with the specific claim about the lack of a finding of malice, the Respondent argues that “malice” and “bias” are not synonymous, noting that the Oxford English Dictionary defines “malice” as “the intention or desire to do evil or cause injury to another person; active ill will or hatred.” The Respondent says that while bias and malice can exist in tandem, a finding of personal bias does not necessarily entail a finding of malice. Therefore, according to the Respondent, the A/CDS’s finding that the repatriation process was coloured by LCol MacDonald’s personal bias, but that the decision to repatriate was not motivated by malice, is reasonable based on the evidence. Furthermore, it is not clear that a decision to launch an investigation would follow automatically even if a finding of malice was made. Based on all of this, the Respondent submits that the decision is reasonable.

[73] In the alternative, the Respondent submits that this case does not fall within the narrow and exceptional circumstance where a directed verdict is warranted. Furthermore, the Respondent contends that the type of directed verdict requested by Maj.(r) Beddows is inappropriate.

[74] On this question, I find aspects of the submissions by both sides to be compelling. I accept that the term “malice” is not completely synonymous with the word “bias”. However, I also see the force in the Applicant’s argument that the evidence on the totality of LCol MacDonald’s conduct towards him can only be interpreted as involving elements of bad faith, animosity, and ill will, the type of behaviour that would normally be associated with the concept of “malice.” On this, I note that the dictionary definition of malice relied on by the Respondent includes “the intention or desire to… cause injury to another person.”

[75] LCol MacDonald was undoubtedly aware that serving in Afghanistan as J2 for Operation ATTENTION - ROTO 2, was a significant and prestigious posting for Maj.(r) Beddows, and that his early repatriation without any public explanation would cause him some degree of humiliation and loss of reputation. Because of this, it is not a leap to see why Maj.(r) Beddows concludes that this conduct involved at least some degree of malice.

[76] Having acknowledged the force of the Applicant's argument on this point, I must immediately underline that it is not my role to make such a finding on judicial review, and I do not do so. Rather, the question is whether the A/CDS's decision not to order an investigation is unreasonable. That is an entirely different question from whether LCol MacDonald's conduct involved a degree of malice (which is not the subject of this judicial review). On this point, I agree with the Respondent that the decision clearly demonstrates that the A/CDS was alive to the issue, grappled with the evidence, and exercised his discretion not to launch an investigation.

[77] While another decision-maker might well have concluded that LCol MacDonald's actions were tainted by malice, this, in itself, would not necessarily compel the launch of an investigation. There is no allegation of criminal wrongdoing; the A/CDS considered the evidence in the record, including that many years had passed since the incident, and explained why he was not ordering an investigation. This aspect of the decision reflects an engagement with the facts, in light of the law, and the reasoning is explained in a logical manner. That is all that reasonableness requires. The fact that Maj.(r) Beddows disagrees with this finding is not a basis to find it unreasonable.

[78] In the end, the decision of whether to launch an investigation involves the exercise of a wide-ranging discretion, and many different considerations are pertinent to this assessment. Maj.(r) Beddows has not pointed to any irrelevant or extraneous factor that was considered in the A/CDS's decision on this point, and none emerges from a review of the evidence. Instead, the decision shows that the A/CDS considered and weighed the evidence, albeit not in a fashion that Maj.(r) Beddows agrees with, and then decided not to order an investigation. Given the wide latitude accorded to the FA in this context, I am not persuaded that this is an unreasonable finding.

[79] On this point, it is important to acknowledge that while the A/CDS's statement that Maj.(r) Beddows had not filed a harassment complaint against his CO could have been more carefully worded, in substance it was correct. The fact that he had previously filed a harassment complaint regarding specific incidents, alleging that the CO made inappropriate comments (not directed specifically towards Maj.(r) Beddows) is an entirely different matter than the claim that he had been subjected to an ongoing pattern of harassment. On the latter argument, the A/CDS reasonably found that Maj.(r) Beddows had not filed any such wide-ranging complaint, and therefore it could not be dealt with in the context of the grievance.

[80] Furthermore, I am unable to agree with Maj.(r) Beddows that the A/CDS's analysis of the mishandling of the sexual harassment complaint that was filed against him is unreasonable. Maj.(r) Beddows points to the findings of the External Review Committee, and rightly notes that the A/CDS's decision does not track that report word-for-word. However, that does not make the decision unreasonable. The A/CDS's decision summarizes the key elements of the history and

clearly finds that Maj.(r) Beddows' Chain of Command mishandled it. Based on this, the report is ordered to be removed from Maj.(r) Beddows' personnel file. It is difficult to see how this in any way amounts to "softening" the treatment of this issue. I am unable to find this aspect of the reasoning in the decision to be unreasonable, even if the decision does not exactly mirror the External Review Committee's findings.

[81] For these reasons, I am unable to find that the A/CDS's decision not to order an investigation into LCol MacDonald's actions was unreasonable.

B. *The delay in dealing with the grievance*

[82] Maj.(r) Beddows points out that the decision on his grievance was made 2,072 days after his initial request. He indicated that at the time of the hearing before the Court, 3,289 days had passed since he filed his grievance and he had been retired from the CAF for 373 days. He observed, with regret, that the day of the hearing before the Court marked the ninth anniversary of his arrival in Canada after his repatriation from Afghanistan. He notes that World War II only lasted six years, and there is no conceivable reason for the handling of his case to have taken longer.

[83] Maj.(r) Beddows submits that the very lengthy delay is unreasonable, and demonstrates bad faith, in particular because he was advised that there is no time limit that binds the decision-maker, which is contrary to the NDA requirement that grievances be dealt with expeditiously. He relies on section 29.11 of the NDA, which states: "The Chief of Defence Staff is the final

authority in the grievance process and shall deal with all matters as informally and expeditiously as the circumstances and the considerations of fairness permit." Maj.(r) Beddows argues that the delay in his case is flagrantly contrary to this provision.

[84] As Maj.(r) Beddows notes, the Supreme Court of Canada laid down strict rules governing delay in the criminal law context in *R v Jordan*, 2016 SCC 27, [2016] 1 SCR 631 [*Jordan*]. He points out that this reflects the age-old maxim that "justice delayed is justice denied." Because of the egregious delays that have already occurred in this case, Maj.(r) Beddows contends that he has been denied procedural fairness, and the harm has been compounded because the ability to provide him adequate redress was diminished once he retired. As Maj.(r) Beddows stated in his written submissions, "How can you restore a professional reputation for a person who is retired? How do you restore lost opportunities after taking eight years to decide an internal workplace dispute?"

[85] In light of these delays, Maj.(r) Beddows asks that if the Court returns the file to the CDS for reconsideration, strict time limits be imposed to ensure that the matter is dealt with expeditiously, as required by the NDA.

[86] The Respondent argues that the period of time between the filing of the original grievance and the decision of the A/CDS was not inordinate, and that Maj.(r) Beddows has not demonstrated any prejudice arising from the passage of time. Noting the case-law that has found that delay alone does not constitute a breach of the duty of fairness (*Blencoe v British Columbia (Human Rights Comission)*, 2000 SCC 44 at paras 121-122), the Respondent submits that the

majority of the evidence in this case was gathered soon after Maj.(r) Beddows' repatriation, and since that time he has had multiple opportunities to provide further evidence and submissions. The A/CDS cannot be held accountable for the previous delays, which resulted from decisions taken by his predecessors and their subordinates, as well as the time taken by court challenges and appeals.

[87] One can understand why Maj.(r) Beddows feels aggrieved by the very long time it has taken for him to obtain a decision on his grievance, and also why he seeks an order that would require any future decision on reconsideration of this matter to be made without undue delay. It cannot be denied that a very long time has passed since he was repatriated from Afghanistan and then filed his grievance.

[88] Maj.(r) Beddows points to the *Jordan* decision as a useful guidepost, even if it relates to criminal rather than administrative proceedings. Taking inspiration from the approach sanctioned by *Jordan* and subsequent decisions relating to criminal law delay, it is important to look at not only the time that has passed, but also the reasons for the delay and who is responsible for said delay. This involves examining each major step in the lengthy procedural history that preceded the final decision.

[89] The key elements of this procedural history include the following steps, with the approximate timeline for each:

- Grievance filed to initial rejection by FA because it was filed beyond the time limit – May 2014 to February 2015;

- Judicial review and appeal of the rejection decision – March 2015 to November 2016

- Second grievance and appeal – February 2017 to October 2020;

- Reconsideration of original grievance – referral to External Review Committee in May 2017, which issued its report in February 2018 – final decision by A/CDS acting as FA October 18, 2021.

[90] It is not necessary to conduct a forensic examination of what transpired during each of these periods. It is sufficient to note that there have been a number of procedural steps taken along the way, some at the request of the Respondent and some due to the actions of Maj.(r) Beddows. In noting this, I am not assigning any blame or casting any aspersions on either party; each side pursued their rights as they were fully entitled to do. The net effect, however, has been that it took a very long time for the initial grievance to be dealt with on its merits.

[91] Insofar as the law is concerned, delay in administrative proceedings does not, itself, make them unfair. It is only when one side is prejudiced in their ability to participate in the proceeding, for example by the difficulty they face in gathering or presenting their evidence, that the delay may be relied on to quash a decision. In this case, Maj.(r) Beddows does not assert that he suffered this type of prejudice. Instead, he points to the fact that he had retired from the CAF by

the time the A/CDS finally dealt with his grievance, and this limited the types of redress that was practically available. Second, he points to the ongoing and prolonged harm he and his family have suffered because of this unfair and unwarranted stain on his reputation.

[92] Although Maj.(r) Beddows submitted that the delay had the effect of denying him procedural fairness, he did not assert any prejudice in his ability to gather evidence or present his case, and the record demonstrates he had ample opportunity to provide evidence and submissions at each step along the way. In my view, his arguments relate more to the merits of the decision and so they must be assessed under the reasonableness framework set out in *Vavilov*.

[93] Examining the delay with regard to the various steps outlined earlier, I am unable to find that the A/CDS's decision to take the passage of time into account in assessing the appropriate forms of redress was unreasonable. By the time the A/CDS was examining the matter, he could not unwind history, and it would not have been appropriate to ignore the fact that a long time had passed since the incidents in question, that Canada's mission in Afghanistan had come to an end, and that Maj.(r) Beddows had retired from the CAF. These facts were relevant to the A/CDS's decision, and he explained how and why he considered them in making his decision. This is all that reasonableness requires, even though the end result may not seem fair or just to Maj.(r) Beddows.

[94] However, as explained in the next section, I have found the decision is unreasonable in two specific respects and it will be sent it back for reconsideration on these two narrow and specific matters. In doing so, I have agreed with Maj.(r) Beddows' main proposition on this

issue, namely that a timeline should be established for the next decision on these two particular items, to ensure that the matter does not languish in military bureaucracy. In this regard, Maj.(r) Beddows' reliance on the 2021 report by Justice (ret'd) Morris Fish titled the "Report of the Third Independent Review Authority to the Minister of National Defence" on the military grievance process is particularly compelling.

[95] For all of the reasons set out above, I do not find that the delay in this case has caused a denial of procedural fairness, nor was it unreasonable for the A/CDS to take the passage of time and intervening events into account in fashioning a remedy.

C. *The failure to provide complete redress*

[96] This claim lies at the heart of Maj.(r) Beddows' complaint about the decision. He argues that while the A/CDS found that he had been unfairly treated throughout the process that led to the repatriation decision, as well as the handling of the weapons allegation and sexual harassment complaint, he has been denied the type of complete and comprehensive redress that justice requires. Maj.(r) Beddows contends that this flies in the face of the evidence and renders the decision unreasonable.

[97] There are two main elements to Maj.(r) Beddows' argument on this point: he was denied all of the personal relief he was seeking, including a more public acknowledgement that he had been wronged; and the A/CDS's failure to grant appropriate redress perpetuated the harm and

was insufficient to hold wrongdoers accountable for their actions or to prevent this kind of issue from happening again. I will discuss each of these in turn.

[98] Starting with the personal relief aspect, Maj.(r) Beddows focuses on two elements: eliminating the negative references and reports that were used to justify his repatriation, and taking steps to restore his professional reputation. On the first element, he points to the failure to order that all traces of the wrongful repatriation and related reports and assessments be removed from CAF files. He says that the A/CDS's decision to only remove such documents from his personnel file is insufficient, because the ongoing impact of these reports will continue to linger, affecting his reputation as well as his future employment prospects. Maj.(r) Beddows asserts that these reports may impair his capacity to obtain a high level security clearance. He points to documents that he says demonstrate the ongoing negative impact of the stain on his reputation caused by the repatriation decision. For example, although he was advised that he had been considered for a posting abroad, this never happened and after the repatriation incident he was never again given the command of subordinates. According to Maj.(r) Beddows, this demonstrates the ongoing harm caused by the failure to purge the unjustified negative reports from all CAF files.

[99] Maj.(r) Beddows also links the negative and impact to the refusal to order that a letter of apology be issued and circulated within the CAF intelligence community. He notes that he and his family have suffered the ongoing humiliation associated with his unexplained early return from his posting to ROTO 2, which they were unable to dispel because of the length of time it has taken to clear his name. Despite this very public impact on Maj.(r) Beddows and his family,

something he expressed with some emotion at the hearing, the only remedies that were granted were essentially “private” matters such as changing the category of his repatriation or removing some reports from his personnel file. These steps did not put an end to the perpetuation of the harm that followed his early repatriation from Afghanistan. The failure to order that a letter of apology be prepared and circulated allows the enduring negative perceptions and suspicions to continue, despite the clear findings in his favour in the final decision. Worse, he notes that the decision is silent on why this request was refused. Maj.(r) Beddows argues this is insufficient and unreasonable.

[100] Turning to the A/CDS’s failure to act, Maj.(r) Beddows focuses on the sexual harassment allegation, which he claims was entirely unfounded and should have been immediately dismissed. Instead, he points out that its importance was exaggerated and relied on as a main justification for the decision to repatriate him from ROTO 2. He says that the harassment allegation was used by LCol MacDonald as a tool to justify his decision, which amounts to an abuse of process. The failure of the A/CDS to recognize this or to realize that this sort of misconduct, combined with the overall delay in dealing with his grievance, warranted even greater redress in order to mitigate and overcome the accumulated harms to Maj.(r) Beddows’ career, reputation, and standing in the community, is sufficient to make the decision unreasonable.

[101] The Respondent submits that the A/CDS granted Maj.(r) Beddows almost all of the individual redress he had requested, and that the main items he refused involved investigating third parties. According to the Respondent, the removal of the negative reports from Maj.(r)

Beddows' personnel file granted him the essence of the relief he sought, and there is no proof of any ongoing negative impact from any documents that may exist elsewhere in the CAF repository. In addition, the A/CDS did not order an apology, and the Respondent noted that the External Review Committee had similarly not recommended that such an order be issued. Although the final decision does not specifically discuss why an apology is not ordered, the Respondent submits that the A/CDS was clearly aware of the request because he listed it earlier in his summary of the redress that Maj.(r) Beddows had requested. The Respondent argues that even if this is found to be an error, it is not sufficiently serious to warrant overturning the decision, given the totality of the findings and redress that was granted.

[102] On the harassment complaint, the Respondent argues that it is important to draw a distinction between the findings regarding the mishandling of the complaint and investigation, and the filing of the initial complaint itself. The Respondent's argument boils down to this: while the complaint was not handled in an appropriate manner, that does not mean that it was not justified or made in good faith from the perspective of the complainant. The fact that the investigation was ultimately closed does not mean that the original complaint was a fabrication, and the complainant may well have genuinely believed that Maj.(r) Beddows' behaviour was inappropriate and that it constituted harassment.

[103] The Respondent relies on the official document that closed the harassment file, noting that the Responsible Officer relied on the very specific harassment criteria specified in CAF policy. That Policy states that in order for harassment to be established, there needs to have been improper conduct directed at and offensive to another individual in the workplace which the

perpetrator knew or ought reasonably to have known would cause offence or harm. While the report finds that only one of the allegations met these criteria, there were insufficient facts to meet the complainant's burden of proving the incident. Based on this, the report concluded "this event either did not occur, cannot be proven to have occurred, or is simply a matter of mistaken perceptions." The Respondent points out that this is not a finding that the complaint was totally unwarranted, or fabricated by the complainant.

[104] At the outset of my discussion of this element of the case, it is important to return to what reasonableness review requires – and what it prohibits. I am not to step into the boots of the A/CDS and to engage in my own analysis of the redress that is appropriate in light of the findings in the decision. Instead, the question is whether Maj.(r) Beddows has established that the redress aspect of the decision is unreasonable, measured in light of the evidence and the legal and policy framework that governs such matters, and assessing whether the decision explains the result that was reached in a logical and coherent manner.

[105] Applying this approach to the decision made by the A/CDS, for the reasons set out below, while I am not persuaded that many aspects of the redress portion of the decision are unreasonable, I find two fatal omissions that must be re-examined.

[106] Once again, while I might have come to a different conclusion on certain aspects of this and can understand why Maj.(r) Beddows believes that the redress he has been awarded falls short, the decision shows that the A/CDS carefully considered the main requests itemized by Maj.(r) Beddows in his grievance and subsequent submissions. Having done that, the A/CDS

awarded the redress that he decided was appropriate based on all of the circumstances prevailing at the time he made the decision. The analysis and rationale for most aspects of the redress decision is explained in a generally clear and logical manner, with the exception of financial compensation and the apology letter. Except for these two elements, I find the decision on redress to be reasonable.

[107] The redress requested by Maj.(r) Beddows can be grouped into several categories. With respect to each of these, I will summarize the request, the decision, and Maj.(r) Beddows' position on the redress not provided, and then I will explain my decision on each element.

[108] The first type of redress that Maj.(r) Beddows asked for involved the destruction of several types of records, both from his own file and other holdings in the CAF. He asked that the records of the repatriation order be destroyed, as well as the Personal Development Report, the Recorded Warning, and his Personal Evaluation Report for this period, as well as the Security Clearance/Reliability Status Change report. The A/CDS ordered that all of these reports be removed from his file and destroyed in accordance with the *Library and Archives of Canada Act*, SC 2004, c 11. Maj.(r) Beddows argues that this does not go far enough, because versions of these documents will exist in other places, and they may have a negative impact on his career and his ability to obtain a security clearance.

[109] In my view, the failure to order a comprehensive search to locate and destroy any other copies of these documents does not make the A/CDS's decision unreasonable. As I noted during the hearing, there is no evidence that any of the other documents pertaining to this incident have

had a negative impact on Maj.(r) Beddows' career, or his ability to obtain a security clearance. Furthermore, if any of these documents are ever cited or relied on in the future, Maj.(r) Beddows can point to the final decision of the A/CDS, as well as these reasons, to show that the earlier documents are a nullity with no legitimacy, force or effect. The A/CDS acknowledged the harm that had been done to Maj.(r) Beddows through these negative reports, and ordered them removed from his personnel file and destroyed. This was reasonable in the circumstances.

[110] Next, Maj.(r) Beddows sought various types of redress to restore his career and professional reputation, including a change in his repatriation category, and a letter of apology, which he requested be prepared and distributed within the intelligence community as well as to those who served in ROTO 2. He also asked that he be awarded the Afghan Campaign Star, to recognize his service. In addition, Maj.(r) Beddows sought to undo the damage to his career progression by asking that the 2013 Merit Board as well as the Tiering Committee be reconvened, that a special review board be constituted to assess the damage to his career, and that he be promoted to the rank of LCol, with an effective date of January 1, 2016.

[111] As discussed earlier, the A/CDS granted the change in repatriation category that was formalized in a letter placed in Maj.(r) Beddows' personnel file. The A/CDS also directed that Maj.(r) Beddows' Personal Evaluation Report be changed to indicate he was "exempt" during this period. In addition, the A/CDS ordered a case analysis be conducted of Maj.(r) Beddows' file in accordance with the Canadian Forces Selection Board Guidance, Annex E, in order to determine whether a supplementary board should be convened. The A/CDS discussed Maj.(r) Beddows' request for a promotion, but declined to order it given his review of Maj.(r) Beddows'

overall performance both before and after the repatriation, and in light of the very competitive nature of promotion into the rank of LCol. Finally, it should be noted that the A/CDS expressed his regret for the manner in which the repatriation and grievance processes had unfolded. Since Maj.(r) Beddows had already been awarded the Afghan Campaign Star, his service in theatre had been recognized and nothing further was required.

[112] Maj.(r) Beddows argues that the redress granted falls short because it does not specifically recognize that he was maliciously aggrieved by the repatriation decision and all the associated matters. The failure to recognize this led the A/CDS to diminish the impact of harm, and consequently he failed to appreciate the nature and scope of reparations needed to repair the negative consequences on Maj.(r) Beddows' career and reputation. He seeks a directed verdict requiring a formal finding that he was maliciously aggrieved and ordering that the redress must correct the harm done to his reputation to the highest degree possible. Maj.(r) Beddows also asks the Court to order that a letter of apology be prepared and circulated. He notes that the remedies granted were personal and private, but part of the harm that was done to him by the early repatriation was of a very public nature, and therefore the redress should address this aspect of the grievance.

[113] On this point, I begin by pointing out that the A/CDS's decision finds that Maj.(r) Beddows was treated wrongly by a CO whose animosity towards him translated into bias, which then led to a series of steps and decisions that unfairly and wrongly harmed Maj.(r) Beddows' career, reputation, and standing as a senior Intelligence Officer in the CAF. As noted previously, this wrong had not been acknowledged or repaired by the time Maj.(r) Beddows retired, and so

his 35 year career of service in the CAF came to an end with no resolution, and with this cloud hanging over him and his family. In the decision, the A/CDS acknowledges this and expresses regret for it.

[114] The question before me is whether the redress granted by the A/CDS is unreasonable because it fails to recognize the nature of the harm done to Maj.(r) Beddows and his career, and it therefore falls short of providing the type of redress needed to repair the wrong that was done to him.

[115] I am unable to find in favour of Maj.(r) Beddows on all of his arguments, for several reasons. First, the A/CDS took into account almost all of the various remedies that Maj.(r) Beddows had sought – these are listed in detail in the decision, and were clearly present in the mind of the A/CDS at the time the decision was taken. Second, the A/CDS granted many of the specific remedies that Maj.(r) Beddows asked for, by changing the repatriation category, ordering the removal and destruction of various reports and records from his personnel file, and by ordering that an analysis be undertaken to determine whether a selection board should be convened. These orders correspond, in large measure, to what Maj.(r) Beddows had requested.

[116] While it is true that Maj.(r) Beddows says that these remedies do not go far enough, I am not persuaded that the A/CDS's exercise of discretion in this regard was unreasonable. For example, I cannot find that the failure to order that a wider search for other copies of the documents was unreasonable, in the circumstances. Maj.(r) Beddows' main complaint concerns the impact of the mistreatment on his career. The removal and destruction of the repatriation

material, Recorded Warning and negative Personal Evaluation Report deals with the documents in his record that are most relevant to that complaint. That is substantial relief, even if Maj.(r) Beddows feels that it should have gone further.

[117] On this point, it is pertinent to note that the A/CDS took into account the facts as he understood them at the time of the decision. It was reasonable for the A/CDS to consider the passage of time from the filing of the original grievance in assessing the appropriate redress. In particular, as Maj.(r) Beddows acknowledged at the hearing, the fact that he had retired from the CAF by the time the decision was taken restricted the remedies that were available to the A/CDS. While it may be unfortunate that a decision was not made sooner so that more of the harm could have been mitigated, the A/CDS cannot be held responsible for that and it was appropriate for him to take these facts into account.

[118] In light of the evidence in the record, in particular the lack of evidence that Maj.(r) Beddows has been denied a security clearance or that his post-retirement career opportunities have been affected by any other records that may still exist, and considering the wide degree of latitude that is to be accorded to the FA on a judicial review of a grievance decision, I am not persuaded that these elements of the redress decision are unreasonable.

[119] However, there are two gaps in the decision, which Maj.(r) Beddows says are sufficiently important to call into question whether the A/CDS ever really considered the totality of his

claim. From the very outset of this process, Maj.(r) Beddows has been clear: he wants to publicly clear his name, and he wants to be compensated for the tangible financial losses he suffered as a consequence of the unjustified decision to repatriate him early from his deployment. This is evidenced, for example, in the original grievance document Maj.(r) Beddows submitted on July 9, 2014, where he included the following requests for redress:

> 4. j. I request that I be granted as part of my redress the pay, allowances, and financial benefits (including tax free status for the period I would have served in Kabul had I not been repatriated) that I lost as a consequence of my early repatriation;
>
> 13. Effects on Family, Reputation, and Career as a consequence of early Category D Repatriation. The enduring effects of my Relief of Military Duty and early repatriation under Category D have had the most enduring effects on my spouse, and my career. I therefore request the following redress:
>
> > a. I request a letter of apology be written to my spouse by the Grievance Authority for the long term stress she and my family have suffered as a consequence of my unjustified early repatriation under Category D…

[120] Maj.(r) Beddows repeated these requests in subsequent submissions along the way, although the request for an apology evolved to reflect his underlying goal of clearing his name. This is reflected in the submission he made to the A/CDS at the final stage of the process, after he had received the report of the External Review Committee, which I refer to here to underline the significance he attached to this aspect of the redress requested:

> 5. I offer the following comments on the MGERC findings on my requested redresses which are addressed in Ref D:
>
> > b. Letter of apology from Comd CJOC (Ref D p. 18): I am not satisfied with the finding of the MGERC analyst in Ref D, p. 18, and request that I be provided with an unclassified

> written letter of apology from Comd CJOC which would be drafted with my review and published to the Intelligence Branch and all the members of the OP ATTENTION ROTO 2 HQ NCSE elements. In their analysis of this requested redress the MGERC Analyst did not appreciate that the requested letter is not a personal apology on the part of Commander CJOC, but an overt acknowledgement that my relief from my position as J2, and subsequent repatriation from theatre under Category D represent systemic failures which have had enduring and negative impacts on my career and reputation with superiors, peers, and subordinates not only on OP ATTENTION ROTO 2 but in the Intelligence Branch overall. The letter is intended to publicly repair my reputation, and underscore that I was sabotaged by my CoC and failed by the personnel administration system which is supposed to incorporate controls in the form of checks, balances, and deliberate oversight of personnel administration by subordinate headquarters to prevent aggrieving CAF personnel under command of Commander CJOC. ..

[121] In the decision, the A/CDS includes the financial compensation and request for a public letter of apology when he lists the redress Maj.(r) Beddows sought, so the A/CDS was clearly aware that these specific requests were on the table. However, the decision is silent on the apology or the means by which some financial recompense could be provided when it counts – in the analysis portion of the decision where the A/CDS explains his decisions on the various aspects of the redress claimed in the grievance. Maj.(r) Beddows says that this is unreasonable. The Respondent argues that these are minor omissions, and that they can only justify quashing the decision if I find that they are sufficiently grave as to call into question the decision as a whole.

[122] The question before me is whether the failure to discuss these elements of Maj.(r) Beddows' redress request are sufficiently serious to make the decision unreasonable. The analysis on this question is guided by the approach set out at para 100 of *Vavilov*:

> [100] The burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. It would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep. Instead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable.

[123] In approaching this question, it is important to recall that Maj.(r) Beddows' application for judicial review is entirely focused on the inadequacy of the redress. While he challenges certain findings made, or not made, by the A/CDS, the relief he seeks is directed towards the remedies he believes should have been granted.

[124] In this respect, the request for financial compensation and a letter of apology are core elements of Maj.(r) Beddows' claim before the Court, and were central elements to the grievance he submitted. He sought both public vindication for the public harms he had experienced by being repatriated early and to be made whole for the financial losses he and his family experienced.

[125] Maj.(r) Beddows submits that the complete failure to discuss the apology and the possibility of an *ex gratia* payment to provide some financial compensation makes the decision unreasonable. I agree.

[126] While I have found many aspects of the A/CDS's decision to be reasonable, I am persuaded that the absence of any discussion of these two central aspects of his grievance is sufficiently serious to warrant quashing the decision and sending it back for reconsideration. However, I must emphasize that the reconsideration will be limited only to these two specific points. The rest of the decision is reasonable, and there is no basis to direct that it be re-examined.

[127] On the letter of apology, I note two points. This request is discussed in the External Review Committee Report, which explains that it is not recommended because "ordering" someone to apologize might contravene their rights, and any apology that resulted from such an order would not be sincere. The request is also listed in the summary of the redress Maj.(r) Beddows requested that is set out early on in the A/CDS decision, but it is not mentioned again.

[128] As *Vavilov* explains, one of the purposes of reasons is to demonstrate to the party affected by the decision that their concerns have been heard and to explain why their arguments were accepted or rejected. Another purpose is to allow a reviewing court to understand the reasoning process that underlies the decision. The bottom line, according to *Vavilov*, is that the outcome must be justified to the party affected through the reasons actually provided (para 86). The fact that it might be justifiable in light of the record and then supplementing the reasons by filling in

the blanks is neither permitted nor required. The remedy for such a gap – insofar as the issue is central to the case – is to quash the decision and send it back so that the decision-maker can provide reasons that address all of the key issues, and explain the reasoning process that led to the outcome.

[129] In this case, I find that the Respondent is asking me either to ignore the decision's silence on these important points, or to fill in the blanks by relying on other documents in the record. For example, the External Review Committee explained why it did not recommend that a letter of apology be ordered, but there is no discussion of this in the final decision.

[130] Similarly, on the issue of financial compensation, in the final memorandum prepared for the A/CDS by the CAF Grievance Authority record, Col Bouckaert recommended that the A/CDS "…consider an *ex gratia* payment." She also stated, however, "(f)rom an *ex gratia* perspective, this is clearly your manoeuvre space…" These documents were included in the record before the A/CDS when he made the decision, but the actual decision that was signed by the A/CDS does not mention this possibility. Instead, the A/CDS states: "I cannot grant you redress in this regard because I do not have the authority to grant pay, allowances and financial benefits under these circumstances." To the extent that the possibility of an *ex gratia* payment was flagged as being within the A/CDS' "manoeuvre space", he failed to explain why or how he decided to reject it.

[131] Having given the matter careful consideration, and viewing the arguments through the lens of the *Vavilov's* guidance set out at paragraph 100, I have come to the conclusion that these

two gaps in the analysis are sufficiently serious to warrant quashing the decision and sending it back so that these two particular aspects of the grievance can be examined and the outcome can be explained, both to Maj.(r) Beddows and to any future reviewing court.

[132] I want to underline again that my finding is very limited and specific. It is not meant to re-open the entire debate about the decision or the other remedies.

[133] I also emphasize that this finding is not a pronouncement on the substance of the questions of whether financial compensation should be awarded, or an apology should be ordered. That is not for me to decide on judicial review, and my decision and order does not rest on any such finding. Rather, what I am requiring is that these specific questions be re-considered, and that the reason for granting or refusing them must be explained. That is all that my decision and order requires.

[134] For all of these reasons, while I am not persuaded that most aspects of the redress granted by the A/CDS is unreasonable, in light of the evidence in the record and the circumstances at the time of the decision, I find that the failure to consider Maj.(r) Beddows' request for financial compensation and an apology letter and to explain why these were not granted, is unreasonable.

D. *Denial of Procedural Fairness*

[135] There are two aspects of this argument. Maj.(r) Beddows contends that he was denied procedural fairness because he was not given access to the legal advice provided to the A/CDS

by lawyers from the Judge Advocate General or Department of Justice. He also argues that the failure to disclose a full Certified Tribunal Record denied him fairness during the course of the judicial review.

[136] On the access to legal advice, Maj.(r) Beddows submits that he was a "client" of the grievance process and that it is a non-adversarial system meant to seek resolution of workplace disputes. He says that the usual rationale for protecting solicitor-client privilege does not apply in this circumstance, and therefore he should have had access to any legal advice that was submitted as part of the record before the A/CDS at the time the decision was made. The failure to do so amounts to a denial of procedural fairness, according to Maj.(r) Beddows.

[137] In addition, he points to the fact that the legal advice was not disclosed as part of the Certified Tribunal Record and that an Addendum to the Certified Tribunal Record was needed in this case. He submits that this supports his claim of a denial of procedural fairness, because the A/CDS was aware of everything that was before him when the decision was taken, but has nevertheless refused to disclose it all as he was required to do by Rule 317 of the *Federal Courts Rules*, SOR/98-106.

[138] The Respondent denies that there was any breach of procedural fairness. Solicitor-client privilege is sacrosanct, and case-law has confirmed that it is available to government or military decision-makers who obtain advice from counsel. In support of this point, the Respondent cites the Supreme Court of Canada decision in *Pritchard v Ontario (Human Rights Commission)*, 2004 SCC 31, [2004] 1 SCR 809 [*Pritchard*]. In this case, the Respondent submits that it

claimed solicitor-client privilege in regard to legal advice, as it was entitled to do. According to the Respondent, nothing in the statute or scheme of the grievance process displaces the very strong protection that the law provides to solicitor-client privilege.

[139] Concerning the CTR, the Respondent argues that the record before the Court is complete, and that the failure to disclose the additional material in the Addendum is of no consequence, because it was provided to the parties and the Court once the oversight was noticed. The Respondent asserts there was no denial of procedural fairness.

[140] In examining claims about procedural fairness, a reviewing court is required to determine whether the procedure was fair in all the circumstances. As confirmed by the Federal Court of Appeal in *Canadian Pacific* at paragraph 54, this involves asking, "with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed. [T]he ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond." (*Canadian Pacific* at para 56).

[141] Applying this approach, I am not persuaded that Maj.(r) Beddows was denied procedural fairness. He had ample opportunity to know the nature of the case being put before the decision-maker, in particular because the External Review Committee Report was disclosed to him and he had an opportunity to make submissions before the A/CDS took the final decision. The fact that legal advice was not disclosed to him simply reflects the long-standing and near-absolute protection that the law affords to such advice: see, for example, *Pritchard* as well as *Alberta (Information and Privacy Commissioner) v University of Calgary*, 2016 SCC 53, [2016] 2 SCR

555 at para 34 . Although Maj.(r) Beddows may have been a client of the grievance process in many respects, he was not the client to whom the in-house lawyers provided their advice, and he was not otherwise entitled to receive their advice on any other basis.

[142] Similarly, the CTR that was before the Court and available to the parties was full and complete. The oversight that led to the necessity to file an Addendum was an administrative problem that was fixed long before the hearing, and both sides had ample opportunity to take the important additional document contained in the Addendum into account in making their submissions. There was no denial of procedural fairness.

E. *Did the A/CDS have the legal authority to make this decision?*

[143] Maj.(r) Beddows' Memorandum of Fact and Law set out his argument on this point in the following way:

> 59. Additionally, I was denied procedural fairness as General Eyre, as *Acting* Chief of Defence Staff, did not have the statutory authority to issue a decision in my grievance at the time of signature.
>
> 60. Section 29.1 1 of the National Defence Act states that: "29.11 The Chief of the Defence Staff is the final authority in the grievance process and shall deal with all matters as informally and expeditiously as the circumstances and the considerations of fairness permit." The CDS is the final authority, and therefore the role, responsibilities and authority inherent in the person who is final authority of the CF grievance process and in and of themselves a federal tribunal is reserved by statute to the person holding the appointment of CDS.

> 61. General Eyre was appointed Acting Chief of the Defence Staff (A/CDS) on February 24, 2021. He was appointed Chief of Defence Staff (CDS) on November 25, 2021. At the time of General Eyre's signature of the decision letter on the matter of my grievance on October 18, 2021 Admiral Art McDonald remained CDS and, in accordance with the Statue [*sic*], Admiral McDonald was therefore the final authority of the grievance process until General Eyre was appointed CDS on November 25, 2021.
>
> 62. In the issuance of a decision as final authority in the grievance process, General Eyre usurped an authority reserved exclusively by statute to the CDS, which was not specifically delegated to him. This is another example of the long chain of misadministration to my grievance by the Canadian Forces, and technically renders General Eyre's decision not only unreasonable but null and void by virtue of the fact that General Eyre was not the CDS, and by extension Final Authority, at the time he issued the decision.

[144] At the hearing, Maj.(r) Beddows elaborated on his written submissions, noting that during the period when the final decision was taken in his case, Admiral McDonald was on leave, not absent. He argued there is no indication Admiral McDonald was incapacitated as that term is usually understood to involve either physical or psychological incapacity. He submitted that in light of this, the pre-conditions for the exercise of authority by the Minister of National Defence under section 18.2 of the NDA were not satisfied:

| **Absence or incapacity of Chief of the Defence Staff** | **Absence ou empêchement du chef d'état-major de la défense** |
|---|---|
| 18.2 In the event of the absence or incapacity of the Chief of the Defence Staff, the Vice Chief of the Defence Staff, or any other officer that is specified by the Minister or the Chief of the Defence Staff, has the control and | 18.2 En cas d'absence ou d'empêchement du chef d'état-major de la défense, c'est le vice-chef d'état-major de la défense qui, sauf désignation contraire par le chef d'état-major de la défense ou le ministre, assure |

| | |
|---|---|
| administration of the Canadian Forces. | la direction et la gestion des Forces canadiennes. |

[145] During his oral submissions, Maj.(r) Beddows specified that he was not seeking any kind of more general declaration that might call into question other decisions taken by the A/CDS, but rather was only challenging his authority to make the decision as FA in his grievance. He requested that the decision be quashed and sent back with a direction that a new decision can only be signed by the CDS or his lawfully appointed delegate.

[146] The Respondent submits that there is no merit to this argument, because the A/CDS had been lawfully appointed under section 18.2, and thus was the FA as specified by section 29.11 of the NDA. The Respondent notes there is no dispute that General Eyre had been appointed by the Minister of National Defence to be the A/CDS pursuant to s. 18.2 at the time the decision was taken. According to the Respondent, Maj.(r) Beddows has no basis to seek to challenge or question this, because the NDA does not define "absence", and Admiral McDonald was, in reality, absent from the office of CDS at the time that General Eyre was named A/CDS. The Minister was entitled to specify that General Eyre was to assume the role and responsibility of A/CDS at that time, and that included serving as the FA pursuant to section 29.11.

[147] I agree with the argument of the Respondent on this point. There are no limiting words or definitions of the terms "absence or incapacity" set out in the NDA. There can be no dispute that the Minister of National Defence exercised the authority granted by section 18.2 of the NDA to specify that General Eyre was the officer who had the "control and administration of the Canadian Forces" at the relevant time. In my view, there is no basis on the record before the

Court to go behind this appointment or otherwise question the exercise of authority by the A/CDS in making the decision as FA. In any event, considering that Maj.(r) Beddows' main objective in this application for judicial review is to obtain a new decision on his grievance, his objection on this question has been overtaken by events because General Eyre has now been named as CDS. In light of this, there is no point in pursuing this argument any further.

## VI. Conclusion

[148] This is a difficult case. Maj.(r) Beddows proudly served his country as a member of the CAF, and his submissions before the Court exemplify the professionalism and devotion he brought to this role. His posting as the Senior Intelligence Officer as part of ROTO 2, Operation ATTENTION was obviously a highlight of his career. The unfortunate, unjustified, and unwarranted way in which that posting came to an end marked a turning point for Maj.(r) Beddows' career, and he retired from the CAF before his grievance concerning that process was resolved.

[149] In the end, after a long and circuitous path, Maj.(r) Beddows' grievance was upheld by the A/CDS, the most senior military leader in Canada, and the Final Authority in respect of the grievance. The A/CDS's decision resoundingly exonerates Maj.(r) Beddows, finding that he was mistreated by his CO, LCol MacDonald, and failed by the Chain of Command in the course of the repatriation process. It also confirms that the sexual harassment complaint filed against him was mishandled. The negative reports and records that were generated in conjunction with the repatriation process and harassment investigation have been expunged from Maj.(r) Beddows'

personnel file and destroyed. His repatriation category was changed so that it no longer reflects negatively on his performance in theatre. Other remedies were granted, and the A/CDS expressed regret for the manner in which these incidents were handled.

[150] Despite this, Maj.(r) Beddows' submissions to the Court express his dissatisfaction with the findings that were not made, and the redress that was not granted. He still feels aggrieved and believes that the decision and redress do not reflect the scope and nature of the harm done to him or his family as a result of the misconduct of his CO. He has come to the Court seeking recognition and a remedy.

[151] I have given this case much thought and deliberation, and have carefully reviewed the oral and written submissions in light of the extensive record. Having done that, I am persuaded that two specific elements of the decision must be reconsidered, relating to Maj.(r) Beddows' request for financial compensation for the losses he suffered because of his early repatriation, and his request for a letter of apology to be drafted and made public within the intelligence community and to his colleagues on ROTO 2. The decision is silent on the apology and inadequate in regard to the question of financial recompense. It is important to note that both items were essential elements of the redress Maj.(r) Beddows has sought, virtually from the outset of this lengthy process. The failure to address them is unreasonable, and these aspects of the decision must be re-examined.

[152] However, for the reasons set out above, I find that while I sympathize with many of Maj.(r) Beddows' arguments, and find merit in several of his general propositions, I am not

persuaded by all of his other submissions about why the decision is unreasonable. In reaching this conclusion, I am required to consider the decision as a whole in light of the record and submissions made to the A/CDS, assessed against the legal principles that guide judicial review, and in light of the high degree of deference that must be granted to the decision of the A/CDS acting as FA in the grievance process.

[153] For all of these reasons, I am granting Maj.(r) Beddows' application for judicial review in part, and the decision is quashed and sent back for reconsideration, but only in respect of Maj.(r) Beddows' requests for financial compensation and a public letter of apology.

[154] As explained earlier, given the lengthy history of this matter, the fact that there are only two discrete issues to be re-examined, and that Maj.(r) Beddows' submissions on both have already been made, I will direct that the reconsideration decision be made and communicated within ninety (90) days. If the CAF is unable to meet this deadline, it may return to the Court to explain why, and propose a limited further time-frame to complete this next step of the process. Maj.(r) Beddows will be granted the opportunity to make representations should any extension request be made.

[155] In the circumstances, each party shall bear their own costs of the proceeding.

[156] In closing, I want to express my regret to the parties for the time it has taken to issue this decision.

**JUDGMENT in T-1683-21**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is granted in part. The decision is sent back for reconsideration on two specific issues: Maj.(r) Beddows' request for financial compensation, and his request for a public letter of apology.

2. The CDS shall re-examine the file, based on the materials already in the record, and provide a new decision on these two items, within ninety (90) days of the release of this decision. If the CDS is unable to meet this deadline, the Respondent may return to the Court to explain why and propose a new deadline. If any such extension request is made, Maj.(r) Beddows shall have the opportunity to make representations to the Court on this point.

3. No costs are awarded. Each party shall bear its own costs.

"William F. Pentney"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | T-1683-21 |
| **STYLE OF CAUSE:** | MAJOR (RET'D) JOHN S. BEDDOWS v ATTORNEY GENERAL OF CANADA |
| **PLACE OF HEARING:** | OTTAWA, ONTARIO |
| **DATE OF HEARING:** | MAY 11, 2022 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | PENTNEY J. |
| **DATED:** | JULY ~~5~~ 4, 2023 |

**APPEARANCES:**

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|---|---|
| Major (Ret'd) John S. Beddows | ON HIS OWN BEHALF |
| Jennifer Bond | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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|---|---|
| Attorney General of Canada<br>Ottawa, Ontario | FOR THE RESPONDENT |