Federal Courts Reports
Recueil des décisions des Cours fédérales

[2022] 2 F.C.R. D-22

## ARMED FORCES

Judicial review of two decisions by Canadian Forces reviewing authority determining applicants not entitled to elect court martial — Applicants charged with offences under *National Defence Act*, R.S.C., 1985, c. N-5 (Act), s. 129 for inappropriate comments to civilian staff members, candidates on Operations Room Officer course — Prior to, during their respective summary trials, applicants requesting option to elect trial by court martial — Presiding officers at summary trials refusing applicants' request for court martial — Stating, *inter alia*, that charges received under s. 129 minor in nature, falling within definition of "deportment", therefore not requiring election to be tried by court martial — Applicants found guilty following their summary trial — Reviewing authority upholding presiding officers' refusals to permit applicants to elect trial by court martial, stating that deportment sufficiently minor in nature so as to not warrant greater powers of punishment than permitted under *Queen's Regulations and Orders* (QR&O), art. 108.17 — Common issue relating to interpretation of QR&O, art. 108.17(1)(a) — Art. 108.17 repealed after decisions under review rendered — Reviewing authority in docket T-1244-22 affirmed that applicant not obliged to be offered court martial because matter relating to "deportment", suggesting that term read disjunctively whereas reviewing authority in docket T-1953-22 affirmed it was because matter related to "dress and deportment" — Reviewing officer in T-1953-22 appears to have been of view that term "dress and deportment" (emphasis added) to be read conjunctively — Decision makers in cases herein not arriving at their interpretation using modern principle of statutory interpretation — Both interpretations of phrase "dress and deportment" in art. 108.17(1)(a) failing to examine words within phrase or within entirety of Act, s. 129 — No analysis provided of purpose of art. 108.17(1)(a)— Interpretations lacking intelligibility, justification, transparency — Pursuant to s. 129, right to elect trial by court martial for conduct to prejudice of good order, discipline withheld "only where the offence relates to military training, maintenance of personal equipment, quarters or work space, or dress and deportment" — When legislation enumerating series of factors, principle of *ejusdem generis* suggesting that these factors representing same kind or class of factor — In this case, nature of specific circumstance of impugned misconduct captured under s. 129 — Based on limitation for election for court martial, art. 108.17(1)(a) relating to s. 129 enacted for minor offences that could be dealt with efficiently, expeditiously through summary trial — Those offences non-electable for this very reason — Applying *ejusdem generis* limited class rule favouring applicants' interpretation that art. 108.17(1)(a) using expression "dress and deportment" as single term of art, as one of three enumerated categories pertaining to s. 129, in relation to two other related categories — "Dress and deportment" read conjunctively rendering phrase, properly interpreted as "deportment" pertaining to "dress", would cover such things as wearing of uniforms, cleanliness of uniform, shining of boots, or other dress related infractions — This interpretation according with other minor non-electable offences, "military training", "maintenance of personal equipment, quarters or work space" — If "dress and deportment" interpreted disjunctively, consequences of considering "deportment" alone resulting in any offence described to be related to "bearing, demeanor, or manners" being determined by summary trial only — This not in keeping with legislative intent that offences covered be minor offences — Reading of art. 108.17(1)(a) relating to s. 129 demonstrating that Governor in Council did not intend "dress and deportment" to be read disjunctively — Use of "and" demonstrating that Governor in Council alert to purpose of art. 108.17(1)(a), intended it to be read conjunctively — To reiterate, "dress and deportment" to be interpreted conjunctively so that it covers deportment pertaining to uniform, such as wearing of uniforms, cleanliness of uniform — This interpretation according with other minor non-electable offences, consistent with both text, context of art.

108.17(1)(a) — Applications allowed.

NOONAN V. CANADA (ATTORNEY GENERAL) (T-1244-22, T-1953-22, 2023 FC 618, Zinn J., reasons for judgment dated April 27, 2023, 23 pp.)