

NOTICE OF APPLICATION

Court File No.

FEDERAL COURT

BETWEEN:

Justin Hudson

Applicant

and

Gregory Lick

First Respondent

and

Ombudsman for the Department of National Defence and the Canadian Armed Forces

Second Respondent

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this

application be heard at (place where Federal Court of Appeal (or Federal Court) ordinarily sits).

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

15 January 2023

Issued by:

Address of local office:

354 Water Street, Suite 209
St. John's, Newfoundland
A1C 1C4

TO:

Gregory Lick

Office of the Ombudsman
100 Metcalfe Street, 12th Floor
Ottawa, Ontario
K1P 5M1

Telephone: 1-888-828-3626

E-Mail: ombudsman-communications@forces.gc.ca

Omb.ombudsman-intake-accueil@forces.gc.ca

Ombudsman for the Department of National Defence and the Canadian Armed Forces

Office of the Ombudsman
100 Metcalfe Street, 12th Floor

Ottawa, Ontario
K1P 5M1
Telephone: 1-888-828-3626
E-Mail: ombudsman-communications@forces.gc.ca
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Marc Lévesque, Intake Officer for Justin Hudson

Office of the Ombudsman
100 Metcalfe Street, 12th Floor
Ottawa, Ontario
K1P 5M1
Telephone: 1-888-828-3626
E-Mail: Marc.Levesque2@forces.gc.ca

APPLICATION

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Justin Hudson

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and

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Ombudsman for the Department of National Defence and the Canadian Armed Forces

Second Respondent

APPLICATION

This is an application for judicial review in respect of:

The decision of the First Respondent and the Second Respondent (hereinafter referred to as the Respondents) dated 20 December 2022 and transmitted to the Applicant by email in the late afternoon on that date and read by the Applicant on 21 December 2022.

This application is made within the 30 day time limit under the rules of Court.

The Applicant says that the Second Respondent's publications say that the First Respondent was and is appointed to the Office of the Second Respondent under section 5 of the National Defence Act and the Respondents exercise authority as prescribed jointly and severally by the Deputy Minister of Defence and the Chief of Defence Staff of the Canadian Armed Forces in DAOD 5047-1 issued on 1999-08-17 and modified on 2001-09-17

The Applicant makes application for:

An Order setting aside the decision of the Respondents dated 20 December 2022 wherein **the Respondents refused to hear the Applicant's Appeal**, and Ordering the Respondents to hear said Appeal of the decision of the Chief of Defence Staff of the Canadian Armed Forces (hereinafter sometimes referred to as the CDS) dated 6 October 2022 wherein the CDS (i) denied a waiver of the Applicant's D-5 release from the Canadian Armed Forces (hereinafter sometimes referred to as the CAF) so that the Applicant could re-enroll in the CAF, and (ii) gave unsubstantiated reasons for said denial, and (iii) did not give the Applicant any opportunity to make representations prior to making his decision, and (iv) stated that the Applicant had to wait 3 years from the date of the CDS decision to re-apply for enrollment in the CAF, but (v) nevertheless, **the CDS directed that the Applicant had the right to Appeal** the said decision to the Respondents.

The Grounds for this Application are:

1. The Applicant is a former member of the CAF. The Applicant released from the CAF in 2011 under a D-5 release. Anyone releasing under a D-5 release who wishes to re-enroll in the CAF must obtain a waiver of the D-5 release from the CDS. The Applicant has applied to re-enroll in the CAF and asked for said waiver. The CDS responded to the Applicant's said request as stated above, including the CDS directive that the Applicant had the right to Appeal to the Respondents.
2. The CDS provided the Applicant with a decision letter dated 6 October 2022 outlining his decision as stated above.

3. The Applicant promptly wrote to the Respondents by way of email indicating that the Applicant wanted to Appeal the CDS decision, and asking the Respondents to inform the Applicant of the steps required by the Respondents to effect the Appeal.

4. The Respondents ignored the Applicant's request, as outlined in paragraph 3 above, and refused to hear the Applicant's Appeal, and proceeded to improperly deal with the Applicant's request and with the Applicant's Appeal.

5. The Respondent's improper handling of the matter was related to the Applicant by way of letter/email dated 20 December 2022 as set forth above. Among other things, the Respondents arbitrarily and without any authorization from the Applicant and without any notice to the Applicant and without giving the Applicant any opportunity to make representations or have any input made a subjective decision that the CDS acted fairly. The Respondents also ignored and denied the Appellant's right to Appeal.

6. The Applicant says that the said 20 December 2022 decision made by the Respondents is arbitrary, subjective, improper, injudicious, contrary to law, and has the perception of bias.

7. The Applicant says that the Respondents do not have the right to deny the Applicant an Appeal or to deny the Applicant the right to make representations before the Respondents made a decision in respect of the Applicant.

8. The Respondents failed to carry out the directive or instruction of the CDS regarding the Applicant's right to Appeal. The Respondents acted contrary to the requirements and instruction of the CDS, and the Respondents acted contrary to the request and instructions of the Applicant.

9. In addition to violation of the Common Law, the Respondents may be in violation Canadian Charter of Rights and Freedoms, in particular sections 7 and 15 thereof.

10. The Applicant will rely on (a) the National Defence Act, section 5 and (b) the Kings Regulations and Orders, in particular sections 1, 2, and 3 thereof and (c) DAOD 5047-1 including Appendix A thereto.

The Applicant Requests that the Respondents provide and send to the Applicant and to the Registry of this Court a certified copy of the following material that is not in the possession of the Applicant, but is in the possession of the Respondents:

1. All emails, text messages, letters, memos, writings and other communications whether sent or received by hard copy or on paper or electronically between the Respondents or any of the Respondents' staff and the CDS or any person acting on behalf of the CDS relating to the Applicant or to the Applicant's request to the CDS for a waiver of the said D-5 release.

2. A summary of all verbal communications between the Respondents or any of the Respondents' staff and the CDS or any person acting on behalf of the CDS relating to the Applicant's request to the CDS for a waiver of the said D-5 release.

3. All documents, memos, writings, and things relied on by the Respondents or by any of the Respondents' staff in arriving at the Respondents' aforesaid decision dated 20 December 2022.

DATED this 15th day of January 2023



Justin Hudson
21 Russell Street
St. John's, Newfoundland
A1A 4G2
Cell Phone: 613-530-6043
Telephone: 709-691-2179
E-Mail: justinkenthudson@gmail.com

**E-Mail from Marc Lévesque, Intake Officer for
Justin Hudson, Office of the Ombudsman, dated
20 December 2022**



Justin Hudson <justinkenthudson@gmail.com>

Ombudsman Office - Waiver appeal

MARC.LEVESQUE2@forces.gc.ca <MARC.LEVESQUE2@forces.gc.ca>
To: justinkenthudson@gmail.com

Tue, Dec 20, 2022 at 4:28 PM

Good day Mr. Hudson,

The confidential complaint that you have filed allows the Ombudsman Office to accumulate statistics on the subject matters that are being reported as problematic by CAF members. Every year, the Ombudsman meets with the leaders of the CAF and DND to underline areas that require attention and change.

As previously discussed, the Chief of Defence Staff has incorrectly designated us as an “appeals mechanism” and we will most likely reach out to them to correct the wording on the letter you received. We are rather an office of last resort on matters of unfairness when no other complaint mechanism is available.

In your case, our office did not find any indications from the information provided that the refusal of your waiver was unfair as the denial was founded on behaviours that occurred in 2022 and was unrelated to the reasons you were initially released.

I will be closing your complaint with our office for now. Please do not hesitate to contact us if you have any questions or concerns.

Thank you,

Marc Lévesque

Intake Officer, Office of the Ombudsman
Department of National Defence / Government of Canada
Marc.Levesque2@forces.gc.ca

Préposée à l'accueil, Bureau de l'Ombudsman
Ministère de la Défense nationale / Gouvernement du Canada
Marc.Levesque2@forces.gc.ca

**Five E-Mail communications with the Office of the
Ombudsman, dated 30 November 2022 to 15
December 2022**



Justin Hudson <justinkenthudson@gmail.com>

CDS waiver decision Appeal to CAF Ombudsman (CAF Application - A782673 Hudson, Justin (Previous Service Number T61 612 933))

5 messages

Justin Hudson <justinkenthudson@gmail.com>

Wed, Nov 30, 2022 at 10:13 PM

To: MARC.LEVESQUE2@forces.gc.ca

Cc: ombudsman-communications@forces.gc.ca, DENIS.O'REILLY@forces.gc.ca

(CAF Application - A782673 Hudson, Justin)
(Previous Service Number T61 612 933)

Dear Canadian Armed Forces Ombudsman / Mr. Marc Lévesque, Intake Officer, Office of the Ombudsman,

1. Herewith is a copy of the Chief of the Defence Staff (CDS) waiver decision letter (attached in a PDF file), dated 6 October 2022 regarding my CAF re-enrollment application for the 5d release item. The CDS has indicated that I can appeal his decision to the CAF Ombudsman.

2. I am writing at this time as a courtesy to inform / give notice of my appeal in this regard. Please advise of the next steps that you wish me to take in the presentation of my appeal.

Respectfully,

Justin Kent Hudson, B.Eng., LL.B., LL.M.
21 Russell Street
St. John's, Newfoundland
A1A 4G2
Cell Phone: 613-530-6043
Telephone: 709-691-2179
E-Mail: justinkenthudson@gmail.com

 **CDS waiver decision letter to Justin Hudson, 6 October 2022.pdf**
1550K

Justin Hudson <justinkenthudson@gmail.com>

Sun, Dec 4, 2022 at 2:56 PM

To: Jessica.Lauzon@forces.gc.ca

Cc: MARC.LEVESQUE2@forces.gc.ca

Dear Ms. Lauzon,

FYI, please advise of what process is for Appeal to Office of the Ombudsman and what is required for an Appeal.

Kind regards,

Justin Hudson

----- Forwarded message -----

From: Justin Hudson <justinkenthudson@gmail.com>

Date: Wed, Nov 30, 2022 at 10:13 PM

Subject: CDS waiver decision Appeal to CAF Ombudsman (CAF Application - A782673 Hudson, Justin (Previous Service Number T61 612 933))

To: <MARC.LEVESQUE2@forces.gc.ca>

Cc: <ombudsman-communications@forces.gc.ca>, <DENIS.O'REILLY@forces.gc.ca>

[Quoted text hidden]

 **CDS waiver decision letter to Justin Hudson, 6 October 2022.pdf**
1550K

MARC.LEVESQUE2@forces.gc.ca <MARC.LEVESQUE2@forces.gc.ca>
To: justinkenthudson@gmail.com

Wed, Dec 7, 2022 at 12:05 PM

Good day,

My apologies for the delay, I have passed on the decision letter and am inquiring if there is an appeal mechanism.

Thank you,

Marc Lévesque

Intake Officer, Office of the Ombudsman
Department of National Defence / Government of Canada
Marc.Levesque2@forces.gc.ca

Préposée à l'accueil, Bureau de l'Ombudsman
Ministère de la Défense nationale / Gouvernement du Canada
Marc.Levesque2@forces.gc.ca

[Quoted text hidden]

Justin Hudson <justinkenthudson@gmail.com>
To: MARC.LEVESQUE2@forces.gc.ca
Cc: ombudsman-communications@forces.gc.ca

Wed, Dec 7, 2022 at 3:54 PM

(CAF Application - A782673 Hudson, Justin)
(Previous Service Number T61 612 933)

Dear Canadian Armed Forces Ombudsman / Mr. Marc Lévesque, Intake Officer, Office of the Ombudsman,

Thank you for passing on the decision letter from the Chief of the Defence Staff, dated 6 October 2022. Please also note the following:
My Lawyer specifically instructed me that I must exhaust the CAF Ombudsman Appeals process before submitting a Federal Court review of this waiver decision, if necessary.

Please let me know what this CAF Ombudsman Appeals process is all about and how it is completed, so that I can follow up, as needed.
Thank you in advance.

[Quoted text hidden]

Justin Hudson <justinkenthudson@gmail.com>
To: MARC.LEVESQUE2@forces.gc.ca
Cc: ombudsman-communications@forces.gc.ca

Thu, Dec 15, 2022 at 11:56 PM

(CAF Application - A782673 Hudson, Justin)
(Previous Service Number T61 612 933)

Dear Canadian Armed Forces Ombudsman / Mr. Marc Lévesque, Intake Officer, Office of the Ombudsman,

Can I have an update regarding the Appeals process via the CAF Ombudsman for the CDS waiver decision letter, dated 6 October 2022?

Please keep in mind that the waiver decision did not consider the fact that the 5d Release Item itself was used directly after I was sexually assaulted more than 10 years ago while serving.

[Quoted text hidden]

**Waiver decision letter from the Chief of the
Defence Staff, dated 6 October 2022**

and

**Letter from the Commander of the Canadian
Forces Recruiting Group, dated 21 October 2022**

Chief of the Defence Staff



Chef d'état-major de la Défense

National Defence
Headquarters
Ottawa, Ontario
K1A 0K2

Quartier général de
la Défense nationale
Ottawa (Ontario)
K1A 0K2

6 October 2022

Mr. Justin Hudson
Suite 303, 427 Princess Street
Kingston, Ontario
K7L 5S9

Dear Mr. Hudson,

This letter is to inform you that I have reviewed your re-enrolment waiver following your 5(d) release and to communicate my decision with you.

Since your release, it is obvious that you have gone to great length to improve your personal situation and your education level, and I hope you feel pride in your accomplishments. However, in your interactions with the recruiting personnel, you have continued to demonstrate a lack of professionalism and attitudes that do not align with the Canadian Armed Forces (CAF) values. After due considerations, I have decided to deny your re-enrolment waiver. Further, in order to afford you with sufficient time to overcome these challenges, I ask that you refrain from submitting another application for a period of three years following receipt from this letter.

I understand that this is not your desired outcome and may feel frustrated with my decision. As any citizen of this country, you have the right to make appeal to the CAF Ombudsman.

A handwritten signature in blue ink, appearing to read 'W.D. Eyre'.

W.D. Eyre
General

Commander Canadian Forces Recruiting Group

25 Centurion Close
P.O. Box, 1000 Station Main
Borden, Ontario
L0M 1C0



Commandant Groupe du recrutement des Forces
canadiennes

25, Centurion Close
C.P. 1000, Succursale Main
Borden (Ontario)
L0M 1C0

21 October 2022

Mr. Justin Hudson
Suite 303, 427 Princess Street
Kingston, ON K7L 5S9

Mr. Hudson,

This letter is to inform you that your file was returned from the Chief of the Defence (CDS) office. As such, I want to communicate the following information:

Firstly, the CDS transmitted his decision via letter, which you will find enclosed.

Secondly, please know that our chain of command wants to ensure you were processed fairly and with due consideration. As such, our higher command will conduct an administrative investigation based on the concerns you raised with regards to the questions that were asked to your references, as part of the reliability screening process. This investigation will be specific to this element of the recruiting process.

Thirdly, as was expressed to you before, it is important to us that you have adequate resources to help you deal with any adverse effects you may have experienced as a result of possible past traumas. As such, you can contact the Sexual Misconduct Response Centre (toll-free) at 1-844-750-1648 or by visiting Sexual Misconduct Response Centre - Canada.ca. As a veteran of the CAF, you can also contact the Veterans Affairs Canada at <http://veterans.gc.ca>.

Finally, as per the CDS decision letter, your file will be closed for processing. Subsequent applications are to be deferred for the timeframe specified in the enclosure. Further, considering that the reliability screening process will be subject to an administrative investigation, all communication and contact with recruiting personnel is strongly discouraged, inclusive of Canadian Forces Recruiting Center Northern and Eastern Ontario, Canadian Forces Recruiting Detachment Kingston, and Canadian Forces Recruiting Group Headquarters.

Respectfully,

N.S. Roby
Colonel
Commander

Enclosure 1