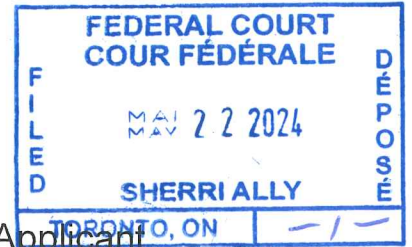


Court File No.: T-1200-24

FEDERAL COURT

BETWEEN:

SAMANTHA ANNE ROMAN



Applicant

and

**HIS MAJESTY THE KING IN RIGHT OF CANADA, as represented by
THE MINISTER FOR NATIONAL DEFENSE**

Respondent

Notice of Application

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

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 Toronto, Ontario.

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 file a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor or, if 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.

22 May 2024

Issued By:
CHERRI ALLY
REGISTRY OFFICER
AGENT DU GREFFE

(Registry Officer)

180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

**TO: HIS MAJESTY THE KING IN RIGHT OF CANADA,
as represented by THE MINISTER FOR NATIONAL DEFENSE**

Application

This is an application for judicial review in respect of the Final Decision of the Final Authority delegated to Colonel C. Cotton by the Chief of the Defence Staff as Final Authority in the Canadian Forces Grievance Process dated 18 April 2024, delivered 24 April 2024, a true copy of which is attached as Schedule 1 hereto.

1. The applicant makes application for:
 - a. An Order declaring the decision of the Final Authority (attached as **Schedule "1"** hereto) to be invalid or unlawful;
 - b. A Mandatory Order requiring the Minister of National Defence and The Chief of the Defence Staff to reinstate the Applicant as a serving Reserve Officer in the Canadian Armed Forces retroactively to the date of her involuntary release under review herein;
 - c. An order pursuant to rule 8.4(2) directing that this application for judicial review be treated and proceeded with as an action;
 - d. Equitable damages in the sum of \$300,000 or such other sum as the applicant may prove and this Honourable Court find fit and just;
 - e. Costs;
 - f. An Order for such further and other relief as this Honourable Court may deem to be fit and just.

2. The grounds for this application are:

- a. The applicant has served continuously in the Canadian Forces since initial enrollment as a private recruit in May 1991.
- b. The applicant was involuntarily discharged pursuant to the findings of a Performance Review Board dated 3 July 2020 on 7 December 2021.
- c. The Final Authority struck the course report issued by the second Performance Review Board held on 3 July 2020 on the grounds that it recommended release which was beyond their scope of responsibility.
- d. The Final Authority did not reverse the resultant involuntary discharge.
- e. The Final Authority did not direct the return of the Applicant to Reserve Service in Toronto retroactive to the date of her wrongful involuntary discharge.
- f. The Final Authority did not consider the self-recusal report of Initial Authority Colonel Perreault nor the subsequent Initial Findings of Initial Authority Brigadier-General Janzen in his reasons.
- g. Brigadier-General Janzen was the Director General Public Affairs (DGPA), also referred to as ADM(PA) throughout the time at issue and had advised subordinate staff that he wanted the Applicant released absolutely before seeking and obtaining authority to serve as the Initial Authority determining the Applicant's Petition for Redress of Grievance.

- h. On 23 Sept 2020 one senior staff officers reviewing this matter wrote to another, "I understand that ADM(PA) wants absolutely release the member but there is maybe other option for her... very strange this file." (sic).
- i. A course training failure in the Canadian Forces, whether caused by illness or other reason, normally results in the candidate being returned to her unit in the job they held before attending the course.
- j. The Course training staff failed or refused to consider substantial evidence of unexplained confusion, fatigue, and inability to complete assignments on the part of the Applicant, which had been reported to them as matters of medical concern.
- k. The Applicant's training officers and commanders had a duty to refer the Applicant for medical examination.
- l. The Applicant requested medical examination to consider the reports of her treatment practitioners, which indicated septicaemic infection as the source of the Applicant's confusion, fatigue, and inability to complete assignments.
- m. QR&O 34.07(7) entitled the Grievor to medical examination to determine the nature, extent, and consequences of her illness, which she drew to the attention of course staff.
- n. The Final Authority and its external review committee investigator, Nina Frid, failed to appreciate or apply the rule that

medical questions must be medically assessed and reported upon.

- o. The Final Authority accepted the said review report without considering with positive duty, which public affairs staff failed to discharge, namely, to have the Grievor medically assessed.
- p. The obligation of training and executive officers to refer medical questions to proper medical and dental authorities is expressly referred to in QR&O 34.07(1) as amplified by subordinate regulations binding on but not followed by the Public Affairs training staff.
- q. None of the First Initial Authority, the Second Initial Authority, the MGERC nor the Final Authority considered or applied Canadian Army Order (CAO) 24-10, Training and Exception Waivers and, in particular, subrules 55 and 58, and more particularly 58.c, which forbids the conduct of PRB being conducted in absentia of the candidate, which occurred entirely with regard to the second PRB.
- r. Neither PRB expressly considered the factor required to be considered by suborder 58.d (4), requiring consideration of personal, administrative, and medical problems which may have contributed to the candidate's unsatisfactory progress, and (5) the other reasons that may impede the candidate's ability to maintain satisfactory progress and successfully complete the training.
- s. None of the foregoing considered that civilian dental assessment was not available to the Applicant between 17 March 2020 and 26 May 2020.


- t. The second Initial Authority (B-Gen. Janzen) pre-judged his desired outcome of involuntary release before receiving or considering the Applicant's Grievance that he rejected.
 - u. Such further and other grounds as counsel may advise and this Honourable Court permit.
3. The following documentary evidence will be relied upon at the hearing of the Application:
- a. The Affidavit of the Applicant to be sworn within 30 days hereof;
 - b. Such supplementary Affidavit of the Applicant as this Honourable Court may permit after the Respondent Minister of National Defense has given documentary disclosure as requested below;
 - c. The Applicant prays leave to adduce oral evidence at a trial of this Application; and
 - d. Such further other material as Counsel may advise and this Honourable Court permit.
4. The applicant requests the Respondent send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the following authorities:
- a. The Director General Public Affairs;
 - b. The First Initial Authority (Colonel Perrault);
 - c. The Second Initial Authority (Brigadier-General Janzen);
 - d. The Military Grievances External Review Committee; and

e. The Final Authority (Colonel Christopher Cotton)

The material requested being:

a. All file notes, memoranda and minutes relating to the matters at issue particularly described above.

22 May 2024

A handwritten signature in black ink, appearing to read "John Legge", written over a horizontal line.

John Legge (LSO 23777W)
LEGGE & LEGGE
Barristers and Solicitors
65 St. Clair Ave. East, Suite 800
Toronto, Ontario M4T 2Y3
Telephone: (416) 923-1776 (222)
Facsimile: (416) 925-5344
jlegge@leggeandlegge.com
Solicitors for the Applicant

I HEREBY CERTIFY that the above document is a true copy of
the original issued out of / filed in the Court on the _____
day of _____ MAY 22 2022 A.D. 20 _____
Dated this _____ day of MAY 22 2022 _____ 20 _____

CHERRI ALLY
R. CLERK OFFICER
AGENT DU GREFFE