

TRANSLATION FROM FRENCH

CANADIAN HUMAN RIGHTS ACT  
RSC, 1985 c H-6, as amended

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

CANADIAN ARMED FORCES

Appellant

and

CANADIAN HUMAN RIGHTS COMMISSION

The Commission

and

JACQUES BOUCHARD

Respondent

DECISION OF THE TRIBUNAL

MEMBERS OF THE TRIBUNAL

ROGER DOYON - Chairman  
JACINTHE THEBERGE - Member  
JOANNE COWAN-MCGUIGAN - Member

DATES AND PLACE OF HEARING

April 29 and 30, 1991, Quebec City

INTRODUCTION

This case concerns the appeal lodged by the Canadian Armed Forces (hereafter referred to as the Appellant) of a decision of the Human Rights Tribunal rendered on October 1, 1990.

## GROUND FOR APPEAL

The Appellant is basing the appeal on the following grounds:

a) that the Tribunal failed to take account of important elements of evidence relating to the consequences of the Complainant's physical condition;

b) that the Tribunal manifestly erred in its assessment of the evidence concerning the demands placed on

2\ ...

members of the Canadian Armed Forces by the military duties they must perform;

c) that the Tribunal erred in its assessment of the elements that the Complainant had to demonstrate to justify his complaint;

d) that the Tribunal erred in its assessment of the elements that the Respondent had to establish in order to have the complainant's complaint rejected;

e) that the Tribunal erred in law in its assessment of what constitutes prima facie evidence that the restriction was imposed on the Complainant in the sincerely held belief that it was in the interests of the adequate performance of the work involved with all reasonable dispatch, safety and economy; and

f) that the Tribunal exceeded its jurisdiction by granting the Complainant all the compensation that it did.

## THE ACT

The provisions relating to an appeal of the decision of a Human Rights Tribunal composed of less than three members are found in sections 55 and 56 of the Canadian Human Rights Act (RSC, 1985, c H-6) which state:

55. Where a Tribunal that made a decision or order was composed of fewer than three members, the Commission, the complainant before the Tribunal or the person against whom the complaint was made may appeal the decision or order by serving a notice, in a manner and form prescribed by order of the Governor in Council, within thirty days after the decision or order appealed was pronounced, on all persons who received notice from the Tribunal under subsection 50(1). 1976-77, c 33, s 42.1.

56. (1) Where an appeal is made pursuant to section 55, the President of the Human Rights Tribunal Panel shall select three members from the Human Rights Tribunal Panel, other than the member or members of the Tribunal whose decision or order is being appealed from, to constitute a Review Tribunal to hear the appeal.

3\...

(2) Subject to this section, a Review Tribunal shall be constituted in the same manner as, and shall have all the powers of, a Tribunal appointed pursuant to section 49, and subsection 49(4) applies in respect of members of a Review Tribunal.

(3) An appeal lies to a Review Tribunal against a decision or order of a Tribunal on any question of law or fact or mixed law and fact.

(4) A Review Tribunal shall hear an appeal on the basis of the record of the Tribunal whose decision or order is appealed and of submissions of interested parties but the Review Tribunal may, if in its opinion it is essential in the interests of justice to do so, admit additional evidence or testimony.

(5) A Review Tribunal may dispose of an appeal under section 55 by dismissing it, or by allowing it and rendering the decision or making the order that, in its opinion, the Tribunal appealed against should have rendered or made.

RS, 1985, c H-6, s 56; RS, 1985, c 31 (1st Supp) s 67.

#### ESTABLISHMENT OF HUMAN RIGHTS REVIEW TRIBUNAL

Under the authority of section 56.(1) of the Canadian Human Rights Act, I hereby establish a Human Rights Review Tribunal - composed of Roger Doyon, Chairman, of Ville St-Georges Est, in the province of Quebec; Jacinthe Théberge, of Aylmer, in the province of Quebec; and Joanne Cowan-McGuigan, of Kings County, in the province of New Brunswick - in order to examine the appeal lodged by the Canadian Armed Forces on October 25, 1990, of the decision rendered by the Human Rights Tribunal on October 1, 1990, in the case of Jacques Bouchard against the Canadian Armed Forces.

4/...

The Review Tribunal shall determine whether the appeal is to be allowed or dismissed on a question of law or fact or mixed law and fact, in accordance with subsections 56.(3), (4) and (5) of the Canadian Human Rights Act.

Done at Toronto, this 23rd day of November, 1990.

(S) Sidney N Lederman, QC

President, Human Rights Tribunal Panel

## THE COMPLAINT

On November 8, 1984, Corporal Jacques Bouchard lodged the following complaint:

[TRANSLATION]

In September 1972, I was enlisted as a cook (861 Cook) in the Canadian Armed Forces. From 1973 onward, I had kidney stone and urinary problems which resulted in weight gain and a rise in my blood pressure. However, this did not prevent me from serving on ships and in field units. In August 1983, when I was practising my trade as cook in the Debert Detachment on the Halifax Base, Nova Scotia, I was operated on for kidney stones. My health improved and, with an appropriate diet, my blood pressure and weight decreased. However, in accordance with certain policies of the Department of National Defence, because my kidney stone problem was considered chronic, my medical category was lowered to the G4-O3 level.

On February 2, 1984, the Department

5/...

of National Defence decided to discharge me from military service, effective August 27, 1984, giving as the reason that my medical category of G4-O3 was below the minimum medical standards for the trade group to which I belonged and for all the other trade groups in the Army.

Nevertheless, I am qualified to perform my work as cook in a satisfactory manner, and my medical problem does not affect my work performance in any way.

I therefore believe that the Department of National Defence, by establishing and applying guidelines based on differentiation according to physical disability, is discriminating against me and against all other individuals in the same circumstances as mine (kidney diseases) and that, by refusing to continue to employ me on this ground of discrimination, it is contravening sections 7 and 10 of the Canadian Human Rights Act.

Done at Ville La Baie, November 8, 1984

(S) Jacques Bouchard (S) Denise Bouchard

---

Signature of respondent      Signature of witness

## THE FACTS

Jacques Bouchard enrolled in the Canadian Armed Forces as a private in September 1972. After passing the required medical examinations, Mr Bouchard received a medical rating of G2-O2. He did his military training at Saint-Jean d'Iberville during late 1972 and early 1973. That same year, he took a cook's course at CFB Borden in Ontario.

6/...

In October 1973, during his stay at Borden, Mr Bouchard suffered an attack of renal colic which required him to be hospitalized in the Royal Victoria Hospital in Barrie, Ontario. An intravenous pyelogram revealed lithiasis in the lower left ureter; a basket extraction was performed, and a urinary infection resulted.

Mr Bouchard was transferred to CFB Gagetown, in New Brunswick, where he practised his trade as cook for three years and took part in military exercises with the Field Ambulance 1, which was later replaced by the Combat Arm School. CFB Gagetown, to which he was attached, is a land operations base of the Canadian Armed Forces.

In August 1973, Mr Bouchard suffered another attack of renal colic. An intravenous pyelogram revealed the presence of a stone in the right kidney that passed spontaneously. A follow-up intravenous pyelogram revealed the presence of a second stone in the right kidney.

Because he was to be transferred to Alert on December 3, 1974, Mr Bouchard consulted an internist, and an intravenous pyelogram on October 22, 1974, revealed no abnormality. However, on November 7, 1974, Bouchard suffered another attack of renal colic, and intravenous pyelograms on November 8 and 10, 1974, revealed the presence of a stone in the right ureter. A basket extraction was successfully performed on November 14, 1974. Mr Bouchard's medical rating was changed to G4-O3.

Mr Bouchard suffered pains in his right side until January 1975, and a number of consultations and follow-up examinations took place. His health problems obviously prevented his transfer to Alert.

During the summer of 1975, more precisely in July and August 1975, Mr Bouchard was examined by an internist at the Oromocto Hospital on several occasions because of the pain in his right side.

7/...

Mr Bouchard was transferred to the Halifax Hospital for reasons unrelated to his kidney problems. The internist at the Oromocto Hospital took the opportunity to obtain an opinion on the condition of Mr Bouchard's kidneys. It was discovered that his calcium level was at the upper limit of normal and his urinary calcium was elevated.

On October 30, 1975, he was examined at the Halifax Hospital, where it was determined that his renal lithiasis had cleared up. His limitations became temporary for a period of six months, such that in May 1976, all restrictions were lifted. His early discharge planned for September 1976 was cancelled, and his medical category was changed to G2-O2 (no restrictions).

On June 8, 1976, Mr Bouchard was admitted to Oromocto Hospital and then transferred to Halifax Hospital.

That same year, Mr Bouchard was transferred to the HMCS Saguenay, where he worked as a cook and took part in military activities for two years.

From the HMCS Saguenay, he went to CFB Bagotville and the 433 Tac F Sqn, where he practised his trade for two years and worked as a supervisor. He successfully took part in two exercises in Norway, with the 433 Tac F Sqn and the 434 Cold Lake, as a cook.

On June 11, 1981, while at Bagotville, Cpl Bouchard went to the base hospital with an attack of renal colic. An intravenous pyelogram was requested at the Valcartier Hospital and revealed the absence of stones or obstruction.

Cpl Bouchard was transferred from Bagotville to Mont Apica in the Laurentians, a semi-isolated Canadian Forces station, where he supervised

8/...

the kitchen staff as second in command. In April 1983, he was transferred from Mont Apica to the Canadian Forces communication station in Debert, Nova Scotia, where he was second in command of the kitchens and civilian employees. His last transfer before his discharge was for two months at CFB Halifax.

While at Debert, Cpl Bouchard met a second in command on August 3, 1983, when he complained of back pain and blood in his urine. He was referred to Halifax Hospital. An intravenous pyelogram revealed a kidney stone, which was surgically removed on August 18, 1983.

On September 12, 1983, Dr Chalmers changed Cpl Bouchard's medical category from G2-O2 to G2-O3. Exhibit CHRC-5 shows that Commander Smith changed Cpl Bouchard's medical category from G2 to G4 on October 26, 1983, and referred the case to the CMRB (Career Medical Review Board) for a ruling.

On February 2, 1984, the CMRB decided that Cpl Bouchard should be discharged from the Canadian Armed Forces effective August 27, 1984.

The grounds for discharge appear in the letter sent to him by General G C E Thériault, on January 30, 1985, in response to his grievance filed against the Canadian Armed Forces.

"30 January, 1985

Mr J J Bouchard

#### APPLICATION FOR REDRESS OF GRIEVANCE

1. I recently reviewed your application for redress of grievance and gave it careful consideration. I made my decision and in the following paragraphs I will provide you with the reasons for that decision.

9/...

2. Your performance and activities in a static location are not in question; however, a key element in the military is mobility and members must have medical categories that do not restrict that mobility. The decision to release you was based on the needs of the Service and the employment limitations related to your medical condition. You were awarded a medical category of Geographical 4 (04) and Occupational 3 (03) for recurring urolithiasis. Your medical reports indicate repeated problems with kidney stones and include hypertension and obesity. Your limitations are G4 - unfit for sea, field and United Nations Emergency Forces and medically isolated duties; 03 - unfit for prolonged arduous duties, PT at your own pace.

3. The Director Medical Treatment Services at National Defence Headquarters carefully reviewed your medical file. Because of your primary medical problems, recurring kidney stones, which severely limits your employability, in that when an attack occurs immediate care by a physician is required, it is considered that the medical category of G4-O3 awarded you is correct. The decision to release a trained service member who has served faithfully is taken with great reluctance and the final decision concerning you was made only after lengthy and thorough medical and career reviews.

4. I concluded that you had not been treated unfairly and denied the redress you were seeking. I regret my inability to be more positive and wish you every success in your future endeavours.

G C E Thériault, General"

10/...

#### THE EVIDENCE

The evidence submitted to the Tribunal of the first instance - such as the medical file that Commander Taillon submitted as exhibit R-8 and commented on at length in his testimony - clearly shows that Corporal Bouchard suffered from recurrent problems with kidney stones (renal lithiasis). The testimony of Colonel Jacques H Roy, MD, reached the same conclusion.

Dr Roy explained to the Tribunal that the Canadian Armed Forces uses a classification system called "Medical Standards for the Canadian Forces", which determines a person's capacity to serve in the Canadian Armed Forces ((A-MD-154-000) from Colonel Roy's file of documents submitted as exhibit R-11).

The system uses medical categories that establish a soldier's condition with respect to his or her planned employment in the Canadian Armed Forces.

In the system, the letter G represents the geographical factor, and the letter O the occupational factor.

The category includes the individual's year of birth and the six following factors (p 507):

- V for visual acuity
- CV for colour vision
- H for hearing
- G for geographical limitation
- O for occupational limitation
- A for air factor

11/...

The geographical factor (G) is divided into three sub-factors:

- climate;
- accommodation and living conditions;
- medical care available.

The alphabetic code is accompanied by a number from 1 to 6 - with 1 being excellent and 6 unfit.

When an individual enters the Canadian Armed Forces, the medical category assigned is normally G2-O2, as was the case for Mr Bouchard.

During the course of his or her career, however, the state of a soldier's health may deteriorate, necessitating a change in medical category. It can initially be modified (G4) temporarily (T6) to allow for a more thorough medical evaluation. If the results are inconclusive, the previous medical category is re-established. Thus, Corporal Bouchard's discharge set for May 7, 1976, was cancelled and his medical category was changed from G4(T6)02 back to G2-O2.

Medical category G4 is described as follows in the Manual (A-MD-150-000):



G4: Climatic or Isolation Limitation - Requirement for Barrack or Equivalent Accommodation and Physician Service Readily Available - This grade will be assigned to individuals in two groups, viz: a) any individual who is limited to employment in temperate climates or who is considered unfit for a medically isolated posting because of a medical disability; and b) any individual who has a medical condition that has the potential for sudden serious complications or a medical disability which is persistently mildly incapacitating. This individual usually requires barracks or home

12/...

living conditions and readily available physician's services. Such personnel are considered unfit for sea and field duty, medically isolated postings and United Nations Emergency Force duty.

The minimum medical category required to be a cook (861), as Corporal Bouchard was, is G3-O3 (annex 6 - CFAO 34-30 in exhibit R-11).

This document also mentions - on page 7-16, section 20 - that "(1) medical renal disease - a) proteinuria, not orthostatic; b) glomerulonephritis; c) nephrocalcinosis, d) nephrolithiasis; e) nephrotic syndrome; f) pyelonephritis (recurrent); and g) metabolic renal diseases, tuberculosis, collagen disease, etc" require a G4 rating.

The evidence shows that when a soldier's medical category is lowered, it is then up to the Career Medical Review Board to decide whether the restrictions arising from the change of category require a change of trade, location or occupation, or discharge.

Since Corporal Bouchard's medical category had been lowered to G4-O3, his case was submitted to the CMRB, which ruled that he had to be released for medical reasons, since he suffered from chronic renal lithiasis, which prevented him from working as a cook.

In his testimony, Commander Young described the roles and objectives of the Canadian Armed Forces, both in Canada and abroad.

WO Pierre Lemire, himself a cook in the Canadian Armed Forces, explained the duties inherent in a military career and the trade of cook.

13/...

The primary role of an individual who joins the army is that of soldier, a fact Mr Bouchard acknowledges (p 34). Individuals choose a military career primarily to defend their country. Since they must be soldiers above all else, they receive training to permit them to fulfil the responsibilities of a soldier, even if they perform the duties of a cook in

the army. Even a cook in the armed forces is first and foremost a soldier who must at all times be capable of performing military duties in any conditions required by the trade of soldier and often for long periods.

If serving on a ship, he or she must, in addition to feeding the members of the crew, stand watch on the bridge and provide first aid. He or she may be called on to combat a fire on the ship.

When serving at a land base, a soldier must be able to defend the base. A cook in the field must, as well as preparing meals, drive trucks, move heavy boxes and lift large weights. The duties of a cook require fourteen to eighteen hours of work a day, and there is sentry duty on top of that.

## THE LAW

After determining the relevance of sections 3 and 7 of the Canadian Human Rights Act, the Tribunal of the first instance reached the conclusion that Corporal Bouchard had been released from the Armed Forces on a prohibited ground of discrimination and that he had been the victim of a discriminatory practice.

14/...

However, with reference to section 15 of the Act, the Tribunal of the first instance asked whether Corporal Bouchard's release from the Canadian Armed Forces resulted from a bona fide occupational requirement, which would mean it was not a discriminatory practice.

To answer the question, the Tribunal of the first instance applied the principles set out by the Supreme Court of Canada in *The Ontario Human Rights Commission v The Borough of Etobicoke*, on page 208:

To be a bona fide occupational qualification and requirement a limitation, such as a mandatory retirement at a fixed age, must be imposed honestly, in good faith, and in the sincerely held belief that such limitation is imposed in the interests of the adequate performance of the work involved with all reasonable dispatch, safety and economy, and not for ulterior or extraneous reasons aimed at objectives which could defeat the purpose of the Code.

The requirement must thus meet a subjective criterion. On this point, this Tribunal feels that, with all respect for the contrary opinion, the Tribunal of the first instance erred in its assessment of the evidence submitted.

The Canadian Human Rights Commission established a prima facie case that Corporal Bouchard had been released from the Canadian Armed Forces because of a physical disability, as the Respondent acknowledged.

15/...

As to the nature of the physical disability, Corporal Bouchard's medical file and the testimony of Commander Taillon, internist, show that Cpl Bouchard suffered from recurrent kidney stones (renal lithiasis). This discovery set in motion the entire procedure of the Medical Standards for the Canadian Armed Forces; in the case of renal lithiasis, the Standards require a medical category of G4, which places restrictions on the soldier.

The document entitled "Notice of change of medical category or medical limitations" (CF 2088), exhibit R-8, contains no ambiguity. In fact, the medical category of G2-O3 established by Dr Chalmers on September 12, 1983, is typewritten.

The same form contains the handwritten remarks of the command surgeon, Commander J D Smith, dated October 26, 1983, which indicate, in a handwritten note, the G4 rating and visibly the same restrictions as those mentioned in the G4 category of the Medical Standards for the Canadian Forces. As a result, the deletions in Dr Chalmers' report are unimportant.

With reference to Corporal Bouchard's medical file, renal lithiasis requires the G4 category and the accompanying restrictions are in accordance with the Medical Standards for the Canadian Forces.

Commander Smith thus conformed to the requirements of the Career Medical Review Board, which oblige the command surgeon to make the observations entered in part III of CF form 2088 as categorical as possible about the prognosis and the occupational and geographical restrictions on the soldier.

16/...

Moreover, Colonel Jacques H Roy, MD, and Director of Medical Treatment Services in the Surgeon General's office at NDHQ, confirms Commander Smith's decision.

Colonel Roy describes his duty in this way (pp 500- 558):

[TRANSLATION]

A - The Surgeon General has made me by delegation the chief medical officer for the Canadian Forces. I am responsible for applying the entrance medical standards for Canadian Forces recruits and assigning the medical category of which we have spoken at great length, maintaining that medical rating there

where changes, depending on individuals' medical status throughout their careers . . . . It is up to me as chief medical officer to confirm the changes in medical categories recommended by base surgeons upon the recommendation of specialists.

After consulting Corporal Bouchard's medical file, Colonel Roy confirmed the validity of the G4 rating given Corporal Bouchard (pp 558-559):

[TRANSLATION]

A - I have absolutely no doubt that that category is the most appropriate category in this case. This individual needed to have medical care provided by a doctor available; it absolutely had to be available. This individual could not go to sea for the reason explained to you, it is not possible to tranship a patient from a destroyer with no doctor aboard to a support ship with a doctor aboard.

17/...

18/...

Moreover, in a case such as former Master Corporal Bouchard's, there is absolutely no question of going to areas with a torrid climate like those where our various UN forces serve. No question, there would be a danger of dehydration or of enteritis producing dehydration.

And finally, I believe that putting him in those areas could place his life or health or the lives of other, his life in health and that of others . . .

Q -In health?

A -His life in danger, excuse me, and the safety of others . . . to put him in isolated areas - to post him to isolated areas such as Alert or other isolated stations.

There is no ambiguity in the evidence presented to the Tribunal of the first instance.

Moreover, the evidence reveals that when an individual chooses a career as a cook in the Armed Forces, that individual must be able to perform all the tasks of a soldier, on land or at sea. A cook, besides feeding the troops, must also be able to perform military duties anywhere and in whatever climatic conditions.

The respondent thus satisfied the subjective criterion set out by the Supreme Court in Etobicoke, in that the restriction was imposed by the respondent honestly, in good faith and in the sincerely held belief that it was imposed in the interests of the adequate performance of the work involved with all reasonable dispatch, safety and economy.

In Etobicoke, the Supreme Court stated that the requirement must also satisfy an objective criterion (p 208):

19/...

In addition it must be related in an objective sense to the performance of the employment concerned, in that it is reasonably necessary to assure the efficient and economical performance of the job without endangering the employee, his fellow employees and the general public.

Ample evidence was submitted with respect to the objective criterion.

Commander Taillon, an internist, enlightened the Tribunal about the illness called renal lithiasis, whose main symptom is renal colic that produces unbearable pain.

[TRANSLATION]

The pain is so severe that we give the patient very powerful painkillers or even narcotics, that is, meperidine, better known as demerol, and morphine is often used to relieve patients with renal colic. (Commander Taillon p 369)

There is no question, Madam Chairman, that during an attack of renal colic, no matter what the individual's profession or trade, that individual is an invalid. (Commander Taillon, p 370)

Renal colic frequently causes vomiting and dehydration. It signifies the presence of a stone which can cause an obstruction that prevents the excretion of urine and may cause an infection.

The treatment of renal colic requires minimal medical facilities and a radiology department to perform an intravenous pyelogram in order to carry out an examination and locate the stone in the urinary system.

20/...

Commander Taillon also explained that renal lithiasis is recurrent:

[TRANSLATION]

You must also remember that renal lithiasis is by nature recurrent. (Commander Taillon, p 400)

It is impossible to predict when renal lithiasis will occur.

The evidence also shows that renal lithiasis requires immediate hospital care and medical equipment to assess the situation in order to allow surgery without delay, or else the patient may die.

An individual with renal lithiasis cannot therefore work where there is no hospital, such as aboard ships or in semi-isolated stations, or during military exercises far removed from hospital centres, without putting his or her life in danger.

The evidence provided in the testimony of Corporal Loesh and Commander Taillon also demonstrates that a soldier likely to suffer from renal lithiasis may endanger the lives of other members of the Canadian Armed Forces.

Taken as a whole, the evidence proves that the respondent has met the subjective criterion set out in *The Ontario Human Rights Commission v The Borough of Etobicoke*.

As a result, the Canadian Armed Forces has demonstrated to the Tribunal's satisfaction that, on the balance of probabilities, the requirement that a soldier performing the trade of a cook in the Canadian Armed Forces cannot have renal lithiasis constitutes a bona fide occupational requirement within the meaning of paragraph 15(a) of the Canadian Human Rights Act.

21/...

Having established that a bona fide occupational requirement does not constitute a discriminatory practice, we now turn to the question of the duty to accommodate.

The question is dealt with in *The Alberta Human Rights Commission v Central Alberta Dairy Pool et al* (1990 - 2 SCR, p 489). The duty to accommodate exists only in cases of indirect discrimination.

The evidence shows, to the satisfaction of the Tribunal, that when the Canadian Armed Forces rules that a person with renal lithiasis is not able to perform military duties, it is imposing a rule intended to be direct discrimination, since it is a standard that applies to everyone with renal lithiasis.

However, once the rule is established by the Canadian Armed Forces, it is appropriate to ask whether there is any alternative that would allow someone with renal lithiasis to pursue a career in the Canadian Armed Forces. The Supreme Court of Canada, in *The City of Saskatoon v The Saskatchewan Human Rights Commission* (1989, 2 SCR, p 1297) said:

If there is a practical alternative to the adoption of a discriminatory rule, this may lead to a determination that the employer did not act reasonably in not adopting it.

Would the practical alternative not be to submit Corporal Bouchard to an individual assessment to demonstrate that his renal lithiasis would not prevent his performing his duties without endangering himself or those around him?

In *David Galbraith v Canadian Armed Forces* (HRC, volume 10, decision 960) paragraph 45827 states:

22/...

A blanket policy can be justified by an employer as a substitute for individual assessment, but only where individual assessment is shown to be impractical or impossible. (See, for example, *DeJager v Department of National Defence* (1986) 7 CHRR D/3508 at D/3517 and *Rodger* at 32.) In *Rodger*, the Tribunal held that an employer seeking to justify the absence of individual assessments must show that such assessments are inappropriate and that in general, there is known to be a sufficiently high risk of failure to warrant the imposition of a blanket restriction. Commander Taillon spoke about the unpredictability of renal lithiasis (p 401):

[TRANSLATION]

Unfortunately, it is completely unpredictable, Madam Chairman. There are individuals - I spoke about them earlier - who can have renal lithiasis without suffering renal colic; it can present itself in the form of a haematuria - blood in the urine - and it is impossible to predict whether this stone will eventually produce a blockage leading to renal colic. When a patient has already had episodes of renal lithiasis and is not having any at the moment, there is no way of telling if they will reform into others or not. That, unfortunately, is the nature of the condition.

The evidence shows that, in this case, individual assessment is impossible and that, moreover, renal colic causes such pain that the sufferer is not capable of performing his or her tasks properly.

23/...

## CONCLUSION

Subsection 56(5) of the Canadian Human Rights Act states that:

A Review Tribunal may dispose of an appeal under section 55 by dismissing it, or by allowing it and rendering the decision or making the order that, in its opinion, the Tribunal appealed against should have rendered or made.

THEREFORE, the Review Tribunal:

Allows the appeal by the Canadian Armed Forces; and now modifies the ruling by Pierrette Sinclair rendered on October 1, 1990, and rejects the complaint made by Corporal Jacques Bouchard to the Canadian Human Rights Commission following his discharge from the Canadian Armed Forces on August 27, 1984.

SIGNED AND DONE at Ville St-Georges, June 21, 1991

(signed)  
ROGER DOYON  
Chairman

SIGNED at East Riverside, Kings County, NB, June 29, 1991

(signed)  
JOANNE COWAN-McGUIGAN  
Member

SIGNED at Hull, July 10, 1991

(signed)  
JACINTHE THEBERGE  
Member