MICHELINE MONTREUIL

Complainant

- and -
CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -
CANADIAN FORCES

Respondent

DECISION

MEMBER: Pierre Deschamps

2009 CHRT 28
2009/09/08

I. INTRODUCTION

[1] In the complaint before the Tribunal, Micheline Montreuil alleges that the Canadian Forces discriminated against him on the grounds of sex and a perception that he was disabled, contrary to sections 3 and 7 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6.

[2] This complaint was heard over a number of months, from October 2006 to December 2007. This case was reserved on December 21, 2007. On February 9, 2008, the Member's mandate expired. The Chairperson of the Tribunal extended the Member's mandate in three of the four cases before him at the time. His mandate in this case was not extended. It appears that the Chairperson's decision not to extend the Member's mandate in this case was the subject of an application for judicial review from the respondent.

[3] On December 23, 2008, the Honourable Madam Justice Hansen of the Federal Court allowed the application for judicial review. She gave her reasons in a judgment dated January 7, 2009. In her reasons for judgment, she found that the Chairperson's decision was unreasonable in several respects. She pointed out that the Chairperson had failed to consider the interests of the parties in the case at bar. The case was therefore referred back to the Chairperson for reconsideration. On February 19, 2009, the Member's mandate was extended until August 19, 2009, so that he could make a determination in the present case.

[4] It should be noted that the member who heard the complaint in the case at bar was never informed by the Tribunal about the judicial review proceedings before the Federal Court. However, as a precaution, he kept in his office all material filed in the hearing of this case-submitted documents, transcripts-as well as his own personal notes from the hearing. This decision is therefore made on the basis of a complete record that includes material filed at the hearing, transcripts and the Member's hearing notes.

[5] The hearing of this matter took 97 days to complete. A number of interim decisions were made in the proceedings. More than 20,000 pages of transcripts were filed. Fifteen factual witnesses and four expert witnesses were heard.

[6] The factual witnesses were Micheline Montreuil, complainant; Daniel Trudel, Hélène Trudel and André Gravel, acquaintances of the complainant; Dr. Serge Côté, psychiatrist; Dr. Rolland Tremblay, endocrinologist; Maj. Pierre Labonté (formerly Captain Labonté), personnel selection officer; Col. Ronald Fletcher; Warrant Officer Jean-Marc Dumais, physician assistant; Dr. Darlene Newnham, recruiting medical officer; Dr. D. B. Collins, recruiting medical officer; Dr. Randy Boddam, Canadian Forces psychiatrist; Dr. Diane Watson, psychiatrist; Dr. Christiane Dufour, psychologist; and Josh Pankhurst, Department of National Defence clerk.

[7] The expert witnesses were Dr. Pierre Assalian, psychiatrist; Dr. Edouard Beltrami, psychiatrist; Dr. Richard Karmel, psychologist; and Daniel Hébert, actuary.

[8] In the case at bar, the complainant represented herself. The respondent was represented by the Attorney General of Canada. The Canadian Human Rights Commission (the Commission) was actively involved throughout the hearing of the complaint.

II. COMPLAINT

[9] On the complaint form dated December 17, 2002, Micheline Montreuil states that he applied for enrolment in the Canadian Forces in June 1999. The complaint indicates that Micheline Montreuil had already applied twice before, in April 1974 and June 1997.

[10] As for the first application for enrolment, Micheline Montreuil states in the complaint that he was unable to start the officer course. As for the second application for enrolment, Micheline Montreuil states that he voluntarily asked to leave the Canadian Forces for two reasons: first, because of a conflict with his employer at the time, Collège François-Xavier-Garneau, he was too behind in his training; and second, he was about to begin a sex reassignment process and did not want that to interfere with the normal course of his training and career in the Canadian Forces.

[11] Micheline Montreuil's complaint indicates that he applied for enrolment in the Canadian Forces again in June 1999. As part of the enrolment process, Micheline Montreuil states in his complaint that he underwent two medical examinations and attended an interview at the end of which it was recommended that Micheline Montreuil continue with the enrolment process to return to the Canadian Forces.

[12] The complaint indicates that, between October 13 and 25, 1999, six experts in their fields, including Dr. Serge Côté, psychiatrist, gave their professional opinions about him in writing. The complaint also indicates that, on October 26, 1999, Dr. Roland Tremblay, endocrinologist, gave the Canadian Forces his professional medical opinion on Micheline Montreuil's sex reassignment.

[13] It appears from the complaint that Lieutenant-Commander Collins, a recruitment medical officer at Canadian Forces Base Borden, later asked a number of questions on Micheline Montreuil's partial physical transformation, in a letter dated December 10, 1999. In a letter dated December 20, 1999, Doctor Côté, psychiatrist, gave the Canadian Forces a second professional medical opinion on Micheline Montreuil's sex reassignment and recommended that Micheline Montreuil be enlisted in the Canadian Forces as a woman, despite his partial transformation, since Doctor Côté believed that the incomplete transformation was beneficial for Micheline Montreuil.

[14] In his complaint, Micheline Montreuil states that he sent Doctor Côté's letter to Lieutenant-Commander Collins. In an accompanying letter to Lieutenant-Commander Collins, Micheline Montreuil states that he was a normal, right-minded person, he had no intention of undergoing any surgery whatsoever in the coming years, he would no longer need hormone treatments, and he wished to meet the Canadian Forces psychiatrist and other members of the Canadian Forces so that they could examine him in person and he could answer their questions in person, so that their opinions would be based on facts rather than assumptions or theory.

[15] The complaint indicates that, in a letter to Micheline Montreuil on March 9, 2000, Lieutenant-Commander Collins asked a very specific question on Micheline Montreuil's physical transformation, requesting that his physician confirm that no additional treatments related to his sexual identity were required. In his reply to Lieutenant-Commander Collins, Micheline Montreuil repeated that he would cease all hormone treatments within two months, with a view to returning to the Canadian Forces. Moreover, the complaint indicates that, on March 15, 2000, Dr. Roland Tremblay, endocrinologist, gave his medical opinion to the Canadian Forces on Micheline Montreuil's sex reassignment, stating that stopping hormonal therapy compromises or simply stops a transsexual person's development.

[16] According to the complaint, on May 17, 2000, Lieutenant-Commander Collins requested that Micheline Montreuil's psychiatrist provide a professional diagnosis of the complainant's need for psychotherapy and medical support regarding his sexual identity in the 30 years to follow. The complaint indicates that, on November 22, 2001, Dr. Roland Tremblay gave his professional medical opinion a third time regarding Micheline Montreuil's sex reassignment and recommended that the complainant be enlisted in the Canadian Forces as woman. The complaint also indicates that, on November 24, 2001, Dr. Serge Côté, psychiatrist, gave his professional medical opinion a third time regarding the sex reassignment and recommended that Micheline Montreuil be enlisted in the Canadian Forces as a woman.

[17] It appears from the complaint that, in a letter to Micheline Montreuil on January 7, 2002, Lieutenant-General Couture explained the Common Enrolment Medical Standard and the role of G (geographical) and O (occupational) factors in selecting applicants, explained that an applicant for enrolment in the Canadian Forces must meet the Common Enrolment Medical Standard of G2 and O2, and explained that the only way for Micheline Montreuil to be classified in medical category G2 would be to show that there was no ongoing or future monitoring or treatment associated with his diagnosed medical condition. According to the complaint, Lieutenant-General Couture states in his letter that hormonal therapy constitutes ongoing treatment that calls for classification in category G3 or higher. According to the complaint, hormonal therapy had been stopped as of February 2001.

[18] The complaint indicates that, on March 7, 2002, Micheline Montreuil asked Lieut.(N.) A. Dieryckx to initiate a review of his medical condition and, in a letter dated April 23, 2002, Micheline Montreuil asked Doctor Newnham, recruiting medical officer, to review his medical condition.

[19] According to the complaint, in a letter dated April 25, 2002, Lieutenant Wright, recruiting medical officer, informed Micheline Montreuil that the Director of Medical Policy (DMedPol) was upholding the same medical restrictions even though all hormone treatments had ended more than one year earlier, no medical attention had been received for over one year and the complainant had submitted new medical reports dated November 2001.

[20] The complaint also indicates that, in a letter dated May 15, 2002, Micheline Montreuil asked Lieutenant Wright to review his medical condition in light of all the changes that had occurred. According to the complaint, in a letter dated July 30, 2002, Lieutenant Wright informed Micheline Montreuil that the restrictions associated with the hormone treatments had been removed by the Director of Medical Policy (DMedPol), but the DMedPol had assigned a new medical limitation indicating that Micheline Montreuil had a chronic gender identity disorder that prevented him from returning to the Canadian Forces.

[21] Micheline Montreuil claims in his complaint that the letter dated May 17, 2000, from Lt.-Cmdr. D. B. Collins and the letter dated July 30, 2002, from Lieutenant Wright are acts of discrimination. More specifically, Micheline Montreuil focuses on two points in the complaint:

(1) How could Lieutenant-Commander Collins, in his letter dated May 17, 2000, ask Micheline Montreuil's psychiatrist to provide a professional diagnosis on Micheline Montreuil's need for psychotherapy and medical attention regarding his sexual identity in the 30 years to follow, when no psychiatrist can guarantee 30 years of good and loyal service?
(2) How could Lieutenant Wright, in her letter dated July 30, 2002, state that Micheline Montreuil had a chronic gender identity disorder when all the assessments indicated otherwise?

[22] Moreover, Micheline Montreuil argues that the decisions of the Director of Medical Policy (DMedPol) are acts of discrimination, since they are contrary to professional opinions given by three different physicians who examined Micheline Montreuil on multiple occasions, that the opinions were not contradicted by any Canadian Forces physician who might have examined him, since the Canadian Forces were still refusing to have a Canadian Forces physician examine him, and that it was futile for Micheline Montreuil to submit new medical assessment reports because, according to the complaint, it was obvious from reading the letter dated July 30, 2002, that the Director of Medical Policy (DMedPol) would never grant a G2O2 classification.

III. POSITION OF THE PARTIES

[23] The positions of the parties in this case are, to say the least, diametrically opposed. The complainant, Micheline Montreuil, argues that this case deals essentially with discrimination, a position that the Commission supports. The respondent argues that the issue at hand is essentially of a medical nature, that Micheline Montreuil's medical condition is at the heart of this dispute. Micheline Montreuil places the discussion at a social or sociological level, while the respondent places it at a medical level.

[24] In the case at bar, Micheline Montreuil is biologically a man, but considers himself transgendered. He describes himself as a person with a body having characteristics of both sexes, for example, a pair of breasts and a penis. He claims to be in between the two sexes, male and female, and says that he wishes to join the Canadian Forces in that physical state.

[25] Micheline believes he is a victim of discrimination because of his gender or sex. For Micheline Montreuil, the crux of the dispute is the discrimination against him in the enrolment process. Micheline Montreuil argues that his application for enrolment in the Canadian Forces was rejected not for medical reasons, but mainly because he considers himself transgendered; therefore, the issue is one of discrimination on the basis of sex. He believes that the medical reasons are simply a way to cover up the discrimination and are in fact an excuse not to recruit him.

[26] Micheline Montreuil does not consider himself to be afflicted with a psychiatric problem such as a gender identity disorder or borderline personality disorder that would prevent him from serving in the Canadian Forces. Moreover, he believes that he has no medical condition that would prevent him from performing common tasks specific to the Canadian Forces and applicable to any member of the Forces.

[27] Micheline Montreuil further argues that the transformations that he has undergone, namely, breast enlargement, through the use of female hormones, and laser hair removal, were for aesthetic purposes only and in no way resulted from a desire to change his gender. Moreover, he emphasizes that the treatments were voluntary, not linked to any pathology, and simply aesthetic in nature, and that his decision to live in between the two sexes, but favouring the female sex, is a voluntary and social one.

[28] Micheline Montreuil claims that there is an anti-transgender policy in the Canadian Forces. He refers to the fact that persons with mental disorders tend not to be hired if such persons are generally thought to have employment limitations. Micheline Montreuil believes that, by adamantly classifying him as having a mental disorder, namely, gender dysphoria, the Canadian Forces are saying that they cannot recruit him.

[29] Micheline Montreuil believes that, in the Canadian Forces, medical issues are used to cover up transgender issues and discrimination. Micheline Montreuil believes that, upon

closer examination, it is actually false to say that the Canadian Forces do not have a policy on transgendered persons. There is in fact a policy, and that policy is to exclude transgendered persons from employment by saying that they have a mental disorder. Micheline Montreuil believes that the respondent knowingly classified him in medical category G5 to be certain that he could not enrol in the Canadian Forces.

[30] The Canadian Human Rights Commission agrees with Micheline Montreuil's position. That said, the basic issue for the Commission is not the fact that Micheline Montreuil is transgendered or transsexual, but whether or not he is able to perform the work in the Canadian Forces for which he applied.

[31] The respondent, by contrast, argues that its refusal to enrol Micheline Montreuil is in no way discriminatory, but is based on his medical condition, which resulted in him failing to meet the Common Enrolment Medical Standard. The respondent's position is expressed clearly in a letter written by Lieutenant-General Couture to the Quebec regional manager of the Canadian Human Rights Commission on December 17, 2003.

[32] In his letter, Lieutenant-General Couture wrote that the respondent was justified in rejecting Micheline Montreuil's application for enrolment, because he did not meet the Common Enrolment Medical Standard. Lieutenant-General Couture believed that the respondent's decision was not motivated by prejudice against transsexuals or persons in transition, but by the medical condition with which Micheline Montreuil was diagnosed when he applied for enrolment. Lieutenant-General Couture pointed out that the respondent had given Micheline Montreuil a number of opportunities to show that he met the Common Enrolment Medical Standard, but the complainant had not provided that assurance. For the Canadian Forces, Micheline Montreuil's medical condition is at the heart of this dispute.

IV. ISSUES

[33] In his complaint, Micheline Montreuil points out two issues that he believes must be decided by the Tribunal:

(1) How could Lieutenant-Commander Collins, in his letter dated May 17, 2000, ask Micheline Montreuil's psychiatrist to provide a professional diagnosis on Micheline Montreuil's need for psychotherapy and medical attention regarding his sexual identity in the 30 years to follow, when no psychiatrist can guarantee 30 years of good and loyal service?

(2) How could Lieutenant Wright, in her letter dated July 30, 2002, state that Micheline Montreuil had a chronic gender identity disorder when all the assessments indicated otherwise?

[34] In addition to those two issues, it is important for the Tribunal to consider a third, which the respondent believes to be the nexus of this case:

(3) Were the Canadian Forces justified in placing a medical limitation on the enrolment of Micheline Montreuil in the Canadian Forces?

[35] Moreover, it appears that those questions are for the most part included in the questions asked of the experts in this matter, namely, Doctor Assalian:

(1) On the basis of the documentation provided by Micheline Montreuil, were the Canadian Forces justified in assigning a medical employment limitation for gender identity disorder?

(2) On the basis of the interview of Mr. Montreuil on May 18, 2006, and Mr. Montreuil's MMPI-2 psychological assessment report by Dr. Richard Karmel, psychologist, should Mr. Montreuil be assigned a medical employment limitation for gender identity disorder?

and Doctor Beltrami:

(1) Would the medical information provided by Mr. Montreuil, especially the reports Doctors Lehoux, Tremblay and Côté, have allowed the Canadian Forces to conclude that Micheline Montreuil had a medical condition that could compromise his work in the Canadian Forces?

(2) Can a person confirm that he will not require medical attention or psychotherapy in the 30 years to follow?

[36] As well, in oral argument, counsel for the Commission stated the main issue that the Tribunal must decide in the following way:

Did the situation of persons who are transsexual, transgendered, in transition or between the two play a role in the decision of the Canadian Forces to reject Micheline Montreuil's application for enrolment?

[37] To answer those questions, one must examine Micheline Montreuil's personal life and military background, the concepts of transgendered and transsexual and their relationship with the TTT realm, the various assessments produced in the case at bar on whether or not Micheline Montreuil had a gender identity disorder or personality disorder, and the various assessments by members of the respondent regarding Micheline Montreuil's application for enrolment. First, however, it is important to set out the legal framework within which all that information must be analyzed.

V. LEGAL FRAMEWORK

[38] In his complaint, Micheline Montreuil alleges that he was subjected to discrimination under sections 3 and 7 of the *Canadian Human Rights Act*, *supra*. The sections read as follows:

3. (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.

7. It is a discriminatory practice, directly or indirectly,

(a) to refuse to employ or continue to employ any individual, or

(b) in the course of employment, to differentiate adversely in relation to an employee,

on a prohibited ground of discrimination.

[39] In this case, a connection must be made between those provisions and certain subsections of section 15 of the *Canadian Human Rights Act*, *supra*, and section 33 of the *National Defence Act*, R.S.C. 1985, c. N-5.

Canadian Human Rights Act

15. (1) It is not a discriminatory practice if (a) any refusal, exclusion, expulsion, suspension, limitation, specification or preference in relation to any employment is established by an employer to be based on a bona fide occupational requirement.

15. (2) For any practice mentioned in paragraph (1)(a) to be considered to be based on a bona fide occupational requirement and for any practice mentioned in paragraph (1)(g) to be

considered to have a bona fide justification, it must be established that accommodation of the needs of an individual or a class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and cost.

15. (9) Subsection (2) is subject to the principle of universality of service under which members of the Canadian Forces must at all times and under any circumstances perform any functions that they may be required to perform.

National Defence Act

33. (1) The regular force, all units and other elements thereof and all officers and non-commissioned members thereof are at all times liable to perform any lawful duty.

[40] Liability to perform any lawful duty is described in more detail in the documents on the principle of universality of service, which applies to all members on exercise and any person applying for a position in the Canadian Forces.

[41] In the case of discrimination, it is not necessary that potential discrimination be the sole or overriding reason for a decision. It is sufficient that the discrimination be one basis for the decision (*Holden v. Canadian National Railway Company*, (1991) 14 C.H.R.R. D/12, para. 7 (F.C.A.)).

[42] That said, it is obvious that, in society, discrimination is often practised in a subtle manner. In fact, there are rarely cases where one can show by direct evidence that a person has been a victim of discrimination (*Basi v. Canadian National Railway Company (No. 1)*, (1988) 9 C.H.R.R. D/5029, para 38474 (C.H.R.T.)). Rather, according to settled case law, a tribunal must consider all of the circumstances to determine if there exists the *subtle scent* of discrimination. In so doing, it may rely on circumstantial evidence.

[43] Finally, it is settled case law that an intention to discriminate against a person is not necessary for discrimination to occur (*Ontario (Human Rights Commission) v. Simpsons Sears Ltd.*, [1985] 2 S.C.R. 536, para 28, para 14).

[44] As for discrimination against transsexual individuals, the decision of this Tribunal in *Kavanagh v. Canada (Attorney General)*, (2001) 41 C.H.R.R. D/119 (C.H.R.T.) removed all doubt that discrimination on the basis of transsexualism is discrimination on the basis of sex or gender, as well as discrimination on the basis of disability. That position has been adopted by a number of other tribunals (*Ferris v. Office and Technical Employees Union, Local 15*, (1999) 36 C.H.R.R. D/329 (B.C.H.R.T.), *Mamela v. Vancouver Lesbian Connection*, (1999) 36 C.H.R.R. D/318 (B.C.H.R.T.), *Sheridan v. Sanctuary Investments Ltd*, (1999) 33 C.H.R.R. D/467).

[45] As for evidence, it is settled case law that the burden rests on the complainant to establish a *prima facie* case of discrimination. A *prima facie* case is one that covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent. That said, as in any civil proceeding, the burden of substantiating such allegations rests on the complainant (*Ontario (Human Rights Commission) v. Simpson-Sears Ltd., supra*, para 28).

[46] Once a *prima facie* case of discrimination has been established, it is up to the respondent to provide a reasonable explanation for the allegedly discriminatory behaviour. If such an explanation is given, the complainant must show that it is but a pretext, and the respondent's

behaviour was in fact discriminatory (*Basi v. Canadian National Railway Company (No. 1), supra*).

[47] As for the *prima facie* evidence that must be shown in the case at bar, Micheline Montreuil stated in oral argument that it all boiled down to the following: *The Canadian Forces rejected the complainant because he considered himself a transgendered person and/or a person in transition and because he allegedly failed to provide the assurance that he would not require medical attention in the 30 years to follow. That is a* prima facie *case of discrimination on the basis of sex and a perceived disability contrary to section 7 of the Canadian Human Rights Act*. Moreover, Micheline Montreuil states that the Canadian Forces have not shown that recruiting him would impose undue hardship, as set out in section 15(2) of the *Act* and in the jurisprudence of the Supreme Court of Canada.

[48] The respondent argues that the issue at the heart of the *prima facie* evidence is Micheline Montreuil's credibility: Micheline Montreuil's position is not credible and he has not met the test for *prima facie* evidence, so one cannot believe the allegations he has made.

[49] As for recruiting, two decisions have defined the tests that must guide tribunals in determining whether or not there is a *prima facie* case of discrimination. In S*hakes v. Rex Pak Ltd.* (1981) 3 C.H.R.R. D/1001, para 8918, it was established that the complainant had to prove that he possessed the qualifications required for the position for which he was applying, he was not hired, and a person no more qualified than he, but lacking the distinguishing feature that is the gravamen of the human rights complaint, was given the position.

[50] In addition, in *Israeli v. Canadian Human Rights Commission* (1983) 4 C.H.R.R. D/1616, para 8918 (C.H.R.T.), it was established that, when a person possessing the required qualifications is not hired and the employer continues to seek a qualified candidate, the complainant must show that he belongs to a designated group under the Act, he applied and was qualified for a position that the employer wished to fill, his application was rejected even though he was qualified, and the employer continued seeking applicants with the complainant's qualifications.

[51] Case law subsequent to *Shakes* and *Israeli* specifies the scope of those decisions and the tests defined therein. According to those cases, neither of the two tests should be applied rigidly or arbitrarily in every hiring case, and the tribunal must consider the circumstances of each case to determine if the application of either test, in whole or in part, is appropriate (*Montreuil v. National Bank of Canada,* (2004) C.H.R.T. 7).

[52] Applying the *Israeli* test, Mr. Hadjis writes in *Montreuil v. National Bank of Canada, supra*, that once the complainant has established that he was qualified for the desired position, and *assuming that a* prima facie *case has been proven in all other requisite respects* (emphasis added), it falls to the employer, in its explanation, to demonstrate that the complainant was overqualified for the job and that the refusal to hire him was justified as a result.

[53] With respect to this case, the Tribunal has learned of two Tribunal decisions in matters involving the complainant. The first, *Montreuil v. National Bank of Canada, supra*, deals with a complaint filed by Micheline Montreuil who alleges that the respondent, the National Bank of Canada, refused to hire her because she was a transsexual person. In that decision, it was not disputed that, as a preoperative transgendered person, Micheline Montreuil belonged to a group that cannot be discriminated against on the basis of sex, pursuant to section 3 of

the *Canadian Human Rights Act*. In *Montreuil v. National Bank of Canada*, Mr. Hadjis found that, in light of the evidence before him, the *Israeli* test had been met and a *prima facie* case had been established. In the end, he found that the explanations provided by the respondent for not hiring Micheline Montreuil revealed discriminatory behaviour on the part of the respondent.

[54] The Tribunal notes that, in the decision by Mr. Hadjis, it states that Micheline Montreuil claims on the complaint form that she is a transsexual person who dresses as a woman and who was, at the time (in 1998), in a period of transition to become a woman. Mr. Hadjis then refers to Micheline Montreuil as a transgendered person. The Tribunal also notes that Micheline Montreuil's state of being a transsexual or transgendered person was not at issue in that case, the parties appearing to have acknowledged that Micheline Montreuil was a transsexual or transgendered person.

[55] With respect to that decision, even more important is the fact that Micheline Montreuil's credibility was not questioned, which is not the case in this matter, where Micheline Montreuil's credibility and allegations against the respondent are of utmost importance in determining the outcome.

[56] The second decision of this Tribunal regarding Micheline Montreuil is *Montreuil v. Canadian Forces Grievance Board* (2007 C.H.R.T. 53). That decision was ultimately upheld by the Federal Court (*Canada (Attorney General) v. Montreuil*, 2009 FC 60). In that second *Montreuil* decision, the Tribunal found that there was a subtle scent of discrimination in the respondent's decision not to offer Micheline Montreuil a grievance officer position.

[57] In the decision rendered by Mr. Doucet in that case, it states that when Micheline Montreuil talks about discrimination on the basis of sex, he refers to certain characteristics tied to gender identity or appearance which are such that she does not find herself, in his own words, in a situation that could be described as ordinary. Between what he describes as a normal man or a normal woman, there is the transsexual or transgendered realm. In the decision, Micheline Montreuil states that, between the transvestites and the transsexuals, there are transgendered people, that is, individuals who, like him, choose to live in the clothing of the other sex all of the time. He goes on to state that persons in that group may also opt for certain minor surgical operations to change certain aspects of their appearance, but they will not undergo a complete surgical transformation.

[58] The Tribunal notes that, in that case, Micheline Montreuil's particular condition was not at issue, the respondent having acknowledged that discrimination on the basis of being transgendered is considered discrimination on the basis of sex. The Tribunal took as fact Micheline Montreuil's description of herself, that is, that he was transgendered. It appears from Mr. Doucet's decision that Micheline Montreuil's credibility was not at issue. It is quite otherwise in the case at bar.

VI. CONTEXTUAL FACTORS

[59] Before I address the factors at the root of this matter, such as the possibility that Micheline Montreuil has a sexual identity disorder and a borderline personality disorder, the issue of whether or not Micheline Montreuil met the Common Enrolment Medical Standard, and whether or not the medical employment limitation assigned to Micheline Montreuil and the requirement of a 30-year guarantee were justified, it is important to analyze relevant contextual factors to thoroughly understand the case at bar. Those factors involve Micheline Montreuil's personal life, military enrolment requirements and Micheline Montreuil's military background.

A. Micheline Montreuil's personal life

[60] At birth, Micheline Montreuil was registered with the État civil du Québec under the name of Joseph Yves Pierre Papineau Montreuil. In November 2002, the Quebec Court of Appeal allowed a change of name application submitted by Micheline Montreuil. The Court authorized the addition of the given name Micheline to the other given names on his birth certificate (*Montreuil v. Directeur de l'État civil*, [2002] R.J.Q. 2911 (C.A.)).

[61] Micheline Montreuil testified that he initiated the name change procedure in October 1997 but had already been using the given name Micheline before that, starting in 1986. He acknowledged that that was not brought to the attention of the Canadian Forces in his application for enrolment, submitted in 1995. Micheline Montreuil also testified that he considered himself in part a transgendered person in 1997 and that he became officially transgendered on May 13, 1998.

[62] Micheline Montreuil explained in his testimony that he initiated a name change in 1997 to add the given name Micheline to his existing given names so that he could use the given name Micheline on his driver's licence, so that his driver's licence would match his credit cards and make it easier to travel abroad as Micheline Montreuil. Micheline Montreuil also testified that he had been travelling as a woman since 1994 and that he had given lectures in the United States as a transgendered person in 1997, when he was a member of the Reserve Force. Micheline Montreuil stated in his testimony that that was never brought to the attention of the Canadian Forces, as the Canadian Forces had never asked the question.

[63] The development of Micheline Montreuil's identity is described in detail on the website created, according to the evidence, by Micheline Montreuil in late 2001 or early 2002. The information at that website was therefore not known by the Canadian Forces when they dealt with Micheline Montreuil's application for enrolment. However, the evidence reveals that Doctor Assalian and his team visited Micheline Montreuil's website after they interviewed Micheline Montreuil on May 18, 2006.

(i) Micheline Montreuil's website

[64] Micheline Montreuil's website is divided into a number of sections. Although the evidence indicates that it was created after Micheline Montreuil's application for enrolment was rejected by the Canadian Forces, the information on the website remains relevant to this case, in that Micheline Montreuil describes his own development.

[65] Micheline Montreuil stated in his testimony that the developmental path described on his website is neither that of a transvestite, who would never regularly appear as such in public, work as a woman or regularly assume a female identity, nor that of a transsexual person, since the path of a transsexual is faster and more violent. He claimed that his website describes the development of a transgendered person.

[66] Micheline Montreuil's website includes a section entitled *Micheline the Transgender*. That section contains the following headings: Why am I become a transgender? [*sic*] How am I become a transgender? [*sic*] From transvestite to transsexual.

[67] Under *Micheline the Transgender,* Micheline Montreuil states that she has a dual personality. As for the question *Why am I become a transgender?* Micheline Montreuil says that that is probably the only question to which she has no logical or certain answer. She goes on to say that the only response that comes to mind is that she felt deep within himself a desire to live differently and that her appearance was not the way she wanted it to be. She states that one person may prefer the city while another prefers the country, one person may

want children while another does not and, likewise, one man may prefer to live as a man while another prefers to live as woman.

[68] On her website, Micheline Montreuil also describes how she became a transgendered person. She states that, at 13, she put on her first bra, slip and one-piece swimsuit out of curiosity; at 16, out of curiosity, she dressed completely as a woman, with a bra, panties, nylons, dress and high heels; at 23, she put on makeup for the first time and made her first trip outside; at 25, she went out a few times dressed as a woman; between 25 and 34, she again went out a few times as a woman, still anonymously, to increase her confidence and self-assurance; and at 34, she wondered if she would rather live as a woman than a man, since she seemed to have more in common with women than with men. Micheline Montreuil states that she feels good dressed as a woman and that she feels more herself when she is dressed as a woman than when she is dressed as a man.

[69] Micheline Montreuil explains on her website that, in 1986, she decided that it would make sense to choose a traditionally female given name to identify herself as a woman if she wanted in the future to live as a woman, work as a woman, go out dressed as a woman, travel dressed as a woman and fit in as much as possible in the world of women on a more permanent basis. She therefore obtained identification cards, passes and credit cards and opened telephone, electricity, bank and cable accounts under the name of Micheline Montreuil. Micheline Montreuil states on her website that, in 1992, at age 40, she began to go out openly in Quebec dressed as a woman and, in 1993, she started to travel in Canada and the United States dressed as a woman. Micheline Montreuil considers himself heterosexual. In his testimony, he stated that he is between the two realms of the conventional man and the conventional woman.

[70] Under *From transvestite to transsexual,* Micheline Montreuil describes the development of her identity. She states that she was a transvestite between the ages of 13 and 14, and she has been a transgendered or transsexual person since the age of 43. Micheline Montreuil states that, from 43 to 45 years of age, she has been an openly transgendered person with a female identity; from age 45 to the present, she has been taking hormones to enlarge her breasts; she has undergone laser treatments; she is now an recognized transgendered person living openly as a woman; and she can therefore say that she is a preoperative transsexual. Micheline Montreuil adds that she is happy with her current body and does not intend to make any changes in the foreseeable future. She claims to be the first known transgendered person in Quebec and that it is up to her to break down barriers.

[71] Micheline Montreuil's website includes a large section on sex reassignment. In that section, Micheline Montreuil describes the various steps in the sex reassignment process. She also describes that state of a person in transition.

[72] According to the website, the expression person in transition applies to any person whose sexual anatomy and identity are not the same or compatible and who intends to make his or her sexual anatomy compatible with his or her sexual identity.

[73] In that section of her website, Micheline Montreuil also states that she is a transgendered person, but points out that some prefer to describe her as a transsexual, transvestite, she-male, fetishist or transvestite on hormonal therapy, that some say that she is in a transsexualism process, that she is a case of transsexuality, that she is in transition or that she is a preoperative transsexual. She describes herself as a person in transition who wishes to live as a woman. She says that she dresses and puts on makeup each day like any conventional

woman, wears a dress, bra, pantyhose or tights and high heels, and feels good in the clothes that she wears.

[74] From analyzing the content of Micheline Montreuil's website, the Tribunal notes that Micheline Montreuil is a male individual who considers himself to be a transgendered person, a preoperative transsexual person and a person in transition who has undergone certain physical changes, and who presents himself with a typically female appearance.

(ii) Collège Garneau incident

[75] The evidence shows that, on December 4, 1997, an event occurred that would turn Pierre Montreuil's life upside down. On that day, the directors of Collège François-Xavier-Garneau asked Pierre Montreuil to resign from the Collège after certain people saw him in a shopping centre dressed as a woman. After being forced to resign, Pierre Montreuil filed a grievance against the Collège. In his grievance, Pierre Montreuil alleged that he was unable to give his free and informed consent when he signed his letter of resignation. The facts about his resignation from Collège Garneau are described in two documents introduced into evidence by the respondent, namely, an application for judicial review of the decision of the adjudicator who dismissed his grievance, filed by his Union, and a detailed affidavit dated June 21, 2000, signed by Micheline Montreuil and produced in support of the application.

[76] Obviously, the facts given by Pierre Montreuil under oath in his detailed affidavit cannot be considered in assessing whether or not the decision of the Canadian Forces physicians to assign a medical employment limitation to Micheline Montreuil was justified. However, the Tribunal can consider the facts given by Pierre Montreuil under oath in assessing whether or not Pierre Montreuil was in a transsexuality or sex reassignment process when the Collège Garneau incident occurred.

[77] It should be noted that, in the case at bar, the respondent has relied heavily on the content of the application for judicial review and detailed affidavit signed by Pierre Montreuil to put Micheline Montreuil in contradiction with his statements in this case. It should also be noted that the respondent's expert has referred to the application and detailed affidavit to substantiate his opinion that, in a crisis or under stress, Micheline Montreuil could lose control of himself.

a) Facts from the affidavit

[78] In the detailed affidavit it is stated that, in the summers of 1996 and 1997, complainant Pierre Montreuil, under the name and appearance of Micheline Montreuil, made two six-week trips to the United States and Ontario alone, without his spouse. According to the affidavit, the complainant made those trips to escape the pressures resulting from continual harassment from the coordinator of the legal techniques department of the Collège. It is stated in the affidavit that, at the end of the 1996 and 1997 winter sessions, the complainant was so tired from the constant pressure exerted by that coordinator that he had to go on a trip to unwind and recuperate. According to the affidavit, at the end of each trip, the complainant's stress level had fallen, and he was once again rested and ready to start a new session.

[79] According to the affidavit, between December 1997 and June 1998, the complainant made numerous trips under the name and appearance of Micheline Montreuil totalling three months in the United States, Ontario and British Columbia, alone, without his spouse, to recuperate from the pressures he experienced from September 1997 to December 1997.

[80] In his affidavit, Pierre Montreuil states that, in September 1997, he prepared his change of name application as a prerequisite to his sex reassignment and wanted the name change to go smoothly and quietly.

[81] According to the affidavit, on December 3, 1997, Pierre Montreuil met with the Collège Garneau human resources director and human resources coordinator. At that meeting, the human resources director told Pierre Montreuil that he had to choose between immediate termination and immediate resignation. The director then told Pierre Montreuil that he had been seen dressed as a woman, outside his hours of availability on an unspecified date, in a Quebec City area shopping centre, namely, Galeries de la Capitale, as well as at a legal techniques student Halloween party in a church basement on October 29, 1997. Pierre Montreuil admitted to having walked around dressed as a woman, outside his hours of availability on an unspecified date, in a Quebec City area shopping centre, as well as at the Halloween party. At the end of the meeting, the human resources director agreed to allow Pierre Montreuil slightly less than 24 hours to make a decision.

[82] The affidavit shows that Pierre Montreuil then went home and had a few glasses of kir to try to relax. He also telephoned a friend. According to the affidavit, during the telephone conversation, Pierre Montreuil went from one extreme to the other, from despair to anger, trying to make sense of what was happening. After the telephone conversation, Pierre Montreuil drank two bottles of liquor and spent the evening at home crying, drinking and talking with his spouse. It appears that Pierre Montreuil changed into Micheline and went on a long walk outside to try to calm down and regain his bearings. It is also stated in the affidavit that Pierre Montreuil considered committing suicide to end the shame of being fired and leaving the country to escape the shame and the termination. Pierre Montreuil states that he felt overwhelmed by the turn of events.

[83] It appears from the affidavit that, at a meeting between Pierre Montreuil and his grievance officer the next day, Pierre Montreuil's emotional state was constantly changing from depressed to lucid to melancholic to aggressive to sad; he was exhausted and felt unstable. At a meeting later the same day with representatives of the Collège, Pierre Montreuil signed a letter of resignation. That evening, according to the affidavit, Pierre Montreuil spent the evening at home crying and drinking a few glasses of kir.

[84] The affidavit states that, over the next two days, a depressed Pierre Montreuil emptied his office at the Collège, breaking down in tears a number of times. On December 19, 1997, it appears from the affidavit that Pierre Montreuil, under the name and appearance of Micheline, in a depressive state, left on a trip to Toronto, Syracuse and Malone to escape the dull feeling plaguing him.

[85] According to the affidavit, on January 5, 1998, Pierre Montreuil saw Dr. Jean Rodrigue who diagnosed an anxiety and high stress syndrome and recommended that Pierre Montreuil get complete rest. It appears that Pierre Montreuil was depressed to the point of not being able to attend social events or visit friends in Quebec City.

[86] It appears from the affidavit that, on January 8, 1998, Pierre Montreuil, under the name and appearance of Micheline, in a depressive state, left on a plane trip to Houston to end the feelings of depression plaguing him and, on February 19, 1998, Pierre Montreuil, under the name of Micheline Montreuil, left on a plane trip to Houston and New Orleans to escape the feelings of depression plaguing him. On March 8, 1998, Pierre Montreuil, again under the name and appearance of Micheline, in a depressive state, left on a plane trip to Vancouver and Seattle to escape the feelings of depression plaguing him. Therefore, between January 8

and March 15, 1998, Pierre Montreuil spent close to six weeks travelling in an attempt to get rest and to forget.

[87] The affidavit states that, on March 18, 1998, Pierre Montreuil saw Dr. Serge Côté, psychiatrist, to review his situation and get a report on his mental state and ability to make an objective decision on his resignation from Collège Garneau.

[88] Regarding the Collège Garneau incident, as mentioned above, the evidence shows that the respondent has relied on facts given by Pierre Montreuil in the application for judicial review and, more specifically, in the affidavit to try to show that Pierre Montreuil, when faced with a stressful situation, is likely to lose control, consume alcohol and take sleeping pills, and even become suicidal.

[89] Moreover, the respondent has highlighted the fact that, in the application that he himself completed, Pierre Montreuil states that he was in a transsexuality process when he was fired, and that that interfered with his abilities. Questioned by the Tribunal on what should be understood from that statement, Micheline Montreuil stated that there was none at the time. Micheline Montreuil added that it was simply an allegation, a legal structure, and not testimony.

[90] The Tribunal also notes that, in the application completed by Pierre Montreuil, he indicates that the adjudicator failed to mention in his decision that Dr. Serge Côté, who was called as a witness at the grievance hearing, stated that he would definitely have been able, from Pierre Montreuil's condition upon resigning, to diagnose the identity disorder, the key stressor and the dysfunction under axes I, IV and V of the DSM-IV (*Diagnostic and Statistical Manual of Mental Disorders*), and the adjustment disorder with serious anxiety, as it appears from Dr. Serge Côté's testimony. The Tribunal further notes that Doctor Côté allegedly explained in detail the axes I, II, III, IV and V of the DSM-IV, and how an a posteriori diagnosis was common practice and even the only practice in many cases.

[91] As for the truth of the facts in the application for judicial review and the affidavit, both signed by Pierre Montreuil, the explanation Micheline Montreuil gave at the hearing was that an application for judicial review is a document in which one [translation] *manipulates every comma, every semicolon, to argue a position*, in which there is no room for [translation] *any nuance*. Micheline Montreuil added that, since the standard of review is that of a patently unreasonable decision, one must have in that type of application [translation] *no nuances, no subtleties, but only an erudite legal construct that is a means to an end.* He goes on to say that [translation] *the application for judicial review manipulates the facts because only the desired facts are included.*

[92] Micheline Montreuil further stated that such an application, the application for judicial review, does not lend itself to nuances, and [translation] *it is a most ruthless address that never reflects the heart of the discussion, but is instead a weapon or single-edged sword, relatively well tapered, whose sole purpose is to stop a decision, especially since one is not dealing with an appeal, but rather a judicial review.* The Tribunal is of the opinion that such statements discredit the administration of justice and undermine Micheline Montreuil's credibility in the court proceedings.

[93] From all of the above, the Tribunal finds that the facts in the application for judicial review signed by Pierre Montreuil, and the detailed affidavit dated June 21, 2000, also signed by Pierre Montreuil must be accepted as true and representative of the realities of events that actually occurred before, during and after Pierre Montreuil resigned from Collège Garneau,

regardless of Micheline Montreuil's position with respect to those documents. The facts, at least those in the detailed affidavit, must be accepted as true, subject to evidence to the contrary.

b) Dr. Serge Côté's report

[94] In this proceeding there was considerable debate on the report prepared on March 18, 1998, by Dr. Serge Côté for the grievance that Pierre Montreuil filed against Collège Garneau. It is important here to recall that Canadian Forces physicians were not informed about the Collège Garneau incident or Doctor Côté's psychiatric report when they assessed Micheline Montreuil's file. It should also be noted that Doctor Assalian, the respondent's expert, did learn about the incident and report in the course of his mandate as an expert and, for his own report, he prepared an addendum dealing exclusively with Doctor Côté's report.

[95] In this proceeding Doctor Côté, called as a witness by the respondent, was asked to explain the scope of his report and the circumstances surrounding the writing of the report. The evidence clearly shows that Doctor Côté's assessment report was written for the sole purpose of determining whether or not Pierre Montreuil was capable of giving free and informed consent when he signed his resignation, specifically, whether or not the short period given to Pierre Montreuil to make a decision could have created enough stress to vitiate the possibility of giving free and informed consent.

[96] Doctor Côté states in his report that he saw Pierre Montreuil at Pierre Montreuil's request on March 18, 1998, to determine whether or not Pierre Montreuil was capable of giving (free and informed) consent when he resigned from Collège Garneau on December 4, 1997, after the authorities at the Collège heard that he had been seen dressed up as a woman at a Halloween party with some students. Micheline Montreuil testified that his meeting with Doctor Côté lasted approximately three or four hours, and Doctor Côté wanted to ascertain whether he had a mental illness or was under stress.

[97] In essence, the report describes Pierre Montreuil's statements to Doctor Côté during the interview. On the basis of those statements, Doctor Côté observes that Pierre Montreuil has had a cross-dressing issue for many years, since the age of 13, and Pierre Montreuil says that there are five parts within him: a female part, Micheline; a transvestite part; a tendency to be a princess, since that is usually how he presents himself outside when he becomes Micheline; an ill-tempered part when he is Micheline; and a male part. Doctor Côté notes that, for Pierre Montreuil, the various parts coexist harmoniously.

[98] From information he received from Pierre Montreuil, Doctor Côté notes that, on December 3, 1997, Pierre Montreuil felt extremely anxious and insecure, had difficulty sleeping (but managed to sleep after assuming his female identity, since Micheline was calmer), was struggling with his problem (at which time Micheline took over), and felt very tense and insecure.

[99] Doctor Côté then gives an assessment of Micheline Montreuil, indicating in his report that Pierre Montreuil, in a mental examination on March 18, 1998, appeared completely normal in that there was no depressive structure, the affect was appropriate and there was a certain anxiety that was normal, the only point being that Pierre Montreuil could feel just as good, and sometimes better, when he became Micheline, but he was also comfortable being Pierre Montreuil. Doctor Côté then gives his opinion on the condition Pierre Montreuil was in when he resigned from Collège Garneau.

[100] Doctor Côté states in his report that Pierre Montreuil did not have a serious mental pathology, such as schizophrenia or bipolar disorder. However, Doctor Côté believes that the sudden announcement that Pierre Montreuil had to make a quick decision that would have a significant impact on his life created great anxiety, insecurity and sadness. Doctor Côté states that Pierre Montreuil appeared to be under significant stress, confronted for the first time about his double identity. Doctor Côté finds that, as a result of anxiety, temporary sadness and great insecurity, Pierre Montreuil was not capable of making a sound decision on December 4, 1997, because he was unable to properly reflect upon his situation.

[101] The evidence shows that, for purposes of his testimony, Doctor Assalian, the respondent's expert, reviewed Doctor Côté's assessment. Unfortunately, he concluded that the passages on the five parts of Pierre Montreuil were observations made by Doctor Côté in his assessment of Pierre Montreuil, while the evidence shows that they were actually information or impressions given by Pierre Montreuil at the interview. That error led Doctor Assalian to state incorrectly in his report that his assessment of Micheline Montreuil's personality was supported by Doctor Côté's psychiatric assessment.

[102] Moreover, regarding the writing of Doctor Côté's report, the evidence shows that it was not Doctor Côté who determined the issue of the grievance but, as Micheline Montreuil testified, Pierre Montreuil and the union. Micheline Montreuil stated in his testimony that the question he and the union asked Doctor Côté was the following: [translation] *Can you show that a lack of time prevented Pierre Montreuil from giving free and informed consent?*

[103] Micheline Montreuil explained in his testimony that, to bypass the mandatory deadline for filing a grievance, which had been missed, he had to [translation] *claim any kind incapacity, although it had to be supported by a medical report, to get around the fact that the deadline to file a grievance had been missed.*

[104] Micheline Montreuil explained that, by referring to a medical appointment, namely, the one that would take place with Doctor Côté, the 30-day grievance-filing period would then start on the day that the assessment report was filed. In fact, Micheline Montreuil stated that [translation] *the purpose of the whole incapacity issue was purely and simply to get around the problem of meeting the prescribed deadline.*

[105] From the above, the Tribunal finds that (1) Pierre Montreuil, at the time of the grievance, obtained a report from Doctor Côté essentially to resolve a problem with the prescribed deadline, stating, [translation] *the purpose of the incapacity issue was purely and simply to get around the problem of meeting the prescribed deadline*; and (2) it is Pierre Montreuil and the union that determined the purpose of preparing the medical report. The Tribunal sees in this a more-than-subtle scent of third-party manipulation.

[106] Moreover, the Tribunal is perplexed about Doctor Côté's assessment of Pierre Montreuil's psychiatric condition at the time of the grievance. In his report dated March 18, 1998, Doctor Côté states that, mentally, Micheline Montreuil appeared completely normal in that there was no depressive structure, the affect was appropriate and there was a certain anxiety that was normal, and that Pierre Montreuil did not have a serious mental pathology, such as schizophrenia or bipolar disorder. However, when the facts reported in the application for judicial review signed by Pierre Montreuil on March 1, 2000, are considered, it can be seen that Doctor Côté allegedly stated at the grievance hearing (Application for Judicial Review, para. 137.10) that he would definitely have been able, given the complainant's condition, to retrospectively diagnose, under axes I, IV and V of the DSM-IV, the identity disorder, the key stressor and the dysfunction, as well as an adjustment disorder

with serious anxiety, as it appears from Doctor Côté's testimony (pages 356 to 358 of the transcript).

[107] The Tribunal has no reason to believe that Doctor Côté did not make those statements, even though he has not been questioned on that aspect in this hearing. The application for judicial review was signed by Pierre Montreuil but, while he tends to exaggerate certain facts, the statements at issue are those of Doctor Côté and not Pierre Montreuil, as Pierre Montreuil has stated in this proceeding.

B. Military requirements

[108] As part of the hearing of this complaint, the Tribunal and the parties travelled to the Valcartier military base to observe various military activities, specifically, an activity for the physical fitness of military personnel (a forced march), shooting practices and a bivouac, as well as military attack manoeuvres. On the Valcartier base, the Tribunal and the parties were accompanied by an officer in charge of visits to the base.

[109] The goal of the trip was to enable the Tribunal to better understand three aspects of the military context, namely, the universality of service principle, medical requirements in real life and what is involved in being a logistics officer, the position for which Micheline Montreuil requested to be enlisted, which remains at issue.

[110] That said, the evidence shows that persons intending to enrol in the Canadian Forces must satisfy certain basic requirements. Their applications for enrolment must be assessed, they must meet the universality of service principle, as well as the Common Enrolment Medical Standard and common medical standards for their chosen military occupation, and they must be free of medical employment limitations that would prevent them from meeting the universality of service principle or performing the common tasks set out in the Generic Task Statement of the Canadian Forces. Each item, as well as Micheline Montreuil's medical category, is analyzed below.

(i) Application assessment process

[111] From the testimony of Major Labonté, who was called as a witness by the respondent, it appears that a person wishing to enrol in the Canadian Forces must send an application for enrolment to a recruiting office. The person must then visit the recruiting office, complete a medical questionnaire, undergo testing and submit to a medical examination by a physician assistant. The person's medical record is then sent to a recruiting medical officer, who assigns a medical category to the person. The file is returned to the recruiting office, which enrols or does not enrol the person, depending on the information received from the recruiting medical officer or a superior authority.

[112] According to the evidence, the medical examination is valid for one year. If an applicant is not enrolled within that period, he or she must submit a new application for enrolment and undergo another medical examination. The evidence shows that that was the case for Micheline Montreuil, who underwent a second medical examination in 2001, after being examined in 1999.

(ii) Universality of service principle

[113] "Universality of service" is an expression denoting a set of principles governing the employment of members of the Canadian Forces. The three essential principles are as follows: (1) whatever their trade or profession might be, members of the Canadian Forces are soldiers first and foremost; (2) the duty of a soldier is to be ready to serve at all times in any

place and under any conditions; and (3) the duty is universal in that it applies to all members of the Canadian Forces.

[114] The source of the universality of service principle is section 33 of the *National Defence Act*, *supra*, which states, "*The regular force, all units and other elements thereof and all officers and non-commissioned members thereof are at all times liable to perform any lawful duty.*" The fundamental importance of the principle to the operation and effectiveness of the Canadian Forces is recognized in subsection 15(9) of the *Canadian Human Rights Act*, *supra*, which states that the duty to accommodate under subsection 15(2) is subject to the principle of universality of service under which members of the Canadian Forces must at all times and under any circumstances perform any functions that they may be required to perform.

[115] For the Canadian Forces, the universality of service principle is at the heart of this dispute, because the principle results in stringent medical standards for members of the Canadian Forces.

[116] In the case at bar, both Major Labonté and Colonel Fletcher commented on the universality of service principle, or liability for combat duty. Colonel Fletcher stated at the beginning of his testimony that he had had no involvement in Micheline Montreuil's file.

[117] Colonel Fletcher stated in his testimony that the universality of service principle applies to serving members of the Canadian Forces and therefore, by extension, to any person wishing to enrol in the Canadian Forces. That position is supported by case law. In *Canada (Human Rights Commission) v. Canada (Armed Forces)*, [1994] 3 F.C. 188, Mr. Justice Robertson opined that he had no objection to the application of the "soldier first" policy in a recruiting context.

[118] The universality of service principle is described in various Canadian Forces documents, in particular, *Universality of Service* (DOAD 5023-0), *Changes to Universality of Service Policy* (CANFORGEN 011/00) and *Minimum Operational Standards Related to Universality of Service* (DOAD 5023-1).

[119] That said, the universality of service principle and its requirements have been repeatedly recognized and endorsed by the courts (*Canada (Attorney General) v. Robinson*, [1994] 3 F.C. 228 (F.C.A.), *Canada (Attorney General) v. St. Thomas et al.*, 109 D.L.R. (4th) 671). In *Canada (Attorney General) v. Robinson*, *supra*, Mr. Justice Stone noted that the member of the Canadian Forces was first and foremost a soldier and, as such, "*he was expected to live and work under conditions unknown in civilian life and to be able to function, on short notice, in conditions of extreme physical and emotional stress and in locations where medical facilities for the treatment of his condition might not be available or, if available, might not be adequate.*" Stone J.A. adds that liability for combat duty, which stems from the soldier first principle, is well understood within the Canadian Forces.

[120] Therefore, members serving in support roles, such as logistics officers, are not exempt, since the obligation is statutory. They are no more exempt than a person wishing to enrol in the Canadian Forces as a musician (*Canada (Human Rights Commission) v. Canada (Armed Forces)*, *supra*). In that decision, Robertson J.A. emphasized that those who seek to join the Canadian Forces must do so on the premise that they will be called upon to perform military duties and, therefore, even though it might be argued convincingly that the likelihood of musicians being placed in combat-type situations is remote, that consideration must remain irrelevant when evaluating the risk associated with an individual.

[121] The universality of service principle holds that Canadian Forces members are liable to perform general military duties in addition to the duties of their military occupation code (MOC). Colonel Fletcher believes that a member of the Canadian Forces is a soldier first, a tradesperson second. Colonel Fletcher also testified that all members of the Canadian Forces are liable to serve as soldiers at times and in locations determined by Canadian government authorities.

[122] Under the universality of service principle, all Canadian Forces personnel must be conditioned to cope with the stresses imposed by sustained operations under unfavourable working conditions and be sufficiently fit and healthy to respond on short notice. Otherwise, the ability of the Canadian Forces to mount and sustain operations, as well as their flexibility in that respect, will be affected.

[123] Colonel Fletcher explained that the concept of universality of service includes three aspects, namely, being physically fit, employable and deployable. He believes that there is a medical component to being employable and deployable. According to him, the O factor in a person's medical profile is related to being employable, that is, being able to perform certain tasks, and the G factor is more related to being deployable. For purposes of this case, it is important to recall that the evidence shows that Micheline Montreuil's ability to perform certain tasks is not at issue.

[124] As for the *physical fitness* aspect, the Canadian Forces member must meet the common fitness requirements of general military service by attaining the minimum physical fitness standards. Colonel Fletcher stated in his testimony that members of the Canadian Forces must be able to perform physical tasks associated with their occupation in accordance with the *Generic Task Statement* of the Canadian Forces. Colonel Fletcher stated that great importance is placed on physical fitness and Canadian Forces members are required to stay fit.

[125] As for the *employability* aspect, all members of the Canadian Forces must be sufficiently trained and sufficiently fit to perform core tasks and general duties and be able to follow additional instructions that may be necessary to meet higher standards required by commanders for commands supporting their unique operational and educational needs. Members of the Canadian Forces must be able to perform the skill elements of common operational core tasks and be free of medical employment limitations that would preclude the performance of core tasks. In other words, Colonel Fletcher stated that all members of the Canadian Forces must be medically capable of performing the tasks set out in the Generic Task Statement.

[126] As for *being deployable*, Canadian Forces members must be able to perform duties in the full variety of geographical locations and climatic conditions in any physical environment, perform duties under physical and mental stress, and perform duties with minimal medical support, in particular under the following conditions: (1) infrequent medical attention, limited proximity to medical care (with respect to distance or travel time) and not being able to take medications when required.

[127] In his testimony, Colonel Fletcher emphasized that a Canadian Forces member is both an individual and part of a team, and Canadian Forces members must be able to rely on each other in a theatre of operations. A member who is likely to react badly under stress cannot be relied upon. Moreover, Colonel Fletcher emphasized the importance for Canadian Forces members to be capable of performing the tasks required of them, and he referred to the document, *Guidelines for Retention of Members with Employment Limitations*, stating that Canadian Forces members who are unable to perform their duties because of an employment

limitation are less employable than other members and are directly or indirectly a burden to their co-workers.

[128] Colonel Fletcher acknowledged that exceptions to the universality of service principle can be made, under certain conditions, but only for individuals who are members of the Canadian Forces. Moreover, those exceptions are time-limited. He added in his testimony that the duty to accommodate applies only to members of the Canadian Forces and not those wishing to enrol in the Canadian Forces. Colonel Fletcher was not contradicted on that point, nor was his interpretation proven incorrect.

[129] Finally, it appears from Colonel Fletcher's testimony that the Canadian Forces do not have a policy on transgendered persons. That said, Colonel Fletcher testified that the Canadian Forces are nevertheless subject to the *Canadian Human Rights Act* and its non-discrimination requirements.

(iii) Medical category

[130] From the evidence produced in this case, the Tribunal learned about medical standards for the Canadian Forces, set out in CFAO 34-30 and CFP 154, as well as the Canadian Forces medical category system, set out in CFP 154. The Tribunal also heard the testimony of Doctor Newnham, recruiting medical officer, who explained the various factors that make up the medical category. In her testimony, Doctor Newnham stated that she consults CFP 154 more than CFAO 34-30 when assessing the files she receives.

[131] Also entered into evidence is *Canadian Forces Medical Standards*, dated April 23, 2004. The first page of the document indicates that it replaces CFAO 34-30, which was in effect at the time of Micheline Montreuil's application for enrolment. The Tribunal will therefore not consider the document in its analysis of applicable medical standards in this case.

a) Common Enrolment Medical Standard

[132] The document on medical standards for the Canadian Forces (CFAO 34-30) presents a summary of the medical standards system for recruits and serving military personnel in the Canadian Forces. According to the document, medical standards are expressed using a system of numeric grades that give administrative and recruiting authorities a concise assessment, from a medical point of view, of the employment potential of recruits and serving military personnel. The medical category includes the year of birth (YOB) and six factors for which a numeric grade is assigned:

V: Visual Acuity 4

CV: Colour Vision 3

H: Hearing 2

G: Geographical Factor 2

O: Occupational Factor 2

A: Air Factor 5

[133] According to the document, the medical category of a Canadian Forces member or recruit is determined from the results of a medical examination and an assessment conducted in accordance with certain requirements. According to the evidence, a recruit applicant must meet a common medical standard to be eligible for the widest selection of military occupation codes (MOCs). In particular, to be enrolled in the Canadian Forces, the applicant must have a medical category or meet the Common Enrolment Medical Standard of V4 CV3 H2 G2 O2 A5. According to Major Labonté, that is true regardless of the position applied for.

[134] That said, the document, *Minimum Medical Standards for Officers/Non-Commissioned,* states that medical category G3O3 is required for MOC 67 (Legal) and 78 (Logistics). However, Major Labonté testified that an administrative waiver can be issued or the Common Enrolment Medical Standard waived as long as the person meets the exception criteria set by the administration.

[135] The evidence shows that the factors relevant to the case at bar are the Geographical Factor (G) and Occupational Factor (O)-especially G-and that those factors should be described in greater detail for a full understanding of this case.

[136] The G or geographical factor is based on the effects that climate, accommodations, living conditions and medical care available may have on the health of a Canadian Forces member. The factor is graded from 1 to 6, with increasing numerical value indicating greater limitations in employment. For example, G1 indicates that there are no limitations, while G4 indicates that the member is unfit for sea environment, isolated postings or locations without ready access to the care of a physician.

[137] The O or occupational factor is based on the principle that all occupations involve physical and mental activity and stress. Physical or mental disabilities can limit a member's capability and performance of duties. The occupational factor is graded from 1 to 6, with increasing numerical value indicating greater limitations in employment. For example, O1 indicates an above-average level of overall fitness, while O4 indicates that a member may be fit only for clerical duties because he or she has a physical limitation or has demonstrated a psychological limitation such that the person cannot adapt to more severe and prolonged stressful demands.

[138] The evidence shows that category O2 is assigned to members who have no employment limitations of a medical nature, or who have one or more specific employment limitations that do not prevent them from fully meeting the Generic Task Statement and MOC task statement. The evidence shows that Micheline Montreuil was assigned category O2 after each medical assessment.

b) Medical category system

[139] Document CFP 154 states that the medical category system is designed to help medical personnel in examining and assessing medical conditions and assigning specific employment limitations. The medical category system, as described in CFP 154, defines the elements specific to each of the factors above. Moreover, it provides direction to Canadian Forces health care providers and the chain of command concerning medical standards for Canadian Forces members based on predetermined occupational imperatives.

[140] Given that, in Micheline Montreuil's case, the only relevant factor is the geographical factor, only that factor will be described in greater detail.

[141] The documentation consulted states that, for the geographical factor, it is essential to know geographically where a member can perform duties without significant limitations in effectiveness or important health risks to self or others. The documentation identifies three elements involved in factor G, namely, climate, accommodations and living conditions, and medical care available. For Micheline Montreuil, the element of medical care available is at issue.

[142] The documentation consulted states that, with respect to medical care available, whether the situation is an armed conflict or an isolated peacetime posting, the level of medical care required is an important consideration in assessing a member's medical condition and is fundamental to the assignment of an appropriate geographical factor. The document goes on to describe the numerical grades for the geographical factor.

[143] G1 is assigned to a member who has successfully passed stringent medical requirements for unique duties, such as astronaut training.

[144] G2 is assigned to a member

a) who has no geographical limitations due to a medical condition; and

b) who is considered healthy and who, at most, requires only routine or periodic medical services.

[145] G3 is assigned to a member

a) who is considered fit for field exercises, sea environment, isolated postings and operational taskings for periods up to six months;

b) who has a known requirement for scheduled medical care by a medical officer, but no more frequently than every six months;

c) whose limitations resulting from a known medical condition do not pose an unacceptable risk to the health or safety of the individual or fellow workers in the operational or work environment;

d) who may require and take prescription medications, the unexpected discontinuance (unavailability) of which will not create an unacceptable risk to the member's health or safety; and/or

e) who is considered unfit in one aspect, for example, members who suffer from seasickness.

[146] G4 is assigned to a member

a) who is considered unfit in two or more aspects, because of medical limitations inherent to the member's medical condition or because of unacceptable risk that the operational environment poses to the health or safety of the member or co-workers;

b) who may be on prescription medications, the unexpected discontinuance of which, for even a few days, is considered likely to create an unacceptable risk to the health or safety of the member or co-workers;

c) who may require close proximity to medical services or ready access to the care of a medical officer; and/or

d) who generally requires scheduled medical care by a medical officer more frequently than every six months.

[147] G5 is assigned to a member

a) who requires scheduled specialist medical care more frequently than every six months; and

b) who is considered unfit for field exercises, sea environment, isolated postings or operational taskings.

The evidence shows that item b for factor G5 is no longer used.

[148] G6 is assigned to a member who is considered unfit for any work environment.

[149] Doctor Newnham stated that it is up to the recruiting medical officer and possibly a superior authority, namely, the Director of Medical Policy (DMedPol), to determine the medical category of an individual who wishes to enrol. However, Doctor Newnham stated that it is up to the recruiting office to determine whether or not the individual is fit for enrolment, given the medical category assigned.

[150] In her testimony, Doctor Newnham explained the criteria under which an individual would be assigned a medical category of G3. She stated that, when category G3 is assigned, it is usually items b, c and d that are considered, especially items b and d.

[151] When asked to comment on medical category G4, specifically the concept of unacceptable risk, Doctor Newnham testified that unacceptable risk does not necessarily imply the existence of a serious medical condition, but simply means that the risk is unacceptable. Doctor Newnham believes that the possibility that a member's condition may deteriorate, whatever the condition may be, poses an unacceptable risk to the member and to co-workers.

[152] With respect to item b in category G4, regarding the taking of medications, Doctor Newnham explained that the difference between G3 and G4 is that there is no unacceptable risk with G3, but there is with G4.

[153] Doctor Newnham also explained that the environment (land or sea) is no longer considered when determining limitations under medical category G5. She added that, for G5, the member is usually described as having a chronic medical condition that could place the member or co-workers in a situation of unacceptable risk and, in any case, the description of the limitation is tailored to the specific condition of the member. For Doctor Newnham, the items of the medical category are in fact guidelines for determining limitations.

[154] As previously seen, the evidence shows that it is factor G and not factor O that is at issue with respect to Micheline Montreuil's enrolment file. According to Doctor Newnham's testimony, factor O involves common tasks that all Canadian Forces members must perform. Doctor Newnham testified that, from an occupational point of view, Micheline Montreuil met the physical requirements of the Generic Task Statement, and was therefore assigned category O2. As such, the Tribunal need not examine the occupational factor any further.

(iv) Medical employment limitations

[155] With respect to medical employment limitations that may be placed on a Canadian Forces member, the document *Selected Medical Conditions With Employment Limitation* was entered into evidence. The document identifies certain medical conditions with specific

features that could have employment implications. Among the conditions are mental disorders, including personality disorders and stressors, which are described in detail.

[156] Under *Mental Disorders*, the following appears:

a) Mental disorders, as listed in the current Diagnostic and Statistical Manual of Mental Disorders (DSM), are to be dealt with as medical issues and, where indicated, the appropriate employment limitations and medical category are to be applied.

b) With mental disorders that have recurred, unless it is absolutely certain that further recurrences will not occur, an appropriate (restrictive) medical category needs to remain in force.

c) Where the consequences of an incorrect decision may jeopardize other people's lives, medical employment restrictions must err on the side of safety.

[157] Under *Personality Disorders*, the following appears:

a) These are considered medical problems (psychiatric) and are dealt with as any other disease.

b) Appropriate employment limitations need to be described to ensure the health and safety of the member and to minimize risks to his or her co-workers or jeopardy of the operations.

c) As with any other medical condition, these limitations may change over time.

(v) Military Occupation Codes (MOCs)

[158] The evidence shows that individuals wishing to enrol in the Canadian Forces must select a specific military occupation code (MOC). In his testimony, Major Labonté gave a lengthy description of MOCs in the Canadian Forces, in particular the requirements associated with the logistics MOC (MOC LOG 69).

[159] In the case at bar, the evidence shows that Micheline Montreuil first applied for enrolment in the Canadian Forces in 1999, for a position as a legal officer (MOC LEGAL 67) in the Office of the Judge Advocate General, but the application was rejected. The evidence shows that Micheline Montreuil then submitted an application for enrolment as a logistics officer (MOC LOG 69).

[160] The *Canadian Forces Manual of Military Occupational Structure-Job-Based Occupation Specification, Logistic Officer*, entered into evidence in this case, describes the structure of MOCs within the logistics group, occupational requirements, working conditions and certain special requirements.

[161] Logistics officer duties are also described in a Canadian Forces document and published on the Canadian Forces website. It is mentioned that logistics officers work in one or more of the following five main disciplines: supply chain management, transportation, human resource management, finance, and food services.

[162] Regarding working conditions, the *Canadian Forces Manual of Military Occupational Structure* states that logistics officers, when providing operational support, may work in harsh conditions and be exposed to situations that may result in death, injury or disability, as well as psychologically and physically stressful situations.

[163] As for special requirements, the Manual states that the minimum medical standard for initial assignment in MOC LOG is V4 CV3 H3 G3 O3 A5.

[164] The evidence shows that, if an applicant is assigned medical category G3O2, say, and the applicant wishes to enrol as a logistics officer, he or she may obtain an administrative waiver of the Common Enrolment Medical Standard if the assigned employment limitation permits. If an applicant is assigned medical category G5, however, a waiver is not allowed, according to Major Labonté's testimony.

(vi) Generic Task Statement

[165] The *Generic Task Statement* is a series of tasks that a Canadian Forces member or person wishing to enrol in the Canadian Forces must be able to perform. The Generic Task Statement consists of two tables, one for physical factors and another for stress factors. Each table contains a list of statements on a person's ability to perform certain clearly defined tasks.

[166] The general information preceding the tables indicates that Canadian Forces members serve in a variety of geographical locations and environmental conditions and must be able to deal with the stress of sustained operations and be physically ready to act on short notice. It is also indicated that the tables specify the universality of service requirements for being employable and deployable.

[167] According to the general information, the physical factors are indicative of the extreme efforts and range of motion required of all CF members when performing essential duties and general service duties in the Canadian Forces. The stress factors are indicative of the circumstances and conditions in which all Canadian Forces members must be able to perform their tasks.

[168] Moreover, the general information indicates that the Generic Task Statement is provided to medical personnel as a tool for determining the employment limitations to be assigned to a member. Medical personnel should use the factors as guidelines to determine if a member is able to perform the tasks listed in the tables or follow instructions to complete those tasks (physical factors), and if the member is able to adapt to specific conditions (stress factors) in the Canadian Forces environment.

[169] When asked to comment on the Generic Task Statement on enrolment, Major Labonté acknowledged that the document sets out the basic common tasks that all members and recruits must fulfill. Major Labonté testified that, because Micheline Montreuil was assigned medical category G5, he concluded that Micheline Montreuil could not perform the common tasks in an operational environment and therefore, from an administrative point of view, did not meet the requirements for common tasks. According to Major Labonté, factors G and O must not be separated when assessing a person's ability to perform certain tasks.

[170] The evidence shows that Doctor Côté and Doctor Tremblay had to complete a Generic Task Statement form with regard to Micheline Montreuil. Both certified that, in their opinion, Micheline Montreuil did not have any medical condition that would prevent him from performing the tasks or following instructions to complete those types of tasks. However, both Doctor Côté and Doctor Tremblay testified that they found it difficult to complete the form, given the questions asked and their lack of knowledge of military life. From the evidence, it appears that the Generic Task Statement form should not have been sent to Micheline Montreuil's physicians for completion. That remains an unexplained error. The evidence shows that the Generic Task Statement form is essentially a tool for medical personnel to assess the ability of members to perform those tasks.

[171] Moreover, it appears from Doctor Beltrami's assessment report that Doctor Beltrami was called upon, as part of his assessment, to analyze the Generic Task Statement form completed by Micheline Montreuil. He found that, from a psychiatric point of view, there was nothing that would prevent Micheline Montreuil from performing those tasks.

[172] Colonel Fletcher was also called upon during his testimony to comment on the Generic Task Statement form completed by Doctor Côté and Doctor Tremblay in 2001 and explain the scope of each task. Since the evidence shows that, ultimately, the Canadian Forces physicians and Micheline Montreuil's physicians found that Micheline Montreuil did not have any physical or psychiatric limitations with respect to common tasks (Doctor Newnham's testimony) and since Micheline Montreuil was assigned category O2, the Tribunal considers it unnecessary to examine this particular point any further.

(vii) Micheline Montreuil's medical category

[173] For purposes of understanding this case, it is important to examine the medical category assigned to Micheline or Pierre Montreuil when he applied for enrolment in 1995, 1999 and 2001, with respect to factor G.

a) Pierre Montreuil's medical category in 1995

[174] On applying for enrolment in 1995, Pierre Montreuil was assigned category G2O2, which meets the Common Enrolment Medical Standard. The evidence shows that Pierre Montreuil was in fact admitted into the Canadian Forces at that time, but that he resigned from the Canadian Forces in 1997 and the resignation took effect in 1999 after he had applied for enrolment as Micheline Montreuil.

b) Micheline Montreuil's medical category in 1999

[175] The evidence shows that Micheline Montreuil applied for enrolment in the Canadian Forces in 1999, for the position of *legal officer* in the Office of the Judge Advocate General. Moreover, the evidence shows that, following the medical examination of Micheline Montreuil and the assessment of his medical file by a recruiting medical officer, Micheline Montreuil was assigned medical category G3 with respect to the geographical factor, which did not meet the Common Enrolment Medical Standard.

[176] Under the rules in effect at the time, he could have received an administrative waiver for the MOC for which he was applying, namely, legal officer. However, the evidence shows that Micheline Montreuil's application was rejected, not because of his medical category but because his practice profile as a lawyer did not match the profile sought by the Office of the Judge Advocate General.

[177] In his testimony regarding Micheline Montreuil's application for enrolment in the Canadian Forces as a legal officer in 1999, Major Labonté stated that the Canadian Forces recruiting group, knowing that Micheline Montreuil had been assigned category G3O2, considered granting him a waiver despite the limitation, after consulting with the management authority for legal officers. The evidence shows that, although Micheline Montreuil did not meet the Common Enrolment Medical Standard, because of the G3 classification, the Office of the Judge Advocate General nevertheless went on to evaluate his application, which was ultimately rejected.

[178] Major Labonté testified that, when Micheline Montreuil applied for enrolment as a legal officer in 1999, the rules for accommodating a person who did not meet the Common Enrolment Medical Standard but did meet the minimum standards of his or her chosen MOC were rather vague, and there was a lack of clear and precise instructions.

[179] Major Labonté stated that the medical category was not a deciding factor in the initial assessment of Micheline Montreuil, given that Micheline Montreuil was assigned category G3, for which a waiver could be obtained, and the reason for rejecting Micheline Montreuil's application was that his practice profile and experience did not match the profile sought by the Office of the Judge Advocate General.

c) Micheline Montreuil's medical category in 2001

[180] In November 2000, after his application for enrolment as a legal officer in the Canadian Forces was rejected, Micheline Montreuil indicated that he wanted to pursue his entry into the Canadian Forces as a logistics officer, in the event that his application for the position of legal officer was unsuccessful.

[181] The evidence shows that, in 2002, after a second medical examination in October 2001 and a second assessment of his medical file by the Canadian Forces, the Director of Medical Policy (DCOS Med Pol) assigned Micheline Montreuil the category G5O2 with the following limitation: [translation] *chronic medical condition the treatment for which has not been completed. The member is therefore at risk of deterioration requiring intervention and treatment by a specialist*. The previous G5 limitation assigned to Micheline Montreuil was as follows: *Requires regular specialist follow-up*. The evidence shows that the medical employment limitation communicated to the Québec recruiting office was the following: *Requires regular specialist follow-up*. The process leading to Micheline Montreuil being assigned the category G5O2 in the case at bar is described below, under *Micheline Montreuil's military background*.

[182] In her testimony, Doctor Newnham explained the assignment of category G5 to Micheline Montreuil by Micheline Montreuil's need to be monitored by a psychiatrist or endocrinologist, given the references, in the various letters submitted to Canadian Forces physicians, to a transsexual person, in transition, on hormonal therapy.

[183] Doctor Newnham stated in her testimony that, once it had been established from the correspondence submitted by Micheline Montreuil that he would not require regular attention from a specialist because he had stopped his hormonal therapy, the medical employment limitation was changed to reflect the situation, that is, that he had a chronic condition the treatment for which had not been completed. According to Doctor Newnham's testimony, the condition was gender dysphoria or gender identity disorder. The change to the medical limitation did not result in a change to the category of G5.

[184] In the case at bar, the assignment of category G5 made Micheline Montreuil unfit to join the Canadian Forces, since the minimum category required for that factor was G2. The evidence shows that the initial medical employment limitations with respect to the second evaluation of Micheline Montreuil's file were set by Doctor Newnham, while revised limitations were set by the Director of Medical Policy (DCOS Med Pol).

[185] Major Labonté stated that, from an administrative point of view, the fact that Micheline Montreuil was assigned category G5 made him unfit to serve in Canadian Forces. Major Labonté testified that the assignment of category G5 indicates that the person cannot be deployed.

[186] Major Labonté acknowledged that the minimum standard for the logistics officer MOC, for which Micheline Montreuil applied, is G3, while the minimum standard is G2. Major Labonté stated in his testimony that a person who is assigned category G3 may request a waiver. However, Major Labonté added that, as administrator, because the employment

limitation placed on Micheline Montreuil was *Requires regular specialist follow-up*, Major Labonté could refuse to enrol the person on the ground that the person was not eligible. According to Major Labonté, the medical category and employment limitation must be considered separately.

[187] Major Labonté stated in his testimony that the medical decision to assign a G5 to Micheline Montreuil arrived too quickly. When asked to explain, Major Labonté testified that, if the medical category had been G3, which is the category for the logistics officer occupation, he would have been ready to contact the logistics and legal branches to see if accommodation was possible. Major Labonté stated that, when he received the medical category G5O2, he had not yet conducted the interview that would have determined whether or not Micheline Montreuil could be granted a waiver or be accommodated.

[188] When asked to give her opinion on the information that would need to be provided to change a medical category G5 to G2, Doctor Newnham stated in her testimony that the person's physicians would have to provide an update on the person's file. However, Doctor Newnham stated that in Micheline Montreuil's case, Micheline Montreuil would have to start from scratch, since an enrolment medical examination is valid only for one year, unless the Tribunal found that the respondent had shown discrimination against Micheline Montreuil and found that Micheline Montreuil was fit for enrolment.

[189] In the case at bar, Micheline Montreuil disputes the G5O2 medical category assigned by the Canadian Forces and maintains that the only difference between his 1995 and 1999 applications for enrolment is that, in 1999, he was wearing a dress. Micheline Montreuil stated that he had stopped taking hormones in 2002, that he was not and would not be receiving any treatment, and that, despite those facts, the Canadian Forces physicians continued to assign him category G5 instead of category G2, for which he believed he was eligible.

[190] Micheline Montreuil believes that that is discriminatory, makes no sense and constitutes wilful blindness on the part of the Canadian Forces. Micheline Montreuil emphasized the fact that Doctor Côté, Doctor Lehoux and Doctor Tremblay all said that he was functioning normally and should be enrolled as a woman.

[191] Moreover, Micheline Montreuil stated that, on the basis of the medical reports, assessments and [translation] *tons of medical reports* provided, the Canadian Forces physicians should have assigned him category G2, not G5, and that they had imposed conditions that were impossible to meet. In his testimony, Micheline Montreuil argued that it is not possible for physicians who have never met him to diagnose that he has a sexual identity disorder, without an assessment or analysis, in contradiction to the reports he had submitted. Micheline Montreuil believes that that is discrimination based on the fact that he wears a dress.

[192] To support his claim that he meets the Common Enrolment Medical Standard, Micheline Montreuil relies on the fact that the reports of Doctor Tremblay and Doctor Côté that he sent to the Canadian Forces indicate, according to Micheline Montreuil, that he does not require any medical care involving the hormonal therapy that he stopped and that he is not suffering from any psychiatric pathology. Micheline Montreuil therefore believes that there is no basis on which to consider him unfit to join the Canadian Forces.

[193] Micheline Montreuil further testified that, notwithstanding the assignment of the medical category G5O2, he met all the requirements of the logistics officer occupation,

pointing out that he had written a book on supply management, held an MBA and a master's degree in industrial relations, had been the owner of a restaurant and grocery store, which enabled him to manage a food service business, had also written books on assembly lines and production engineering, and had been a logistics officer in 1997 for the Voltigeurs de Québec.

[194] Having completed this presentation and analysis of the Canadian Forces military requirements for prospective recruits and the way in which those requirements apply to Micheline Montreuil, the Tribunal finds that a person wishing to join the Canadian Forces must show that he or she is physically and mentally fit for enrolment, regardless of the military occupation desired, that, given the raison d'être of the Canadian Forces, the person must be able to fulfill the duties of a soldier first, before fulfilling the tasks specific to his or her chosen MOC, and that the requirements for being enrolled in the Canadian Forces are quite strict and for good reason, given the universality of service principle. Moreover, the Tribunal notes that the assignment of medical category G5 to Micheline Montreuil, with its associated medical employment limitation, prevented him from being enrolled in the Canadian Forces.

C. Medical appointments and reports

[195] The evidence shows that, in the process of applying for enrolment, Micheline Montreuil asked three physicians, namely, Dr. Martine Lehoux, Dr. Serge Côté and Dr. Rolland Tremblay, to prepare medical reports to be sent to the Canadian Forces in response to the Canadian Forces' requests for information.

[196] As well, it appears from the evidence that Micheline Montreuil, when he applied for enrolment in July 1999, was seeing Doctor Lehoux for laser hair removal on his face and chest, and Doctor Tremblay for hormonal therapy. The evidence also shows that Micheline Montreuil saw Doctor Côté regarding his resignation from Collège Garneau in December 1997, and a few times after that, also regarding the resignation.

[197] To fully understand this case, it is important to examine the relationships that Micheline Montreuil had with the various physicians, as well as the contents of their medical reports, to gain a better appreciation of the documents that the Canadian Forces had when they evaluated Micheline Montreuil's file.

(i) Dr. Martine Lehoux's involvement

[198] Doctor Lehoux did not testify in this case. However, the evidence shows that she was practising at the Centre dermatologique du Québec métropolitain in 1999. The evidence also shows that Doctor Lehoux is an acquaintance of Micheline Montreuil, the two having taken computer courses together. In addition, the evidence shows that Doctor Lehoux is a client of Micheline Montreuil.

[199] The evidence shows that, on December 5, 2005, Doctor Lehoux sent one of the respondent's counsel a letter explaining the treatments she had given Micheline Montreuil. Micheline Montreuil's complete medical record, as compiled by Doctor Lehoux, was enclosed. It should be noted that the medical record compiled by Doctor Lehoux regarding Micheline Montreuil was not sent to Canadian Forces physicians.

[200] The letter of December 5, 2005, states that Micheline Montreuil began seeing Doctor Lehoux in October 1998 for the laser removal of his beard and moustache, and neck and chest hair. It appears from the letter that the appointments continued over a number of years. In the letter, Doctor Lehoux adds that she saw Micheline Montreuil mainly to perform

laser hair removal and to repeat prescriptions for creams that dermatologists had prescribed for Micheline Montreuil. Doctor Lehoux also states in the letter that she is not a specialist in dermatology, but rather a general practitioner with training in medical aesthetics.

[201] The evidence shows that, on October 20, 1999, Doctor Lehoux sent Captain Labonté a letter on Centre dermatologique letterhead. The subject of the letter was [translation] *Medical Report for Micheline Montreuil-Returning to the Canadian Armed Forces as an Officer*, and the letter was in response to the signed request for medical information that Micheline Montreuil on October 12, 1999.

[202] Doctor Lehoux writes in her letter that she has known Micheline Montreuil for seven years and has been giving Micheline Montreuil laser hair removal treatments to eliminate all signs of his beard and unwanted facial and chest hair, to improve his appearance as a woman. Doctor Lehoux added that, given that Micheline Montreuil is also in the care of Dr. Roland-R. Tremblay, an endocrinologist at the CHUL, for hormonal therapy, and Micheline Montreuil's body has undergone permanent changes, with obvious female characteristics such as breasts, and his behaviour is logical and rational, it will be necessary, if he returns to the Canadian Forces, to return as a woman, to ensure the smooth continuation of the sex reassignment process and avoid any disruptions. The letter dated October 20, 1999, is the only letter that Doctor Lehoux sent to Captain Labonté.

[203] When asked if Doctor Lehoux was in contact with Doctor Tremblay at that time, Micheline Montreuil testified that he has no idea. However, he acknowledged that he may have talked with Doctor Lehoux about Doctor Tremblay being his attending endocrinologist.

[204] When asked about Doctor Lehoux's comment in her report about Micheline Montreuil's behaviour being logical and rational, Micheline Montreuil stated that one would have to ask Doctor Lehoux to explain the comment. However, Micheline Montreuil did suggest a possible explanation for the fact that Doctor Lehoux gives an assessment of Micheline Montreuil's state of mental health, namely, that his behaviour is logical and rational: While Doctor Lehoux has no background in psychology, she has known Micheline Montreuil for seven years and they have worked together in a computer club, so they have necessarily talked a great deal about computers, logic, structure, networks, systems and other things; therefore, Doctor Lehoux is perhaps a logical and rational person also who uses those words.

[205] The evidence would tend to show that Micheline Montreuil told Doctor Lehoux what he wished to see included in the report for the Canadian Forces, as she did with Doctor Tremblay. A comparison of Doctor Lehoux's letter, dated October 20, 1999, and the letter that Micheline Montreuil sent to Doctor Tremblay on October 12, 1999, is revealing. The remarks are the same, almost word for word, especially regarding behaviour that is [translation] "logical and rational" and a return to the Canadian Forces [translation] "as a woman."

[206] When asked about why Doctor Lehoux refers in her report to a sex reassignment process when her involvement with Micheline Montreuil was limited to laser hair removal, Micheline Montreuil testified that it was probably because the request for information mentioned it. The evidence shows that Micheline Montreuil also attempted to justify the reference by the fact that, if a person takes hormones to enlarge his breasts and at the same time eliminates facial hair for a more feminine appearance, one might logically think that it is a sex reassignment process when it is not necessarily so. In the Tribunal's view, that explanation does not hold water when the letter written by Doctor Lehoux on October 20, 1999, is compared with the letter written by Micheline Montreuil on October 12, 1999.

(ii) Dr. Serge Côté's involvement

[207] Doctor Côté is a psychiatrist who was called as a witness by the respondent. The evidence shows that Doctor Côté is an acquaintance of Micheline Montreuil, having prepared a medical assessment for the grievance that Pierre Montreuil filed in 1998 against Collège Garneau, and the evidence shows that Doctor Côté is not a specialist in gender identity disorders.

[208] The evidence shows that, in a telephone message left on December 8, 2005, for one of the respondent's counsel, Doctor Côté states that he has no file under the name of Micheline Montreuil, does not keep files older than five years, saw the complainant for an assessment in relation with his resignation from Collège Garneau, remembers having completed a file for the Canadian Forces in which he stated that the complainant was fit for his position and things were fine in that regard, but he had never dealt with the matter of the complainant's transsexuality. He states in the letter that he does not work in that field and is not qualified in that area, and has referred Micheline Montreuil to Dr. Jean-Pierre Bernatchez at the Centre hospitalier de l'Université Laval (CHUL).

[209] The evidence shows that Dr. Serge Côté sent one of the respondent's counsel a letter on December 15, 2005, in which he describes his professional relationship with Micheline Montreuil. In the letter, Doctor Côté confirms that he met with Micheline Montreuil as an expert to assess whether or not Micheline Montreuil's decision to resign from Collège Garneau in November 1997 was the result of a free and informed choice.

[210] In his letter, Doctor Côté states that, in that context, Micheline Montreuil appeared to be psychologically more at ease as a woman (letter dated October 25, 1999) and there was no basis on which to make a psychiatric diagnosis that would undermine his work, and Doctor Côté states that the meeting on November 24, 2001, was brief, he answered no to all the questions on the form and prepared a brief report stating that there had been no treatments, past or present.

[211] Doctor Côté states in his letter that he has never intervened as attending physician regarding the complainant's choice of being Micheline and he had referred the complainant to Doctor Bernatchez or that it was Micheline Montreuil who had informed him about that assessment. Doctor Côté further states in his letter that the reports he prepared were written as part of an assessment for the complainant's employment.

[212] Doctor Côté testified that the information provided to the Canadian Forces in response to their requests for medical information is based on the contents of the report and his personal knowledge of Micheline Montreuil, information of which the Canadian Forces were unaware. It appears from Doctor Côté's testimony that most of the information in the report came from information that Pierre Montreuil sent him.

[213] The evidence shows that Doctor Côté sent the Canadian Forces three documents regarding Micheline Montreuil's application for enrolment. Doctor Côté testified that Micheline Montreuil asked him in 1999 to complete some forms for the Canadian Forces, and he agreed to do so. However, Doctor Côté stated in his testimony that it was not as an attending physician that he agreed to complete the forms, that he had in fact never been Micheline Montreuil's attending physician or psychiatrist, that he had not conducted any psychiatric assessment of Micheline Montreuil in 1999, or any assessment of Micheline Montreuil with regard to sex reassignment, admitting that he was not qualified to assess that aspect.

[214] In addition, Doctor Côté testified that he did not observe any mental disorders, depression, schizophrenia or bipolar disorder when he saw Micheline or Pierre Montreuil. Doctor Côté stated that he was never part of any team of sex reassignment specialists for Micheline Montreuil.

[215] Doctor Côté testified that Micheline Montreuil was very insistent when making requests, so his actions were not strictly of his own free will. The evidence shows that Doctor Côté appears to have felt trapped by Micheline Montreuil's demands. The Tribunal was able to observe Doctor Côté during his testimony. Doctor Côté repeatedly testified that, in hindsight, he does not know why he agreed to Micheline Montreuil's request to write the respondent and added that he had previously felt a certain pity for Pierre Montreuil when Pierre Montreuil lost his job at the CEGEP.

[216] The Tribunal notes from the points above that Micheline Montreuil always knew that Doctor Côté had never met with him regarding his potential status as a transsexual or transgendered person, had never assessed him regarding that and had never treated him. The Tribunal also notes that Micheline Montreuil nevertheless asked Doctor Côté, whose existence was unknown to the respondent, to prepare reports that would answer the Canadian Forces' questions regarding his sex reassignment and his being a person in transition, despite the fact that Doctor Côté was not treating him, was not his attending physician and was in no way involved as a psychiatrist in any sex reassignment process in which Micheline Montreuil may have been involved.

a) Report dated October 25, 1999

[217] The evidence shows that Doctor Côté sent Capt. Pierre Labonté a letter on October 25, 1999, with the subject line, [translation] *Medical Report for Micheline Montreuil*. In the report, Doctor Côté simply states that, given Micheline Montreuil's sex reassignment process, he believes that it is important for Micheline Montreuil to be enrolled as a woman. He adds that, although the physical transformation is not complete, the identity is primarily female.

[218] Doctor Côté stated repeatedly in his testimony that the letter of October 25, 1999, was not an assessment, but should rather be considered a letter of recommendation in support of Micheline Montreuil's desire to enrol in the Canadian Forces as a female. Doctor Côté also stated that he said as much to Micheline Montreuil and what he underlined in the letter was what Micheline Montreuil had told him. Doctor Côté admitted in his testimony that he had never assessed Micheline Montreuil.

[219] When asked to comment on the contents of the letter, in particular the reference to a sex reassignment process, Doctor Côté stated that Micheline Montreuil told him about being referred to the CHUL for a sex reassignment process, and he knew that Micheline Montreuil was on hormonal therapy. As for Micheline Montreuil's identity, he stated that the letter reflects only what Micheline Montreuil told him, nothing more, as he did not conduct a deeper assessment.

[220] Doctor Beltrami testified that Doctor Côté's report dated October 25, 1999, provides a cursory opinion without detailed reasons. Doctor Beltrami believes that cursory information calls for a request for further information. Doctor Beltrami acknowledged in his testimony that the information provided by Doctor Côté is insufficient. He also acknowledged that, short of requesting an independent assessment, it was appropriate to request additional information, given the cursory nature of the two reports.

[221] In addition, Doctor Beltrami mentioned in his testimony that it was not Doctor Côté's role to suggest, as he did in his letter of October 25, 1999, that Micheline Montreuil should be enrolled as a woman despite Micheline Montreuil's incomplete transformation. Doctor Beltrami added that he finds the whole affair completely anomalous, that the letter, in his words, makes no sense, that the letter is confusing. Doctor Beltrami states that, as a medical advisor, he would have asked for more information.

[222] Micheline Montreuil admitted in his testimony that Doctor Côté's letter was very brief and served more as a letter of reference.

[223] The Tribunal finds that the opinions expressed by Doctor Côté in his letter of October 25, 1999, are based not on an assessment of Micheline Montreuil conducted in 1999, but rather on observations made in an assessment written in 1998 for the dispute between Pierre Montreuil and Collège Garneau.

b) Report dated December 20, 1999

[224] In the letter with the subject line *Micheline Montreuil* that Doctor Côté wrote to Captain Labonté on December 20, 1999, which was not on letterhead, Doctor Côté states that Micheline Montreuil shows no sign of any psychiatric pathology that would compromise his work in the Canadian armed forces.

[225] In his testimony, Doctor Côté stated that that is the same as his assessment in 1998, in the dispute between Pierre Montreuil and Collège Garneau. In the letter, Doctor Côté added that the incomplete transformation appeared to be beneficial for Micheline Montreuil, she has her own personal resources for facing the military music, there will surely be reactions from people, and Micheline Montreuil knows them and is capable of reacting appropriately.

[226] In his testimony, Doctor Côté stated that he wrote the letter, once again, using knowledge gained from Micheline Montreuil during the first assessment, that is, the one conducted for the dispute between Pierre Montreuil and Collège Garneau, and there was no other assessment. Moreover, Doctor Côté stated that he wrote it more as a letter of recommendation and not as an assessment.

[227] As for the comment that there was no psychiatric pathology, Doctor Côté testified that that is what he found in his assessment of Pierre Montreuil in 1998 for the dispute between Pierre Montreuil and Collège Garneau. As for the fact that there would be reactions from people to Micheline Montreuil's reintegration as a woman, Doctor Côté testified that for Micheline Montreuil, a man, using the women's washroom could cause problems. Doctor Côté stated in his testimony that Micheline Montreuil went to his home to get the letter.

[228] Doctor Beltrami testified that Doctor Côté's second letter, dated December 20, 1999, is a short letter containing a conclusion for which no reasons are given and, as such, is not an assessment. Doctor Beltrami believes that Doctor Côté's remark that there is no psychiatric pathology *that might compromise work* in the Canadian Forces may suggest that there are other psychiatric problems, but those problems would not affect the Canadian Forces. Doctor Beltrami believes that he would definitely ask for an explanation, because that is a second letter that fails to provide reasons. Doctor Beltrami added that comparing the letter's contents with Doctor Tremblay's observation that there was movement toward a complete transformation that suddenly stopped invites further analysis or an external assessment.

[229] To Doctor Beltrami, Doctor Côté's letters imply that Micheline Montreuil's enrolment as a woman would make life easier for Micheline Montreuil. Doctor Beltrami does not

believe that a job can cure a person. Doctor Beltrami stated that either the person is normal and the Canadian Forces make their decision, or the person is not normal and a job will not make him better.

c) Report dated November 24, 2001

[230] The evidence shows that, on November 24, 2001, Doctor Côté completed a medical information request form from Warrant Officer Leroux that was dated November 6, 2001. Warrant Officer Leroux indicated on the form that the Canadian Forces were especially interested in receiving Doctor Côté's comments on how a person who is only psychologically a woman and who has had partial treatment would fit into the Canadian Forces.

[231] In response to the information request, Doctor Côté wrote on the form, under *Psychiatric Diagnosis*, "none" and "nil" in answer to questions on personal history and current and past treatment. He indicated that no care was required and Micheline Montreuil's condition was normal, and he wrote nothing under *Limitations and Risk of Recurrence*. During testimony, Doctor Côté repeated that he had not conducted a medical assessment of Micheline Montreuil on that occasion.

[232] The evidence shows that Doctor Côté was also asked to complete a document entitled Task Statement-All CF Members dated November 24, 2001. The document produced as evidence shows that Doctor Côté completed the last section only, in which he certifies that Micheline Montreuil does not have a medical condition that would prevent him from performing the tasks listed or following instructions to complete those tasks.

[233] In his testimony, Doctor Côté seemed surprised, if not troubled, that he signed the document on required tasks, stating that as a psychiatrist he should not comment on such topics, since he is not qualified to do so. To him, the document is in no way a medical report or assessment. When asked what could have led him to sign the document, Doctor Côté could not give an answer, but said that the underlying reason was that he found Micheline Montreuil to be intrusive and wanted to quickly end his dealings with Micheline Montreuil; however, he said he should have refused to sign.

[234] The evidence shows that, Micheline Montreuil subsequently sent Corporal Domaine of the Canadian Forces Medical Group a letter stating that he was sending the Canadian Forces a psychiatric assessment by Doctor Côté dated November 24, 2001.

[235] Regarding Doctor Côté's reports, Micheline Montreuil testified that, following the request for disclosure of medical information signed on October 12, 1999, he contacted Doctor Côté, the only psychiatrist with whom he had had professional contact (regarding the Collège Garneau incident) to have Doctor Côté write a letter in response to the request of the Canadian Forces. The evidence shows that it is Micheline Montreuil who chose the physicians whom he told about the request of the Canadian Forces for a sex reassignment transition summary.

[236] Why did Micheline Montreuil choose to involve Doctor Côté? In his testimony, Micheline Montreuil candidly stated that he provided the Canadian Forces with a letter from Doctor Côté, psychiatrist, simply because the Canadian Forces were requesting a report from a psychiatrist, since he arrived dressed as a woman, and that may have bothered them somewhat. The evidence does not support that submission.

[237] The evidence shows that, in the case at bar, the Canadian Forces were attempting to obtain a [translation] *Sex Reassignment Transition Summary*. If Micheline Montreuil was not,

as he states, seeking sex reassignment and was not treated by Doctor Côté, then why ask for a medical summary from a psychiatrist who is not his therapist and who therefore does not have his medical file, because the psychiatrist is not treating him?

[238] Moreover, what should be made of the Doctor Côté's statement that Micheline Montreuil was not suffering from any psychiatric illness upon resigning from Collège Garneau, given the testimony Doctor Côté allegedly gave at the hearing of Micheline Montreuil's grievance?

[239] At the hearing, it was obvious to the Tribunal that Doctor Côté was not proud of what he had done regarding Micheline Montreuil's information requests and Doctor Côté felt manipulated by Micheline Montreuil. Doctor Côté's testimony and behaviour before the Tribunal clearly shows that he was uncomfortable and, if the same situation were to arise again, he would act differently. In any event, he admitted in his testimony that he was hoping to be finished with Micheline Montreuil and his information requests as quickly as possible.

[240] The Tribunal believes that Micheline Montreuil derailed his application for enrolment in the Canadian Forces by not being upfront about Doctor Côté. By acting in the way that he did, Micheline Montreuil led Canadian Forces physicians to believe that he was under the care of a psychiatrist and in a sex reassignment process, which was obviously not true. Micheline Montreuil can claim all he wants that he has never had a health care team and Doctor Côté has never been his attending physician; however, it can be seen that he has led people to believe the contrary, so he must face the consequences.

(iii) Dr. Rolland Tremblay's involvement

[241] Doctor Tremblay was called as a witness by the respondent. The evidence shows that Doctor Tremblay is an endocrinologist who saw Micheline Montreuil on a number of occasions for hormonal therapy. The evidence shows that Doctor Tremblay was Micheline Montreuil's attending physician for hormonal therapy from July 1998 to October 2001. At the time, Doctor Tremblay was responsible for managing the andrology laboratory at the Centre hospitalier universitaire de Québec (CHUQ).

[242] The evidence shows that, on December 8, 2005, Dr. Roland Tremblay sent one of the respondent's counsel a copy of everything in the file that he had for Micheline Montreuil. However, it appears that the file sent by Doctor Tremblay was incomplete, the final entry being dated November 30, 1999. That was rectified on October 20, 2006, when Doctor Tremblay sent one of the respondent's counsel the complete file for Micheline Montreuil. The file includes progress notes, letters from Micheline Montreuil, analysis results, documents from the Canadian Forces on Micheline Montreuil's application for enrolment, Doctor Côté's letters of October 25, 1999, and December 20, 1999, Doctor Lehoux's letter dated October 20, 1999, and Doctor Tremblay's letters to the Canadian Forces.

[243] It should be noted that the file was not sent to the respondent by Micheline Montreuil and was not part of the documentation in the Canadian Forces' possession when the decision on his application for enrolment was made.

[244] Doctor Tremblay testified that he saw Micheline Montreuil eight times between July 1998 and October 2001, including four times after receiving letters from Micheline Montreuil asking about various aspects of the life of a person in transition. The evidence also shows that Micheline Montreuil wrote to Doctor Tremblay several times regarding the taking of female hormones and the information requests from the Canadian Forces.

a) Appointments and correspondence

[245] The evidence shows that Micheline Montreuil saw Doctor Tremblay for the first time on July 14, 1998. Doctor Tremblay testified that he remembers little about that appointment.

[246] However, Doctor Tremblay testified that two other transsexual persons told him that Micheline Montreuil would be coming to see him. Doctor Tremblay stated that Micheline Montreuil introduced himself dressed as a woman. Doctor Tremblay stated that, even though Micheline Montreuil's sex was not recorded in the consultation notes, Micheline Montreuil was a male who wanted female hormone therapy for purposes of sex reassignment, as far as Doctor Tremblay is concerned.

[247] Notes recorded in the file by Doctor Tremblay on July 14, 1998, indicate that Micheline Montreuil was 46 years old, in good health and wishing to receive female hormone therapy for purposes of sex reassignment, that Micheline Montreuil had not had any psychiatric or psychological consultations, that Micheline Montreuil's social attitudes reflected stability and security, and that the action Micheline Montreuil was taking was well thought out. The notes also indicate that Micheline Montreuil was prescribed Estinyl and Euflex, and he needed to be seen again three months later, in October 1998.

[248] When asked in the course of his testimony to define the expression [translation] "sex reassignment" used in the note, Doctor Tremblay stated that the expression was used with the connotation of a transsexual person or transsexualism, that is, a desire to change from being a man to being a woman. Doctor Tremblay testified that it was obvious to him on July 14, 1998, that Micheline Montreuil was seeing him regarding sex reassignment. However, he does not recall whether or not the word "transsexualism" was used. He stated that Micheline Montreuil wanted female characteristics in a sex reassignment context, that is, transsexualism and/or transgender depending on the direction that Micheline Montreuil's development would take. However, Doctor Tremblay stated that the terms used did not necessarily mean that Micheline Montreuil wanted operations affecting his genital organs. That said, Doctor Tremblay testified that Micheline Montreuil used the expressions "transsexual," "transgendered" and "sex reassignment" at the appointment on July 14, 1998.

[249] Doctor Tremblay testified that Micheline Montreuil did not say during the appointment how far he wanted to go with changing his sexual attributes. Moreover, Doctor Tremblay emphasized that the appointment on July 14, 1998, was not about surgical castration. Doctor Tremblay stated that he wrote Micheline Montreuil a prescription for estrogens and anti-hormones on the day of the appointment. Doctor Tremblay testified that neither Doctor Côté nor Doctor Lehoux was mentioned during the appointment.

[250] On August 5, 1998, three weeks after the appointment on July 14, 1998, Micheline Montreuil, who had begun hormonal therapy, wrote Doctor Tremblay a letter to say that he had noticed a measurable increase in the size of his breasts, a swelling of his stomach, increased appetite, decreased hairiness, increased difficulty in getting an erection, and reduced sperm production. In the letter, Micheline Montreuil asks Doctor Tremblay what would happen to those characteristics if he stopped taking the prescribed female hormones. He states that he wants to know if some of the results or effects would be temporary and others permanent. He notes in the letter that his next appointment is on October 13, 1998.

[251] The evidence shows that Doctor Tremblay had a second appointment with Micheline Montreuil on October 13, 1998. Doctor Tremblay noted in Micheline Montreuil's medical file that the prescribed medication had been stopped in early September because Micheline Montreuil had concerns. Doctor Tremblay also noted that, upon examination, two

small breasts had developed with no nodularity palpated, body systems were examined and there was increased appetite. Doctor Tremblay renewed the prescription.

[252] On September 6, 1999, Micheline Montreuil wrote Doctor Tremblay a letter regarding the effects of the hormonal therapy. Micheline Montreuil states in the letter that he has been on hormonal therapy for one year and is wondering about the short- and long-term results and consequences of it. He tells Doctor Tremblay about his decision to alternate between periods of taking the prescribed hormones and periods of not taking them and asks for Doctor Tremblay's opinion on his breast development, the development of a kind of eczema on one breast, his decrease in muscle mass, the widening of his buttocks, the swelling of his stomach, the risk of developing breast cancer and the occurrence of headaches when erect. Micheline Montreuil also asks Doctor Tremblay a series of questions on hormone therapy under various scenarios.

[253] Micheline Montreuil indicates to Doctor Tremblay that he would like to know what the side effects would be if he stopped the hormonal therapy, whether or not it would be helpful or necessary to continue taking female hormones if he [translation] *had sex reassignment surgery*, since he would then be a woman, whether or not he would have to take female hormones if he [translation] *did not have sex reassignment surgery* and remained in an intermediate state, half male and half female, and whether or not it would be helpful or necessary to continue taking female hormones if he [translation] *did not have sex reassignment surgery* and went back to being a man.

[254] Doctor Tremblay stated in his testimony that the letter dated September 6, 1999, raised questions that caused him to have a number of concerns. While the concerns were small, he did feel the need, as he wrote in a progress note, to see the hospital's lawyer. Doctor Tremblay added that he detected from the letter that Micheline Montreuil might be transgendered and not transsexual. His concern was about the effect of hormones on breast cancer.

[255] The evidence shows that Doctor Tremblay had a third appointment with Micheline Montreuil on September 17, 1999. Doctor Tremblay added a new progress note to Micheline Montreuil's file. The note indicated that the letter dated September 6, 1999, was a note to file, a legal opinion had been obtained and Micheline Montreuil's consent had been obtained. Doctor Tremblay testified that the legal opinion deals with Micheline Montreuil and the September 6 letter that Micheline Montreuil sent him. Doctor Tremblay stated that he consulted the attorney at the CHUQ.

[256] Micheline Montreuil wrote to Doctor Tremblay again on October 12, 1999. Attached to the letter was a medical information disclosure request form dated October 12, 1999, on which was written [translation] *Sex Reassignment Transition Summary*. In the letter, Micheline Montreuil states that he has had an interview to return to the Canadian Forces as a legal officer. He states that the Canadian Forces had him sign a medical information disclosure request form and asks Doctor Tremblay to write a report certifying that he has been in Doctor Tremblay's care for 18 months, is taking hormones, has undergone permanent changes to his body, has obvious female characteristics, has fairly large breasts developing within the norm, has tested negative in blood tests for sexually transmitted diseases and other diseases, is demonstrating logical and rational behaviour with respect to his development and, if he returns to the Canadian Forces, will need to return as a woman to ensure the smooth continuation of the reassignment process.

[257] The evidence shows that Doctor Tremblay had a fourth appointment with Micheline Montreuil on November 30, 1999. Doctor Tremblay writes in his consultation note that he saw Micheline Montreuil on that day and Micheline Montreuil was in very good health overall, the hormones were being taken faithfully and were not causing side effects, Premarin had been substituted for the Estynil, mammary glands were developing normally from a phenotype perspective, and the September blood tests results were normal except for increased total and bio-available testosterone. Doctor Tremblay ends the note with [translation] *Patient to be seen again in fall 2000*.

[258] When asked during testimony to explain the increased testosterone, Doctor Tremblay stated that that may have been the result of not taking the medications or taking them intermittently. The evidence shows that Micheline Montreuil took the hormones in alternating periods or intermittently, which was not according to Doctor Tremblay's prescription.

[259] The evidence shows that Micheline Montreuil wrote to Doctor Tremblay again on November 30, 1999. Micheline Montreuil states in the letter that he has a number of questions on the results of the hormonal therapy, after having been on the therapy for a year and a half.

[260] In the letter, Micheline Montreuil describes the way in which he has been taking the female hormones. He states that he has alternated between periods of taking the Estinyl and Euflex tablets, which were prescribed by Doctor Tremblay, and periods of not taking them. Micheline Montreuil also tells Doctor Tremblay that he has decided to take the Estinyl and Euflex tablets for three months and is thinking of extending that to three and a half or four months. Micheline Montreuil asks for Doctor Tremblay's thoughts on his plan to take hormones for an uninterrupted period of three and a half to four months or longer, his breast development, the expected growth period of his breasts, the size and volume his breasts may reach, the condition of his skin, the results of laser hair removal, the condition of his left leg after treatment for a bacterial infection, and the excision of a small bleb on his left arm. Micheline Montreuil also wants to know the connections between the bacterial infection and the simultaneous use of hormones and antibiotics. He also inquires about the availability of a replacement hormone for Estinyl and the renewal of his prescription for Euflex. He states that he would like to know the results of his blood tests.

[261] When asked during testimony to comment on Micheline Montreuil's statements in the letter he sent Doctor Tremblay on November 30, 1999, Doctor Tremblay stated that he definitely answered Micheline Montreuil that if he wanted to continue his development in a linear fashion, there was no medical contraindication, it was the only sure way to reach the overall goal of changing his identity and completing the transsexualization process. In Doctor Tremblay's opinion, taking hormones in alternating periods does not make it possible to attain the ultimate goal of transsexualization.

[262] Doctor Tremblay could not say during testimony whether or not he had the letter when he examined Micheline Montreuil on November 30, 1999. However, when confronted with the fact that he indicates in his progress notes that the hormones are being taken faithfully while Micheline Montreuil indicates in his letter that the tablets prescribed by Doctor Tremblay are being taken in alternating periods, Doctor Tremblay suggested that he probably had not read the letter to him dated November 30, 1999, when he wrote the note.

[263] The evidence shows that Micheline Montreuil sent Doctor Tremblay a letter on March 13, 2000, telling Doctor Tremblay that the Canadian Forces were requesting additional

information and referring to Doctor Collins' letter dated March 9, 2000, which was included as an attachment.

[264] Doctor Collins states in his letter that the additional information is required to determine if Micheline Montreuil meets the Common Enrolment Medical Standard, and mentions the fact that Micheline Montreuil was taking hormones when he applied for enrolment and indicated that he was going to stop taking them in the future. Doctor Collins informs Micheline Montreuil that it has been decided that it would be prudent that he provide a reassessment from his physician once the effects of the hormones have ceased. Doctor Collins requests confirmation from the physician that no other treatment is required for his gender identity-related condition.

[265] Micheline Montreuil states in his letter that he has stopped taking the hormones, and he asks Doctor Tremblay to prepare a report certifying that the effects of the hormones have ceased, no other hormone treatment is required in light of the breast development results obtained, his breast development is within the norm, blood tests show that his health is normal, his *behaviour is logical and rational* with respect to his development and, given his development, if he were to return to the Canadian Forces, he would have to *return as a woman*. Lastly, he states that he has made an appointment with Doctor Tremblay for an examination on April 4, 2000, and seems to ask Doctor Tremblay to wait until then to write the report. Doctor Tremblay stated that he did not meet with Micheline Montreuil before writing the report, as he saw so no reason to do so.

[266] The evidence shows that Doctor Tremblay had a fifth appointment with Micheline Montreuil on April 4, 2000. Doctor Tremblay wrote in the file that Micheline Montreuil stopped all female hormone therapy in early March 2000, his body weight has started to drop, he feels less hungry, his breast size has diminished, he does not want an operation on his genitals but [translation] *foresees possibly having plastic surgery on his breasts*. Doctor Tremblay also indicates that the procedures with the army have reached a very late stage, and there is no authorization for surgery for three years. When asked to comment on the last item, Doctor Tremblay testified that he was recording what Micheline Montreuil said.

[267] The evidence shows that Doctor Tremblay had a sixth appointment with Micheline Montreuil on October 17, 2000. Doctor Tremblay writes in his progress note that Micheline Montreuil stopped all female hormone therapy in April 2000, the hormone assessment conducted on August 21, 2000 is normal and indicates a return to normal functioning of the gonads. Doctor Tremblay notes that, in light of Micheline Montreuil's development, Micheline Montreuil wishes to resume hormonal therapy. Doctor Tremblay also indicates in his note that he must respect the freedom of this lawyer, prescribes Euflex and Estrace, and indicates that a lipid and hormonal assessment will be conducted in six months.

[268] It appears that Doctor Tremblay saw Micheline Montreuil a seventh time on March 27, 2001. Doctor Tremblay writes in his progress note that the hormonal therapy has produced good results but also weight gain, body systems were examined and found to be normal, and the final assessment is perfectly normal. Doctor Tremblay stated in his testimony that, according to the laboratory results, Micheline Montreuil had been taking his medications as directed. That said, Doctor Tremblay testified that the hormonal therapy resumed between February 20, 2001, and March 27, 2001.

[269] The evidence shows that Doctor Tremblay had an eighth appointment with Micheline Montreuil on October 16, 2001. The progress note on file indicates that Micheline Montreuil ceased all medication on February 20, 2001, there are no metabolic effects except for an excess of body weight, sperm analysis shows a slightly reduced sperm count, Micheline Montreuil is with his partner and they definitely plan to have a baby shortly, and the couple has sought advice regarding that.

[270] Micheline Montreuil wrote to Doctor Tremblay on November 12, 2001, regarding his application for enrolment in the Canadian Forces. He tells Doctor Tremblay in the letter that a final medical opinion is required. He writes that the Canadian Forces are open to his return subject to a final medical opinion from Doctor Tremblay. He tells Doctor Tremblay that he has received a new medical information disclosure request form and asks Doctor Tremblay to complete it. Micheline Montreuil attached to the letter another letter he had sent and copies of the three letters written by Doctor Côté and Doctor Lehoux. The evidence shows that, in response to the letter, Doctor Tremblay completed the medical information request form on November 22, 2001, and a Generic Task Statement form on November 29, 2001.

[271] From the above, the Tribunal finds that Micheline Montreuil was planning to undergo *sex reassignment* when he saw Doctor Tremblay for hormonal therapy. Doctor Tremblay's remark in Micheline Montreuil's medical file about [translation] *hormonal therapy for purposes of sex reassignment* contradicts Micheline Montreuil's repeated testimony and argument that the purpose of the hormonal therapy he underwent was simply to develop a pair of breasts, and the only goal was an aesthetic one, period. The Tribunal lends more credence to Doctor Tremblay than to Micheline Montreuil regarding the reasons that led Micheline Montreuil to see Doctor Tremblay.

[272] The Tribunal finds that there is no reason for which Doctor Tremblay might record false or inaccurate information in his file. Doctor Tremblay appears to the Tribunal to be a conscientious professional, although his attitude toward those who come to him seeking hormonal therapy for purposes of sex reassignment may seem surprising.

[273] Moreover, the Tribunal finds that Micheline Montreuil, contrary to his assertion that he wanted only one thing-to have breasts by undergoing hormonal therapy-was planning in April 2000 to have *plastic surgery on his breasts*. On this, the Tribunal considers that the facts given by Doctor Tremblay reflect the reality of Micheline Montreuil's words, as the Tribunal is more inclined to believe Doctor Tremblay than Micheline Montreuil.

[274] Lastly, given Doctor Tremblay's testimony, the Tribunal finds that Doctor Tremblay considered Micheline Montreuil a transsexual person when Micheline Montreuil went to him to obtain hormonal therapy.

[275] Moreover, from the letters that Micheline Montreuil sent to Dr. Roland Tremblay between August 5, 1998, and November 12, 2001, the Tribunal notes that Micheline Montreuil (1) was especially concerned about the development of his breasts; (2) was ambivalent regarding a possible sex reassignment; and (3) did not hesitate to indicate, if not dictate, the information he wanted to see on the medical reports sent to the Canadian Forces, information that served his own personal interests and did not necessarily reflect reality.

[276] Aside from the correspondence that Micheline Montreuil sent Doctor Tremblay regarding his hormonal therapy and the multiple appointments that took place, the evidence shows that Doctor Tremblay sent the Canadian Forces a series of medical reports regarding the medical care he was providing to Micheline Montreuil.

b) Medical reports

1. Report dated October 26, 1999

[277] The evidence shows that Doctor Tremblay wrote to Captain Labonté of the Canadian Forces on October 26, 1999, further to Micheline Montreuil's letter of October 12, 1999. Doctor Tremblay testified that he did not see Micheline Montreuil before writing the letter. He also stated that, in writing the letter, he took into account the contents of the letter that Micheline Montreuil had sent him, dated October 12, 1999, and there are certain correlations with Micheline Montreuil's requests, namely, the remarks that Micheline Montreuil's behaviour is logical and rational, his biopsychological development is following normal patterns for sex reassignment, and his return to the Canadian Forces would have to be made as a woman to ensure the smooth continuation of the sex reassignment process.

[278] Doctor Tremblay writes in his letter of October 26, 1999, to Captain Labonté regarding Micheline Montreuil that he has been seeing Micheline Montreuil for a year and a half as the physician in charge of hormonal therapy to feminize Micheline Montreuil's phenotype. Doctor Tremblay writes that he understands that this stage in the life of a transsexual person marks a transition that precedes surgical operations to give the body indelible marks of femininity. Doctor Tremblay adds that Micheline Montreuil is demonstrating *compliance* in the medical relationship and agreeing to all suggested blood work, biological examination results are normal, and biopsychological development is following normal patterns for sex reassignment.

[279] Doctor Tremblay ends by opining that the current circumstances lead him to recommend that Micheline Montreuil return to the Canadian Forces as a female for consistency with the new direction of Micheline Montreuil's life.

[280] Doctor Tremblay stated in his testimony that the contents of the letter dated October 26, 1999, reflects his perception of reality as described with respect to Micheline Montreuil. He added that, after he sent the letter, he did not receive any news from Micheline Montreuil saying that anything in the letter was incorrect. Doctor Tremblay also testified that the letter dated October 26, 1999, was written in good faith, and he was not under any pressure from Micheline Montreuil.

[281] Moreover, Doctor Tremblay testified that [translation] *stage of life* refers specifically to the taking of hormones, he considered Micheline Montreuil a transsexual person at the time, and the transition period is the time when a person takes hormones. Doctor Tremblay also testified that he wanted Captain Labonté to understand that, for a transsexual person taking hormones, hormonal therapy is the transition phase that precedes surgical operations to give the body indelible marks of femininity. However, Doctor Tremblay stated that his understanding of Micheline Montreuil's condition was not that Micheline Montreuil was going to undergo surgical operations.

[282] Doctor Tremblay explained in his testimony that he used the expression [translation] *biopsychological development* in his letter to mean that Micheline Montreuil's development was following normal patterns for sex change, an expression commonly used in 1999 that was replaced by the expression "gender dysphoria."

[283] Doctor Tremblay also stated in his testimony that on October 26, 1999, he was convinced as a physician that Micheline Montreuil did not have psychological problems. However, he admitted that did not perform any psychological tests on Micheline Montreuil.

[284] It should be noted that Doctor Tremblay testified that he was referring in his letter to transsexuality in general, very broadly, and to transsexual persons within the meaning of the DSM-IV, sex reassignment, and not to Micheline Montreuil specifically.

[285] In the Tribunal's opinion, that explanation does not hold water. The subject of the letter dated October 26, 1999, is Micheline Montreuil. Doctor Tremblay states in his letter that he has been seeing Micheline Montreuil for a year and a half regarding hormonal therapy, and the hormonal therapy stage of a transsexual person's life marks a transition that precedes surgical operations. As written, the letter dated October 26, 1999, would suggest to any reader that Doctor Tremblay considered Micheline Montreuil a transsexual person and not a transgendered person, as he has previously acknowledged. As shown by the evidence, Doctor Tremblay knew well the difference between a transsexual person and a transgendered person. Yet he never uses the word "transgendered." Under the circumstances, one cannot blame the Canadian Forces physicians in any way for having interpreted the contents of the letter as an indication that Micheline Montreuil was a transsexual person in transition.

[286] When asked about Doctor Tremblay's use of the term "transsexual" in the letter dated October 26, 1999, Micheline Montreuil stated in his testimony that it is Doctor Tremblay who is using the term and not him, and he is not responsible for what others write about him. He also acknowledged in his testimony that Doctor Tremblay is referring to Micheline Montreuil when Doctor Tremblay talks about the stage of a transsexual person's life.

[287] The fact that Micheline Montreuil stated that he is not responsible for what others write is surprising in that, as the evidence shows, Micheline Montreuil himself uses the terms that he criticizes others for using, such as "transsexual" and "sex reassignment." Micheline Montreuil believes that Doctor Tremblay could have used the terms "transgendered," "transvestite" or "she-male." That explanation lacks credibility. The evidence shows that, for close to 30 years, Doctor Tremblay has been treating people who have come to him for hormonal therapy for purposes of sex reassignment. Doctor Tremblay has a thorough knowledge of the terminology in that field and knows how to use it properly.

[288] In addition, Micheline Montreuil testified that the [translation] *indelible marks* in question are a pair of breasts. Moreover, to Micheline Montreuil, the expression [translation] *transsexual person* does not describe what he was at that time. Micheline Montreuil further testified that, to him, [translation] *to undergo the development of a transsexual person* does not mean that one is a transsexual person. Micheline Montreuil believes that Doctor Tremblay used terms that did not correspond to reality.

[289] Regarding the report dated October 26, 1999, Doctor Beltrami, the Commission's expert, acknowledged that the contents of the letter implies that Micheline Montreuil is heading toward complete transsexuality, that is, a complete sex reassignment operation including castration and removal of the penis. Doctor Beltrami also acknowledged in his testimony that there is in the letter a strong presumption that the diagnosis by Doctor Tremblay, who incidentally is shown by the evidence to be familiar with the treatment of persons who have gender dysphoria or who are transsexual, although he does not explicitly say so, was a diagnosis of transsexuality oriented toward a complete sex reassignment. That is also the understanding of the Canadian Forces physicians. Doctor Beltrami added that he believes that the case at bar involves transsexuality that, in 1999, would be consistent with the DSM.

2. Report dated March 15, 2000

[290] The evidence shows that Doctor Tremblay sent a second report to Captain Labonté on March 15, 2000. Doctor Tremblay writes in the report that, in [translation] *the sex reassignment process*, it is critical to continue hormonal therapy for hypothalamo-hypophyseal suppression, so that the testicles remain at rest and the hormonal balance, shifted in favour of female hormones, maintains the female attributes. It is only after surgical castration and plastic surgery on the genitals have been performed that this feminizing hormonal therapy can be significantly reduced. In short, stopping hormonal therapy compromises or simply stops a transsexual person's development. The person goes back to square one. Doctor Tremblay also writes that there must have been a disconnect between Micheline Montreuil and the perception of the Canadian Forces, and he will see Micheline Montreuil on April 4, 2000, for more information. Doctor Tremblay testified that the letter was in reply to the letter that Micheline Montreuil sent him on March 13, 2000.

[291] When asked to explain his understanding of the letter from Doctor Collins that was attached to Micheline Montreuil's letter dated March 13, 2000, Doctor Tremblay stated that he understood that he was being asked whether or not the effects of the hormones had ceased and whether or not any treatment was required for the gender identity issue. Doctor Tremblay testified that, for the year 2000, Micheline Montreuil stopped taking female hormones in March 2000, after previously mentioning the month of April 2000. Doctor Tremblay testified that when he wrote the report dated March 15, 2000, he was under the impression that Micheline Montreuil had stopped taking hormones for good in March 2000. As well, Doctor Tremblay stated in his testimony that there is no need for medical attention once a person has stopped taking hormones.

[292] When asked to explain his understanding of Micheline Montreuil's development, Doctor Tremblay testified that, given that he was informed that the hormonal therapy had been stopped, he does not understand very much. He stated that there may have been a change from a purely transsexual path to a transgendered one, and he believes that the goal had changed. He then noted that, given that Micheline Montreuil interrupted his hormonal therapy for whatever reason, Micheline Montreuil could potentially start taking hormones again, for one-time needs or to resume his transsexual development. Doctor Tremblay testified that on March 15, 2000, the letter can be understood as a return to square one from a hormonal and behavioural point of view, which might point to a case of a transgender person.

[293] Doctor Tremblay also testified that stopping hormonal therapy compromised the feminization of Micheline Montreuil, and Doctor Tremblay acknowledged that, in that context, Micheline Montreuil wanted to become a woman. He also added that if the interruption were validated, it would mean that Micheline Montreuil had opted to be transgendered. Doctor Tremblay stated in his testimony that at that time he had come to consider Micheline Montreuil as belonging more to the category of transgendered persons than to that of transsexual persons.

[294] However, if that is case, the Tribunal notes that Doctor Tremblay never uses the term "transgendered" in his correspondence with the Canadian Forces, even though he is familiar with the term. He continues to talk about sex reassignment and transsexual persons in his correspondence. The Tribunal observes that, if Doctor Tremblay did indeed think that Micheline Montreuil's condition had changed from transsexual to transgendered, he did not inform the Canadian Forces explicitly. In the Tribunal's opinion, the Canadian Forces physicians cannot be criticized in any way for not having considered that change, given the information they were sent.

[295] When asked to explain the reference in his letter to a disconnect, Doctor Tremblay stated that the Canadian Forces expected Micheline Montreuil to return to the Forces as a man, given that he had stopped taking hormones, while Micheline Montreuil wanted to return as a woman. Doctor Tremblay testified that his intention in writing the letter in that way was to make it clear to the Canadian Forces that Micheline Montreuil wanted to return to the Canadian Forces as a woman, with female sex attributes, whether she was in the process of transsexual development with surgical transformation, or in a transgendered state.

[296] Doctor Tremblay acknowledged in his testimony that his letter dated March 15, 2000, addresses neither the issue of reassessing Micheline Montreuil's condition, since no psychiatric or psychological assessment was performed, nor the issue of gender identity.

[297] Moreover, Micheline Montreuil acknowledged that Doctor Tremblay discusses a sex reassignment process in his report dated March 15, 2000, and acknowledged that Doctor Tremblay is referring to Micheline Montreuil, that is, that the report in fact deals with Micheline Montreuil.

[298] That said, Micheline Montreuil believes that Doctor Tremblay is explaining in that letter what is involved, with respect to hormonal therapy, in a sex reassignment process in general, and not specifically with regard to Micheline Montreuil, and that Doctor Tremblay is not talking about Micheline Montreuil at all, but about transsexual persons in general, in the abstract, hypothetically. Micheline Montreuil stated specifically that Doctor Tremblay's first paragraph is not referring to him personally, but is a general statement about transsexual persons in general, and not him, who considers himself transgendered and not transsexual.

[299] As for hormonal therapy, Micheline Montreuil stated in his testimony that Doctor Tremblay's letter deals with the development of a transsexual person, that stopping one's hormonal therapy stops one's development. Therefore, Micheline Montreuil believes that transsexual persons continue their development to the end because they want to be transsexual. Unlike Micheline Montreuil, they do not take female hormones in three-month periods, but rather in a continual fashion. Micheline Montreuil stated that he took the prescribed hormones in an intermittent fashion because he was a transgendered person who wanted to keep his functional penis and avoid chemical castration.

[300] In the Tribunal's opinion, that is perhaps Micheline Montreuil's interpretation. The evidence shows that Canadian Forces physicians had a different interpretation of Doctor Tremblay's statements that is far from unreasonable under the circumstances, namely, that Doctor Tremblay was referring to the condition of Micheline Montreuil.

[301] Doctor Beltrami stated in his testimony that Micheline Montreuil is the transsexual person to whom Doctor Tremblay refers in his letter dated March 15, 2000. Doctor Beltrami stated that, from reading the letter, his understanding is that Doctor Tremblay appeared to have thought in March 2000 that Micheline Montreuil would go all the way and the interruption in the hormonal therapy was compromising his development. Doctor Beltrami added that the meaning of Doctor Tremblay's letter with respect to Micheline Montreuil's condition is unclear.

[302] When asked to compare the contents of the letter dated March 15, 2000, with Doctor Tremblay's note dated April 4, 2000, which the Canadian Forces physicians did not have, Doctor Beltrami observed that Doctor Tremblay writes on March 15, 2000, that there will be an operation but writes a month later, on April 4, 2000, that Micheline Montreuil has stopped hormonal therapy and does not want an operation on his genitals. Doctor Beltrami

considers that highly unusual, if not abnormal, and something that requires an explanation, if not an assessment.

[303] Doctor Beltrami stated that, if all of that were to take place in a civilian setting, it would be appropriate to request an assessment to shed some light on the situation. Doctor Beltrami acknowledged that, under the circumstances, an assessment or reassessment of the medical condition of Micheline Montreuil, who was changing paths, was necessary. Doctor Beltrami believes that it would have been appropriate at that time to request a psychiatric assessment, just as it would have been appropriate under the circumstances to ask Doctor Tremblay to explain the meaning of his statements, given the questions that Doctor Beltrami believes were raised by Doctor Tremblay's letter.

3. Information request form dated November 22, 2001

[304] The evidence shows that Doctor Tremblay completed a medical information request form from the Canadian Forces on November 22, 2001, and a Generic Task Statement questionnaire on November 29, 2001.

[305] The evidence shows that Doctor Tremblay wrote on the medical information request form as a diagnosis that Micheline Montreuil behaved like a transsexual person, the hormonal therapy had ended on February 20, 2001, the applicant had no known limitations and no foreseeable risk of recurrence. Doctor Tremblay testified that he was not sure about what was meant by risk of recurrence, and he wrote that it was not foreseeable.

[306] When asked to comment on the meaning that should be applied to the expression [translation] *behaved like a transsexual person*, Doctor Tremblay testified that he was saying that Micheline Montreuil behaved like a transsexual person without being one, which meant that Micheline Montreuil was transgendered.

[307] The Tribunal believes that that explanation holds for Doctor Tremblay without a doubt; however, it cannot be inferred from the text that Doctor Tremblay was in fact saying that Micheline Montreuil was not transsexual, but transgendered. Given the knowledge that Doctor Tremblay demonstrated at the hearing on the difference between a transgendered person and a transsexual person, the Tribunal is perplexed about the use of cryptic terminology here.

[308] Doctor Tremblay testified that he answered the Canadian Forces' questions about hormonal treatment by indicating on the information request form that the hormonal therapy had ended on February 21, 2001. Moreover, he stated that the prescription of Xenical was the only detail he provided regarding the treatment plan. Doctor Tremblay testified that he provided no information on the need for medical attention and he simply completed various sections of the medical information request form.

[309] Doctor Tremblay testified that he found no medical condition that would prevent Micheline Montreuil from performing the tasks on the Task Statement that was sent to him. He stated in his testimony that he had not met with Micheline Montreuil before completing the documents.

[310] Micheline Montreuil testified that he never told Doctor Tremblay that he intended to change his gender. Micheline Montreuil stated that he said only that he wanted breasts. From Micheline Montreuil's point of view, the steps taken with Doctor Tremblay were for aesthetic reasons only. Micheline Montreuil also stated that it was up to him to decide how often to take the hormones once they had been prescribed.

[311] The Tribunal finds that, despite Micheline Montreuil's denials and his argument that his only reason for seeing Doctor Tremblay was of an aesthetic or cosmetic nature, that is, to have breasts, the evidence clearly shows that Micheline Montreuil was or led his physicians to believe that he was in a sex reassignment process. Doctor Tremblay wrote in a consultation note dated July 14, 1998, that Micheline Montreuil wanted female hormone therapy for purposes of sex reassignment. Contrary to Micheline Montreuil's claim, there is no indication that the hormonal therapy was for purely aesthetic purposes.

[312] Moreover, Doctor Beltrami stated at the end of his testimony that Doctor Tremblay's letters contain insufficient information, and the information they do contain is nebulous and vague. Doctor Beltrami noted that there are too few details, diagnoses and reasons for the diagnoses and change of path. That said, Doctor Beltrami stated that the diagnosis is the responsibility of the psychiatrist. However, he added that any physician can provide a diagnosis as long as he or she is qualified to do so.

[313] Lastly, it is remarkable that, in the October 1999 letters of Doctor Lehoux, Doctor Côté and Doctor Tremblay, all three recommended that Micheline Montreuil return to the Canadian Forces as a woman, information that was never requested by the Canadian Forces. There is a strong presumption here that Micheline Montreuil asked for that information to be included in the letters sent to the Canadian Forces, as the letter to Doctor Tremblay on October 12, 1999, suggests.

[314] Accordingly, it is interesting to examine side by side the medical report that Doctor Lehoux sent Captain Labonté on October 20, 1999, further to the medical information request from the Canadian Forces, and the letter that Micheline Montreuil sent Doctor Tremblay on October 12, 1999.

Letter dated October 12, 1999, from Micheline Montreuil to Doctor Tremblay [translation] Would you please prepare a report certifying . . . that *my body has undergone permanent changes* and *now has* obvious *female characteristics*, I have fairly large breasts developing within the norm, . . . *my behaviour is logical and rational* with respect to my development and, if I return to the Canadian Armed Forces, it will be *necessary that I return as a woman*, to ensure the smooth *continuation of the reassignment process*.		Medical report from Doctor Lehoux to Captain Labonté [translation] Furthermore, given that Ms. Montreuil is also under the medical care of one of my colleagues, Dr. Roland R. Tremblay, endocrinologist at the CHUL, for hormone treatments, *Ms. Montreuil's body has undergone permanent changes* and *now has* obvious *female characteristics*, specifically, breasts comparable in size to those of other women, and *her behaviour is logical and rational*, it will be necessary, if Ms. Montreuil returns to the Canadian Armed Forces, for her to *return as a woman*, both to ensure the smooth *continuation of the* sex *reassignment process* and to avoid any

		disruptions.

[315] The similar terminology in the two letters suggests that Micheline Montreuil sent Doctor Lehoux a letter similar to the one he sent Doctor Tremblay on October 12, 1999. Moreover, in the opinion of the Tribunal, it is not by coincidence that Doctor Tremblay, Doctor Côté and Doctor Lehoux all recommended that Micheline Montreuil return to the Canadian Forces as a woman.

D. Pierre/Micheline Montreuil's military background

[316] Regarding Pierre/Micheline Montreuil's military background, the Tribunal heard as a witness Maj. Pierre Labonté, personnel selection officer at Canadian Forces Base Borden since 2004. When Micheline Montreuil enrolled in 1999, Major Labonté was the personnel selection officer in charge of the Québec recruiting office. In his testimony, Major Labonté described Micheline Montreuil's background in the Canadian Forces starting with the various applications for enrolment.

[317] To fully understand this case, it is useful to systematically analyze the timeline of Pierre/Micheline Montreuil's various applications for enrolment and the various elements that led the Canadian Forces to reject the 1999 application for enrolment. The timeline will paint an accurate picture of the progress of the various applications over time, although it will result in some repetition.

[318] The evidence shows that Micheline Montreuil applied for enrolment in the Canadian Forces three times-in 1974, 1987 and 1995-under the name of Pierre Montreuil, before he submitted his 1999 application for enrolment.

(i) 1974 application for enrolment

[319] The evidence shows that Pierre Montreuil first applied for enrolment in the Canadian Forces in April 1974. Pierre Montreuil applied to join the military occupation code (MOC) 23U Infantry. It appears from the evidence that Pierre Montreuil, after being admitted, did not take any courses and was released five months after being enrolled, for a lack of availability resulting from a scheduling conflict between the start of his training at the Shilo military base and a course at the University of Ottawa, after he was awarded a Department of Justice Canada scholarship.

(ii) 1987 application for enrolment

[320] It appears from the evidence that Pierre Montreuil applied for enrolment in 1987 to serve as a legal officer in the regular force of the Canadian Forces, in the Office of the Judge Advocate General. The evidence shows that his application was rejected, as it appears from a letter signed by Brig.-Gen. Robert Martin on December 12, 1987, informing him of the decision.

[321] In the letter, Brigadier-General Martin writes that, while Pierre Montreuil's application more than satisfied the required academic and professional qualifications and Brigadier-General Martin was impressed at the interview he had attended, he was not convinced that, of all the applicants, Pierre Montreuil best met the needs of the organization, especially regarding the aspect of a career in the Canadian Forces.

(iii) 1995 application for enrolment

[322] The evidence shows that Pierre Montreuil applied for enrolment in the Reserve Force of the Canadian Forces on December 7, 1995, in MOC 69U Logistics.

[323] As part of the application for enrolment, Pierre Montreuil underwent a medical examination on December 7, 1995. In the questionnaire section of the *Report of Physical Examination (For Enrolment)*, Pierre Montreuil indicated that he was male. Pierre Montreuil was considered to be in excellent health. The *Report of Physical Examination* indicates that Pierre Montreuil met the Common Enrolment Medical Standard and was assigned the medical category V3 CV1 H2 G2 O2 A5.

[324] The evidence shows that Pierre Montreuil signed a medical information disclosure request form on November 20, 1996, on which the following was written: [translation] *would like left abdominal region X-ray report results for renal calculi-IVP-results*. No physician's name appears. The evidence shows that a medical report was prepared. In the medical report dated December 7, 1995, it is recorded that there was a single calculus with no recurrence.

[325] It appears from the evidence that Pierre Montreuil was interviewed on December 8, 1995. The interview record shows that the applicant demonstrated good qualities for success in military training and excellent qualities for employment, his academic achievements suggested an excellent learning capacity and his simultaneous pursuit of education and work experience demonstrated excellent time management skills.

[326] It is also noted that his self-discipline in managing his time suggested that he was methodical, had a heightened sense of responsibility and performed effectively under stress. However, it is noted that the applicant had difficulty communicating verbally, in that he sometimes sidestepped questions by drowning his answers in a sea of superfluous information, and his current athletic activities did not provide an indication of good physical endurance. That was considered a risk factor for training and could lower the applicant's performance under stress.

[327] On the basis of the information obtained, Pierre Montreuil was assessed as a below-average applicant for MOC 69U Logistics. It was recommended that he start a physical fitness program focusing on cardiovascular exercise and follow it diligently.

[328] On March 7, 1996, Pierre Montreuil was informed that he had not been selected for the logistics officer position for which he had applied, and he was invited to apply again the following year.

[329] The evidence shows that Captain Perreault interviewed Pierre Montreuil on April 16, 1996. The interview record shows that Pierre Montreuil wanted to apply for MOC 23U Infantry. Captain Perreault notes that the applicant was not motivated to pursue a career as an infantry officer, but preferred to use his qualifications in appropriate areas such as management, administration, legal and logistics. It is also noted that the applicant demonstrated poor physical endurance and was not recommended for MOC 23U Infantry, for lack of motivation and an insufficient level of physical fitness for MOC 23U infantry officer training, but was recommended for MOC 69U Logistics.

[330] The record shows that Pierre Montreuil was interviewed on November 19, 1996, to update information from the interview on December 8, 1995. At the end of the interview, Pierre Montreuil was assessed as an average applicant for MOC 69U Logistics. It was recommended that the applicant start a physical fitness program focusing on cardiovascular exercise.

[331] The applicant assessment report for the interview on November 19, 1996, indicates that the applicant's actions to select a unit and his continuing interest in the MOC suggested good

motivation with respect to the MOC. It is also noted that the applicant's athletic activities did not provide an indication of good physical endurance, and that was a risk factor for training and could lower his performance under stress. Despite his lack of cardiovascular activities, Pierre Montreuil was convinced that his determination and physical strength would enable him to keep up with the group during training.

[332] On the basis of all the information obtained, including information from the first interview, Pierre Montreuil is assessed as an average applicant for MOC 69U Logistics.

[333] The evidence shows that, on November 26, 1996, Lieutenant-Colonel Pichette of the Régiment des Voltigeurs recommended that Pierre Montreuil be enrolled in MOC 69U Logistics.

[334] It appears from the evidence that Lieutenant-Colonel Pichette wrote to the Commanding Officer of the District Headquarters on March 4, 1997. In his letter, Lieutenant-Colonel Pichette states that, after talking with Pierre Montreuil, he believes that Pierre Montreuil would make an excellent officer within his staff. He states that Pierre Montreuil possesses many of the qualities that are desirable in someone who will be behind a desk 80% of the time. Micheline Montreuil emphasized in his testimony that there is nothing in the letter to suggest that he is under psychiatric care, is crazy or has dreadful pathologies.

[335] The file shows that Pierre Montreuil's selection file was sent to Canadian Forces Quebec Area Headquarters on March 11, 1997, by Captain Verville, who recommended that Pierre Montreuil be enrolled in MOC 69U Logistics under the Direct Entry Officer (DEO) plan. The recommendation was approved by the district commander on March 18, 1997.

[336] The evidence shows that Pierre Montreuil was officially enrolled in the Primary Reserve of the Canadian Forces on April 22, 1997, under the DEO plan, as an untrained MOC 69U logistics officer with the rank of second lieutenant.

[337] The file indicates that the officer training course was to take place from June 5, 1997, to July 29, 1997. Pierre Montreuil submitted a request to his employer at the time, Collège François-Xavier-Garneau, to be freed from his duties at the Collège from June 5 to 11, 1997. In a letter dated May 28, 1997, the employer refused to free Pierre Montreuil from his duties at the Collège. The evidence shows that Pierre Montreuil was therefore forced to travel each day between Montreal and Farnham, where the course was taking place.

[338] The evidence shows that Pierre Montreuil was unable to complete the course that he had started in June 1997. The evidence shows that Pierre Montreuil wrote to Captain Reid and Captain David on June 17, 1997, to inform them of his wish to withdraw from the basic officer training course BOT 1 (Infantry), after nine days of training, and to give his reasons.

[339] In his letters, Pierre Montreuil claims that he has lost his motivation and enthusiasm for field training. He states that his physical fitness is improving, but he will never be an officer in the field. In a letter sent the following day, again to Captain Reid and Captain David, Pierre Montreuil states that his physical fitness is insufficient or inadequate for the work and exercises in the field and he is experiencing great fatigue that is slowing him down significantly in the field. Pierre Montreuil does not mention his employer's refusal to accommodate him as a reason for his withdrawal.

[340] The course report for Pierre Montreuil indicates that he requested withdrawal from BOT 1 for personal reasons. The report indicates that Pierre Montreuil had difficulty with the C7 service rifle and drills, and he arrived for the course unprepared. Moreover, the report

indicates that he had no problems understanding the theory taught in the classroom, but had difficulty in the practical phases of the training and great difficulty adapting to military life. According to the report, Pierre Montreuil demonstrated a noticeable lack of motivation in field training phases. As well, the report recommends that his application not be resubmitted in the future if his motivation with respect to the course remains unchanged.

[341] The file also shows that Pierre Montreuil was interviewed on June 18, 1997, to obtain his explanation of the reasons for his withdrawal. The interview record indicates that Pierre Montreuil stated a third time that he had decided to drop the course because he believed that he was holding back the other trainees and he did not have the level of physical fitness required to continue the training. Moreover, the record states that Pierre Montreuil had become an administrative burden, was seriously affecting the motivation of the other applicants and clearly lacked the motivation required to complete the basic officer training course. Therefore, the decision was made to remove Pierre Montreuil from the course in response to his voluntary request for withdrawal. It was recommended that Pierre Montreuil not take the course again, and it was suggested that his unit re-evaluate whether or not he should be kept on staff.

[342] Pierre Montreuil wrote Lieutenant-Colonel Pichette a letter dated August 25, 1997, to tell Lieutenant-Colonel Pichette that he was unable to take and complete the courses BOT 1, BOT 2 and CAP and tendered his resignation as a member of the Régiment des Voltigeurs.

[343] Capt. F. Roy of the Voltigeurs de Québec wrote to 35 Canadian Brigade Group Headquarters on June 16, 1998, to inform them that Pierre Montreuil had failed BOT 1 and was asking to be released. Captain Roy wrote that, since Pierre Montreuil has not completed his course, a career review with authority to release him is being requested. A copy of the course report is attached to the letter.

[344] Moreover, the file shows that a failure review committee met on June 22, 1998, and recommended that Second Lieutenant Montreuil be released under Item 5(d) of the table to article 15.01 of the *Queen's Regulations and Orders for the Canadian Forces* (QR&Os) on the ground that he was not advantageously employable for the following reasons: (1) he had an inherent lack of ability or aptitude to meet military classification or trade standards; (2) he was unable to adapt to military life; and (3) he had domestic or other personal problems that seriously impaired his usefulness to or imposed an excessive administrative burden on the Canadian Forces.

[345] The evidence shows that Colonel Belleau of 35 Canadian Brigade Group, to which the Régiment des Voltigeurs de Québec reports, wrote to the Commanding Officer of Land Force Quebec Area on July 6, 1998. In his letter, he states that Pierre Montreuil asked for voluntary withdrawal from the course after nine days of instruction, had great difficulty adapting to military life and showed a noticeable lack of motivation in field training phases. Colonel Belleau therefore recommends that Pierre Montreuil be released from the Canadian Forces under Item 5(d) of the table to QR&O 15.01.

[346] It appears from the evidence that, on November 2, 1999, the Career Review Board, which reviewed the 1998 course failures, having noted that Pierre Montreuil had difficulty adapting to military life and showed a noticeable lack of motivation in field training phases, did not recommend that Pierre Montreuil take the course again, but rather recommended that he be released under Item 5(d) of the table to QR&O 15.01.

[347] The evidence shows that the Régiment des Voltigeurs de Québec was informed on November 4, 1998, about the compulsory release of Pierre Montreuil, and was ordered to undertake the appropriate administrative procedures.

[348] A notice of intended release dated November 18, 1998, informed Pierre Montreuil that, in light of his request to leave the Forces and his failure to complete BOT 1, he would be released from the Canadian Forces shortly. The evidence shows that, on December 3, 1998, Lieutenant-Colonel Hébert signed the recommendation for the compulsory release of Pierre Montreuil from the Canadian Forces because he had failed BOT 1. The recommendation was approved by Brigadier-General Gagnon on March 31, 1999.

[349] The evidence shows that, on July 7, 1999, Colonel Strain of National Defence Headquarters approved the final release of 2nd Lieut. Pierre Montreuil from the Canadian Forces under Item 5(d)-aptitude. Pierre Montreuil's release occurred a few days after Micheline Montreuil applied for enrolment in the Canadian Forces, on June 30, 1999. The evidence shows that the release took effect on August 18, 1999.

[350] On the basis of the documents produced regarding Pierre Montreuil's applications for enrolment in the Canadian Forces before 1999, the Tribunal finds that, in 1997, Pierre Montreuil did not demonstrate the motivation required to become a Canadian Forces member and did not have the level of physical fitness required to complete a training program. These findings are in sharp contrast to Micheline Montreuil's description of his physical fitness at the hearing.

(iv) 1999 application for enrolment

[351] The evidence shows that Micheline Montreuil applied in 1999 for enrolment in the Canadian Forces as a legal officer in the Office of the Judge Advocate General (JAG). The evidence shows that Micheline Montreuil later indicated a second choice on the application for enrolment, namely, logistics officer.

[352] Major Labonté explained to the Tribunal that the rule in the Canadian Forces is to review only one application at a time. Therefore, it was not until after the application for enrolment as a legal officer had been processed that the application for enrolment as a logistics officer was evaluated, in 2002.

[353] It appears from the file that Micheline Montreuil's application for the position of legal officer in the JAG was ultimately rejected, not because he failed to meet the Common Enrolment Medical Standard, but because his practice profile and work experience did not match the profile sought by the Office of the Judge Advocate General.

[354] The evidence shows that the National Defence Headquarters selection committee rejected Micheline Montreuil's application in January 2002. That is when Micheline Montreuil indicated that he wanted to go ahead with his application for enrolment as a logistics officer. The January 2002 decision of the Canadian Forces to reject Micheline Montreuil's application is not at issue in the case at bar.

[355] The evidence shows that Micheline Montreuil corresponded with Captain Labonté on a number of occasions during the enrolment process. Micheline Montreuil acknowledged in his testimony that everyone who interviewed him at the Québec recruiting office acted properly toward him, and no one made any negative comments.

[356] Major Labonté testified that Micheline Montreuil was not a special case because he considered himself transgendered, but because of his medical record. Major Labonté believes

that the file was treated like any other file, except that the processing time was different. To him, Micheline Montreuil's file was different because Micheline Montreuil did not meet the medical requirements but the file was kept open while the possibility of an administrative waiver was investigated. It was not because Micheline Montreuil was transgendered that the file was considered a special case.

[357] Major Labonté says he saw Micheline Montreuil as a human being and assessed him in terms of his skills and abilities. As head of the Québec recruiting office, Major Labonté instructed recruiting office employees to respect Micheline Montreuil and address him as Ms. Montreuil. For physical tests, it was decided that male standards would be used.

[358] The evidence shows that Micheline Montreuil completed an application for enrolment in the Canadian Forces as a legal officer MOC 67 Legal under the name of Micheline Montreuil on June 30, 1999. The evidence shows that later, on October 12, 1999, when Micheline Montreuil was being interviewed by Captain Labonté, a second choice was written on the application for employment, namely, logistics officer in the Naval Reserve. The evidence shows that, in November 2000, Micheline Montreuil requested to be enrolled as a logistics officer in the regular force.

[359] On July 13, 1999, Micheline Montreuil sent the Canadian Forces recruiting office his application for enrolment for the position of legal officer, indicating that he wished to have a career as a legal officer in the Office of the Judge Advocate General.

[360] According to Major Labonté's testimony, the application for enrolment was considered to have been submitted on September 23, 1999. According to Micheline Montreuil, the envelope sent to the recruiting office on July 13, 1999, contained forms dated June 30, 1999, namely, a completed application for enrolment form and a completed application for employment form consisting of a number of pages, to which Micheline Montreuil attached his curriculum vitae. Micheline Montreuil testified that those documents were the starting point of his application for enrolment.

[361] In the letter accompanying his enrolment file, Micheline Montreuil refers to an important characteristic that makes her a very special person and a member of a very visible minority, such that her application could be rejected automatically or accepted to show clearly that diversity is respected and equality in employment promoted by the Canadian Forces.

[362] Micheline Montreuil writes in his letter that he has changed his name and appearance, as it appears on his passport, social insurance card and birth certificate. He also indicates that, when he left the Canadian Forces in 1997, he was [translation] *a person in transition* and he wanted his transition to go smoothly so he could return to the Forces under a [translation] *new name and new appearance*. It should be noted that Micheline Montreuil does not indicate that he is a transgendered person.

[363] Micheline Montreuil went to the Québec recruiting office on October 12, 1999, to undergo a medical examination and answer questions from the physician assistant who was conducting the medical examination. Micheline Montreuil then signed a conditional offer of enrolment.

[364] The evidence shows that the medical examination was conducted by Warrant Officer Dumais, who was summoned as a witness. Warrant Officer Dumais testified that he contacted Doctor Collins, the recruiting medical officer who would ultimately review

Micheline Montreuil's file, before meeting Micheline Montreuil, for instructions on how to handle the file. Doctor Collins testified that it was possible that Warrant Officer Dumais asked him questions on gender identity disorders and indicates that he likely told Warrant Officer Dumais to treat Micheline Montreuil's file as a regular file.

[365] The relevant medical information about Micheline Montreuil collected on October 12, 1999, was recorded on Canadian Forces form CF2720, *Report of Physical Examination (For Enrolment).*

[366] On the first page of the *Report of Physical Examination*, which was completed by Micheline Montreuil, it is indicated that Micheline Montreuil is female. Micheline Montreuil testified that he checked that box.

[367] Micheline Montreuil answered no to the question, *Have you suffered from ... nervous trouble or breakdown?* During oral examination, Micheline Montreuil stated that he thought it unwise to refer to Doctor Côté, since the report prepared in March 1998 had nothing to do with this item.

[368] Micheline Montreuil answered yes to the question, *Have you had any other investigations, tests or treatment by doctors, psychiatrists, psychologists or social workers?* He stated in his testimony that he answered yes to the question because he was under Doctor Tremblay's care. Micheline Montreuil further stated that it was not relevant to mention Doctor Côté or Doctor Lehoux, given the questions that were asked.

[369] Micheline Montreuil answered yes to the question, *Are you presently taking any medication or pills?* and indicated the medication that he was taking, namely, Estinyl and Euflex. He answered no to the question for females, *Have you had any gynecological or obstetrical problems?* Micheline Montreuil stated in his testimony that he would answer no if he were classified as female and, if he were classified as male, the answer would still be no.

[370] On the second page of the *Report of Physical Examination*, which was completed by physician assistant Dumais, it is indicated that the applicant is male, in transition for sex reassignment, and taking Estinyl and Euflex.

[371] On the third page of the report, the physician assistant indicates that the applicant's emotional status is stable. On the fourth page of the report, which was completed by Warrant Officer Dumais, it is indicated under "Remarks" that the applicant is [translation] *temporarily unfit, awaiting sex reassignment operation*. It should be noted here that the remark came from Warrant Officer Dumais and Micheline Montreuil did not see it.

[372] It appears from the medical report that Warrant Officer Dumais initially assigned Micheline Montreuil the medical category V4 CV1 H2 G4 O4 A5, which was later changed to V4 CV1 H2 G3 O2 A5 by Doctor Collins, who, as recruiting medical officer, is ultimately responsible, exceptional circumstances aside, for determining the medical category of an applicant.

[373] It is also noted on the fourth page of the report that the applicant does not meet the Common Enrolment Medical Standard CEMS. In section K on the same page, it is written that Micheline Montreuil [translation] *requires periodic care of a specialist*. That remark was apparently written by Doctor Collins on May 17, 2000. In section M on page 4 of the report, it is also written that Micheline Montreuil was ultimately assigned the category V4 H2 G3 O2 for his application for enrolment as a legal officer. The remark [translation] *requires periodic*

medical care also appears on page 4. The remark is dated July 13, 2000, and was written by Doctor Ménard of the Office of the Director of Medical Policy of the Canadian Forces.

[374] When asked if his specific condition as a transgendered person was mentioned in his meeting with Warrant Officer Dumais, Micheline Montreuil answered that it was definitely discussed, but he cannot remember anything more. Later in his testimony, Micheline Montreuil referred to the letters that he filed and stated that he never said that he wanted to change his gender.

[375] Micheline Montreuil maintained in his testimony that the Canadian Forces physicians were misdirected right from the start with regard to his file. Micheline Montreuil traced the cause to Warrant Officer Dumais, given that he talked about sex reassignment when that had not been discussed, according to Micheline Montreuil. Micheline Montreuil believes that Warrant Officer Dumais in a way misled Doctor Collins.

[376] In his testimony, Doctor Collins, who, as recruiting medical officer, was responsible for the initial review of Micheline Montreuil's file, commented on what was written. Doctor Collins noted that, on the first page, Micheline Montreuil identified himself as a female and indicated that he was not undergoing treatment, even though he was taking hormones. Doctor Collins noted that the physician assistant indicated on the sheet that he completed that Micheline Montreuil was male, in transition for sex reassignment and taking hormones.

[377] Doctor Collins testified that he concluded from the information in the report that Micheline Montreuil was being treated for a medical condition. Doctor Collins also noted that Micheline Montreuil declared himself female on the first page of the medical report. Doctor Collins further stated that Micheline Montreuil was initially assigned the medical category G4O4 by Warrant Officer Dumais and Warrant Officer Dumais also wrote that Micheline Montreuil was temporarily unfit while awaiting a sex reassignment operation.

[378] Doctor Collins also testified that he concluded that Micheline Montreuil was temporarily unfit and awaiting a sex reassignment operation. Doctor Collins also stated that he spoke with Warrant Officer Dumais on the telephone on October 12 or 13, 1999, and Warrant Officer Dumais was inquiring about how to handle the file. Doctor Collins testified that his instructions were to treat the file as a regular file and ask the applicant to provide information from his attending physicians.

[379] To Doctor Collins, it was clear that Micheline Montreuil was then undergoing active treatment, given the medications he was taking and the remark by Warrant Officer Dumais that he was awaiting a sex reassignment operation.

[380] When asked to comment on Warrant Officer Dumais' notes, in particular the remark, [translation] *sex reassignment transition*, Doctor Newnham, the second recruiting medical officer who dealt with Micheline Montreuil's file, testified that her understanding was that the applicant was in transition for sex reassignment and awaiting surgery.

[381] Warrant Officer Dumais, who performed the medical examination of Micheline Montreuil, had Micheline Montreuil sign a medical information disclosure request form on October 12, 1999. Micheline Montreuil was more specifically asked to provide a [translation] *sex reassignment transition* summary, a request Micheline Montreuil accepted. The disclosure request was not addressed to a specific physician.

[382] In the Tribunal's opinion, Micheline Montreuil could certainly have objected to Warrant Officer Dumais' choice of terms, assuming that it was Warrant Officer Dumais who

chose those terms, and could certainly have said that he was not in a sex reassignment process, if that were the case, and that he was taking hormones only to have breasts. Instead, Micheline Montreuil chose to ask three physicians for reports on his condition.

[383] Moreover, it is Micheline Montreuil and not the Canadian Forces who chose the physicians who would be given the disclosure request. It is in fact Micheline Montreuil who took the initiative to find the physicians he would contact. The disclosure request did not require an assessment from a psychiatrist or endocrinologist or any other specific type of physician.

[384] The evidence also shows that Warrant Officer Dumais likely contacted Doctor Collins a second time to inform Doctor Collins that he had examined a male applicant who was taking hormones and who was under the care of an endocrinologist, and to ask what other information was required.

[385] Micheline Montreuil wrote to Doctor Tremblay on October 12, 1999. In his letter, Micheline Montreuil states that he had an interview to return to the Canadian Armed Forces as a legal officer. He also states that the Canadian Forces had him sign the attached [translation] *Medical Information Disclosure Request Form*, and he asks Doctor Tremblay to prepare a report that is a [translation] *Sex Reassignment Transition Summary* to inform the Canadian Forces about his medical development.

[386] As seen above, Micheline Montreuil states in his letter that the report [translation] *should certify* that he has been under Doctor Tremblay's medical care for 18 months, is taking hormones, namely, Estinyl and Euflex, has undergone permanent changes to his body and now has obvious female characteristics, has fairly large breasts developing within the norm, has tested negative in blood tests for sexually transmitted diseases, is demonstrating [translation] *logical and rational behaviour* with respect to his development and, if he returns to the Canadian Armed Forces, will [translation] *need to return as a woman* to ensure the smooth continuation of the reassignment process.

[387] The evidence also shows that, on October 12, 1999, Micheline Montreuil had a selection interview before a jury composed of Captain Labonté and Major Morin, legal officer at the Valcartier base, for MOC 67 Legal only. The assessment indicates that Micheline Montreuil was assessed as a slightly above-average applicant for MOC Legal and his enrolment was subject to the assignment of a medical category and successful completion of the CFAPFT.

[388] Major Labonté stated in his testimony that, at the interview, he had Micheline Montreuil's application for employment, curriculum vitae and letters of recommendation. Major Labonté testified that Micheline Montreuil's wanted to enrol as a legal officer in the regular force or, if that was not possible, as a logistics officer in the Naval Reserve.

[389] Following the interview, Captain Labonté completed an applicant assessment report. The report indicates that Micheline Montreuil had previously been a member of the Primary Reserve (for five months in 1974) in MOC R23 (from April 1997 to August 1999) and had been assigned to MOC R69 LOG. It also indicates that he was released under Item 5(d) of QR&O 15.01, at his request after nine days of training. The report states that an examination of the record indicates that Pierre Montreuil had great difficulty adapting to military life and demonstrated a lack of motivation in field training phases, and it was not recommended that he take the course again.

[390] The report also notes that there are no personal circumstances that would preclude enrolment or prevent the applicant from meeting the requirements of basic training or initial MOC training.

[391] The summary that appears on the form states that Ms. Montreuil is assessed as a slightly above-average applicant for MOC 67 Legal and enrolment is subject to the assignment of a medical category and the successful completion of an examination. It also states that, while Micheline Montreuil's academic training and aptitude tests indicate that she possesses the learning capacity required to successfully complete the BOT and MOC 67 training, at the interview, she demonstrated only moderate motivation to join the Forces, and her expectations were vague. Furthermore, while she has shown leadership through work experience and community involvement, she had a chance to demonstrate leadership in the Forces, which led disastrously to her release. Captain Labonté notes in his assessment report that some of Micheline Montreuil's behaviours during the interview were questionable. Captain Labonté testified that Micheline Montreuil was poorly prepared for the interview and argued with the interviewers.

[392] Major Labonté further testified that, given the explanations that Micheline Montreuil provided at the interview, he was granted a waiver with regard to Item 5(d) of QR&O 15.01, Captain Labonté believing that a scheduling conflict was the reason for Pierre Montreuil's resignation from the Forces in 1997.

[393] Dr. Martine Lehoux sent Captain Labonté a letter on October 20, 1999. The subject line of the letter reads: [translation] "Medical Report for Micheline Montreuil-Returning to the Canadian Armed Forces as an Officer".

[394] As described above, Doctor Lehoux states in her report that she has been giving Micheline Montreuil laser hair removal treatments to eliminate all signs of his beard and unwanted facial and chest hair, to improve his appearance as a woman. She also states in her report that, given that Micheline Montreuil is also under the care of Doctor Tremblay, endocrinologist, for hormone therapy, and Micheline Montreuil's body has undergone permanent changes, with obvious female characteristics such as breasts of a size comparable to those of other women, and Micheline Montreuil's behaviour is logical and rational, it would be necessary, if Ms. Montreuil returned to the Canadian Armed Forces, for her to return as a woman, to ensure the smooth continuation of the sex reassignment process and avoid any disruptions.

[395] Micheline Montreuil stated in his testimony that he saw Doctor Lehoux for laser hair removal on his face over a number years. Micheline Montreuil also testified that, after he signed the medical information disclosure request form, he showed it to Doctor Lehoux, who was taking care of his change in appearance.

[396] It appears from Micheline Montreuil's testimony that Doctor Lehoux is not a dermatologist but a general practitioner and she was not only an acquaintance of Micheline Montreuil, the two having been members of the same MacIntosh club, but also a client of Micheline Montreuil.

[397] Doctor Collins, who performed the initial review of Micheline Montreuil's file as recruiting medical officer, stated in his testimony that he had the letter written by Dr. Martine Lehoux when he assessed Micheline Montreuil's file.

[398] Doctor Collins testified that he considered Doctor Lehoux to be one of Micheline Montreuil's attending physicians. He also stated in his testimony that what caught his attention in the letter was that Doctor Lehoux had known Micheline Montreuil for seven years, Doctor Lehoux was giving Micheline Montreuil laser hair removal treatments, Micheline Montreuil was under Doctor Tremblay's care, according to Doctor Lehoux, and hormonal therapy had resulted in noticeable changes in secondary sexual characteristics.

[399] Doctor Collins pointed out in his testimony that Doctor Lehoux was responsible for determining whether or not Micheline Montreuil met the medical requirements, and it was not for her to recommend that Micheline Montreuil be enrolled as a woman. Doctor Collins repeated that, to him, a person's gender is of little importance; as a recruiting medical officer, he is interested in finding out whether or not the person is receiving treatment and how the treatment affects the person's ability to serve in the Canadian Forces.

[400] Doctor Newnham, the second recruiting medical officer to assess Micheline Montreuil's medical record, stated in her testimony that she remembers the letter and remembers not having attached much importance to it. She further stated that her understanding was that the letter was from a dermatologist, although she was not certain that the person was actually a dermatologist, who had been providing Micheline Montreuil with laser hair removal treatments for seven years, to remove facial hair for a more feminine appearance.

[401] Doctor Côté, psychiatrist, wrote to Captain Labonté on October 25, 1999. The subject line of the letter reads: [translation] "Medical Report for Micheline Montreuil". As seen above, Doctor Côté writes in his letter that, in light of Micheline Montreuil's sex reassignment process, he believes that it is important for Micheline Montreuil to be enrolled as a woman and, although the physical transformation is not complete, the identity is primarily female. Micheline Montreuil did not comment on Doctor Côté's report during testimony.

[402] Doctor Collins stated in his testimony that he had read Doctor Côté's letter. He stated that what caught his attention was the fact that Micheline Montreuil was in a sex reassignment process. Moreover, he pointed out that Doctor Côté failed to answer the questions asked of him and provided no diagnosis and therefore no treatment plan, prognosis or list of potential limitations. Doctor Collins considers the letter to be more a letter of recommendation, as Doctor Côté himself stated.

[403] That said, Doctor Collins testified that, since Micheline Montreuil refers to Doctor Côté as *his* psychiatrist in one of his subsequent letters, Doctor Collins ultimately concluded that Micheline Montreuil was under the care of a psychiatrist. To him, a person would not file a medical report from a physician, in this case a psychiatrist, as Micheline Montreuil did, unless that person was seeing or under the care of that physician. That statement is logical.

[404] Doctor Collins testified that Doctor Côté did not provide him with a specific diagnosis regarding a gender identity disorder in Micheline Montreuil. However, Doctor Collins stated that the information sent by Micheline Montreuil's physicians suggest that Micheline Montreuil was in a transformation process and was under the care of physicians who sent the Canadian Forces medical reports on Micheline Montreuil's condition. To Doctor Collins, the diagnosis of gender identity disorder matters little.

[405] When asked about her understanding of Doctor Côté's letter, Doctor Newnham, the second recruiting medical officer to assess Micheline Montreuil's file, testified that she

inferred from Doctor Côté's letter that Micheline Montreuil was under the care of a psychiatrist who was helping Micheline Montreuil with the sex reassignment process. To Doctor Newnham, the statement that Micheline Montreuil should return as a woman is irrelevant to the decision she had to make. In her opinion, the information in the letter was very limited and raised more questions for her to ask. She believes that the fact that Micheline Montreuil provided a letter from a psychiatrist in this case suggests that Micheline Montreuil was under a psychiatrist's care. If that was not true, then why provide a letter from a psychiatrist?

[406] Doctor Boddam, Canadian Forces psychiatrist, acknowledged in his testimony that Doctor Côté's letter does not state specifically that Doctor Côté was providing psychological support to Micheline Montreuil but, given that there was a doctor-patient relationship, Doctor Boddam concluded that Micheline Montreuil could have been receiving psychological support. Moreover, Doctor Boddam maintained that, although it is not explicitly stated that Micheline Montreuil was awaiting surgery, the fact that it is written that he was in a sex reassignment process could suggest either that he was awaiting surgery or that he was not.

[407] Lastly, Doctor Boddam noted in his testimony that Micheline Montreuil states on the first page of the *Report of Physical Examination* completed on October 12, 1999, that he has had other investigations, tests or treatment by physicians. Upon reading all of the documents in the file, Doctor Boddam concluded that Micheline Montreuil had a gender identity disorder, was receiving psychological support and was intending to have a sex reassignment operation.

[408] In short, the report provided by Doctor Côté left Doctor Boddam perplexed as to the nature of the professional relationship that existed with Doctor Côté, hence Doctor Boddam's desire for more information. Moreover, Doctor Boddam stated that, to him, Doctor Côté's letter definitely indicates that Micheline Montreuil is in a sex reassignment process.

[409] When asked to comment on Doctor Côté's letter, Doctor Assalian stated that it is rather confusing. He added that, given the information in the letter, the Canadian Forces physicians were justified in requesting further explanation, because the letter was unclear.

[410] Dr. Roland Tremblay, endocrinologist, sent Captain Labonté a letter on October 26, 1999. As seen above, Doctor Tremblay states in the letter that he has been seeing the person in question, Micheline Montreuil, for a year and a half, as the physician in charge of hormonal therapy to feminize Micheline Montreuil's phenotype. Doctor Tremblay writes that he understands that that stage in the life of a transsexual person marks a transition that precedes surgical operations to give the body indelible marks of femininity. He states that the biopsychological development of the person in question is following normal patterns for sex reassignment. Current circumstances lead him to recommend that Micheline Montreuil return to the Canadian Armed Forces as a female for consistency with the new direction of Micheline Montreuil's life.

[411] Regarding Doctor Tremblay's report, Micheline Montreuil testified that she simply took the hormones prescribed by Doctor Tremblay according to her own schedule.

[412] Doctor Collins stated in his testimony that he saw that letter. In his opinion, it was the clearest letter. From it he inferred that Micheline Montreuil was on hormonal therapy, the hormonal therapy was part of a transition process to feminize Micheline Montreuil, a surgical operation would follow the hormonal therapy and Micheline Montreuil was *compliant* with respect to the hormonal therapy.

[413] Regarding the contents of that letter, Doctor Collins stated that his understanding of the file at that time was that Micheline Montreuil was undergoing active treatment, taking hormones as part of a sex reassignment process, in an active phase of treatment for a medical condition that was not well defined, and awaiting a surgical operation on an unspecified date in the future.

[414] Doctor Collins further stated in his testimony that, regardless of the diagnosis, what he had to determine was whether or not Micheline Montreuil would require medical attention from the Canadian Forces, in the event that Micheline Montreuil was enrolled. Doctor Collins also stated that Doctor Tremblay's letter led him to conclude that Micheline Montreuil was taking hormones not only for purposes of feminizing his phenotype, but also as part of a sex reassignment process, as indicated in Doctor Tremblay's letter, and that more information was needed from Micheline Montreuil's physicians. Doctor Collins acknowledged in his testimony that the letter makes no reference to the surgeon who would be performing the sex reassignment surgery or the date of the operation.

[415] In the cross-examination of Doctor Collins, Micheline Montreuil wanted to know if a person could at any time stop a treatment that was aesthetic in nature, such as breast augmentation. Doctor Collins replied that, according to the information that Doctor Tremblay sent, Micheline Montreuil's hormonal therapy was not purely aesthetic in nature, but was part of a sex reassignment process. Doctor Collins maintained that taking hormones involves risks.

[416] Doctor Newnham stated in her testimony that her understanding of Doctor Tremblay's letter was that Doctor Tremblay had been seeing Micheline Montreuil for a year and a half as the physician in charge of Micheline Montreuil's hormonal therapy, Micheline Montreuil was acting as a transsexual person in transition in preparation for a future operation to further feminize his body, and Micheline Montreuil was *compliant* with respect to the treatment. In Doctor Newnham's opinion, this letter contains more information that Doctor Côté's.

[417] When asked to comment on the contents of Doctor Tremblay's letter, Doctor Beltrami stated that the reference to a transsexual person is not a firm diagnosis of transsexuality in Micheline Montreuil, but that it is unclear and not within the norm. When asked to comment on Doctor Tremblay's letter, Doctor Assalian stated in his testimony that if he were the physician receiving such a letter, his understanding would be that the person in question was transsexual, taking hormones and preparing for sex reassignment.

[418] Doctor Collins wrote to Doctor Boddam at Borden on November 9, 1999, and sent him Micheline Montreuil's medical record for review. Doctor Collins asks for Doctor Boddam's opinion on medical employment limitations with respect to Micheline Montreuil's current medical condition, as well as the medical category that should be assigned. Doctor Collins asks Doctor Boddam to tell him whether or not additional clinical information is required to reach a decision.

[419] Doctor Collins states in his letter that he understands that the applicant is taking hormones and receiving psychological support while awaiting a surgical operation. Doctor Collins states that he intends to assign a restrictive medical category until the treatment is complete.

[420] When asked to comment on the letter sent to him, Doctor Boddam testified that the information provided by Doctor Collins led him to believe that Micheline Montreuil was in a sex reassignment process and undergoing treatment.

[421] Doctor Boddam replied to Doctor Collins on November 30, 1999. Doctor Boddam states in his letter that the psychiatrist's note is brief: since the phenotype of the individual in question is only partially female, the individual may be unable to assume the role he wishes to assume. Doctor Boddam states that he would like to know the opinion of the medical team regarding the prognosis with partial treatment-*I would need to know the treatment team's assessment of prognosis with only partial treatment*. Doctor Boddam wonders about the logistics of integrating a person who has received partial treatment only and also wonders what the medical team perceives will be the psychological impact on the applicant.

[422] Doctor Boddam testified that he assumed that the three physicians were part of a treatment team because they had prepared reports. He also testified that the fact that Micheline Montreuil sent reports from three physicians without being requested to by Warrant Officer Dumais could suggest that the three were part of a team, even though that was not explicitly stated. Doctor Boddam further stated in his testimony that, at that time, he was less interested in Micheline Montreuil's return to the Canadian Forces and more interested in the psychological impact that Micheline Montreuil's physicians thought such a return would have on Micheline Montreuil, given that Micheline Montreuil considered himself neither male nor female.

[423] Major Morin wrote to the Québec recruiting office of the Canadian Forces on December 8, 1999. Major Morin, Deputy Judge Advocate General, writes in his letter dated October 12, 1999, that he interviewed the applicant at the Québec recruiting office. He indicates in his letter that he could see that Micheline Montreuil had done well academically; however, there was one negative point: the applicant was not prepared for the legal portion of the interview. Major Morin nevertheless recommended that the Micheline Montreuil be interviewed by the selection committee of the Office of the Judge Advocate General.

[424] Doctor Collins wrote to Micheline Montreuil on December 10, 1999. In his letter, Doctor Collins tells Micheline Montreuil that the Canadian Forces requires additional information to be able to determine whether or not Micheline Montreuil meets the Common Enrolment Medical Standard. He informs Micheline Montreuil that the Canadian Forces psychiatrist, having reviewed Micheline Montreuil's file, needs to know the treatment team's prognosis, given the partial treatment of Micheline Montreuil's condition.

[425] As well, Doctor Collins points out that there will definitely be logistic difficulties in integrating into the Forces a person who has undergone only partial treatment and asks Micheline Montreuil what psychological impact the treatment team foresees with respect to that.

[426] Doctor Collins stated in his testimony that he was hoping to obtain more information from Micheline Montreuil's attending physicians on Micheline Montreuil's ability to handle stress in a military operations environment. Doctor Collins also writes in his letter that Micheline Montreuil's file will be forwarded to the DMedPol because of its uniqueness.

[427] When asked about the concept of treatment team as used in his letter, Doctor Collins stated that, if someone gives him three medical reports in response to a medical information disclosure request, he will infer or assume that the person is under the care of a group of physicians, and it is legitimate to assume that they are working together. It was clear to Doctor Collins that Micheline Montreuil was being treated by various physicians and the treatment was related to a sex reassignment process, to which Doctor Côté and Doctor Tremblay refer, for a transsexual person. Doctor Collins further stated that he knew that transsexual persons fell under the gender identity disorder category in the DSM-IV, even

though none of the letters submitted by Micheline Montreuil refer to the existence of a gender identity disorder.

[428] When asked about the logistic difficulties of integrating Micheline Montreuil, Doctor Collins stated that that involves challenges for the medical officer. For example, Micheline Montreuil may require female hormones that are not generally available on a ship. The medical officer would then have the logistic challenge of finding out whether the Canadian Forces are able to provide the medication, to meet Micheline Montreuil's needs. For Doctor Collins, the difficulties in this case are related not to the integration of Micheline Montreuil as a woman, but to Micheline Montreuil's partial treatment. When asked to explain what he meant by integration difficulties in the plural, Doctor Collins stated that, in this case, it meant the need to see a physician, psychologist or social worker, have access to certain medications, and be removed from a theatre of operations to obtain medical care.

[429] When asked about the uniqueness of the file, Doctor Collins stated in his testimony that he handled the file according to the established procedure and wanted to take all the required measures to ensure that Micheline Montreuil's condition was correctly assessed in accordance with the existing procedure.

[430] Doctor Collins also testified that his reason for forwarding the file to Ottawa was that he had never handled such a file before and wanted to make sure that everything was done properly and that he had all the relevant opinions before deciding to assign a medical employment limitation regarding Micheline Montreuil's condition and the care that Micheline Montreuil might require if enrolled in the Canadian Forces.

[431] Doctor Collins repeatedly testified that the Canadian Forces must ensure that persons serving in the Canadian Forces receive the care that their condition requires. However, he added that that rule does not apply to persons wishing to join the Canadian Forces.

[432] Doctor Collins stated in his testimony that, when he receives a file, he does not focus on the applicant's desired occupation, but rather the medical conditions that may require care. Doctor Collins believes that Canadian Forces medical officers must determine whether certain conditions will result in medical employment limitations that will prevent the applicant from satisfying the universality of service principle and the Common Enrolment Medical Standard. Doctor Collins stated that the Canadian Forces will impose medical employment limitations if an applicant requires care that cannot be provided.

[433] Doctor Collins added that, after speaking with Micheline Montreuil on the telephone and upon receiving the requested information, he forwarded the file to the Canadian Forces psychiatrist and the DMedPol for review.

[434] When asked to comment on Doctor Collins' letter, Doctor Newnham stated in her testimony that she believes that the letter is stating that Doctor Collins has reviewed the file and made a decision together with Doctor Boddam, on the basis of the information they had, that is, that Micheline Montreuil did not meet the Common Enrolment Medical Standard and was therefore unfit for enrolment in the Canadian Forces at that time.

[435] Regarding the uniqueness of the file, Doctor Newnham stated that not all files are forwarded to the DMedPol-approximately 20 per week-and only two to four per month are forwarded to a psychiatrist. To Doctor Newnham, in this case, what made the file unique was the time spent reviewing it.

[436] When asked to comment on Doctor Collins' letter, Micheline Montreuil stated that there could not have been a treatment team because, in this case, there were three individual physicians, and the Canadian Forces medical officers might have considered the treatment as partial if they were treating the file as the file of a transsexual person.

[437] Micheline Montreuil also stated in his testimony that he had explained and re-explained countless times that he was transgendered, he did not want a complete transformation and there would be no operation or anything of the sort, yet the Canadian Forces medical officers still saw him as a transsexual person undergoing treatment.

[438] Micheline Montreuil believes that those divergent approaches to his condition explain why the responses to the questions of the Canadian Forces medical officers did not meet their expectations. In Micheline Montreuil's opinion, the medical officers went in a direction that did not reflect reality, that is, they decided to make the matter a medical, psychiatric one and view it as an issue of gender identity disorder.

[439] When asked to comment on Doctor Collins' letter, Doctor Assalian stated that Doctor Collins' request for more information on Micheline Montreuil's condition was justified, in light of the information that was provided. Doctor Beltrami testified that he believes that the request for clarification was justified under the circumstances.

[440] As seen above, Doctor Côté wrote to Captain Labonté again on December 20, 1999. As seen above, Doctor Côté writes in his letter that he believes that Micheline Montreuil shows no sign of any pathology that would compromise his work in the Canadian Forces. He added that the incomplete transformation appears to be beneficial for Micheline Montreuil, she has her own personal resources for facing the military music, there will surely be reactions from people, and Micheline Montreuil knows them and is capable of reacting appropriately.

[441] Doctor Collins was asked during testimony to comment on Doctor Côté's letter. Doctor Collins testified that it would be expected that Doctor Côté state that Micheline Montreuil shows no sign of any psychiatric pathology, and not that he showed no sign of any psychiatric pathology that would compromise his work in the Canadian Forces. Doctor Collins testified that that sentence led him to forward the file to Doctor Boddam.

[442] In Doctor Collins' opinion, Doctor Côté did not in fact answer the questions that the Canadian Forces physicians were asking, and the information provided was actually of low quality. Moreover, it appears that Doctor Collins thought that Micheline Montreuil was under the active care of Doctor Côté, since, as Doctor Collins stated, why provide letters from a psychiatrist when one is not under the care of a psychiatrist? As well, Doctor Collins stated that Doctor Côté's statement that the transformation was incomplete caught his attention.

[443] Doctor Collins testified that he was therefore disappointed by Doctor Côté's letter. He stated that would have expected more in terms of an assessment. Doctor Collins stated that he had expected Doctor Côté to provide a diagnosis, treatment plan, prognosis and opinion on the limitations a person might have. To Doctor Collins, it was clear from the information provided by Doctor Côté that Micheline Montreuil had a gender identity disorder issue.

[444] Doctor Newnham testified that her understanding of the letter was that a psychiatrist was involved in the medical care that Micheline Montreuil required, the psychiatrist stated

that there were no signs of any psychiatric pathology that would hinder Micheline Montreuil's enrolment in the Canadian Forces, and Micheline Montreuil's transformation was incomplete.

[445] To Doctor Newnham, the fact that Doctor Côté states that there is no psychiatric pathology that would compromise Micheline Montreuil's work in the Canadian Forces implies that there could nevertheless be a psychiatric pathology. Doctor Newnham noted that a physician working in a civil setting is not familiar with military life, and his or her role in assessing an applicant is not to determine if the applicant is fit for military life, but to provide the information requested regarding diagnosis, treatment plan and prognosis, so that a military physician can make that determination.

[446] Doctor Newnham also stated in her testimony that the more information she requested, the more questions arose in her mind. She believes that each time a physician is involved, additional information should be requested to gain a better understanding of past and current treatment, prognosis and possibility of recurrence.

[447] When asked to comment on the contents of Doctor Côté's letter, Doctor Boddam stated that, with respect to Doctor Côté's remarks on integrating Micheline Montreuil, he was expecting a more comprehensive report that gave a background, the nature of the problems and treatments, and the expected effects of stopping the treatments, if any.

[448] Doctor Boddam further testified that he considered Doctor Côté to be involved in Micheline Montreuil's treatment. To Doctor Boddam, the fact that Doctor Côté prepared a report in response to a request for information on Micheline Montreuil implied that Doctor Côté was actively involved in the case. Since Doctor Boddam was not satisfied by the responses given, he sought further information. Doctor Boddam acknowledged that he did not specifically request a detailed report from Doctor Côté.

[449] Doctor Assalian stated in his testimony that Doctor Côté's report is unacceptable, since it does not answer the questions of the Canadian Forces physicians.

[450] On December 22, 1999, Micheline Montreuil replied to Doctor Collins' letter dated December 10. Micheline Montreuil states in his letter that he has asked *his psychiatrist*, Dr. Serge Côté, to respond to the two questions from Doctor Collins, which Doctor Côté does in his letter of December 20, 1999.

[451] Micheline Montreuil writes in his letter that Doctor Côté acknowledges that she is not suffering from any psychological problem or disorder and emphasizes that Doctor Côté believes that the incomplete transformation is beneficial. Micheline Montreuil claims to be happy and well and emphasizes that Doctor Côté believes that she has the ability, courage and strength to face and overcome any obstacles that may arise. Micheline Montreuil gives her word that she does not intend to undergo surgery while in the Canadian Forces-she will not undergo sex reassignment surgery or any another type of surgery, such as breast implants or cosmetic surgery.

[452] Micheline Montreuil states in the letter that she will stop hormone treatments in late January 2000 or early February 2000, will no longer require hormonal therapy and will therefore no longer require medical attention from an endocrinologist. Micheline Montreuil also states that she should meet with the Canadian Forces psychiatrist to tell him directly that there is no medical or psychological reason that would prevent Micheline Montreuil from joining the Canadian Forces. She suggests that such a meeting would enable the Canadian Forces psychiatrist to be more certain of his diagnosis or recommendation. Micheline

Montreuil claims that such a meeting would provide an opportunity for him to meet someone like her and prepare himself for similar cases in the future, because there are thousands of people like her throughout Canada who may want to enrol in the Canadian Forces.

[453] Lastly, Micheline Montreuil states in the letter that she was not born a woman, but has chosen to become a woman and live as a woman, with all the difficulties she will have to face, and she has accepted that fact. Therefore, those who will have dealings with her will have to accept the fact that she is a bit different, and the situation will surely help them to change and accept diversity.

[454] In his testimony, Doctor Collins commented on the letter that Micheline Montreuil sent him on December 22, 1999. Doctor Collins stated that his understanding of the letter was that Micheline Montreuil was ready to postpone any surgery for three years, was continuing to take hormones, was still in transition, and was planning to stop treatment in January or February 2000.

[455] Doctor Collins testified that it is not customary for Canadian Forces physicians to meet applicants for enrolment. For information on medical conditions, Canadian Forces physicians rely on the applicants' physicians since, if a person is undergoing medical treatment, the person's own physician is in a better position to know the person's condition, and the Canadian Forces physicians expect applicants' physicians to provide relevant information regarding applicants' background, the care they require and the prognosis of their condition. Doctor Collins also stated that he gives little weight to the assessment that a person might make of his or her own condition and he would have liked to know Doctor Tremblay's opinion about Micheline Montreuil no longer taking hormones.

[456] Doctor Collins stated that he therefore wanted confirmation from Doctor Tremblay about the taking of hormones. Doctor Collins believes that it is not enough for a Canadian Forces recruiting medical officer to rely on the applicant with respect to the need for medical attention. Consequently, even though a person may claim that he or she does not need to be examined for the presence of a heart condition, it is the duty of the recruiting medical officer to obtain confirmation from a cardiologist to be able to determine if the person has a medical condition that would lead the recruiting medical officer to assign a medical employment limitation that might make the person ineligible to join the Canadian Forces.

[457] When asked to explain his understanding of the term "transsexual" used in Micheline Montreuil's letter, Doctor Collins stated that that is the most extreme form of gender identity disorder, when a person undergoes laser hair removal treatments and hormonal therapy and is in a sex reassignment process. Doctor Collins said that in his opinion that the letter was not at all useful in helping him make a decision as to Micheline Montreuil's medical condition.

[458] When asked to comment on Micheline Montreuil's letter, Doctor Assalian stated that the idea that one can control symptoms, drive or anxiety arising from gender identity disorders is very difficult to accept.

[459] Doctor Collins wrote to Doctor Boddam again on January 5, 2000. Doctor Collins states in the letter that he is resending Micheline Montreuil's medical record for Doctor Boddam to review. He asks Doctor Boddam for comments regarding employment limitations and medical categories.

[460] Doctor Boddam replied to Doctor Collins on January 17, 2000. Doctor Boddam states in his reply that, from the Micheline Montreuil's point of view, there appears to be no psychiatric contraindications to Micheline Montreuil becoming a Canadian Forces member. Doctor Boddam states that Doctor Côté is clear about that. Doctor Boddam states that he would probably feel more comfortable if the sex reassignment surgery had been completed, which would make it easier for Micheline Montreuil to be integrated as a woman.

[461] Doctor Boddam stated in his testimony that he was not looking for Micheline Montreuil to undergo surgery at any cost, but wanted more information on Micheline Montreuil's condition and treatments, and the risk associated with the fact that Micheline Montreuil had not undergone sex reassignment surgery.

[462] Doctor Boddam stated in his testimony that, to him, the treatment plan initially established by Micheline Montreuil's physicians involved sex reassignment surgery, and he felt uncomfortable with the fact that the treatment plan was changed six weeks later for no apparent reason, and a treatment that appeared to have been recommended six weeks earlier was no longer recommended.

[463] Doctor Boddam was asked during testimony to explain the meaning of his note. He stated that, in his note, he gives his observation that [translation] *Micheline Montreuil sees no contraindication to her joining the Forces*, and not that he himself, along with Doctor Côté, sees no contraindication. Moreover, Doctor Boddam stated that, since the sex reassignment surgery to which the documentation refers was not performed, he considered Micheline Montreuil to be still undergoing treatment and the problem still unresolved, and he felt uncomfortable.

[464] On January 20, 2000, Doctor Collins wrote to Major Ménard of the Office of the Director of Medical Policy (DMedPol). Doctor Collins sent Micheline Montreuil's medical file for review with respect to employment limitations and medical categories. That was the first review by the DMedPol.

[465] On February 23, 2000, Doctor Georgantopoulos replied to the letter that Doctor Collins had sent to Major Ménard. Doctor Georgantopoulos states in his reply that he has discussed the file with Colonel Cameron of the Office of the Director of Medical Policy (DMedPol) and it has been agreed that the applicant should be assigned category G3O2 until the gender identity issue has been resolved. He states that the applicant is currently taking hormones and has undergone a partial transformation. He adds that the applicant has stated that he would stop taking hormones in the near future. Therefore, it would be prudent to reassess the applicant once the effects of hormonal therapy have ceased. The applicant's physician could then give a clear confirmation that no treatment associated with gender identity is required.

[466] When asked to comment on Doctor Georgantopoulos's reply, Doctor Collins stated that he was surprised about the category G3O2 assigned to Micheline Montreuil, given that Micheline Montreuil was taking hormones.

[467] Doctor Assalian stated in his testimony that Doctor Georgantopoulos had every right, if not an obligation, to request that Micheline Montreuil be reassessed for gender identity disorder once the effects of the hormones had ceased.

[468] Doctor Collins wrote to Micheline Montreuil on March 9, 2000. In the letter, Doctor Collins tells Micheline Montreuil that Micheline Montreuil's file has been reviewed

by the DMedPol, and further information is required to determine whether or not Micheline Montreuil meets the Common Enrolment Medical Standard.

[469] More specifically, Doctor Collins points out that Micheline Montreuil was taking hormone supplements when he applied for enrolment and had stated that he would stop taking hormones in the near future. Doctor Collins tells Micheline Montreuil that it has been determined that it would be prudent for Micheline Montreuil to provide a reassessment from his physician once the effects of the hormones have ceased. Doctor Collins states that Micheline Montreuil's physician must then confirm that no treatment related to gender identity issues is required.

[470] The evidence shows that, on the same day, Doctor Collins wrote on the form containing medical information about Micheline Montreuil that Micheline Montreuil did not meet the Common Enrolment Medical Standard (CEMS) and changed the medical category G4O4 assigned by Warrant Officer Dumais to category G3O2. In his testimony, Doctor Collins explained that he assumed that the hormonal therapy was ending.

[471] When asked to comment on the expression "gender identity disorder" used in the letter, Doctor Collins acknowledged that none of Micheline Montreuil's physicians used that expression, but that Doctor Lehoux and Doctor Tremblay used "transsexual" and "sex reassignment." Doctor Collins used "gender identity disorder" because, to him, the term "transsexual" refers to gender identity disorder.

[472] Doctor Collins repeated a number of times in his testimony that the key element in his assessment of the file was the fact that Micheline Montreuil, under Doctor Tremblay's care, was in male-to-female transition and taking female hormones. Doctor Collins' focus was on assessing whether or not it was likely that Micheline Montreuil's current condition would cause future problems and whether or not she would require future care that the respondent would be unable to provide. To Doctor Collins, the main issue was whether or not, from a medical standpoint, the applicant could safely be put in uniform and provided with the care required.

[473] When asked during testimony to comment on that letter, Micheline Montreuil emphasized the fact that, in his opinion, the Canadian Forces physicians were insisting that he undergo sex reassignment-that he have a vagina-and they understood nothing about his condition, that is, that he is not transsexual but transgendered.

[474] Doctor Tremblay wrote to Captain Labonté on March 15, 2000. As seen above, Doctor Tremblay writes in the letter that it is critical, in the sex reassignment process, to continue hormonal therapy for hypothalamo-hypophyseal suppression, so that the testicles remain at rest and the hormonal balance, shifted in favour of female hormones, maintains the female attributes. It is only after surgical castration and plastic surgery on the genitals have been performed that the feminizing hormonal therapy can be significantly reduced. In short, Doctor Tremblay writes that stopping hormonal therapy compromises or simply stops a transsexual person's development. The person goes back to square one.

[475] When asked to comment on the contents of that letter, Doctor Collins testified that, to him, Doctor Tremblay was stating that active treatment was in progress, hormonal therapy was required until the sex reassignment surgery and, at some time, the hormonal therapy would be reduced. Doctor Collins stated that what he found the most frustrating about this file was that he was asking for specific information and not receiving answers to his questions.

[476] When asked to explain her understanding of the letter, Doctor Newnham testified that she understood that the hormonal therapy was part of a sex reassignment process, there being no indication that the hormonal therapy was for a cosmetic or aesthetic procedure.

[477] When asked to comment on the letter, Doctor Boddam stated that he believes that the letter refers to a transsexual person in a sex reassignment process who likely has a gender identity disorder.

[478] Micheline Montreuil pointed out in his testimony the disconnect mentioned by Doctor Tremblay. Micheline Montreuil claimed that Doctor Tremblay realized that the Canadian Forces physicians had completely misunderstood that which Doctor Tremblay knew well-that Micheline Montreuil did not want to change his gender.

[479] Micheline Montreuil wrote to Doctor Collins on March 20, 2000. In the letter, he states that he has received Doctor Collins' letter dated March 9, 2000, and has contacted his endocrinologist, Doctor Tremblay, as requested, for an appointment on April 4, so that Doctor Tremblay can answer the questions in Doctor Collins' letter. Micheline Montreuil also states that he has sent Doctor Tremblay a copy of Doctor Collins' letter and that his hormonal therapy has ended.

[480] Micheline Montreuil wrote to Captain Labonté on March 21, 2000. Micheline Montreuil states in the letter that Captain Labonté will find attached a copy of a letter from Doctor Tremblay dated March 15, 2000, in response to Doctor Collins' letter dated March 9, 2000.

[481] Micheline Montreuil wrote to Doctor Collins on March 21, 2000. Micheline Montreuil states in the letter that he has contacted his endocrinologist for an appointment, in response to Doctor Collins' letter dated March 9, 2000. Attached is Doctor Tremblay's report dated March 15, 2000. Micheline Montreuil states in his letter that he has decided to stop his hormonal therapy because he does not need any more hormones for the time being. He writes that he would prefer to have a job and knows that he would not be able to work for at least five years if he continued his hormonal therapy and the process to become a transsexual person (emphasis added). He writes that he has also decided to postpone all medical treatment until retirement and join the Canadian Forces as a woman, since he is currently living as a woman.

[482] Micheline Montreuil also states in the letter that he gives his word that he does not intend to undergo any medical treatment to change his gender or body for as long as he is in the Canadian Forces. He ends the letter by asking Doctor Collins how many more medical reports will be required for a decision to be made, and he states that he is living as a woman, is psychologically stable, has undergone a few changes to his body and is fit to serve.

[483] Doctor Collins was asked to comment on the letter during testimony. His understanding was that Micheline Montreuil planned to put his therapy on hold to join the Canadian Forces. Doctor Collins stated that he interpreted the word *postponed* in the letter to mean that Micheline Montreuil planned to delay or suspend his treatment. To Doctor Collins, that meant that there would be a treatment in the future, and the treatment would only be suspended while Micheline Montreuil was a member of the Canadian Forces. Doctor Collins further stated that he gives little weight to assessments that people make of their own condition.

[484] When asked to comment on the letter, which she claims to have seen, Doctor Newnham testified that her understanding of the letter is that Micheline Montreuil had contacted his endocrinologist for answers to a number of questions from the recruiting medical officer, had stopped taking hormones so that he could work, would be unemployed for the following five years if he decided to continue hormonal therapy and the process to become a transsexual person, had decided to postpone all medical treatment until retirement so that he could join the Canadian Forces as a woman, did not intend to change his gender through surgery, was living as a woman and was psychologically stable.

[485] Doctor Newnham acknowledged in her testimony that Micheline Montreuil's statements have merit but had little influence on her subsequent decision, since she was more interested in the fact that Micheline Montreuil was under the care of a specialist and had stopped hormonal therapy.

[486] When asked to comment on the letter, Micheline Montreuil stated in his testimony that people did not understand the difference between a transsexual person and a transgendered person: A transsexual person needs to have an operation but, for a transgendered person, it is simply mind over matter. He added that his way of living is his choice, a free and informed choice, period. He further added that six years have passed since he wrote that letter, and he still has not undergone a transformation.

[487] When asked to comment on Micheline Montreuil's letter, Doctor Assalian stated that Micheline Montreuil's statement about not needing hormones for the time being raises questions about the future. To Doctor Assalian, the information provided by Micheline Montreuil is confusing: Micheline Montreuil states that he has stopped taking hormones and stopped his sex reassignment process, and he added that he will resume treatment after retiring from the Canadian Forces. Doctor Assalian believes that a person suffering from a gender identity disorder cannot control that drive.

[488] On April 7, 2000, Doctor Collins sent Micheline Montreuil's file to Major Ménard of the Office of the Director of Medical Policy (DMedPol) for review with respect to employment limitations and medical categories. That was the second review of Micheline Montreuil's file.

[489] Doctor Collins states in his cover letter that he is attaching additional correspondence received from the endocrinologist. He states that all medical treatment has been stopped and no additional treatment is required. Doctor Collins testified that that statement was made on the basis of Micheline Montreuil's letter, and not Doctor Tremblay's.

[490] On May 9, 2000, Doctor Georgantopoulos replied to the letter sent by Doctor Collins to Major Ménard on April 7, 2000. In his reply, Doctor Georgantopoulos states that what is required is a clear statement from Micheline Montreuil's psychiatrist that, from a mental health standpoint, she will require no additional treatments related to *her gender identity issue*. That is, can the specialist issue a statement certifying that Micheline Montreuil will not require psychotherapy or medical attention for that gender identity issue in the 30 years that follow? That is the question for which an answer is required.

[491] When asked to comment on the 30-year period, Doctor Collins testified that he believed that that meant that Micheline Montreuil had to show that she would not require treatment at any time during her career in the Canadian Forces. To Doctor Collins, it is the applicant's medical condition that is important, not his age. He admitted that referring to a 30-year period was probably a bad choice of words, but he had to be sure that Micheline

Montreuil's condition would not cause problems if Micheline Montreuil were allowed to enrol in the Canadian Forces. Doctor Collins stated in his testimony that a person may stop treatment for a certain condition, but the condition remains and it is important for Canadian Forces physicians to be certain that the condition is under control, because it will not disappear on its own.

[492] Doctor Newnham testified that her understanding of that note was that a letter was being sought from Micheline Montreuil's psychiatrist stating that, from a mental health standpoint, Micheline Montreuil would require no further treatment for gender identity disorder.

[493] The evidence shows that, on May 17, 2000, Doctor Collins wrote in section K of form CF2027, *Report of Physical Examination*, that Micheline Montreuil was in category G3, *requires periodic care of a specialist*. It should be noted that Doctor Collins had Doctor Tremblay's letter dated March 15, 2000, when he assigned category G3O2 to Micheline Montreuil.

[494] When asked to explain how he reached that conclusion, Doctor Collins stated that, since there was no other information on potential medical problems related to Micheline Montreuil's condition, which remained poorly defined, and since Micheline Montreuil had stopped hormonal therapy, Doctor Collins assumed that Micheline Montreuil did not require frequent medical attention. However, since Micheline Montreuil still had that poorly defined condition, which had led him to see a psychiatrist, endocrinologist and general practitioner specializing in dermatology, Doctor Collins found it appropriate to assign a medical category G3, adding that others might have assigned a G4 or greater.

[495] Regarding the fact that he assigned a medical category G3 even though Micheline Montreuil had stopped hormonal therapy, Doctor Collins pointed out that Micheline Montreuil had stopped hormonal therapy on his own, without seeking medical advice, there was no additional information on the possibility of the condition recurring, and concerns remained about the existence of a poorly defined condition and uncertainty regarding the need for future medical care.

[496] To Doctor Collins, even though Micheline Montreuil had stopped hormonal therapy, the fact remained that Micheline Montreuil still had a poorly defined condition and had stopped treatment on his own initiative. Doctor Collins believed that Micheline Montreuil might require or request treatment in the future; therefore, he found that G3 was the most appropriate medical category.

[497] Doctor Collins wrote to Micheline Montreuil on the same day. Doctor Collins informs Micheline Montreuil in the letter that the Director of Medical Policy (DMedPol) requires a clear statement from Micheline Montreuil's psychiatrist that Micheline Montreuil will not require treatment, from a mental health standpoint, for his gender identity issue. Doctor Collins writes that, to avoid the assignment of an employment limitation, the specialist must state that Micheline Montreuil will not require any psychotherapy or medical attention for that issue for 30 years. Doctor Collins informs Micheline Montreuil that he has been assigned the employment limitation, *requires periodic care of a specialist*.

[498] Doctor Collins believes that Canadian Forces physicians needed a better understanding of Micheline Montreuil's condition, in light of the letters written by the physicians that she had approached. As a physician, Doctor Collins could not rely solely on what Micheline Montreuil said, especially since Micheline Montreuil, as is shown in this case, tended to

exaggerate and manipulate things. Doctor Collins could not simply rely on Micheline Montreuil's statement that he had decided to have breasts for cosmetic reasons only.

[499] It should be noted here that Doctor Collins stated a number of times that, as a recruiting medical officer, his focus was on determining if the applicant would be burden on the Canadian Forces and if the Canadian Forces would be able to provide the care the applicant might require. To do that, Doctor Collins had to determine if Micheline Montreuil had a condition that might prevent the latter from serving in the Forces and completing a mission. To Doctor Collins, Micheline Montreuil had a condition that was not clearly defined in the letters sent to the Canadian Forces by the physicians Micheline Montreuil had approached, and more information was needed.

[500] When asked to comment on the 30-year requirement, Doctor Newnham testified that that was the first file in which she had seen such a requirement and it would be difficult to make a prediction for a 30-year period.

[501] Micheline Montreuil maintained in his testimony that the condition imposed by the Canadian Forces was ludicrous, if not discriminatory, since he was being asked by the Canadian Forces, at age 47, to prove that he would not need treatment for 30 years, by which time he would be 77, well past retirement age.

[502] When asked to comment on the information request by the Canadian Forces, Doctor Assalian testified that the request was justified, because it is clear to him that the Canadian Forces physicians had not received their answer and the impression remained that Micheline Montreuil was suffering from a gender identity disorder. However, regarding the 30-year guarantee, Doctor Assalian stated that, instead of saying for life, they said 30 years. Doctor Assalian added that, for gender identity disorders, it is impossible to predict that treatment will not be necessary for the rest of a person's life.

[503] Micheline Montreuil wrote to Captain Labonté on June 4, 2000. In the letter, Micheline Montreuil refers to the progress of his application with the Canadian Forces and asks for the status of his application.

[504] On June 14, 2000, Doctor Collins wrote to Major Ménard of the Office of the Director of Medical Policy (DMedPol). Doctor Collins states in his letter that he is sending Micheline Montreuil's medical record for review, a third review, regarding employment limitations and medical categories.

[505] Doctor Collins states in the letter that he has assigned Micheline Montreuil the limitation, *requires periodic care of a physician*. He tells Major Ménard that no other information is forthcoming. He writes that the applicant is highly experienced and has been a Canadian Forces member before, and the file will be reviewed by Director Military Careers Administration and Resource Management (DMCARM) for a possible administrative waiver with regard to the Common Enrolment Medical Standard.

[506] Doctor Newnham testified that her understanding of the file at that time was that the Director of Medical Policy (DMedPol) had approved the medical category G3O2 with medical employment limitations, and the file would be returned to the recruiting office, given that an administrative waiver was possible according to Doctor Collins. As a result, a letter was not sent to the applicant to inform him that he had failed to meet the Common Enrolment Medical Standard.

[507] Major Ménard replied to Doctor Collins on July 13, 2000, stating that the medical category assigned to Micheline Montreuil was V4 H2 G3 O2.

[508] When asked to comment on the position of the Canadian Forces and the accuracy of the assessment, Doctor Assalian stated that there was utter confusion in the documentation, so the request of the Canadian Forces physicians was justified. Doctor Assalian added that the word "transgendered" had not been used thus far, only "transsexual" and "sex reassignment process."

[509] Micheline Montreuil wrote to Captain Labonté on November 24, 2000. Micheline Montreuil states in the letter that no physician can certify that a member of the Canadian Forces will not need treatment for 30 years. Given that there is no valid reason to stop the enrolment process for his return to the Canadian Forces, Micheline Montreuil requests that the process for his enrolment as a legal officer be continued. He writes that, if that position is not available, he would like his application to be reviewed for the position of logistics officer. Captain Labonté testified that he believed the position sought was that of logistics officer in the regular force, not the Naval Reserve.

[510] Micheline Montreuil wrote to Captain Labonté on June 4, 2001, summarizing the steps he had taken and asking for an update on the status of his application.

[511] Micheline Montreuil wrote to General Hénault on August 14, 2001. In the letter, Micheline Montreuil describes the slow progress of his application. He tells General Hénault that he is not like most of the people who apply to join the Canadian Forces. He asks that his application be reviewed on the basis of merit, and he describes his skills. He also states in the letter that he is a *transgendered person*, that is, one who is living a healthy life in between the male and female sexes. Micheline Montreuil added that that unusual situation may be a reason to see that his application falls between the cracks, that his situation can make certain people uncomfortable. Lastly, he states in the letter that, when he left the Canadian Forces in 1997, he was preparing for his transition, and he asks General Hénault to take the necessary steps to inform him about the status of his application.

[512] On August 20, 2001, Colonel Martin acknowledged receipt of Micheline Montreuil's letter to General Hénault dated August 14, 2001.

[513] The record indicates that a handwritten memo from the Canadian Forces was sent on August 30, 2001. The memo, to which an article from the *Ottawa Citizen* was attached, reads as follows: "This is the person who wrote to the CDS 14 August 01 concerning disposition of her application to join CF as JAG. We forwarded her enquiry to ADM (HR-Mil) under note from you to investigate her application status."

[514] On October 11, 2001, Micheline Montreuil completed a second form CF2027 (*Report of Physical Examination (For Enrolment)*) to re-enrol in the Canadian Forces. He underwent a second physical examination, as the evidence shows that a physical examination is valid for one year only. The examination was performed by physician assistant Leroux, who was not summoned as a witness.

[515] It should be noted that, although physician assistant Leroux recorded that the applicant being examined was female, he also recorded that a sperm count was done and Micheline Montreuil expressed a desire to have children conceived from Micheline Montreuil's sperm.

[516] Physician assistant Leroux assigned Micheline Montreuil the medical category V3 CV1 H1 G2 O2 A5. The evidence shows that Doctor Newnham changed it to V4 CV1 H1 G5(T) O2 A5 on October 31, 2001. On December 10, 2001, after receiving information from Doctor Côté and Doctor Tremblay, Doctor Newnham assigned Micheline Montreuil a permanent category G5, which was subsequently confirmed by Doctor Deilgat of the Office of the Director of Medical Policy (DMedPol).

[517] On page 1 of the *Report of Physical Examination*, that is, the questionnaire completed by Micheline Montreuil, it is indicated that he is female. The questionnaire shows that Micheline Montreuil answered yes to the question, "Have you had any other investigations, tests or treatment by doctors, psychiatrists, psychologists or social workers?" In addition, Micheline Montreuil answered the question for females only, stating that he had not had any gynecological or obstetrical problems.

[518] The evidence shows that Warrant Officer Leroux recorded on page 2, the findings page, that the applicant was a female who wished to join the Canadian Forces regular force in MOC 67, had stopped hormonal therapy eight months earlier, on February 20, 2001, wanted to have children, was in good spirits, showed no signs of depression and had no suicidal ideation. Under "Medical Category" on page 4, "2" was initially written for the geographic and occupational factors. The evidence shows that, for the geographic factor, the "2" was then crossed out and replaced by "5(T6)," indicating a rating of 5 for a period of six months.

[519] The evidence shows that Doctor Newnham studied the information in the report but did not consult Doctor Boddam before deciding on the medical category to assign to Micheline Montreuil, because she did not think that there was enough new information. However, Doctor Newnham testified that she no longer knew how far along the file was, because of all the changes to it.

[520] When asked to comment on the report, Doctor Newnham testified that she asked for more information because the applicant had been undergoing treatment and had been under the care of a physician. The fact that, when the body systems were examined, nothing was recorded regarding the endocrine system or psychiatric system suggested to her that she perhaps did not have all of the relevant information, given that she did have the complete file.

[521] The record shows that Captain Labonté wrote Corporal Gagné an e-mail message on October 15, 2001, in which he says not to do the msg [*sic*] for the credit and criminal checks, and that, for the physical exam, he will wait for the offer because it is an old file, and that he told him that the exam would be done at the time of the offer, in the same way as for the other officers.

[522] Corporal Gagné replied to Captain Labonté on the same day, stating that he had been asked to send the file for selection as a legal officer, and the physical exam had not been done. The e-mail message also indicates that Captain Labonté allegedly told him that the file was a special file. Micheline Montreuil stated in his testimony that she believes the only thing that made his file special was the fact that he was transgendered.

[523] The evidence shows that, on October 31, 2001, Doctor Newnham reviewed Micheline Montreuil's file, changed the medical category G2O2 initially assigned by physician assistant Leroux and assigned a temporary category V4 CV1 H1 G5 O2 A5 for six months, writing that follow-up with a specialist was required before a medical employment limitation, if any, was assigned.

[524] Doctor Newnham testified that she had the *Report of Physical Examination (For Enrolment)* dated October 11, 2001, and all earlier documentation when she did her assessment. She testified that what caught her attention was the fact that Micheline Montreuil had stopped hormonal therapy eight months earlier. Doctor Newnham claimed to have telephoned physician assistant Leroux to have him obtain more information from Micheline Montreuil.

[525] Doctor Newnham stated in her testimony that assigning a temporary medical category for six months effectively puts the file on hold while further information is gathered, and the fact is that assigning a G5 instead of a G3 makes no difference. She maintains that assigning a temporary medical category is an indicator that more information is required.

[526] When asked why she assigned a temporary medical category G5(T6) O2 when Doctor Collins and the DMedPol had previously assigned the category G3O2, Doctor Newnham stated that she was starting over, because the previous examination was done more than a year earlier and was therefore no longer valid. To her, the application for enrolment was a new application and her role was not to amend the previously assigned medical category.

[527] Doctor Newnham believes that the new application raised a number of questions that had not been answered previously. She stated in her testimony that, in the case at bar, a specialist was involved in Micheline Montreuil's file and, under CFP 154, whenever a specialist is involved in an applicant's file and information is required from the specialist, category G5 is preferred over G4 or G3. She stated that Doctor Collins was justified in assigning a medical category G3 because he indicated that the medical care was *periodic*. She stated that, regardless of whether the category was G3 or G5, the applicant failed to meet the Common Enrolment Medical Standard. However, she acknowledged that an administrative waiver is easier to obtain when category is G3.

[528] Doctor Newnham further testified, regarding the medication Micheline Montreuil took, that Doctor Collins states in his letter to Major Ménard on April 7, 2000, that all medical treatment has been stopped, but Doctor Newnham notes that the form completed by physician assistant Leroux indicates that hormonal therapy ended eight months earlier, in February 2001. Doctor Newnham infers that Micheline Montreuil started to take hormones again after April 7, 2000, and in fact stopped taking them in February 2001. Doctor Newnham believes that that is a change in Micheline Montreuil's medical history that would require an update from his physician.

[529] The evidence also shows that Doctor Newnham wrote to physician assistant Leroux on October 31, 2001. In the letter, she asks that Micheline Montreuil provide assessments from his endocrinologist and psychiatrist, since the last update regarding hormones was dated March 2000, and the last psychiatric assessment was dated 1999. She also asks that his psychiatrist comment on the foreseeable psychological impact of the applicant assuming a role of the opposite gender with only partial treatment. In addition, Doctor Newnham asks that Micheline Montreuil's endocrinologist comment on the current treatment, the date on which the medication was stopped, the need for treatment and the expected treatment plan or follow-up plan. Doctor Newnham testified that her requests were based on Doctor Boddam's earlier information requirements.

[530] When asked to comment on the position of the Canadian Forces with respect to the requests for additional information, Doctor Assalian stated that the Canadian Forces physicians had reason to request an update on Micheline Montreuil's condition, given the

terminology used in the documentation, especially the terms "hormones" and "sex reassignment process."

[531] Micheline Montreuil signed two medical information disclosure request forms on November 6, 2001, one for his psychiatrist and another for his endocrinologist. The information request for the psychiatrist states that the Canadian Forces recruiting medical officer requires the psychiatrist's comments on the integration into the Canadian Forces of a person with partial treatment who is only psychologically female. The information request for the endocrinologist states that the Canadian Forces recruiting medical officer requires an update on the hormonal therapy, in particular, the exact date on which the medication was stopped, the need for medication, the treatment plan and the need for follow-up. Both requests were signed by physician assistant Leroux.

[532] On the same day, Micheline Montreuil received a letter from Lieutenant-Colonel Couture in reply to Micheline Montreuil's letter dated August 14, 2001. In Lieutenant-Colonel Couture's letter, Lieutenant-Colonel Couture informs Micheline Montreuil that he initially failed to meet the Common Enrolment Medical Standard, on the basis of the information available, but his application could be reconsidered if his condition were to change. Lieutenant-Colonel Couture informs Micheline Montreuil that his file has been sent to the legal officer screening committee for review, even though it has not been determined if his medical condition has changed. Lieutenant-Colonel Couture writes that, if the Canadian Forces determine that Micheline Montreuil meets the Common Enrolment Medical Standard and the selection committee considers him fit to join the ranks of the Canadian Forces, the enrolment process will be initiated.

[533] Lieutenant-Colonel Couture also states in his letter that he understands the concerns expressed by Micheline Montreuil about Micheline Montreuil's sexual orientation [*sic*], and he assures Micheline Montreuil that the delay in processing the application is the result of Micheline Montreuil's medical condition, not sexual orientation. He states that the Canadian Forces do not discriminate on the basis of sexual orientation or any other prohibited ground of discrimination under the *Canadian Human Rights Act*, above.

[534] Micheline Montreuil stated during testimony that he believed that his problem stemmed from the fact that he wore a dress. He also suggested that the Canadian Forces initially hid behind the issue of hormonal therapy to say that he failed to meet the Common Enrolment Medical Standard, and then behind the fact that he had a gender identity disorder. Moreover, regarding Lieutenant-Colonel Couture's reply, Micheline Montreuil pointed out that he had never discussed sexual orientation in his letters.

[535] Micheline Montreuil wrote to Lieutenant-General Couture on November 13, 2001. In the letter, Micheline Montreuil refers to the 30-year issue raised by Doctor Collins in his letter dated May 17, 2000, and points out that no physician on Earth can provide such a guarantee.

[536] In the letter, Micheline Montreuil describes herself as a transgendered person or person in transition. She writes that she feels like a woman, lives as a woman, works as a woman, dresses as a woman and behaves as a woman. She maintains that she knows who she is, knows her condition and is happy with it. She considers herself balanced, logical, coherent and very intelligent.

[537] Micheline Montreuil also refers to the four medical reports provided and highlights the fact that the reports suggest that he return to the Canadian Forces as a woman. He explains

that his condition involves not sexual orientation, but gender identity, that is, his condition is that of a person in transition between the male and female genders. He considers himself in a transition phase and perfectly comfortable that way. He states that he has decided to stay in transition as long as he finds it appropriate, which may be a long time, since he considers himself happy in that condition. He further states that he does not intend to undergo a sex reassignment process and maintains that he will need no medical care or treatment for his identity change for *fifteen years* (emphasis added). Lastly, he states that he commits to resigning from the Canadian Forces or taking unlimited, unpaid leave, at the discretion of the Canadian Forces, if he ever decides to undergo any medical treatment for his identity change.

[538] When asked to comment on the letter, Doctor Assalian testified that physicians who are not gender identity disorder specialists will understand that Micheline Montreuil is in transition, in an identity change process.

[539] The evidence shows that the Canadian Forces Recruiting Group Headquarters issued a message on November 20, 2001, stating that Micheline Montreuil was not selected for MOC 67U Legal, and that his file was closed and no further action was required.

[540] Doctor Tremblay prepared a new report for the Canadian Forces on November 22, 2001. The information he provides is in fact found on the information request form that Micheline Montreuil completed on November 6, 2001.

[541] As seen above, Doctor Tremblay states on the form that Micheline Montreuil is an individual [translation] *who behaves as a transsexual person*, stopped hormonal therapy on February 20, 2001, has no known limitations and has no foreseeable risk of recurrence. Doctor Tremblay certifies on the Generic Task Statement form that Micheline Montreuil has no medical condition that would prevent him from performing the tasks described on the form or following instructions to complete those tasks.

[542] When asked to comment on Doctor Tremblay's report, Doctor Newnham stated that Doctor Tremblay provides information on the stopping of the medication. However, she stated that her greatest concern was with the risk of recurrence, which Doctor Tremblay indicated was not foreseeable. To her, it would have been preferable for Doctor Tremblay to state that there was no risk of recurrence, if that was in fact true.

[543] Doctor Newnham further stated that a person joining the Canadian Forces must be in good health, and the Canadian Forces will not run the risk of enrolling a person who is unhealthy, unfit for work in the Forces and not deployable.

[544] Doctor Newnham testified that she did not believe that she had enough information on Micheline Montreuil's medical history. She emphasized that she had requested information on medical care but had received nothing. However, she acknowledged that the Generic Task Statement form was not usually sent to specialists.

[545] When asked to interpret the expression [translation] *who behaves as a transsexual person*, Doctor Boddam testified that a transsexual person is one who behaves as a transsexual person. Doctor Boddam also stated in his testimony that the information provided does not fully answer his questions.

[546] Doctor Beltrami was asked during testimony to comment on the information on the medical information disclosure request form completed by Doctor Tremblay. Doctor Beltrami stated that the diagnosis, individual behaving as a transsexual person, is rather nebulous and vague, and is not a firm diagnosis. To Doctor Beltrami, "to behave as a

transsexual person" is not a diagnosis. However, it should be noted that Doctor Beltrami acknowledged that Doctor Tremblay considered Micheline Montreuil to be a transsexual person, an expression he used in his letter dated October 26, 1999, and he never used the term "transgendered."

[547] When asked to comment on Doctor Tremblay's report, Doctor Assalian stated that it does not answer the questions of the Canadian Forces physicians. To Doctor Assalian, the report does not make it clear whether or not Micheline Montreuil will need hormones in the future, given his unresolved condition. Doctor Assalian believes that people reading that information may think that the applicant is still suffering from a gender identity disorder.

[548] As seen above, on November 24, 2001, Dr. Serge Côté completed the medical information disclosure request form that Micheline Montreuil signed on November 6, 2001. On the form, Doctor Côté writes a psychiatric diagnosis of none, no psychiatric history, no current or past treatment, current status normal. Doctor Côté also certifies on the Generic Task Statement form that Micheline Montreuil has no medical condition that would prevent him from performing the tasks described on the form or following instructions to complete those tasks.

[549] When asked to comment on the information in that document, Doctor Boddam stated that it in fact contains little information that is relevant. Doctor Newnham stated in her testimony that Doctor Côté's responses did not answer the questions that he had been asked. In fact, she points out in her testimony that Doctor Côté did not answer all of the questions, wrote [translation] "none" as a psychiatric diagnosis, failed to provide a synopsis of psychiatric conditions, wrote nothing regarding current and past treatment, and made no comments regarding potential limitations and the risk of recurrence.

[550] In short, Doctor Newnham believes that Doctor Côté's report did not provide the desired information and did not help to clarify the situation, since it failed to provide the information required for her to determine whether or not Micheline Montreuil's condition had been resolved. Moreover, Doctor Newnham did not consider the information provided to be very reliable.

[551] When asked to comment on Doctor Côté's report, Doctor Assalian stated that Doctor Côté did not answer Doctor Newnham's question.

[552] The evidence further shows that Doctor Tremblay responded to the questions on the Generic Task Statement form on November 29, 2001, as seen above. Doctor Tremblay testified that he did his best to answer the questions and found that Micheline Montreuil had no sign of any medical condition that would prevent him from performing the tasks. Moreover, since Micheline Montreuil was assigned the medical category O2, he was ultimately considered by the Canadian Forces physicians to be capable of performing those tasks.

[553] On December 3, 2001, Micheline Montreuil sent Corporal Domaine two new assessment reports, a psychiatric assessment by Doctor Côté dated November 24, 2001, and a medical assessment by Doctor Tremblay dated November 22, 2001. When asked about what took place during the appointment with each of the two physicians whom she had asked to complete the medical information request form, Micheline Montreuil testified that the physicians asked questions and completed the form.

[554] On December 10, 2001, after receiving the information from Doctor Côté and Doctor Tremblay, Doctor Newnham assigned Micheline Montreuil a permanent medical category of G5O2, making Micheline Montreuil unfit for enrolment. That category would later be changed to G5(T6) by Doctor Wright.

[555] Doctor Newnham stated in her testimony that, when she made her decision, she had a number of reports (from Doctor Tremblay, Doctor Côté and Warrant Officer Leroux), a number of physician's notes (from Doctor Boddam, Doctor Collins and Doctor Georgantopoulos) and a number of letters (from Doctor Ménard, Doctor Collins and Micheline Montreuil). She further stated that her decision was made partly on the basis of the fact that she had not received new information in the latest reports from Doctor Côté and Doctor Tremblay that would justify assigning a medical category of G2O2. It is important here to examine each piece of information that Doctor Newnham had when she decided to assign Micheline Montreuil the medical category G5O2, as well as the reasons that led her to make that decision. The evidence shows that, during testimony, Doctor Newnham was fully able to explain the reasons behind her decision.

[556] Doctor Newnham emphasized in her testimony that it is important to have all the relevant information before making an informed decision on enrolling an applicant, so that only those who are healthy will be enrolled. She stated that the DMedPol is not prepared to take any risks, especially involving the potential for decompensation or a medical emergency that would jeopardize an applicant's health. In the case at bar, Doctor Newnham believes from the documentation provided that Micheline Montreuil had a potentially recurrent medical condition, as well as an unresolved medical condition.

[557] Regarding the making of her decision, Doctor Newnham referred in her testimony to a handwritten memo from Doctor Collins to her. Doctor Collins states in the note that the DMedPol has reviewed the application twice, the first time being in February 2000. Doctor Collins then states that he has written to Micheline Montreuil and received additional information. He states that Doctor Ménard reviewed the application again in July 2000 and assigned the medical category G3O2. Doctor Collins states that he submitted a statement of limitations to Major Stouffer following that review, so that Major Stouffer could investigate the possibility of a waiver. Micheline Montreuil was informed of that. In his note, Doctor Collins states that he gave Micheline Montreuil Major Stouffer's telephone number. In the absence of new information, Doctor Collins recommends assigning medical category G3 with the restrictions from Doctor Ménard.

[558] Doctor Newnham added in her testimony that she gave considerable weight to the decision, as described above in Doctor Collins' memo, to assign medical category G3 in the absence of additional information. Doctor Newnham also testified that the memo was the reason that she wanted more information before reassessing Micheline Montreuil's medical category.

[559] Regarding Doctor Côté's reports, Doctor Newnham pointed out that it is common sense that a person not under the care of a psychiatrist does not ask a psychiatrist to prepare a medical report about him or her. Moreover, Doctor Newnham finds it surprising that an applicant who presumably has a psychiatrist would submit a psychiatric report containing so few details and such vague information, given the information that was requested on the applicant's condition. Doctor Newnham testified that that gave her doubts as to the credibility of the responses provided. Doctor Newnham believes that Doctor Côté was holding back information on Micheline Montreuil.

[560] In comparing the information in reports provided by Doctor Côté in October and December 1999, Doctor Newnham observed that Doctor Côté wrote a psychiatric diagnosis of [translation] "none" in 2001 but wrote in 1999 that Micheline Montreuil was in a sex reassignment process and had not achieved a complete transformation. Doctor Newnham stated that she could not ignore or disregard that in her *de novo* assessment of Micheline Montreuil's application. Moreover, the fact that Doctor Côté wrote *nil* under *current and past treatment* after having sent two assessment reports in 1999 left the Canadian Forces medical assessor perplexed and wanting more information to clarify the situation.

[561] Doctor Newnham's testimony also shows that, when she made her decision, she had Doctor Tremblay's report dated October 26, 1999, which stated that the applicant was undergoing hormonal therapy to feminize his appearance and the applicant was a transsexual person in transition. Doctor Newnham stated in her testimony that it appeared to her that surgery was planned, and she added that all of that indicated to her that there were medical issues in October 1999, since Micheline Montreuil was seen by a specialist, Doctor Tremblay, taking hormones as part of a sex reassignment process and possibly planning to have surgery, according to the letter itself.

[562] Doctor Newnham also testified that she had Doctor Collins' letter to Doctor Boddam dated November 9, 1999. She testified that Doctor Boddam's reply to Doctor Collins' letter was, as she says, "pivotal" to her decision to seek more information.

[563] Doctor Newnham further testified that, as she was making her decision, she found out about Micheline Montreuil's letter to Doctor Collins dated December 22, 1999, in which Micheline Montreuil states that he has asked his psychiatrist to answer the two questions put forth. Doctor Newnham testified that that was her confirmation that a psychiatrist was involved in Micheline Montreuil's treatment. She also noted that Micheline Montreuil states in the letter that the hormonal therapy will end in January 2000 at the latest, while the file shows that it continued until February 20, 2001.

[564] Doctor Newnham also stated in her testimony that she took into account Doctor Collins' letter to Doctor Boddam dated January 5, 2000, and Doctor Boddam's reply. Doctor Newnham stated that, upon reading those letters, she concluded that the applicant was taking hormones and was under the care of a psychiatrist and endocrinologist. Doctor Newnham testified that what caught her attention in Doctor Boddam's note was the fact that he wrote that there appeared to be no psychiatric contraindications to enrolling in the Canadian Forces, according to the applicant. Doctor Newnham pointed out that very little information had in fact been provided.

[565] Doctor Newnham also stated that she had Doctor Collins' letter to Major Ménard in the Office of the Director of Medical Policy (DMedPol) and Doctor Georgantopoulos's reply stating that Micheline Montreuil should at a minimum be assigned medical category G3O2 until the issue of his gender has been resolved, his condition should be reassessed once the hormonal therapy has ended and his physician should provide a clear confirmation that further treatment for the gender identity issue is no longer required. Doctor Newnham stated that she concluded that further information was required. To her, the relevant information was the medical diagnosis (existence or absence of a psychiatric condition), medical treatment (hormonal therapy) and the fact that Micheline Montreuil was under the care of specialists.

[566] Doctor Newnham testified that, when she was making her decision, she also had Doctor Collins' letter to Micheline Montreuil dated March 9, 2000, as well as

Micheline Montreuil's reply dated March 20, 2000. According to her testimony, what caught her attention in the reply is the fact that Micheline Montreuil mentions that he has an endocrinologist, and she claims that that justified her subsequent request for an update on Micheline Montreuil's condition with respect to taking hormones, given that he said that he had stopped his hormonal therapy.

[567] Regarding Micheline Montreuil's letter to Doctor Collins dated March 21, 2000, Doctor Newnham testified that she was concerned by the fact that Micheline Montreuil had decided to stop his hormonal therapy. She wondered if Micheline Montreuil might need to resume the therapy in the future. Doctor Newnham stated in her testimony that those thoughts led her to request additional information to gain a better understanding about why Micheline Montreuil stopped his hormonal therapy. To Doctor Newnham, a patient may stop treatment, but Doctor Newnham, as a physician, must know why and must be aware of the implications for the future. That is why it was important to obtain information from Micheline Montreuil's endocrinologist on the risk of recurrence.

[568] Lastly, Doctor Newnham testified that she had Doctor Tremblay's letter dated March 15, 2000. To her, the letter raises numerous questions, especially when Doctor Tremblay states that it is critical to continue hormonal therapy during the sex reassignment process. To her, that statement raises the issue of knowing how far along a person is in the sex reassignment process.

[569] In short, given the information available to her from various sources when she made her decision, it appeared to Doctor Newnham that medical category G5O2 was appropriate and further information was required.

[570] On December 18, 2001, Lieutenant Dieryckx informed Micheline Montreuil that his application for officer in MOC 67U Legal had been rejected, although the review of his application showed that she was a serious contender, and Micheline Montreuil's application had therefore been withdrawn from the competition. The letter states that the Canadian Forces are unable to offer him employment that would fulfill his aspirations. Micheline Montreuil testified that he did not inquire about reasons for the rejection. It appears from the evidence that Micheline Montreuil's file was not closed and, as he had requested, he was being considered for a logistics officer position.

[571] On January 7, 2002, Lieutenant-General Couture wrote to Micheline Montreuil in response to Micheline Montreuil's letter dated November 13, 2001. In his letter, Lieutenant-General Couture gave the following explanation regarding Micheline Montreuil's file:

[Translation]

An application for enrolment in the Canadian Forces, whether it is a new application or an application for re-enrolment, must meet the Common Enrolment Medical Standard right from the start. The standard requires a factor G2 (geographic) and O2 (occupational), which means no employment limitations under the medical standards for the Canadian Forces. A medical officer assigns the medical category, but it is the Recruiting Group, in consultation with the applicable authority, that makes the final decision regarding enrolment.

The medical assessment process for enrolment is intended to be a clear and simple medical and administrative decision: for each medical condition reported, if care or treatment is currently in progress or is expected in the future on the basis of the natural development of the condition, the appropriate G and O factors are assigned. The factors assigned are in no

way related to the applicant's sexual orientation. In your case, the authorizing physician of the Recruiting Group was responsible for ensuring that the requirements for periodic or regular care or treatment were identified correctly for all pre-existing medical conditions reported on enrolment. According to your medical report, the appropriate category would be G5 if you receive medical attention from a specialist (endocrinologist) more often than every six months, or G3 if less often than every six months. Medical category G2 can be assigned only if your medical condition, diagnosed before enrolment, requires no current or future medical attention or treatment. Your current hormonal therapy is a treatment that justifies a category of G3 or greater.

If an applicant's medical record does not meet the minimum standard, an exception may be granted by the management authority of the applicable military occupation, the Judge Advocate General, in your case. Such an exception must, however, be beneficial to the Canadian Forces, and it must be possible to transfer the applicant to a position in which the medical condition will not pose any risk to the applicant or to the service. The Judge Advocate General has agreed to have the legal officer selection committee review your file, despite your medical category.

[572] When asked to comment on the letter, Micheline Montreuil testified that he was neither receiving medical attention nor taking hormones at that time.

[573] In his letter, Lieutenant-General Couture also explains the reasons for rejecting Micheline Montreuil's application for legal officer. The letter explains that, in November 2001, a selection committee reviewed applications from a number of lawyers wishing to enrol in the Canadian Forces as legal officers, using the following criteria: military potential, academic grades, military or paramilitary experience, legal experience, community involvement and overall assessment. The letter also states that a majority of the committee members found that the grades received in the Faculty of Law were not competitive and Micheline Montreuil's experience as a lawyer in the areas sought by the Office of the Judge Advocate General was marginal, and so his application was not selected. Lastly, the letter states that Micheline Montreuil's application has been handled properly, without any prejudice with respect to his sexual identification, but has unfortunately been rejected, and his medical category remains below the minimum requirement.

[574] The record shows that Micheline Montreuil did not challenge the decision made by the Canadian Forces to reject his application for a legal officer position and does not claim that the decision was discriminatory.

[575] Micheline Montreuil wrote to Major Labonté on January 11, 2002, to confirm Micheline Montreuil's verbal request that his application for legal officer be considered. Captain Labonté testified that, were it not for the G5 rating, Micheline Montreuil would have undergone another medical examination and interview. Major Labonté believes that a military career counsellor would have interviewed Micheline Montreuil. Micheline Montreuil would also have had to undergo physical fitness testing. However, since the final decision was to assign Micheline Montreuil the category G5O2, there was no choice but to end the process.

[576] Major Bédard wrote to Micheline Montreuil on February 25, 2002. In his letter, Major Bédard informs Micheline Montreuil that an assessment of his file shows that he does not meet the Common Enrolment Medical Standard and is therefore not eligible, medically speaking, for MOC 78 Logistics. Major Bédard also informs him that he may request a review of his medical condition.

[577] Micheline Montreuil wrote to Lieutenant Dieryckx on March 7, 2002, asking Lieutenant Dieryckx to initiate a review of Micheline Montreuil's medical condition.

[578] Doctor Wright, who succeeded Doctor Newnham as recruiting medical officer, sent Micheline Montreuil's file to the DMedPol on April 4, 2002, for review with respect to employment limitations and medical categories. She states in her letter that she has assigned category G5(T6), that is, temporary for six months, to Micheline Montreuil while awaiting the review of the file. The evidence shows that that rating was assigned in light of new information that Micheline Montreuil had sent to the Canadian Forces.

[579] On April 15, 2002, Doctor Deilgat wrote in a memo that Micheline Montreuil's file had been reviewed, no new information had been provided that was not already known, the imposed limitations were to remain unchanged and the medical category assigned to Micheline Montreuil was 52 V4 CV1 G5 O2 A5. Doctor Deilgat wrote in a memo dated April 25, 2002, that the medical category G5 was for the following medical employment limitations: *requires regular specialist follow-up and to wear prescription lenses as directed*.

[580] Micheline Montreuil wrote to Doctor Newnham on April 23, 2002. Micheline Montreuil points out in her letter that her file has been under review for three years and there is no medical reason that would preclude her return to the Canadian Forces. Micheline Montreuil emphasizes that she has been asked three times to provide medical reports and, each time, she has fulfilled the requirements and sent the Canadian Forces medical reports from three of the best specialists in Quebec. In the opinion of the three physicians, she should return to the Canadian Forces as a woman.

[581] Micheline Montreuil states that there is no medical or psychological reason that would preclude her return to the Canadian Forces. She repeats that she stopped all medical treatment one year ago, will never ask the Canadian Forces to pay for any sex reassignment treatment and will leave the Canadian Forces if she ever decides to finish the sex reassignment. Micheline Montreuil ends the letter by asking what the problem is with respect to her return to the Canadian Forces.

[582] Doctor Newnham testified that she never received that letter personally, having left on maternity leave in mid-March 2002. She added that, had she seen the letter, it would not have changed her position. She would have requested an update on Micheline Montreuil's condition.

[583] The evidence shows that Doctor Wright stated in a memo on April 25, 2002, that Micheline Montreuil was assigned the following medical employment limitations: requires regular specialist follow-up and to wear prescription lenses according to the DMedPol's decision on April 15, 2002.

[584] Doctor Wright wrote to Micheline Montreuil on April 25, 2002. In her letter, Doctor Wright writes that no new information had been submitted that was not already known by the Canadian Forces, the limitations remain unchanged and, unfortunately, Micheline Montreuil does not meet the Common Enrolment Medical Standard. Doctor Wright explains that the purpose of the Common Enrolment Medical Standard is to ensure that all recruits meet a high standard of physical fitness and are capable of dealing with a high level of prolonged physical and mental stress. She emphasizes that military personnel work in extreme weather and all kinds of environments, including remote locations where medical support is minimal. She also explains that, when deployed, a Canadian Forces member may not have access to prescription medications, medical attention or laboratory tests. Therefore,

an employment limitation must be assigned to persons who require such services. Such limitations are unacceptable for recruits. Doctor Wright ends by inviting Micheline Montreuil to contact the Québec recruiting office for the final decision.

[585] Micheline Montreuil wrote to Doctor Wright on May 15, 2002. In the letter, Micheline Montreuil expresses his disagreement with the statement that he did not provide new information. Micheline Montreuil states that he completely stopped taking hormones in February 2001 and has completely stopped the sex reassignment process, because he wants to join the Canadian Forces. Micheline Montreuil further states that he will never ask the Canadian Forces to pay for any treatment related to sex reassignment and, *if someday, [he] wish[es] to finish the sex change*, he will leave the Canadian Forces so that the Canadian Forces will not have to pay for anything.

[586] Micheline Montreuil adds in his letter that he has submitted new facts that the Canadian Forces have not taken into account. He refers to the fact that three physicians have seen, examined and assessed him several times and three series of reports have been submitted. He points out that his offer to meet with Canadian Forces physicians was declined. Micheline Montreuil ends the letter by stating that there is no medical, logical or legal reason to deny him the right to return to the Canadian Forces, unless it is because they do not want a transgendered person in their ranks. He asks that the diagnosis be changed and all medical limitations removed. Lastly, he states that he may request that his file be brought before the medical review panel if the Canadian Forces physicians do not change their diagnosis.

[587] When asked to comment on the letter, Doctor Assalian stated in his testimony that the stopping of the sex reassignment process and hormones are still being discussed. Doctor Assalian believes that Micheline Montreuil's statements add to the confusion with respect to the Canadian Forces.

[588] On May 31, 2002, Doctor Wright sent Micheline Montreuil's file to the DMedPol for review regarding employment limitations and medical categories. Doctor Wright states in her letter that she has assigned category G4(T6), temporary for six months, while awaiting the review of the file. She states that another review is required even though there is no new medical information. Doctor Newnham stated in her testimony that she does not know why Doctor Wright changed the medical category.

[589] Doctor Ricard of the Directorate of Medical Policy (DCOS Med Pol) wrote to the recruiting medical officer on June 14, 2002. Doctor Ricard states in the letter that the documentation provided has been reviewed and the employment limitation changed, since the applicant is not undergoing medical treatment. The medical category is changed as follows:

Previous limitations

G5: requires regular specialist follow-up; to wear prescription lenses as directed

O2: no occupational limitations

Revised limitations

G5: *chronic medical condition* for which treatment has not been completed; thus the member is at risk of suffering deterioration requiring specialist intervention and treatment

O2: no occupational limitations

[590] Doctor Ricard states in the letter that the changes were made and the employment limitations kept because the medical team must make a firm diagnosis of the medical condition before treatment begins. Although the applicant may decide to interrupt treatment, the health problem remains. Therefore, there is a risk that the applicant may not be able to tolerate the postponement of a treatment that is clearly indicated and recommended. Doctor Ricard believes that such a crisis situation can be resolved only by resuming treatment, and access to specialists would be required, hence the limitations imposed under factor G5.

[591] When asked to specify the type of specialist to which the document was referring, Doctor Boddam was unable to answer and referred to the *Report of Physical Examination* completed on October 11, 2001. The evidence shows that the same question was asked of Doctor Newnham, who responded that she understood from the file that Micheline Montreuil was under the care of a psychiatrist and endocrinologist when she reviewed the file, and those are the specialists to which reference was being made.

[592] When asked to comment on the nature of the chronic medical condition, Doctor Newnham stated in her testimony that she believes that Doctor Ricard is referring to gender dysphoria. When asked to explain the reasoning behind the decision to assign category G5 to Micheline Montreuil and, more specifically, the issue of the diagnosis, Doctor Newnham stated that her understanding of Doctor Ricard's letter is that a diagnosis must have been made, since treatment had been started. A specialist such as an endocrinologist would not undertake treatment unless a diagnosis had been established.

[593] When asked to comment on the contents of the letter, Doctor Assalian stated that he agrees with the position of the Canadian Forces that it is not because a person has stopped taking hormones that the person is guaranteed not to be affected by gender identity disorder anymore. Doctor Assalian believes that gender identity disorder can only be resolved through therapy.

[594] Micheline Montreuil stated in his testimony that he does not see how it is possible for Doctor Wright to assign a G5 on April 4, 2002, and a G4 on May 31, 2002, and then for Doctor Ricard to assign a G5 on June 14, 2002. Micheline Montreuil stated that it is rather absurd, nonsensical, unfounded and contrary to everything, that it is heresy, and that it goes against all medical logic. Micheline Montreuil believes that he is being required to resume treatment and undergo surgery.

[595] Doctor Wright wrote to Micheline Montreuil again on July 30, 2002. Doctor Wright informs Micheline Montreuil in her letter that she has reviewed his medical file and the medical documents it contains. As well, she states that his file has been reviewed a fourth time by the DMedPol.

[596] In her letter, Doctor Wright tells Micheline Montreuil that the DMedPol has changed the medical employment limitation because Micheline Montreuil has stopped undergoing treatment for gender identity disorder. The amended limitations state that Micheline Montreuil has a chronic condition diagnosed by a specialist, the treatment for which Micheline Montreuil has stopped. Doctor Wright states that there is a risk of Micheline Montreuil's condition recurring, and the need for intervention or treatment by a specialist. Therefore, she writes, the medical employment limitations have been reassigned. As a result, Micheline Montreuil unfortunately does not meet the Common Enrolment Medical Standard. Doctor Wright states that the decision of the DMedPol is final and the medical enrolment limitations will remain for as long as Micheline Montreuil stops treatment. The file will not

be reassessed unless the Micheline Montreuil's medical team provides the DMedPol with new information based on a medical assessment performed after June 14, 2002.

[597] Micheline Montreuil emphasized in his testimony that Doctor Tremblay had stated in one of his reports that Micheline Montreuil presented no foreseeable risk of recurrence. Micheline Montreuil believes that the reasoning of the Canadian Forces physicians in this case is illogical and contrary to Doctor Tremblay's opinion on hormone treatments. Micheline Montreuil believes that this is a case of discrimination.

[598] The evidence shows that Captain Cyr talked with Micheline Montreuil on the telephone on September 23, 2002. In a record of the conversation, Captain Cyr writes that he contacted Micheline Montreuil to inform him about the DMedPol's decision on amending the medical category. Captain Cyr said that, further to the letter that Micheline Montreuil had received from Doctor Wright, Micheline Montreuil had to provide the DMedPol with another medical assessment. According to the record, Micheline Montreuil then said that he did not intend to follow those instructions, but would file a complaint with the Canadian Human Rights Commission.

VII. ELEMENTS IN DISPUTE

[599] Beyond the contextual factors described above, the case at bar raises a number of issues that the Tribunal must consider to dispose of the complaint properly. The issues involve the credibility of the witnesses, the concepts of "transgendered" and "transsexual" and their relevance to Micheline Montreuil's condition, the assessments of Micheline Montreuil's file by the Canadian Forces, the assessment reports presented in this case, and the correctness of decisions made by the Canadian Forces in light of certain elements.

A. Credibility of witnesses

[600] As in any legal proceeding, such as human rights, the credibility of the persons summoned as witnesses is often determinative of the outcome. Credibility is especially important in human rights cases, because the complainant need only present *prima facie* evidence initially. Therefore, to the extent that the Tribunal believes the complainant's allegations of discrimination, the burden of proof is shifted to the respondent, who must then provide an explanation that dispels any impression of discrimination. If such an explanation is provided, then the complainant must show that the explanation is but an excuse to hide the alleged discriminatory behaviour.

[601] In this proceeding, the Tribunal has heard a large number of factual and expert witnesses summoned by Micheline Montreuil, the Commission and the respondent. The Tribunal will consider the credibility of each factual witness and each expert witness heard in the case at bar.

(i) Factual witnesses

[602] The Tribunal heard 15 factual witnesses in the case at bar.

a) Micheline Montreuil

[603] In this case, Micheline Montreuil testified at length on a number of points. The Tribunal notes from Micheline Montreuil's testimony that he is a highly intelligent person, with an IQ of 156, who is very knowledgeable about an impressive number of real-life topics, very socially involved and very articulate, and who thinks extremely highly of himself.

[604] On the basis of all his statements at the hearing and all the documentary and testimonial evidence, the Tribunal finds that Micheline Montreuil is in many ways a manipulative person

who uses inflated language and does not hesitate to distort reality for his own benefit, and a person who tends to exaggerate and who will conceal facts if that will serve his interests.

Micheline Montreuil, manipulator

[605] In the opinion of the Tribunal, Micheline Montreuil does not hesitate to use people for his own benefit, to achieve his goals. For example, Doctor Côté's testimony in this case clearly shows that he felt trapped by Micheline Montreuil's requests for medical reports. When asked why he wrote the reports, Doctor Côté's discomfort was palpable. Micheline Montreuil knew well that Doctor Côté was not his psychiatrist and had no involvement whatsoever in any assessment of his transgendered condition, yet he requested medical reports from Doctor Côté on three occasions, reports that did not answer the questions of Canadian Forces physicians. He did not hesitate to knowingly put Doctor Côté in an awkward situation, to serve his own interests.

[606] Moreover, the evidence clearly shows that Micheline Montreuil attempted to guide Doctor Lehoux, Doctor Côté and Doctor Tremblay regarding the information that should appear in the reports that he was requesting to be sent to the Canadian Forces. The letter he sent Doctor Tremblay on October 12, 1999, is a prime example.

[607] Consequently, rather than ask the physicians caring for him to respond to the information requests from the Canadian Forces for a file summary, Micheline Montreuil strongly suggested-requested that they certify, in fact-that it was necessary for him to enrol in the Canadian Forces as a woman.

[608] Although the evidence regarding Doctor Côté is circumstantial, the evidence is direct with respect to Doctor Lehoux and Doctor Tremblay. The similarity of the statements in the letter that Micheline Montreuil sent Doctor Tremblay on October 12, 1999, and those in Doctor Tremblay's report and especially Doctor Lehoux's report leave little doubt, especially regarding the expressions [translation] *logical and rational*, and the necessity of joining the Canadian Forces [translation] *as a woman*. The explanation given at the hearing by Micheline Montreuil, that he and Doctor Lehoux knew each other well, so that Doctor Lehoux had been able to observe Micheline Montreuil's methodical nature, does not hold water when the similarity of the wording in the letter to Doctor Tremblay is taken into account.

[609] That said, the Tribunal points out that it was not for Doctor Lehoux, as a general practitioner, to comment on the two questions, given that her only medical involvement with Micheline Montreuil was regarding laser hair removal. Why did she do it? No doubt because she had been asked.

[610] As for Pierre Montreuil's application for judicial review of the decision of the adjudicator who heard the grievance filed after Pierre Montreuil was forced to resign from Collège Garneau, it appears from Doctor Côté's testimony that it was Micheline Montreuil and the Union that determined the medical issue. Moreover, as for the truth of the facts in the application for judicial review, Micheline Montreuil stated at the hearing that an application for judicial review is a document in which facts are manipulated to support a position, there is no room for nuances, everything is an erudite legal construct, many points are arguments-not facts-and must be considered with the greatest caution, and everything is done to meet the test for a patently unreasonable decision.

[611] In the opinion of the Tribunal, all the points above show that Micheline Montreuil is a person who manipulates the truth and the integrity of the people whom he approaches to serve his interests.

Micheline Montreuil, exaggerator of reality

[612] In the Tribunal's opinion, Micheline Montreuil also tends to exaggerate reality to achieve his goals and advance his interests. In the case at bar, the Tribunal gives the example of Micheline Montreuil's testimony on the affidavit he produced in the Superior Court regarding his application for judicial review of the decision of the adjudicator who heard his grievance.

[613] Micheline Montreuil testified that he did not hesitate to amplify certain facts in the affidavit, to meet the test for judicial review. In the Tribunal's opinion, that approach renders certain statements by Micheline Montreuil in this case suspect. The Tribunal takes as fact the statements in the detailed affidavit dated June 21, 2000, that was produced in the Superior Court. The Tribunal cannot, as Micheline Montreuil has suggested, consider those facts to be simply submissions to win the support of the Court rather than true facts describing the reality of Pierre or Micheline Montreuil's life.

[614] The evidence also shows that Micheline Montreuil did not hesitate, when speaking about the three physicians whom he approached to obtain medical reports, to say that they were [translation] *three of the best specialists* in the Québec region, knowing full well that Doctor Lehoux was not a specialist in dermatology and Doctor Côté had never assessed his condition as a transgendered person. The Tribunal believes that, far from demonstrating honesty in the matter, Micheline Montreuil wanted to deliberately embellish the situation in an attempt to show the Canadian Forces that they did not measure up to the physicians whose services he had retained to prepare medical reports that would serve his personal interests.

Micheline Montreuil, distorter of reality

[615] The Tribunal also notes that Micheline Montreuil tends to distort reality, or at least rearrange it, to serve his own interests. Micheline Montreuil likes to play with words. Throughout this hearing Micheline Montreuil maintained that he was transgendered and not transsexual. Yet he does not hesitate to refer to himself as transsexual in some of his own letters to the Canadian Forces, such as the letter to Doctor Collins on March 21, 2001. Micheline Montreuil explained during testimony that he used "transsexual" because "transgendered" is not a well-known term in general, not even in the medical profession. Rather than explain what he really is, he prefers to play both ends by describing himself as female, when he is biologically male and considers himself in between the two sexes.

[616] Moreover, Micheline Montreuil repeatedly stated that he never wanted to change his sex, yet he repeatedly refers to his hormonal therapy when discussing the issue of sex reassignment in his letters to the Canadian Forces. It appears from the evidence that, since it was not stated that he wanted to cut off his penis and have a vagina, Micheline Montreuil expected his target audience to understand that he was not in a sex reassignment process and was not transsexual, even though he described himself as transsexual.

[617] Moreover, as sad as it may be, Micheline Montreuil does not hesitate to lie, or at least withhold or twist the truth, if that will serve his interests or advance his cause. For example, in his letter to Doctor Wright on May 15, 2002, Micheline Montreuil writes: "Three

physicians in Québec City have met me, examined me, tested me many times and sent to you three series of report that I am well fit for duty." The evidence in this proceeding does not tend to support such a statement. In fact, the evidence shows that Doctor Côté never assessed Micheline Montreuil for his condition as a transgendered person, and that is something that Micheline Montreuil knew when he wrote the letter dated May 15, 2002. The evidence also shows that Doctor Lehoux was not a specialist and her role was limited to providing laser hair removal treatments.

[618] Lastly, an analysis of the documentation filed by Micheline Montreuil shows that he tries to have things both ways. It is clear from the evidence that Micheline Montreuil wanted breasts but not chemical castration. In a letter to Doctor Collins dated December 22, 1999, Micheline Montreuil states that he gives his word that he will not have any sex reassignment surgery or any other surgery, such as a breast implant operation. However, a note to file by Doctor Tremblay dated April 4, 2000, states that Micheline Montreuil foresees possibly having plastic surgery on his breasts.

[619] As another example, Micheline Montreuil stated repeatedly in his testimony that his change of name application, filed in 1997, had nothing to do with sex reassignment, but was done to avoid transportation and accommodation problems when he travelled under the guise of being a woman.

[620] Yet, in his detailed affidavit dated June 21, 2000, prepared in support of his application for judicial review of adjudicator Morin's decision, Micheline Montreuil states that he prepared his change of name application in September 1997 [translation] *as a prerequisite to his sex reassignment*. Micheline Montreuil testified that, when a person submits a change of name application, it implies that there will be changes. Micheline Montreuil added that, for name changes, the Directeur de l'État civil required that a reason be given for adopting a traditionally female given name, and his reason at the time was that he was considering sex reassignment.

Micheline Montreuil, player of word games

[621] When questioned during testimony about the depression he mentions in the detailed affidavit, which he allegedly experienced in December 1997, and January, February and March 1998, Micheline Montreuil candidly stated that it is impossible for him to be in a state of depression, because only a psychiatrist can characterize such a state, and what was involved here was a state of sadness. He therefore denies that he was in a state of depression, as stated in the affidavit, on the ground that the term is banished from the language and can only be used by psychiatrists because depression is a psychiatric illness, and he is not qualified to use the word "depression." However, throughout the hearing, when giving his own assessment of his condition, Micheline Montreuil stated that he has no psychiatric pathologies.

[622] From this aspect of Micheline Montreuil's testimony, the Tribunal finds that Micheline Montreuil does not hesitate to play with words to achieve his own ends: he has his own vocabulary and assigns his own meanings to words. The evidence clearly shows that, when Micheline Montreuil states that he is transsexual, he actually means that he is transgendered; when he states that he is doing something as part of a sex reassignment process, he is not actually planning for sex reassignment, but simply breast augmentation; when he says that he was depressed, he in fact means that he was sad, a term that he claims reflects reality more closely; when he says that he was under the care of three physicians, he

in fact means that he was under the care of Doctor Lehoux and Doctor Tremblay but not Doctor Côté, and there was no connection between those physicians; when he states that he asked his psychiatrist, he actually means that the psychiatrist was not his, that he never consulted Doctor Tremblay as part of a sex reassignment process, as Doctor Tremblay maintains, but only to make his breasts grow.

Micheline Montreuil, concealer of facts

[623] Moreover, the evidence shows that Micheline Montreuil did not reveal to the Canadian Forces that he was depressed after being forced to resign from Collège Garneau, even though he stated so in his affidavit and even though he is apparently very good at assessing himself. When Micheline Montreuil completed the enrolment questionnaire, he did not reveal that period of his life. He did not state that he had been depressed at that time. He did not say, as he stated in his application for judicial review, that Doctor Côté diagnosed Pierre Montreuil as having a gender identity disorder.

[624] The Tribunal infers that Micheline Montreuil was not completely honest in answering the questionnaire. Micheline Montreuil may argue that he exaggerated the facts for purposes of the application for judicial review and that the application or affidavit is inconsistent with reality. If that is so, then one may wonder about the credibility of Micheline Montreuil's statements and the extent to which one may rely on them as reflecting reality.

[625] From the above points, the Tribunal concludes that Micheline Montreuil will do everything that he can to reach his goals, will not hesitate to use the people he knows for his own benefit, without worrying about leading them to engage in unethical conduct, and will readily distort reality to confuse the people with whom he deals.

b) Micheline Montreuil's witnesses

[626] Micheline Montreuil summoned three witnesses, namely, Daniel Trudel, an instructor at Collège de Limoilou who claims to have known Micheline Pierre Montreuil for 30 years; Hélène Trudel, Daniel Trudel's spouse, an accountant who also claims to have known Micheline Pierre Montreuil for 30 years; and André Gravel, a professor who claims to have known Micheline Montreuil for more than 20 years and who shared an office with Micheline Montreuil at Collège Garneau for 10 years.

[627] Essentially, the witnesses summoned by Micheline Montreuil testified that Micheline Montreuil is of good moral character, drinks little, does not smoke or use drugs, is never angry, is always calm, helpful, reliable, always optimistic and never pessimistic, is sensible, thoughtful, very humane, generous, intelligent-very intelligent, in fact-responsible, hard working, very efficient, rational, well rounded, even keeled, very self-controlled and friendly, has a strong personality, is respectful of everyone, is very logical, very disciplined, very organized and not suicidal, is polite and dedicated, and has a strong character and ego.

[628] The witnesses summoned by Micheline Montreuil also stated that they were not disturbed by his or her dressing as a woman, and Micheline Montreuil never told them that he wanted a sex reassignment operation. Ms. Trudel testified that she considers Micheline Montreuil to be an archangel, and she believes that Micheline is most comfortable as both Pierre and Micheline.

[629] The Tribunal notes that André Gravel had been summoned as a witness at the hearing for the grievance that Pierre Montreuil filed against Collège Garneau. In Pierre Montreuil's application for judicial review of the adjudicator's decision, Pierre Montreuil criticizes the

adjudicator for failing to mention that André Gravel had noticed Pierre Montreuil's incoherence and despair during a conversation between the two on the evening of December 3, 1997, and that André Gravel had also noticed that Pierre Montreuil was not behaving normally on September 4 and, on December 5, 1997, was not acting normally, was crying and was defeated. Essentially the same facts are found in the detailed affidavit signed by Pierre Montreuil on June 21, 2000.

[630] Could it be that the application and affidavit are wrong? Could Mr. Gravel have forgotten that important period in Pierre Montreuil's life? Could his testimony in this proceeding be false? Regardless, the Tribunal notes that the testimony thus far of the three witnesses summoned by Micheline Montreuil is similar, if not identical, and so angelic that the Tribunal has reason to doubt the sincerity of the witnesses.

[631] Moreover, Micheline Montreuil's behaviour, which the Tribunal was able to observe in the hearing room for more than 90 days, does not fully support the claims of Micheline Montreuil's witnesses. The Tribunal observed mood swings and behaviour that showed a lack of respect for the administration of justice, such as episodes of narcolepsy and the intimidation of third parties. The Tribunal has no doubt that Micheline Montreuil is of good moral character, but strongly doubts that he is as perfect as his witnesses appear to claim.

c) Canadian Forces witnesses

[632] In this proceeding, the respondent summoned a number of witnesses who are members of the Canadian Forces, including Major Labonté, Warrant Officer Dumais, Doctor Collins, Doctor Newnham, Colonel Fletcher, Doctor Boddam and Doctor Watson. They explained either their involvement in assessing Micheline Montreuil's application, or various aspects of military life. In addition, the respondent summoned as witnesses two physicians who had prepared medical reports for Micheline Montreuil's application for enrolment, namely, Doctor Tremblay and Doctor Côté. As well, three witnesses were heard regarding a remedy.

[633] In the Tribunal's opinion, Warrant Officer Dumais, Doctor Collins, Doctor Newnham and Doctor Boddam, all of whom were involved in the medical assessment of Micheline Montreuil's file, testified with self-assurance and without exaggeration, in an attempt simply to explain their findings and their understanding of Micheline Montreuil's application, as constituted from information provided by Micheline Montreuil and the physicians he had approached, and the findings of the physician assistants who examined Micheline Montreuil.

[634] The Tribunal finds that the other witnesses, namely, Major Labonté, Colonel Fletcher, Doctor Watson and Doctor Dufour, also testified in a sincere, straightforward and simple manner. The information regarding the Canadian Forces enrolment process, minimum medical category, universality of service principle and transsexual members of the Canadian Forces was most helpful for the Tribunal to understand some of the more complex and unknown aspects of military life.

[635] The Tribunal has no doubt that Doctor Côté and Doctor Tremblay testified with sincerity. However, it appears from Doctor Côté's testimony that he was very uncomfortable about having to appear before the Tribunal to explain his role in Micheline Montreuil's application for enrolment. It was obvious to the Tribunal that he was ashamed of having been drawn into the assessment of Micheline Montreuil's file. The Tribunal finds that Doctor Tremblay sometimes dodged questions, especially concerning whether Micheline Montreuil's condition was transgendered or transsexual. Nevertheless, Doctor Tremblay was particularly informative regarding the transsexual people who go to see him and the transgendered realm that he sees in his practice.

[636] In addition to Major Labonté, the Tribunal heard from Josh Pankhurst regarding a remedy. Josh Pankhurst simply testified on the source of the information used by the actuary.

(ii) Expert witnesses

[637] The Tribunal heard from four expert witnesses, namely, Dr. Pierre Assalian and Dr. Édouard Beltrami. The former is a psychiatrist and expert in sexology, the latter, a psychiatrist and expert in occupational medicine and sexology. The Tribunal also heard from Dr. Richard Karmel, a psychologist, and Daniel Hébert, an actuary.

a) Dr. Pierre Assalian

[638] Doctor Assalian provided the Tribunal with very relevant information on transsexualism and its various forms, as well as the DSM-IV and its use in psychiatry. During the hearing, it was very obvious that there was antagonism between Doctor Assalian and his team and Micheline Montreuil, who readily accused Doctor Assalian of trying to make him look like a queen and a nutcase.

[639] Nevertheless, in the Tribunal's opinion, that did not affect the quality of Doctor Assalian's testimony regarding the scientific information he sent to the Tribunal and his experiences as a psychiatrist treating people with gender dysphoria. Doctor Assalian appears to the Tribunal to be a man and professional of conviction with strongly held views on transgenderism.

[640] Doctor Assalian believes that transgenderism may be considered a social phenomenon with which he has trouble dealing, as a physician. Nonetheless, he believes that an individual who considers himself or herself to be a transgendered, preoperative transsexual or transitioning person is an individual with a sexual identity or gender identity disorder. As a psychiatrist, Doctor Assalian denies that a person can be in between the two sexes and does not believe that there is a third sex, which means that he sometimes has strongly held views on transgenderism as a phenomenon. The Tribunal also notes that Doctor Assalian can tend to place a pathological connotation on actions related to an individual's rights, such as a changing one's name or suing a third party.

[641] Doctor Assalian clearly stated that, regardless of what Micheline Montreuil says and even though Micheline Montreuil does not meet all the tests for gender dysphoria or borderline personality disorder, Doctor Assalian still believes that Micheline Montreuil has one or more psychiatric pathologies and requires care from professionals involved in treating persons with gender dysphoria, and that the Canadian Forces were justified in rejecting Micheline Montreuil's application for enrolment. The Tribunal's role is to determine whether or not to accept the opinions of an expert, on the basis of the evidence presented and the testimony heard.

b) Doctor Beltrami

[642] Doctor Beltrami, like Doctor Assalian, provided the Tribunal with highly relevant information about his practice, transsexualism and gender identity disorders, as well as the DSM-IV. The Tribunal notes that Doctor Beltrami is less stringent than Doctor Assalian with regard to Micheline Montreuil having a gender identity disorder or borderline personality disorder. Without denying that Micheline Montreuil had a definite psychiatric issue, Doctor Beltrami describes the issue using terms that are less absolute than those used by Doctor Assalian. Unlike Doctor Assalian, Doctor Beltrami shows openness toward transgenderism and its existence as a social reality. Moreover, the Tribunal notes that Doctor Beltrami, during testimony, qualified some of the opinions in his report in light of

additional information he received, which adds to the credibility of his testimony and positions.

c) Dr. Richard Karmel

[643] The Tribunal heard from Dr. Richard Karmel as a witness. Doctor Karmel was described by the Tribunal as an expert psychologist specializing in the administration and interpretation of MMPI tests as psychological assessment tests. The Tribunal greatly appreciated the clarity of the information and explanations provided on the administration and interpretation of MMPI tests, as well as Doctor Karmel's professionalism.

d) Daniel Hébert

[644] The respondent summoned Daniel Hébert, an actuary, regarding the remedy sought by Micheline Montreuil. Mr. Hébert testified in a competent, sincere manner. The Tribunal greatly appreciated the availability of Mr. Hébert, who agreed to create additional tables at the request of the Tribunal, to update his expert report.

B. Concepts of "transgendered" and "transsexual"

[645] A number of elements are at the heart of this dispute, not the least of which are the concepts of "transgendered" and "transsexual," and the realities hidden behind those concepts. Also at the heart of this dispute are the concepts of "gender dysphoria" and "borderline personality." The following is an analysis of each element on the basis of the evidence.

[646] To fully understand this case, the concepts of "transgendered" and "transsexual" should first be clarified, and details given on what is sometimes called the *transgendered realm* or *transgenderism*. Second, the reality and medical care of transsexual persons should be considered with respect to the evidence in this case.

(i) Transgendered persons and the transgendered realm

[647] The Tribunal heard various points of view from various witnesses regarding transgendered persons and the transgendered realm. Also put in evidence were certain scientific articles to which reference should be made.

a) Testimony

[648] At this hearing, a number of people were asked for their point of view, given their experience, on the concepts of "transgendered " and "transsexual," as well as the transgendered realm and transgenderism, namely, Micheline Montreuil, Dr. Pierre Assalian, Dr. Édouard Beltrami and Dr. Rolland Tremblay. In addition, various scientific articles on the concepts were put in evidence. It is worthwhile to consider each element.

1. Micheline Montreuil's testimony

[649] Throughout the hearing of this matter, Micheline Montreuil repeatedly stated that he is not a transsexual person, but a transgendered person. It is important to examine his point of view on his *own condition* and his understanding of the *transgendered reality* and the *transgendered realm*.

[650] In the case at bar, Micheline Montreuil testified at length about his condition and the condition of transgendered persons. Although he was not recognized as an expert on the subject, the Tribunal nevertheless permitted Micheline Montreuil to state his specific knowledge about the transgendered realm and the transgendered condition, as well as his view and understanding of associated concepts, such as cross-dressing and transsexualism,

since the evidence shows that Micheline Montreuil has been involved in that scene for more than 15 years.

[651] Micheline Montreuil claims to be the first transgendered person to apply for enrolment in the Canadian Forces. His website states that she is the first well-known transgendered person in Quebec and it is therefore up to her to open the doors. The Tribunal notes that Micheline Montreuil sees himself as the standard bearer of transgendered people in Quebec, and that may influence his positions, given his activism in that area.

[652] Micheline Montreuil maintains that the only difference between his 1995 and 1999 applications for enrolment was that he wore a dress in 1999, having become transgendered. He maintains that nothing else had changed. The evidence shows that Pierre Montreuil was cross-dressing in public long before 1999 and long before the start of his hormonal therapy in 1998. The evidence shows that he attended a convention in 1996 in Chicago for transvestites and transgendered people, one year after his 1995 application for enrolment. The evidence shows that when his 1995 application for enrolment was being processed, the Canadian Forces were unaware of Pierre Montreuil's cross-dressing behaviours.

[653] As for his own condition, Micheline Montreuil considers himself to be a transgendered person, that is, a person who simply *lives in between the two genders*. Micheline Montreuil describes himself as a mixed person, a person who falls in between the two views of the world: the man's and the woman's. He considers himself neither a man nor a woman, but rather in between, and he claims that he considers himself, in his words, a man below and a woman above. He also sees himself as a person in transition. He claims to be of the third sex.

[654] Micheline Montreuil stated that his condition as a transgendered person was made public in September 1998. However, according to his testimony, it was on May 13, 1998, that he decided to stay dressed as a woman. The evidence shows that Micheline Montreuil started to call himself "Micheline" in 1986, but his change of name application, submitted in October 1997, was not accepted until 2002. From 1986 to 1998, Micheline Montreuil dressed as a woman when travelling, at conventions and at Halloween parties. He stated that his cross-dressing side remained hidden during that period. The evidence also shows that Micheline Montreuil's spouse considered him to be a man, while he presented himself socially as a woman, even though he considered himself to be in between the two sexes.

[655] Micheline Montreuil stated in his testimony that, as a transgendered person, he is a person who violates cultural norms by dressing regularly as a person of the other sex but not wanting an operation. Micheline Montreuil also described himself as a man living as a woman who has a pair of breasts and a penis. Micheline Montreuil maintains that he likes living in between the two sexes, feels comfortable that way and is not ashamed about what he feels.

[656] Although he stated that, as a transgendered person, he is neither male nor female but in between, Micheline Montreuil in fact considers himself socially female and biologically male. His masculine side consists only of his genitalia, his penis. He asks to be called "Madam" even though he is male. That said, Micheline Montreuil did acknowledge that, as far as his civil status is concerned, he is male. Therefore, he admitted in his testimony that his government health insurance card states that he is male. However, the evidence shows that his hospital card states that he is female.

[657] Although he considers himself in between the two sexes, Micheline Montreuil assumes a female identity, works dressed as a woman, goes out dressed as a woman, travels dressed as

a woman and immerses himself as much as possible in the world of women. He stated that he describes himself as a woman but lives in between the two sexes, adding, [translation] "What is the problem?" He explained that he wears women's clothing because he does not find shirt collars and neckties very comfortable. He stated that he is comfortable as a man or woman, and living dressed as a woman is a personal choice.

[658] As well, Micheline Montreuil categorically denied that he is a transsexual person who cross-dresses for fun. He claims to see himself as a man who has a pair of breasts but does not want to go any further. He stated repeatedly in his testimony that he does not want to have his penis cut off.

[659] Micheline Montreuil believes that his development is not that of a transsexual person, but that of a transvestite. He stated that, when one stays a woman 24 hours a day, one goes from being transvestite to transgendered pure and simple.

[660] Micheline Montreuil testified that, on his website, he describes himself as a preoperative transsexual in the popular sense of the term, explaining that the purpose of his website is to educate the public. Micheline Montreuil explained that he uses the two terms side by side because many people find it hard to understand the meaning of the term "transgendered." However, Micheline Montreuil emphasized that there is a fundamental difference between the two.

[661] Micheline Montreuil also testified that he does not see why people cannot understand that the reality, simply put, is that he wanted to have, and took the steps to obtain, a pair of breasts to go with his identity, without destroying his male hormonal system and without undergoing a sex reassignment operation.

[662] To Micheline Montreuil, a transgendered person is a person in between the two sexes, a person who may have characteristics of a drag queen, cross-dresser and transsexual, without being completely one or the other. To him, a transgendered person is a man who has decided to live as a woman 24 hours a day, that is, a permanent cross-dresser. Micheline Montreuil testified that he believes a transgendered person is also a preoperative transsexual.

[663] According to Micheline Montreuil, the term "transgendered" was created by Virginia Prince to describe a reality that the conventional nomenclature could not define, that is, the reality of persons who believed that one had to go beyond the division of the sexes into male and female, and that the term transsexual was inadequate to describe that new reality. Micheline Montreuil stated that most transgendered persons reject the idea that their condition should appear in the DSM-IV. For those persons, being transgendered is simply a variation of human behaviour.

[664] In general, Micheline Montreuil objects to transgendered persons being described a having a mental disorder or mental illness. Micheline Montreuil believes that being transgendered is a social reality and not a mental illness. Moreover, Micheline Montreuil believes that transgendered people do not have any characteristics of transvestites, transvestite fetishists, drag queens or transsexuals, who are people intending to undergo a sex reassignment operation.

[665] Micheline Montreuil stated that there are many interpretations of the term "transgendered" with respect to the reality he is trying define. To some, a transgendered person is a person of either sex who lives under the appearance of the opposite sex by adopting certain specific characteristics of that sex; to others, a transgendered person is one

who spans both sexes; to yet others, it is a person who lives in between the two sexes, has no sex and is a third sex.

[666] Micheline Montreuil emphasized in his testimony that the issue of a transgendered person is not the same as that of a transsexual person and a transgendered person cannot be equated with a transsexual person. He believes that, unlike transgendered persons, transsexual persons hate their bodies, hate their penis and, in the case of men, are unable to live as men. Micheline Montreuil testified again and again that he has never wanted to have his penis cut off or try to have it removed. Moreover, unlike a transsexual person, a transgendered person has a desire to live as a woman and dress as a woman, as evidenced by the photograph of a group of transgendered persons taken at a convention in Chicago in 1996.

[667] Micheline Montreuil also testified, referring to the photograph of a group of transgendered persons taken at a convention in Chicago in 1996 and entered in evidence, that one characteristic of transgendered persons is the desire to dress and behave as women. When asked to explain whether or not there were characteristics specific to transgendered persons other than dress and certain behaviours, Micheline Montreuil testified that there were not really any others. However, Micheline Montreuil acknowledged that surgery may be a characteristic in some transgendered people.

[668] Micheline Montreuil further testified that transsexual people feel a deep need for sex reassignment, feeling that they do not have a body compatible with their spirit. Micheline Montreuil stated that such people feel that need from a young age and throughout adolescence, exhibit behaviours that can be inconsistent with their sex, and end up in the office of a psychologist or psychiatrist around age 18, asking for sex reassignment. To Micheline Montreuil, transsexual people have an irrepressible urge to change their sex and will go to any length to do so.

[669] Micheline Montreuil stated that transgendered people do not have a desire to change their sex, and the transgendered condition does not appear until later in life, in one's twenties. To Micheline Montreuil, a person becomes transgendered by choice, and not as a result of an irrepressible urge. Micheline Montreuil stated that two characteristics separate transgendered persons from transsexual persons. First, transgendered people do not want sex reassignment and have never had an irrepressible urge to change their gender; they are like permanent cross-dressers who are happy as they are. Second, transgendered people do not require women's clothing for sexual arousal. They are simply people who want to dress differently and wear jewellery and makeup-nothing more.

[670] To Micheline Montreuil, transgendered people, unlike transsexual people, do not feel that they are in the wrong body, but rather wish to modify their body slightly, in certain cases, to make it more pleasing to them, such as taking hormones to develop breasts. To Micheline Montreuil, the simple fact that a man is taking hormones to develop a female bust should not be taken as conclusive evidence of a gender identity disorder.

[671] Micheline Montreuil further maintains that transgendered people are happy people who are content to be who they are. To support that statement, Micheline Montreuil again referred to the photograph of people whom he claims are transgendered, at a convention in Chicago in 1996. In the photograph, Micheline Montreuil appears dressed as a woman, in the company of several other men who are also dressed as women. Micheline Montreuil believes that the photograph clearly shows that a man dressing as women-being transgendered-is a current social phenomenon.

[672] With respect to the photograph, Micheline Montreuil testified that it was when the Canadian Forces discovered that he wore a dress that he was diagnosed with gender identity disorder, that he became, as mentioned in his testimony, an outcast, a queen, a nutcase, a person with gender dysphoria who needed a vagina at any cost, and who needed treatment.

[673] Micheline Montreuil emphasized that, if the Canadian Forces were unaware of material such as the photograph, Micheline Montreuil would not be perceived as a person with a gender identity disorder. He added in his testimony that when he was admitted into the Régiment des Voltigeurs of the Canadian Forces in 1997 as Pierre Montreuil, he was assigned category G2O2 because, according to him, the Canadian Forces had not seen the photograph but, when the Canadian Forces learned that he dressed as a woman, the situation changed. Micheline Montreuil was diagnosed with a gender identity disorder and, in 1999, as Micheline Montreuil, he was assigned category G5O2.

[674] Lastly, Micheline Montreuil believes that it is not the role of the medical profession to determine whether or not being transgendered, or even transsexual, is a mental illness, insofar as the behaviour is human. Micheline Montreuil objects to the pathologization, psychiatrization or medicalization of the trans identity. Micheline Montreuil believes that the debate surrounding the status of transgender (including LGBT) is more political and social than medical. He referred, in his testimony, to the 2006 *Declaration of Montréal*.

[675] To Micheline Montreuil, the TTT (transvestite, transgendered, transsexual) realm is a social or sociological reality and not a medical reality or pathology. To him, the transgendered realm is a reality that cannot be grasped per se, but is described by a set of diverse elements and people. To Micheline Montreuil, it is hard to find characteristics common to all transgendered people. Micheline Montreuil believes that transgendered persons do not identify with a predetermined role, but take on the role they want to have.

[676] Micheline Montreuil stated that almost all behaviours, possible and impossible-in fact, everything between a normal man and a normal woman-are found in the trans realm, including transvestites, drag queens, butches, two-spirited people, cross-dressers, transgendered people, transsexual people and she-males.

2. Doctor Assalian's testimony

[677] Doctor Assalian acknowledged in his testimony that he has never actually treated a transgendered person, such as Micheline Montreuil, nor has he written any scientific articles on transgendered persons. The evidence shows that people like Micheline Montreuil, who consider themselves of the *third sex*, do not go to Doctor Assalian's clinic. It is therefore not surprising that Doctor Assalian has not encountered any transgendered people in his practice and has not treated any of them, his medical practice focusing primarily on transsexual persons who make appointments with him because they are suffering.

[678] Doctor Assalian admitted in his testimony that the term "transgendered" generally refers to individuals whose appearance and behaviour are inconsistent with the social roles prescribed by society for their sex, individuals who violate cultural norms to varying degrees with respect to what a man or woman is supposed to be, and those violations may include occasionally or regularly dressing as a person of the other sex.

[679] Doctor Assalian also noted that transgendered people say that they do not have psychological or psychiatric problems, are not transsexual, are not necessarily male or female, are in fact both male and female simultaneously, have an identity that is different from that of males and females, and do not have an illness.

[680] Doctor Assalian testified that, for clinicians, however, transgendered persons are persons with a gender identity disorder, or gender dysphoria, just like transsexual and transvestite persons. As a clinician, he refuses to view the transgendered phenomenon as a simple sociological reality.

[681] As a clinician, Doctor Assalian believes that a person who says that he will live as a person of the third gender or sex, who will live "in between," is showing symptoms of a gender identity or sexual identity disorder. Moreover, Doctor Assalian believes that a person who takes hormones for the sole purpose of having breasts is confused about his gender. Doctor Assalian stated that there are only two sexes, male and female.

[682] To Doctor Assalian, people who present themselves as transgendered are trying to make normal something that is fundamentally a disorder. Doctor Assalian agreed that "gender dysphoria" refers to individuals who are uncomfortable with their gender and want sex reassignment surgery. Doctor Assalian stated in his testimony that Micheline Montreuil is suffering from a gender identity disorder because he is confused between being a man and being a woman, because he dresses as a woman because dresses are more comfortable, and because he is living as a man with a wife. To Doctor Assalian, all of that suggests that Micheline Montreuil is confused about his role or gender. Micheline Montreuil strongly disagrees.

[683] Doctor Assalian further testified that Micheline Montreuil having a female name, dressing as a woman and having sex as a man is inconsistent with his understanding of transgendered persons. Doctor Assalian also noted in his testimony that Micheline Montreuil's spouse refers to Micheline Montreuil as her big, handsome Viking, and therefore as a man. Micheline Montreuil admitted that that is true.

[684] Doctor Assalian testified that he is familiar with the TTT (transvestite, transgendered, transsexual) realm. To Doctor Assalian, the TTT realm or transgenderism is a phenomenon of a social nature that began with Virginia Prince, who is recognized as the first person to consider herself transgendered, in between male and female, representing a third sex, and the first to use the term "transgenderism."

[685] To Doctor Assalian, to discuss transgenderism is to discuss gender identity disorder. He believes that, even though it may be considered to be a social phenomenon, a person who considers himself transgendered is in fact uncomfortable. To Doctor Assalian, "transgenderism" does not refer to a person living in between male and female, but instead refers clearly to a non-operated female.

[686] Doctor Assalian stated that Virginia Prince considered herself to be a non-operated female who had breasts through hormone treatments and who did not wish to go as far as to have surgery, and it was in that context that she called herself transgendered. Doctor Assalian noted in his testimony that Virginia Prince, who considered herself transgendered, was male at birth but chose at some point to cross the line completely and live as a woman from then on.

[687] To Virginia Prince, the term "transgendered" referred to a male person wishing to live as a woman. To Micheline Montreuil, "transgendered" has a much broader connotation. The concept refers to a person who considers himself both male and female simultaneously. Doctor Assalian stated that Virginia Prince believed that society should accept those people as they were and that those people did not necessarily have an illness.

[688] Doctor Assalian stated that there is an interesting parallel between Micheline Montreuil and Virginia Prince. Doctor Assalian went as far as to say that Micheline Montreuil may be Quebec's Virginia Prince. However, according to Doctor Assalian, the difference between Micheline Montreuil and Virginia Prince is that Virginia Prince accepted that he was biologically male but living as a female, while Micheline Montreuil, who is biologically male, has taken hormones, uses a female given name, dresses as a woman but is sexually active as a man with a wife.

3. Doctor Beltrami's testimony

[689] Doctor Beltrami was asked during testimony to comment on Micheline Montreuil's perception of himself, the concept of "transgendered," and Doctor Beltrami's view on the transgendered realm.

[690] Doctor Beltrami stated that he was surprised to hear Micheline Montreuil say that a transgendered person is a full-time cross-dresser. Doctor Beltrami stated that he saw in Micheline Montreuil a person who wanted to increase the social acceptance of the transgendered reality. Doctor Beltrami also believes that Micheline Montreuil is demanding the right to dress as he wishes and it is up to society to change its norms, as it has done for homosexuality. In his report, Doctor Beltrami finds that Micheline Montreuil's problem is a social one more than anything else.

[691] Doctor Beltrami acknowledged in his testimony that Micheline Montreuil's development was complex but could be summarized as follows: Doctor Beltrami believes that Micheline Montreuil was seeking a complete transformation initially, then underwent hormonal therapy to develop breasts, and finally developed an issue of dressing as a woman. Doctor Beltrami partially contradicted Micheline Montreuil, who stated that he wanted simply to be able to dress as a woman while being a man. Doctor Beltrami added in his testimony that it is rather unusual to see a man who wants to retain his male attributes and sexuality but live as a woman, actually living in between the two.

[692] When asked to explain what he meant by "living in between the two," Doctor Beltrami stated that that meant retaining male attributes, such as erection, penetration, ejaculation and attraction to non-homosexual women. Doctor Beltrami believes that that is a new, special situation.

[693] Doctor Beltrami believes that Micheline Montreuil's motivation to live as a woman is that women's clothing is much less restricting and more pleasant to wear. However, Doctor Beltrami stated that he finds it hard to believe that Micheline Montreuil's problem is simply that he feels better in women's clothing.

[694] To Doctor Beltrami, a transgendered person is a male who has a feminine appearance but male genitalia. To Doctor Beltrami, there is no question that Micheline Montreuil is biologically a man. To Micheline Montreuil, a transgendered person is a permanent cross-dresser, stated Doctor Beltrami.

[695] When asked to distinguish between a transsexual person and a transgendered person, Doctor Beltrami stated that the transgendered person is a new phenomenon characterized by the fact that some people do not want to see a doctor, do not want hormones and end up adapting to the world around them. However, Doctor Beltrami believes that, if those persons require hormones, they will need an endocrinologist and medical and psychological care. Doctor Beltrami stated that he did not want to comment further on the transgendered

phenomenon except to say that it may be classified in the DSM-IV with the gender dysphorias that are not specified.

[696] Doctor Beltrami acknowledged in his testimony that Micheline Montreuil does not have the classic profile of a transsexual person, who usually scorns his penis and its paternal function. Doctor Beltrami stated that there appears to be a change of direction in Micheline Montreuil's development, from transsexual to transgendered, a situation that Doctor Beltrami describes as unusual.

[697] Doctor Beltrami further stated in his testimony that Micheline Montreuil told him that, if it were possible to be completely female and have children as a woman, the operation would definitely be worth it. According to Doctor Beltrami, Micheline Montreuil considered himself ultimately to belong to an intermediate category that is neither the typical man nor the overly feminine woman, and that considers being dressed as a woman to be more comfortable than being dressed as a man.

b) Scientific literature

[698] The Tribunal consulted a number of authors regarding gender identity development and its relationship to the concepts of "transgendered" and "transsexual."

[699] According to Crooks and Baur (*Psychologie de la sexualité*, 2003), gender identity development is a very complex process influenced by a large number of factors, and there is no guarantee of consistency between biological sex and gender identity. The authors state that many people are found in a range of gender identities that depart in varying degrees from the norm.

[700] Crooks and Baur write that a transsexual is a person whose gender identity is the opposite of the person's biological sex. Transsexuals feel trapped in a body of the wrong sex, a psychological state known as "gender dysphoria." A transsexual who is anatomically male feels that he is psychologically and emotionally a female-a female with the misfortune of having been born with male genitalia. The authors write that such a person wants to be recognized as a woman by society. However, not all persons with gender dysphoria want to change their sex. Some wish to enjoy their bodies, as well as the gender identity and roles of the opposite sex. While many individuals with gender dysphoria, including most transsexuals, want to have all the characteristics of the other sex, some want only one or two characteristics.

[701] Crooks and Baur also state in their book that the term "transgendered" usually applies to individuals whose appearance and behaviour are inconsistent with the social roles prescribed by society for their sex, individuals that violate to varying degrees the cultural norms for what a man or woman should be. The violations, the authors write, may include occasionally or regularly dressing as a person of the other sex. According to Crooks and Bauer, many transgendered persons dress as persons of the other sex for psychosocial gratification.

[702] Crooks and Baur state that the main difference between a transsexual person and a transgendered person is that the latter does not seek to harmonize all aspects of his or her being. The authors state that transsexuals sometimes undergo major surgery to make their bodies consistent with their gender identity. However, most transgendered people do not want to modify their body, but occasionally or frequently dress and behave as persons of the other sex.

[703] According to Milton Diamond ("Sex and Gender are Different: Sexual Identity and Gender Identity Are Different," www .hawaii.edu), the term "transgender", coined by Virginia Prince, is a term whose meaning has changed over the years. To Virginia Prince, "transgender" referred to individuals like him, who had no difficulty accepting that they were men, but wanted to live as women at least partially or part time. To Virginia Prince, "transgender" did not include transsexual people. Milton Diamond writes that transgendered persons do not necessarily want to change their sex, but want to change certain aspects of their gender at birth. Moreover, transgendered persons mix characteristics considered to be both male and female. Milton Diamond further states in his article that "transgendered" has recently come to include transvestites, transsexuals and drag queens. The author writes that transgendered people express aspects of their person that they cannot otherwise express.

[704] Paisley Currah, Richard M. Juang and Shannon Price Minter (*Transgender Rights*, Introduction, 2006, xiii-xxiv) define a transgendered person as one whose gender identity or gender expression is inconsistent with social expectations regarding their sex at birth. The authors write that transgenderism is a complex and expanding social category. They believe that transgendered persons do not easily fit into a binary, male-female system, since they cannot easily be thought of as male or female. That view is shared by Julie A. Greenberg (*Transgender Rights*, "3. The Roads Less Travelled: The Problem with Binary Sex Categories," pp. 51-68).

[705] In an article entitled "Changing Models of Transsexualism" published in *Transgender Subjectivities: A Clinician's Guide* (2004), author Dallas Denny observes that, in the 1990s, both research scientists and clinicians became more aware of the fact that sex reassignment surgery was not always desired or sought by persons dressing or behaving as persons of the opposite sex. A new analysis model emerged to counterbalance the classic transsexual model in which a transsexual person is a person imprisoned in the wrong body and experiencing psychological suffering that can be alleviated only through sex reassignment surgery.

[706] According to the new transgender model, gender is seen more as a continuum rather than a male-female dichotomy. The author writes that, in the mid-1990s, the term "transgendered" was frequently used to describe not only those whose identity, behaviour or dress departed from the traditional norm for their gender-such as transsexuals, transgendered persons, transvestites and drag queens-but also those who challenged dress or employment norms.

[707] Under the transgender model, transsexualism and other forms of gender variation are perceived not as psychiatric disorders or related to mental illness, but as natural forms of human variation. Moreover, under the transgender model, if a pathology exists, it should be attributed more to society than to the individual perceived as deviating from the norm. The author believes that those seen as deviating from the norm, especially those who are visibly so, are more at risk of being targets of discrimination, hostility and violence from an intolerant society.

[708] Author Dallas Denny believes that the new transgender model has significantly changed the interaction between transgendered people and health professionals. The author states that there is a world of difference between the therapist believing that the patient is mentally deranged and in crisis, and both the therapist and patient believing that the patient is healthy and considering a life-altering decision that will enable the patient to become what he wants to be. Dallas Denny also believes that there exists a considerable difference between the shared sense that the purpose of the therapy is to determine whether or not the patient is a

candidate for sex reassignment surgery versus helping the patient make sense of his life with respect to the feelings he has about his gender identity.

[709] Anne Bolin emphasizes that the term "transgendered" may include transsexual persons who do not want surgery or are in a pre-surgical stage, and who want to live permanently as women. She believes that most people who consider themselves transgendered do not want sex reassignment surgery. The author adds that those people describe themselves as people who want to change sexual roles without sex reassignment surgery. They are often perceived as living with characteristics of both sexes. They may also modify their anatomy using hormones or surgery, but keep a number of characteristics of their sex at birth (Anne Bolin, *Transcending and Transgendering: Male to Female Transsexuals, Dichotomy and Diversity*, n.d.).

[710] From the above, the Tribunal finds that Micheline Montreuil, who considers himself transgendered, is not alone in society, there being many men who occasionally or regularly dress as women and take part in group activities such as conventions or social gatherings. The Tribunal also finds that Micheline Montreuil, when he went by the name of Pierre Montreuil, dressed as a woman on certain occasions and participated in activities with other men who dressed as women.

[711] Moreover, on the basis of the documentation entered in evidence and the testimony heard, the Tribunal finds that a transgendered person, according to increasing social consensus, is a person of the male or female sex who, unlike a transsexual person, adopts the appearance and way of living of the other sex, undergoes certain morphological changes-hormonal therapy to develop breasts, hair removal-without going as far as sex reassignment surgery. Micheline Montreuil believes that that is a social reality that cannot be denied. Doctor Assalian believes that, from a psychiatric viewpoint, that is the expression of a gender identity disorder.

[712] Currently Canadian society, including the Canadian Forces, operates officially in a binary mode. At birth, one is male or female. The feature that distinguishes male from female is anatomical: a male has a penis and a female, a vagina. The binary model is simple and reassuring (Bolin). Along the way, it is, however, possible to change one's sex established at birth if certain legal requirements are met.

[713] In Quebec, a person who wishes to change the sex recorded on the birth certificate, from male to female, for example, may do so if the person complies with article 72 of the *Civil Code of Québec*, which reads: "Every person who has successfully undergone medical treatments and surgical operations involving a structural modification of the sexual organs intended to change his secondary sexual characteristics may have the designation of sex which appears on his act of birth and, if necessary, his given names changed."

[714] Therefore, in Quebec as in most jurisdictions, one cannot of one's own accord change one's sex established at birth. One can consider oneself to be of the gender opposite to that established at birth and, for example, present oneself as female when one is biologically male. A person's hospital card may state that the person is female while the health insurance card states that the person is male; regardless, in the eyes of civil society, the person is of the sex established at birth.

[715] Under the *Civil Code of Québec*, it appears that sex reassignment surgery is required to amend the sex recorded on one's birth certificate. It would not be surprising if, someday, a person wishing to identify with the opposite sex challenges the requirement to undergo sex

reassignment surgery to change his or her sex or gender civilly and officially. Accepting that sex reassignment surgery is not always necessary to resolve a gender identity disorder may open the door for such a challenge, as well as potential changes to legislation (Jerry L. Dasti, "Advocating a Broader Understanding of the Necessity of Sex-Reassignment Surgery Under Medicaid," 77 New York Law Review, pp. 1738-1775).

[716] In human rights, it is possible for more than two genders to be recognized since, regardless of a person's gender, whether the person is male, female, transgendered, transsexual, in between the two or both simultaneously, the person has a statutory right to respect as a human being, everywhere and in all circumstances. Therefore, the existence of a third sex or gender that some claim must be recognized matters little in human rights (Julie A. Greenberg, "Deconstructing Binary Race and Sex Categories: A Comparison of the Multiracial and Transgendered Experience," 39 San Diego Law Review 917, 2002). What is important is ensuring that the person's basic human rights are respected.

[717] The Tribunal is very aware of the discriminatory attitudes that nonconformists face daily. There is no need for people to be seen as transgendered or transsexual because the clothes they wear are inconsistent with their sex at birth to be targets for potential discrimination. Already, simply dyeing one's hair yellow or green is likely to be a significant obstacle when seeking a job in finance or law. Society, and especially the more conservative segments of society, is known for judging people by their appearance and not caring to find out who those people really are. Careful thought is required here. Given that homophobia is still very prevalent in many places, what should be made of persons who alter their physical appearance to identify with the sex opposite to their own? The answer appears self-evident.

(ii) Transsexual persons and their care

[718] The issue of transsexual persons and their care is not new in human rights. It was at the heart of this Tribunal's decision in *Kavanagh v. Canada (Attorney General)*, *supra*.

[719] As for the case at bar and issue of the transsexual person, which Micheline Montreuil denies he is, the Tribunal has heard abundant evidence regarding the condition of transsexual persons and the medical attention that they require. The parties filed with the Tribunal a large body of scientific literature on transsexualism, transsexual people and their treatment. It is worthwhile to study those items to gain a better understanding of this matter, especially with regard to the difference that there may be between a transsexual person and a transgendered person.

a) Scientific literature

[720] In psychiatry, transsexualism may be defined as a desire to live and be accepted as a person of the opposite sex. The desire is usually accompanied by feelings of discomfort or maladjustment with respect to one's anatomical sex and a desire for a surgical operation or hormone treatment to make one's body as consistent as possible with the desired sex (T. Gallarda, I. Amado, S. Coussinoux, M.-F. Poirier, B. Cordier and J.-P. Olié, *Le syndrome de transsexualisme: aspects cliniques et perspectives thérapeutiques*, L'Encéphale, 1997; XXIII:321-6). Literature on transsexualism distinguishes between primary and secondary transsexuals.

[721] The evidence shows that transsexual persons wishing to change their sex must enrol in a sex and sex reassignment program. Doctor Assalian testified at length about his experience in that area. It should be noted that those in charge of such programs refer to standards set by Harry Benjamin, known as the Harry Benjamin Standards of Care (HBSC).

[722] Under those standards, a person who wishes to change his or her sex must (1) undergo therapy for at least six months; (2) be assessed by two professionals, including one psychiatrist, with recognized expertise in gender identity disorders; (3) undergo a real-life test for at least one year, that is, be successful in adapting psychosocially to the new gender role; and (4) undergo a urological test to exclude the possibility of any congenital anomalies.

[723] According to the literature entered in evidence, the sex reassignment process takes a number of years and includes (1) psychiatric and psychological assessments; (2) the real-life test; (3) hormonal therapy to develop and maintain desired secondary sexual characteristics; and (4) general surgery (Pierre Assalian, Marilyn Amis Wilchesky, Hélène Côté, "Troubles de l'identité sexuelle," in *La psychiatrie clinique, une approche bio-psycho-sociale*, 1999, c. 26, pp. 636-50).

[724] In the case at bar, the evidence shows that Micheline Montreuil was never enrolled in such a program. The evidence clearly shows that he was never psychiatrically assessed for any gender identity issue, except for the formal diagnosis that Doctor Côté allegedly provided at the grievance hearing regarding Micheline Montreuil's forced resignation from Collège Garneau and the two assessment reports produced in this proceeding.

[725] In fact, the evidence shows that Micheline Montreuil approached Doctor Tremblay, an endocrinologist, for a prescription for female hormones to develop breasts without having consulted a psychiatrist first. The hormonal therapy prescribed by Doctor Tremblay, without any previous psychiatric assessment and, according to Micheline Montreuil, solely for aesthetic purposes, was the subject of much discussion.

[726] The evidence shows that, Doctor Assalian found it inconceivable that a physician would prescribe hormones for a person such as Micheline Montreuil without a psychiatric assessment being done. To Doctor Assalian, a physician cannot prescribe hormones merely on the request of an apparently logical and rational person. It is not for the Tribunal, in the case at bar, to rule on Doctor Tremblay's practice, regardless of the opinions people may have about it. What is shown by the evidence is that Doctor Tremblay prescribed Micheline Montreuil hormones on a number of occasions and monitored Micheline Montreuil's hormonal therapy.

b) Testimony

[727] In the case at bar, the Tribunal heard abundant testimony on transsexual people, the sex reassignment process that many, if not most, transsexual people seek to undergo.

[728] The Tribunal heard testimony from Dr. Diane Watson, who has treated a number of members of the Canadian Forces who have decided to change their sex, Dr. Christiane Dufour and Dr. Pierre Assalian, regarding their experience at the Montreal General Hospital's human sexuality clinic, Dr. Édouard Beltrami, who has seen transsexual persons in the course of his practice, and Dr. Rolland Tremblay, who has also seen, in his practice as an endocrinologist, persons wishing to make morphological changes to their bodies, whom he considers to be transsexual persons. The testimony has made it possible to better understand the development and lives of transsexual people.

1. Doctor Dufour's testimony

[729] Before Doctor Dufour testified, the respondent requested that she be recognized as an expert in psychology and sexology. Following a hearing on her qualifications, the Tribunal did not recognize Doctor Dufour as an expert. However, Doctor Dufour was recognized as a psychologist-sexologist having specific knowledge from her practice with persons afflicted

with gender dysphoria or with sexual identity disorders, such as transsexuals and transvestites, and authorized to offer testimony not only about her involvement in Micheline Montreuil's case but also about her own experience in treating people who consult her for sexual identity or gender dysphoria disorders.

[730] Doctor Dufour stated in her testimony that she has been working in Doctor Assalian's human sexuality clinic at the Montreal General Hospital since 1995, with Doctor Wilchesky and Hélène Côté. She stated that, in the course of her practice, she has seen over 400 people with gender identity disorders.

[731] Doctor Dufour told the Tribunal that, in Doctor Assalian's clinic, assessments are done of people who come for all kinds of sexual problems, including many for gender dysphoria problems. She explained, among other things, the approach used in the clinic for treating and monitoring people who come for gender identity disorder problems.

[732] Doctor Dufour stated in her testimony that those admitted to the sex reassignment program must attend individual therapy twice a month and group therapy twice a month with assessment meetings.

[733] She testified that a period of approximately eight months precedes hormonal therapy. Following hormonal therapy, there is a real-life test, which consists of living in the chosen gender 24 hours a day. The real-life test may last up to two years. Doctor Dufour testified that, at the end of that period of development, the person is assessed for readiness to undergo sex reassignment. The person then sees Doctor Assalian and his team. If the team believes that the prognosis is favourable, a favourable report is prepared, and the person may undergo sex reassignment either at a private clinic in Quebec, at his or her own cost, or in a hospital outside Canada, in which case the cost of the operation is reimbursed through the Régie de l'assurance-maladie. Doctor Dufour testified that, in her opinion, problems related to gender identity disorders are usually resolved once sex reassignment has been completed.

[734] Doctor Dufour also testified that people who go to the clinic are unhappy and suffering. Moreover, Doctor Dufour points out that not everyone who goes to the clinic will undergo a sex reassignment operation. Some will return to their biological gender, and others will seek homosexual relationships.

[735] Doctor Dufour testified that those who go to Doctor Assalian's clinic consider themselves transsexual, that is, wanting sex reassignment, and in her practice she has not encountered any people who consider themselves transgendered.

[736] In her testimony Doctor Dufour summarized the interview with Micheline Montreuil on May 18, 2006, referring to the report that she, Doctor Assalian and Doctor Wilchesky co-signed and the general interview format. She also referred to certain specific cases of people interviewed.

[737] Doctor Dufour found the interview with Micheline Montreuil laborious. Doctor Dufour stated that interviewees are often defensive. She added that Micheline Montreuil appeared to be irritated during the interview and seemed to be harbouring anger.

[738] According to Doctor Dufour, Micheline Montreuil stated at the interview that he was in between the two sexes, transgendered by choice, happy with the way he was and not suffering at all in his male gender. Doctor Dufour testified that she has encountered few people with that profile. She stated that, when a person who appears to be rational wants to change his or her sex, it is customary to investigate further to find the deepest motivations.

Doctor Dufour noted in her testimony that, from her clinical experience, people taking hormones experience mood swings.

[739] Doctor Dufour stated that transsexual people take female hormones on an ongoing basis because they seek chemical castration. The opposite is true in this case. The evidence shows that Micheline Montreuil took hormones intermittently because he did not want chemical castration. He wanted to retain his functioning male reproductive system but have breasts at the same time. The evidence further shows that Micheline Montreuil wanted children conceived from his own sperm.

[740] Regarding Micheline Montreuil's hormonal therapy, Doctor Dufour testified that she did not ask about the intermittent use of hormones. Doctor Dufour added that he [*sic*] has never met a person who wanted to become a woman because he felt that he was female, but who also wanted to keep his male organs.

[741] Doctor Dufour and Doctor Assalian note in their report that Micheline Montreuil initiated legal proceedings against a bank, and they use that information in their assessment of Micheline Montreuil's psychiatric condition. The Tribunal points out that a person cannot be criticized for asserting his rights in the courts. Doctor Dufour stated that it is not a matter of challenging a person's right to assert his rights, but rather of taking into account a factor that could affect the time a person must spend asserting his rights and the psychological suffering that might result.

[742] From Doctor Dufour's testimony, the Tribunal notes the following: (1) persons with a gender identity disorder who go to the clinic are treated in accordance with the Harry Benjamin Standards of Care or similar standards; (2) persons who go to the clinic are suffering; (3) sex reassignment, when indicated, usually resolves problems related to gender identity disorders; (4) not everyone who goes to the clinic will undergo a sex reassignment operation; and (5) Micheline Montreuil's profile with regard to gender identity disorders differs from that of the patients that Doctor Dufour sees.

2. Doctor Watson's testimony

[743] Doctor Watson, a psychiatrist, testified as an ordinary witness, even though the evidence shows that she had specific experience with people with gender identity disorders, having established and directed the Gender Dysphoria Clinic in Vancouver, and having been interested in gender dysphoria issues for more than 20 years. The evidence shows that Doctor Watson has previously been recognized as an expert in a number of cases in which a person's transsexuality was at issue. The evidence also shows that Doctor Watson was not a member of the Canadian Forces, but an external consultant. It appears from Doctor Watson's testimony that her employment with the Canadian Forces was terminated in July 2007, at the request of the latter.

[744] Doctor Watson stated that her role in the Canadian Forces was to provide psychiatric care to members of the Forces as a generalist and not as a specialist in gender identity disorders. However, the evidence shows that while she was employed by the Canadian Forces, from 2002 to 2007, Doctor Watson treated 12 cases of transsexualism, 11 of which involved primary transsexualism and 1 of which involved secondary transsexualism.

[745] The evidence shows that being transsexual is not a contraindication to serving in the Canadian Forces. Doctor Watson's testimony is convincing in that regard. However, an unresolved gender identity disorder will result in the assignment of a permanent medical

employment limitation, if the disorder is not resolved, or temporary medical employment limitation, if the disorder is eventually resolved.

[746] It appears from Doctor Watson's testimony that there are a certain number of transsexual persons in the Canadian Forces. Moreover, it appears from the evidence that the Canadian Forces do not have a specific policy regarding persons with a gender identity disorder or transsexual persons. That said, the evidence shows that members of the Canadian Forces with a gender identity disorder, far from being excluded from the Canadian Forces, are given support during their sex or gender reassignment process.

[747] Doctor Watson testified that each transsexual person she saw underwent an in-depth initial assessment that included a life history. Relatives were also consulted. Once a diagnosis was made, various treatments were offered, such as weekly psychotherapy sessions over six months, hormonal therapy, laser hair removal and marriage counselling.

[748] Doctor Watson stated that, if necessary, the person is referred to a surgeon for sex reassignment surgery, but the person must first pass a real-life test, in which the person lives under the appearance of the other sex in society and in the workplace for a given period. During that transition phase, the person is provided with support in the workplace, from superiors as well as co-workers. Support is also provided after sex reassignment surgery, when meetings are arranged with people in the workplace to foster a smooth integration.

[749] Doctor Watson testified that each transsexual person received regular attention from a team of professionals and, in particular, had access to the services of dermatologists, endocrinologists and social workers. Doctor Watson testified that, during the transition phase, the transsexual persons continued to work and were assigned to a temporary employment category for 12 months. Those who opted for surgery were placed on sick leave for six to eight months. It appears from Doctor Watson's testimony that treatment costs were covered by the Canadian Forces.

[750] As mentioned above, Doctor Watson referred in her testimony to 12 cases of transsexualism in which she was involved while working for the Canadian Forces. It appears from her testimony that all the people who went to see her had from a young age felt that they were of the opposite sex (primary transsexualism) and wanted to get rid of their genital organs.

[751] Doctor Watson testified that the 12 people she saw felt that their biological sex did not match their psyche (gender). She stated in her testimony that the 12 transsexual people went to see her mainly because they were in a state of depression and anxiety resulting from their gender identity disorder. It appears that they had two choices, surgery or suicide. Doctor Watson in fact specified that several of the transsexual persons she saw were contemplating suicide. She testified that all the transsexual persons she saw needed psychotherapy for their depression and anxiety.

[752] Doctor Watson noted in her testimony that the Canadian Forces has an informal online community for transsexual people. Doctor Watson believes that it is important for transsexual people to be able to rely on support from peers in the Canadian Forces. Doctor Watson stated that she does not know whether or not a website exists. However, she said that she understands that discussions take place by e-mail.

[753] Doctor Watson acknowledged in her testimony that the transsexual people who went to see her feared the reaction of superiors and the potential impact on their career. She also

stated that the prospect of sex reassignment surgery was difficult and intimidating, and stressors existed in military life that were not encountered in civil life, the military setting being a binary social organization in which one is either male or female. Moreover, she emphasized that military training restricts the spontaneous expression of a transsexual person's personality, and she acknowledged that sexual stereotypes are limiting for transsexual people. She added that, in military culture, it is more acceptable to be a woman with masculine behaviours than a man with feminine behaviours.

[754] Doctor Watson was asked during testimony to explain her understanding of the terms "transsexual," "transgendered," "sex" and "gender." Doctor Watson stated that "sex" refers to phenotype, to the anatomic and chromosomal features that distinguish men and women, while "gender" refers to an innate sense of masculinity or femininity resulting from psychological experience.

[755] Regarding the concept of "transsexual," Doctor Watson stated that the term does not appear in the DSM-IV (*Diagnostic and Statistical Manual for Mental Disorders*), but is included in the category of gender dysphoria, and is at one end of the range of gender identity disorders. Doctor Watson stated that, of the 12 cases she handled, there was one in which the initial diagnosis of gender identity disorder was changed to gender identity disorder not otherwise specified, and she opined that a person may have a gender identity disorder even if the person does not want sex reassignment.

[756] Doctor Watson stated that the term "transgendered" is not a medical term. It includes individuals with various gender identity disorders. In fact, it is more a term with social or political connotations than with medical connotations.

[757] Doctor Watson testified that she has never met a person who wanted to assume the role of the opposite sex but who did not believe that he or she needed medical treatment to alter his or her biological sex, which appears to be the case for some transgendered persons.

[758] When asked about the issue of employment limitations assigned to transsexual members of the Canadian Forces, specifically the assignment of categories G and O, Doctor Watson testified that, in some cases, she felt compelled to protect the transsexual person from being deployed, so that the person would have access to appropriate medical care. She would then recommend that a temporary category be assigned. When a person was undergoing treatment, she believed that the person would be vulnerable if deployed to a field of operation, since the person required medical care. Doctor Watson talked specifically in her testimony about two people who were assigned temporary employment limitations for 12 months, the duration of their sex reassignment, to prevent deployment.

[759] Doctor Watson pointed out that, to her knowledge, none of the 12 transsexual individuals with whom she dealt was released solely because of a gender identity disorder. Doctor Watson stated that, once sex reassignment was completed, the temporary limitation was removed and the individuals were able to continue working in the Canadian Forces.

[760] Doctor Watson stated that, regarding the diagnosis of gender identity disorder in the 12 individuals, a series of criteria had to be met: a persistent belief by the individual that he or she is of the wrong sex, a desire to get rid of one's sex organs and associated secondary sexual characteristics, and the desire to acquire the sexual characteristics and role of the other sex, and distress or dysfunction resulting from the gender identity disorder. However, she added that, for a gender identity disorder not otherwise specified, the criteria are not as well defined. She stated that individuals confused about their gender would fall under that

category. Doctor Watson stated that distress or dysfunction need not be present to diagnose a gender identity disorder not otherwise specified.

[761] Doctor Watson also testified that she had provided military personnel with training on the gender identity disorders of the 12 individuals, as well as lectures to other military staff members. Doctor Watson further testified that, to her knowledge, the Canadian Forces have never forced a person to undergo sex reassignment surgery.

[762] From Doctor Watson's testimony, the Tribunal notes the following: (1) in comparing the profile of the 12 individuals under Doctor Watson's care with the profile of Micheline Montreuil as shown by the evidence, it appears that Micheline Montreuil does not have a *profile similar* to that of the transsexual individuals treated by Doctor Watson; (2) in the Canadian Forces, there are a number of people who have undergone sex reassignment while they were members of the Canadian Forces; (3) the Canadian Forces do not release individuals who opt for sex reassignment while they are in the Canadian Forces; (4) the Canadian Forces provide support for individuals with a gender identity disorder and see to it that the appropriate care is administered; (5) the Canadian Forces have never forced a person with a gender identity disorder to undergo sex reassignment surgery; and (6) individuals with a gender identity disorder are provided with support during their development and standards similar to the Harry Benjamin Standards of Care are followed.

3. Doctor Assalian's testimony

[763] Doctor Assalian stated in his testimony that he agrees that a transsexual is a person whose gender identity is the opposite of his or her biological sex and that such people feel trapped in a body of the wrong sex, which is a psychological state known as "gender dysphoria." He also stated that he agrees that a transsexual person is one who, for instance, is anatomically male but feels that he is psychologically and emotionally a female-a female with the misfortune of having been born with male genitalia. Doctor Assalian acknowledged that the man in the example would want to be recognized as a woman by society and would be willing to modify his body accordingly.

[764] Doctor Assalian also stated that he agrees that the goal of a person with gender dysphoria is to become a person of the other sex, the characteristics associated with the other gender may vary between individuals, and some individuals want to have all the characteristics of the other sex while others want only one or two. Doctor Assalian also acknowledged that there are people with gender identity disorders-transgendered people, transsexual people-who achieve a partial resolution.

[765] The evidence shows that the people who seek psychiatric consultations for gender identity disorders are people who are suffering (Doctor Assalian, Doctor Watson and Doctor Dufour). The evidence also shows that numerous people who may be suffering from a gender identity disorder or who present themselves as transvestites or transsexuals do not seek psychiatric consultations because they do not believe that they are ill or have a psychiatric disorder.

[766] Doctor Assalian believes that it is important to follow the Harry Benjamin protocol when treating persons with a gender identity disorder, to avoid problems later on. Doctor Assalian believes that the Harry Benjamin protocol is a guide for professionals treating persons with a gender identity disorder.

[767] Doctor Assalian admitted in his testimony that his approach to categorizing gender identity disorders, which includes transvestites, transsexuals and transgendered people, is

conservative. Doctor Assalian stated that, under the Harry Benjamin protocol, people who consider themselves to be transgendered and who do not want to have a sex reassignment operation fall under the category of *gender identity disorder* not specified. Doctor Assalian believes that the protocol of the Harry Benjamin International Gender Dysphoria Association (HBIGDA) is the best scientific consensus available for gender identity disorders.

4. Doctor Tremblay's testimony

[768] The Tribunal heard Doctor Tremblay, an endocrinologist and Micheline Montreuil's attending physician, regarding the issue of transsexuality. Doctor Tremblay testified as a factual witness. However, the Tribunal recognized that he could express opinions based on his experience.

[769] Doctor Tremblay described in his testimony his experience in treating people who see him regarding a potential sex reassignment. Doctor Tremblay distinguished between two groups, namely, those aged 60 or over who see him for hormones but do not intend to have surgery, and those around the age of 40 who wish to change their physical morphology at some point in their life and plan to have sex reassignment surgery.

[770] Doctor Tremblay testified that transsexual people have been going to see him since 1972. He stated that, with regard to transsexual people, two types of situations arise in his practice. The first and more frequent type involves individuals who approach him for hormonal therapy as part of a sex reassignment process, the second type, persons referred by psychiatrists for purposes of starting hormonal therapy. Doctor Tremblay stated that he has handled eight to ten new cases a year since 1972.

[771] Doctor Tremblay referred in his testimony to the protocol proposed by Harry Benjamin for sex reassignment. Doctor Tremblay believes that the protocol, recognized by the psychiatric community, promotes sound practices regarding transsexualism. The protocol recommends that a person wishing to change his or her sex undergo a psychological or psychiatric assessment with one or two years of psychiatric follow-up, followed by hormonal therapy. The person is then referred for surgery to remove certain male or female attributes, depending on the orientation chosen.

[772] Doctor Tremblay acknowledged in his testimony that the Harry Benjamin protocol provides for the creation of a sex reassignment team composed of professionals working with a psychiatrist to determine the real motivation behind a person's desire for sex reassignment. Doctor Tremblay believes that the psychiatrist is the pivotal member of the team. The endocrinologist's role is to bring additional expertise, especially in the area of biology.

[773] Doctor Tremblay explained in his testimony that the protocol is used for transsexual persons, but opines that the protocol, even though it applies to gender identity disorders, is not a guide to sound practices for transgendered people, but provides guidance that enables a physician to form an opinion on a transgendered person.

[774] Doctor Tremblay believes that there are more than two genders. In his testimony, he referred to the issue of the third sex or gender. He emphasized that today's society is still bipolar-a view shared by Doctor Watson-and is a society of men and women. He believes that the Harry Benjamin protocol allows for additional gender categories.

[775] When asked to comment on the difference between transsexual people and transgendered people, Doctor Tremblay stated that transsexualism actually leads to a change of identity and sex reassignment, but many people will, during their development, opt for an

intermediate condition, which is the third gender category. That happens especially with people such as 60-year-old males who, late in life (secondary transsexualism), decide to go through the transition to finish living their lives as women. Doctor Tremblay stated in his testimony that a transgendered person is one who, having lived as a man or woman (most frequently as a man), decides at some point to live in the identity of the opposite sex. He acknowledged that, unlike a transsexual person, a transgendered person seeks to retain aspects of both sexes, that is, to have breasts for a female phenotype without losing the opportunity to have children. He stated that a transsexual person who wishes to change his or her sex will have been convinced for a number of years that there is a fundamental mismatch between his or her chromosomal sex, gender of presentation and gender of rearing.

[776] Doctor Tremblay also believes that a transgendered person is one who wants to change his physical appearance because he believes that he would be happier in a female role. A transgendered person never asks to go further than hormonal therapy and never requests genital surgery. Doctor Tremblay added that transgendered people, aside from the 60-year-olds that he knew to be transgendered, rarely request hormones.

[777] To Doctor Tremblay, transgenderism is not a mental illness. Doctor Tremblay testified that he has never referred anyone whom he considered transgendered to a psychiatrist for assessment, and the six or eight older people-grandpas who became grandmas-had a certain experience and were perfectly stable. Doctor Tremblay stated that he never felt any desire to refer Micheline Montreuil to a psychiatrist, because Micheline Montreuil's actions seemed clear and rational, and Micheline Montreuil's objectives were clear.

[778] When asked to comment on the requirements for prescribing hormones to a person seeing him regarding transsexuality, Doctor Tremblay testified that it must be confirmed that the person's physical and mental health, as well as biological state, can tolerate the hormonal therapy. Doctor Tremblay testified that, regarding the person's mental health, it is appropriate in most cases to order a psychiatric assessment, when the case specifically involves transsexualism.

[779] Doctor Tremblay also acknowledged in his testimony that prescribing hormones on request is a special situation, and he has done that twice in the past, for professionals, one of whom is Micheline Montreuil. Doctor Tremblay added that the two people, both under 60, introduced themselves to him as transsexual individuals, while the other people had no transsexual aspirations. He added that neither of the two professionals showed any ambivalence about choosing to be transsexual and both wanted to change their way of life and have breasts or breast implants. He stated that he prescribed them hormones at the first appointment. Doctor Tremblay stated that, in such cases, balanced hormonal therapy has few side effects and is reversible. According to him, there are no repercussions in stopping the medication, except that the person goes back to square one.

[780] Doctor Tremblay also commented in his testimony on the phenomenon of people in their sixties going to see him to request hormonal therapy, to live out their remaining days as a person of the opposite sex, grandma rather than grandpa. Doctor Tremblay believes that those people are transgendered, and he states that he has no objection to helping them develop in that way for a few years.

[781] Doctor Tremblay stated in his testimony that, if a man were to go to his office dressed as a woman and ask to be prescribed female hormones to change the man's phenotype, Doctor Tremblay would make sure that the person's actions were rational and the person's attitudes were safe. Doctor Tremblay stated that, given his duty as a physician and given the

Charter of Rights and Freedoms, he would prescribe hormones and provide follow-up. He added that making a decision for the person and refusing the person's request could be malpractice and could be unethical. Doctor Tremblay added that he did not require that the people over 60 undergo a psychiatric consultation.

[782] As for Micheline Montreuil, Doctor Tremblay testified that he perceived in 2000 that Micheline Montreuil belonged in the category of transgendered people. Doctor Tremblay does not believe that a person who goes to his office for hormones is ill in the literal sense of the term, as long as there is a specific purpose for taking the hormones, such as a desire to have breasts.

5. Doctor Beltrami's testimony

[783] Doctor Beltrami, an expert psychiatrist, acknowledged that it is appropriate, as recommended by the Harry Benjamin Association, for transsexual persons to undergo a psychiatric assessment before being prescribed hormones. Doctor Beltrami testified that the Harry Benjamin protocol provides for the creation of a team to monitor a person who is in a sex reassignment process. Doctor Beltrami believes that it is important for a psychiatrist to be involved, since the operation is emotional. To Doctor Beltrami, one must be certain that the person truly wants to go through the process and does not have some kind of psychosis. He stated that the surgeons will ask for a psychiatric report. Moreover, Doctor Beltrami acknowledged that it is appropriate for a psychiatrist to provide an opinion on the person's psychiatric condition before hormones are prescribed.

[784] Doctor Beltrami believes that, in principle, there should be a six- to twelve-month period of psychotherapy or sex therapy before the decision is made to begin hormonal therapy. To Doctor Beltrami, it is abnormal for a physician to prescribe a person hormones immediately.

[785] Doctor Beltrami stated in his testimony that, when a person asks to be prescribed hormones to develop breasts, the norm is to have the person undergo psychotherapy before prescribing hormones. Doctor Beltrami acknowledged in his testimony that it is outside the norm for a man to consider himself a woman, dress as a woman and want to be treated in all respects as if he were a woman even though he is biologically a man, and it must be determined exactly what is behind that, if there is something hidden. Doctor Assalian stated that he agrees with Doctor Beltrami on that point.

[786] In light of Doctor Beltrami, Doctor Assalian and Doctor Tremblay's testimony, the Tribunal finds that (1) the Harry Benjamin protocol is the standard for treating persons with a gender identity disorder who go to see a health professional; and (2) there are divergent points of view on prescribing hormones to such persons, Doctor Tremblay having an approach that is more liberal and less conformist than that of Doctor Beltrami or Doctor Assalian.

C. Psychiatric assessment of Micheline Montreuil

[787] On the issue of whether or not the Canadian Forces were justified in assigning Micheline Montreuil a medical employment limitation because he had an unresolved gender identity disorder, the parties called upon two expert psychiatrists specializing in gender identity disorders.

(i) Experts who were present and their reports

[788] In the case at bar, the evidence shows that Micheline Montreuil underwent two psychiatric assessments, one by Dr. Pierre Assalian, whose services were retained by the

respondent, with the help of two colleagues, Dr. Christiane Dufour and Dr. Marylin Wilchesky, psychologists, and another by Dr. Édouard Beltrami, whose services were retained by the Commission. Each expert prepared multiple reports. In addition, the Tribunal heard Dr. Richard Karmel, a psychologist, regarding the MMPI test that he administered to Micheline Montreuil as part of Doctor Assalian's assessment mandate. Doctor Karmel also prepared a report.

a) Dr. Pierre Assalian

[789] Doctor Assalian was recognized as an expert psychiatrist specializing in sexology. Doctor Assalian testified that he was the only psychiatrist in Quebec authorized to sign letters of authorization for persons with a gender identity disorder to have the Régie de l'assurance-maladie du Québec pay for their sex reassignment surgery. Micheline Montreuil disputes that statement.

[790] Doctor Assalian stated in his testimony that the people who go to see him have a gender identity disorder. Over the course of his career, he claims to have interviewed close to 2,000 people with a gender identity disorder.

[791] The evidence shows that Doctor Assalian's testimony at the hearing was based on the documentation provided by the respondent and other sources, including Micheline Montreuil's website, the testimony of Doctor Côté and Doctor Tremblay, the affidavit signed by Micheline Montreuil on June 21, 2000, and the testimony of the three witnesses summoned by Micheline Montreuil.

1. Doctor Assalian's mandate

[792] The evidence shows that the mandate initially given to Doctor Assalian by the respondent was to determine, on the basis of the documentation provided by the respondent on Micheline Montreuil, whether or not the Canadian Forces were justified in assigning Micheline Montreuil a medical employment limitation because he had a gender identity disorder.

[793] It appears from the evidence that Doctor Assalian then asked to perform a clinical assessment of Micheline Montreuil because, in his words, it was a "high profile case," and a clinical assessment would enable him to assess Micheline Montreuil psychologically. Doctor Assalian testified that it was not necessary for him to meet Micheline Montreuil to form an opinion on Micheline Montreuil's condition. However, Doctor Assalian testified that he wanted to meet Micheline Montreuil, to partially assess Axis II of the DSM-IV and the possibility of forming a professional relationship with Micheline Montreuil, if Micheline Montreuil wanted to do so. Doctor Assalian does not believe that there would have been any therapeutic value in having the Canadian Forces physicians interview Micheline Montreuil.

[794] The evidence shows that the Canadian Forces agreed to the request, and Micheline Montreuil was seen on May 18, 2006, by Doctor Assalian and two members of his team, Doctor Dufour and Doctor Wilchesky. Doctor Assalian was then given the mandate to determine, on the basis of the interview on May 18, 2006, and the results of the MMPI-2 test, whether or not Micheline Montreuil should be assigned a medical employment limitation because he had a gender identity disorder. The two parts of the mandate given to Doctor Assalian are discussed in his first assessment report.

2. Doctor Assalian's reports

[795] The evidence shows that Doctor Assalian signed four reports: an initial report prepared solely on the basis of documentation provided by the respondent, a report signed jointly with

Doctor Dufour and Doctor Wilchesky following the clinical examination of Micheline Montreuil on June 18, 2006, an addendum to the report dated June 21, 2006, signed by three clinicians and, lastly, an addendum signed by Doctor Assalian following the disclosure of the report prepared by Doctor Côté, dated March 18, 1998.

(1) First report

[796] Doctor Assalian's first report, dated June 21, 2006, deals with the analysis of the documentation sent to him by the respondent, the interview with Micheline Montreuil on May 18, 2006, and the results of the MMPI-2 test.

[797] Doctor Assalian describes in his report the DSM-IV diagnostic criteria for gender identity disorders, his double mandate and the facts that he considers important for his analysis of the documentation received from the respondent.

[798] Doctor Assalian observes in his report that none of the physicians who prepared reports for Micheline Montreuil's application for enrolment is a recognized expert in gender identity disorders under the Harry Benjamin criteria, and no overall psychiatric assessment was performed before female hormones were prescribed to Micheline Montreuil by his endocrinologist, which Doctor Assalian believes is contrary to the Harry Benjamin criteria, which recommend two years of psychiatric monitoring before the prescription of hormones.

[799] Doctor Assalian states in his report that he disagrees with Doctor Côté's opinion that Micheline Montreuil has no psychiatric pathology. Doctor Assalian states that, on the basis of the DSM-IV, gender identity disorder is a psychiatric pathology. Doctor Assalian opines that Micheline Montreuil was suffering from a gender identity disorder when he applied for enrolment to the Canadian Forces. Doctor Assalian also states that he disagrees with Doctor Côté's opinion that Micheline Montreuil's incomplete transformation appeared to be beneficial for Micheline Montreuil.

[800] To Doctor Assalian, a person with a gender identity disorder who does not want to complete the sex reassignment process is unstable, confused, uncertain and ambivalent. Doctor Assalian states that an incomplete sex reassignment process may exist for a certain indeterminate period, but not forever. That, to Doctor Assalian, is a sign of an identity crisis.

[801] For Doctor Assalian, one question about Micheline Montreuil remains unanswered: Is Micheline Montreuil a man or a woman? In Doctor Assalian's opinion, a person who considers himself in between the two sexes has a psychological pathology, the condition of being in between the two sexes is by definition unstable, and the desire to become completely female and proceed with a sex reassignment process may resurface.

[802] Doctor Assalian also notes in the report that Micheline Montreuil did not stop hormonal therapy in early 2000, as he stated, but one year later, in February 2001, and he stated in May 2006 that he did not want sex reassignment surgery, yet stated at the end of the interview on May 18, 2006, that he would undergo the surgery if his spouse wanted him to. To Doctor Assalian, that ambivalence indicates that the prognosis was poor and Micheline Montreuil's pathological condition was still active and unstable.

[803] Doctor Assalian believes that there remained an ambivalence that was perhaps hidden at the time, but that could resurface later during a stressful situation. In Doctor Assalian's opinion, it matters little whether Micheline Montreuil joins the Canadian Forces as a woman or a man. The psychological pathology remains the same. To Doctor Assalian, the in-between condition in which Micheline Montreuil considers himself will clearly lead to disaster.

Doctor Assalian believes that Micheline Montreuil, if placed in a stressful situation, will be in crisis and at risk of psychological decompensation that could include psychosis, depression and possibly suicide. Doctor Assalian ends by noting that Micheline Montreuil's psychiatric self-assessment is of no value to a psychiatrist.

[804] Doctor Assalian opines that, in light of the information provided by the Canadian Forces, the interview on May 18, 2006, and Doctor Karmel's report, the Canadian Forces were justified in assigning Micheline Montreuil a medical employment limitation on medical grounds, because he had a gender identity disorder. Doctor Assalian testified that persons with an unresolved gender identity disorder do not meet the standards in effect in the Canadian Forces, as he understands them.

(2) Second report

[805] Doctor Assalian's second report was co-signed by Doctor Dufour and Doctor Wilchesky, who were both present at the interview on May 18, 2006. The report describes the outcome of that interview. The report indicates that, before the interview, Doctor Assalian and his team studied the documentation sent to Doctor Assalian and, subsequently, Doctor Karmel's report. It also appears from the evidence that Doctor Assalian learned about Micheline Montreuil's website after the interview.

[806] In the report, Doctor Assalian, Doctor Dufour and Doctor Wilchesky present a history of Micheline Montreuil's life, with special emphasis on his transgendered condition. They note that Micheline Montreuil describes himself as a transgendered person, that is, a man who has the secondary characteristics of a woman as a result of female hormones, like a person in between the two, but that he sees himself as a woman but feels no suffering from being of the male gender.

[807] Doctor Assalian and his colleagues indicate in the report that, in their opinion, Micheline Montreuil's employment history suggests irregular, changing highs and lows and investments and disinvestments; furthermore, Micheline Montreuil's previous employment in the Canadian Forces did not last very long, which suggests to them that he has difficulty making informed choices. Doctor Assalian and his colleagues note the following: Micheline Montreuil does not verbalize any discomfort with his male gender, except for a marked preference for female clothing; Micheline Montreuil states that he does not want an operation, because he is a transgendered person living a healthy life with male and female sexual attributes and he does not want to spend $25,000 for an operation with somewhat guaranteed results; Micheline Montreuil's spouse sees him as a man; and Micheline Montreuil's spouse does not want him to have the operation, but if she did, then he might have the operation.

[808] Doctor Assalian and his colleagues state that Micheline Montreuil clearly has a gender identity disorder according to the DSM-IV criteria. Micheline Montreuil also appears to them to be an intelligent, articulate person who is functioning well. However, he appears to them to be a person who is unhappy with his biological gender, a person who is depressed inside. They believe that Micheline Montreuil's hyperactivity and oratorical skills protect him from being exposed to his sadness and falling into a readily apparent depressive state, which is called "masked depression."

[809] Doctor Assalian and his colleagues indicate in their report that Micheline Montreuil's personality has obvious narcissistic traits that indicate a narcissistic fragility. Doctor Assalian and his colleagues state that Micheline Montreuil meets the diagnostic criteria for borderline personality disorder, as described in the DSM-IV, with a risk of decompensation, because of

his low tolerance for frustration, mood swings, irritability, controlled anger, need for control, hyperactivity, anxiety, omnipotence and the precariousness of his defence mechanisms. According to the report, the risk of decompensation is present and unpredictable with respect to both form and trigger.

[810] The authors of the report also point out that psychological distress was observed during the assessment appointment, as well as a fragile ego. The report authors believe that, because of that fragility, acting out is possible under stress, for example, suicide, mutilation, deep depression, inability to meet the demands of the job, operative emergency for sex reassignment or anything that could represent a cry for help.

[811] Doctor Assalian and his colleagues conclude in their second report that Micheline Montreuil has a borderline personality disorder.

(3) Third report

[812] The third report, which is an addendum to the assessment report dated June 21, 2006, is signed by Doctor Assalian, Doctor Dufour and Doctor Wilchesky. It deals only with the report dated March 18, 1998, by Doctor Côté.

[813] Doctor Assalian and his colleagues indicate in their report that Doctor Côté's report reflects the clinical observations and diagnostic impressions in their report dated June 21, 2006, and confirms their finding that Micheline Montreuil's medical condition involves a genuine fear of decompensation under stress. The authors state that Doctor Côté's finding that Micheline Montreuil was not capable of making an informed decision when he resigned from Collège Garneau in December 1997, because he was unable to properly reflect upon his situation after being confronted for the first time about his double identity, is based on symptoms disclosed by Micheline Montreuil that reveal his narcissistic fragility.

[814] Moreover, on the basis of the five inner parts described by Micheline Montreuil and recorded in Doctor Côté's report, Doctor Assalian and his colleagues infer that Micheline Montreuil was forced to divide himself into five independent people to survive in the outside world. To Doctor Assalian and his colleagues, Doctor Côté's report suggests that Micheline Montreuil shows a dissociative symptom. They believe that Doctor Côté emphasizes that Micheline and Pierre are two different people, that Micheline must bear Pierre's suffering, which is always present, although Micheline does not realize it, and that that suffering is a result of fear, uncertainty, anger and deep wounds that can be released through therapy, but can lead to decompensation if denied.

(4) Fourth report

[815] The fourth report is an addendum to Doctor Assalian's assessment report dated June 21, 2006. Doctor Assalian indicates in the fourth report that he has read Doctor Côté's report and finds that it confirms his opinion that Micheline Montreuil, if placed in a stressful situation, would be in crisis and at risk of psychological decompensation, including psychosis, severe depression and suicide.

[816] To Doctor Assalian, the reference in Doctor Côté's report to the five parts of Pierre Montreuil, Pierre Montreuil's inability to make a sound decision because he was not capable of reflecting upon his situation, and the fact that Pierre Montreuil feels equally good as Pierre or Micheline, but sometimes better as Micheline, are all symptoms of dissociation.

[817] To Doctor Assalian, these are all signs that Micheline Montreuil was suffering from an unresolved gender identity disorder when he applied for enrolment in the Canadian Forces,

and continues to suffer from that condition, in addition to a psychiatric disorder resulting from a weak ego, preventing him from being able to handle frustration and stress. In Doctor Assalian's opinion, Micheline Montreuil can lose control and become psychotic in stressful situations, which is the reason that he is incapable of making decisions.

b) Dr. Richard Karmel

[818] Doctor Karmel is a psychologist. He was described by the Tribunal as a specialist in administering and interpreting MMPI test results. He was required to administer the MMPI test to Micheline Montreuil following Micheline Montreuil's interview with Doctor Assalian and his colleagues on May 18, 2006. The test results are included in the report dated May 18, 2006.

[819] Doctor Karmel finds in his report that Micheline Montreuil's test responses show the latter to be a very defensive person who emphasizes his well-being and normality to the extreme. Doctor Karmel notes in his report that Micheline Montreuil will do anything to appear above reproach and in a special category, to project an angelic image and deny any weakness.

[820] In conclusion, Doctor Karmel believes that a frank, honest representation of Micheline Montreuil cannot be obtained from Micheline Montreuil through clinical assessment. On the contrary, Micheline Montreuil's sophisticated defensive attitude will prevail. Micheline Montreuil will no doubt be motivated to maintain his view of things and his version of the truth.

c) Dr. Édouard Beltrami

1. Doctor Beltrami's mandate

[821] In the case at bar, the Commission had Dr. Édouard Beltrami testify as an expert. The Tribunal recognized Doctor Beltrami as an expert psychiatrist and clinical sexologist specializing in sexual medicine and occupational medicine. The Tribunal also recognized his specific knowledge on the administration, interpretation and use of MMPI tests.

[822] The evidence shows that the Commission asked Doctor Beltrami to assess (a) whether or not the medical information provided by Micheline Montreuil, especially the reports of Doctor Lehoux, Doctor Tremblay and Doctor Côté, could have enabled the Canadian Forces to conclude that Micheline Montreuil was suffering from a medical condition that could compromise his work in the Canadian Forces; (b) what steps were required to diagnose gender identity disorder; (c) who could make such a diagnosis; (d) whether or not a person can confirm that he or she will not require medical attention or psychotherapy in the 30 years to follow; and (e) explain the HBIGDA.

2. Doctor Beltrami's reports

[823] The evidence shows that Doctor Beltrami prepared three assessment reports. The first deals with Micheline Montreuil's ability, from a psychiatric perspective, to perform common tasks required of any member of the Canadian Forces, the second deals with the psychiatric assessment of Micheline Montreuil, and the third is a response to two reports prepared by Doctor Assalian and his colleagues that deal with Doctor Côté's report.

(1) First report

[824] Doctor Beltrami's first report is based in part on the documentation that Doctor Lehoux, Doctor Côté and Doctor Tremblay sent to a Canadian Forces counsel in 2005, in response to a Tribunal order. The documents that Doctor Lehoux and Doctor Tremblay sent are in fact

the complete medical file they had on Micheline Montreuil. Doctor Côté did not have a medical file on Micheline Montreuil, since it was his practice to destroy files after five years.

[825] Doctor Beltrami also bases his report on certain medical reports that Doctor Lehoux, Doctor Côté and Doctor Tremblay sent to the Canadian Forces as part of their assessment of Micheline Montreuil's medical file for Micheline Montreuil's 1999 application for enrolment.

[826] It should be noted here that when the Canadian Forces assessed Micheline Montreuil's medical file, they did not have the documents that Doctor Lehoux and Doctor Tremblay sent in 2005 to a Canadian Forces counsel. In fact, the evidence shows that those files were never sent to the Canadian Forces physicians.

[827] In cross-examination, Doctor Beltrami acknowledged that, when he was preparing his report, he did not have the following documents: the *Report of Physical Examination (For Enrolment)* completed in October 1999, when Micheline Montreuil applied for enrolment, the disclosure request form completed by Micheline Montreuil in October 1999, the letter from Doctor Collins to Doctor Boddam dated November 9, 1999, the letter from Micheline Montreuil to Doctor Collins dated December 22, 1999, the letter from Doctor Collins to Doctor Boddam dated January 5, 2000, and the letter from Doctor Collins to Major Ménard dated January 20, 2000.

[828] Finally, Doctor Beltrami's first report is also based on certain letters that Doctor Collins and Doctor Wright, two recruiting medical officers, sent to Micheline Montreuil regarding the assessment of his file.

(a) Doctor Lehoux's medical file

[829] It appears from Doctor Beltrami's first report that he did not take into account the medical report that Doctor Lehoux sent to the Canadian Forces physicians in 1999, but only the medical file that she sent a Canadian Forces counsel in November 2005 that the Canadian Forces did not have when they assessed Micheline Montreuil's medical file in 1999. In the Tribunal's opinion, no valid conclusion can be drawn from Doctor Beltrami's analysis of the medical file that Doctor Lehoux sent to the Canadian Forces counsel in 2005.

(b) Doctor Côté's medical file and reports

[830] In his assessment, Doctor Beltrami appears to have considered as part of a whole the document sent by Doctor Côté to a Canadian Forces counsel in 2005 that refers to the 1998 assessment and the October and December 1999 reports that Doctor Côté sent to the Canadian Forces. Doctor Beltrami does not appear to have considered the November 2001 document regarding the medical information request.

[831] Doctor Beltrami's error in confusing two separate files, the Collège Garneau file and the Canadian Forces file, weakens his findings. However, Doctor Beltrami nevertheless concludes that the information sent to the Canadian Forces in 1999 would have been insufficient and he would have requested another assessment. Moreover, regarding the partial transformation issue, Doctor Beltrami opines that the Canadian Forces should have requested a more detailed assessment or had one of their experts assess Micheline Montreuil to get a clearer assessment.

(c) Doctor Tremblay's medical file and reports

[832] Doctor Beltrami refers in his first report to the complete medical file that Doctor Tremblay had on Micheline Montreuil, as well as letters that Doctor Tremblay sent to Canadian Forces physicians in October 1999 and March 2000. It is very clear in Doctor

Beltrami's report that Doctor Beltrami merged the information in the medical file that Doctor Tremblay had compiled on Micheline Montreuil, which the Canadian Forces did not have when they assessed Micheline Montreuil's medical file, with the information in Doctor Tremblay's October 1999 report. That error weakens Doctor Beltrami's conclusions in the same way as in Doctor Côté's case.

[833] That said, Doctor Beltrami notes that Doctor Tremblay appears to indicate in his October 1999 report that Micheline Montreuil would complete the entire transsexuality procedure, while Doctor Côté states in his letter that Micheline Montreuil did not wish to complete it. Doctor Tremblay concludes that, in such a situation, an external assessment by recognized experts in the field could have been requested.

[834] Moreover, Doctor Beltrami stated that a question exists with respect to Doctor Tremblay's report dated March 15, 2000, given that Micheline Montreuil had decided that he did not want to lose his physical sexual ability or undergo overly extensive penile regression, and that he did not want to go all the way but would likely become what is called a transgendered person. Doctor Beltrami believes that Doctor Tremblay did not understand what was happening with Micheline Montreuil. Doctor Beltrami states in his report that he can understand why the Canadian Forces would consider Micheline Montreuil's development as atypical for a transsexual.

[835] Aside from the reports and files of Doctor Lehoux, Doctor Côté and Doctor Tremblay, Doctor Beltrami also considered certain letters that Canadian Forces physicians sent to Micheline Montreuil, in particular, the letters from Doctor Collins dated December 10, 1999, March 9, 2000, and May 17, 2000, as well as the letter from Doctor Wright dated July 30, 2002.

(d) Letters from Doctor Collins

[836] Doctor Beltrami states in his report that the request in the letter dated December 10, 1999, for more information from Micheline Montreuil's psychiatrist is completely justified, and the Canadian Forces physicians were correct in requesting a more detailed assessment, especially from a psychological perspective, that provided further details on Micheline Montreuil's atypical development. Doctor Beltrami has no comment on the other two letters from Doctor Collins.

(e) Letter from Doctor Wright

[837] Doctor Beltrami mentions in his report the contents of the letter from Doctor Wright, specifically that the medical limitations had changed because the gender identity treatment had changed, a specialist (Doctor Tremblay) had diagnosed a chronic condition, the treatment had been stopped and there was a risk of recurrence.

[838] To Doctor Beltrami, the reasoning in the letter is as follows: gender identity disorder is generally a lifelong condition; gender identity disorder was diagnosed by Doctor Tremblay, a specialist in the area, albeit not a psychiatrist; treatment usually must be completed; therefore, since Micheline Montreuil has a chronic condition but is not receiving treatment for it, he may require treatment later on. Doctor Beltrami added that the reasoning in the letter is perhaps not perfect, but is sound.

[839] Doctor Beltrami also appears to conclude in his first report that, in the documentation consulted in writing his report, there is nothing that leads him to believe that Micheline Montreuil was unable to perform, from a psychiatric point of view, the tasks described in the *Generic Task Statement*, which applies to all members of the Canadian Forces. However, the

evidence shows that that is not at issue in the case at bar, since Colonel Fletcher testified that the common tasks are related to the occupational factor of the medical category, and Doctor Newnham testified that Micheline Montreuil's ability to perform the tasks was not disputed by the Canadian Forces. Therefore, Doctor Beltrami's findings regarding Micheline Montreuil's ability to perform such tasks are of little use for the purposes of this case.

(2) Second report

[840] In his second report, Doctor Beltrami states his observations following the clinical assessment of Micheline Montreuil. His assessment is based on an interview with Micheline Montreuil and an MMPI test administered to Micheline Montreuil.

[841] Doctor Beltrami notes that Micheline is biologically male. Contrary to what Doctor Beltrami writes in his report, the evidence shows that Micheline Montreuil has a health insurance card that identifies him as a male. In his report, Doctor Beltrami traces the history of Micheline Montreuil's issue. That history is mainly based on information that Micheline Montreuil provided to Doctor Beltrami.

[842] In the history, Micheline Montreuil mentions the Collège Garneau incident. According to Doctor Beltrami's report, Micheline Montreuil stated that, given his preference for dressing as a woman, he was seen in a shopping centre in the city and the Collège considered it inappropriate for teaching, and Doctor Côté was then asked to provide a psychiatric assessment, Micheline Montreuil having been faced with choosing to resign or be fired. The Tribunal notes that no mention is made of information in the affidavit signed in June 2000 by Micheline Montreuil regarding his depression in the weeks and months following his resignation from Collège Garneau and the suicidal thoughts he had during that period.

[843] Doctor Beltrami also notes in the report that Micheline Montreuil told him that it is a pleasure to dress as a woman, everything is easier and simpler, the clothing is cooler in the summer, and there are fewer cumbersome pockets. Doctor Beltrami notes that Micheline Montreuil stated that, if it were possible for him to be a whole, complete woman, and maybe have children, the operation would be worthwhile, but his experience had taught him that operations were complex, imperfect and not worth it. Doctor Beltrami also notes that Micheline Montreuil believes that [translation] "everyone realizes that he is transgendered and potentially transsexual."

[844] Doctor Beltrami also notes in his report that Micheline Montreuil does not deny being a man, places himself in an intermediate group and considers himself in a realm, repeats that dressing as a woman is more comfortable than dressing as a man and complains about men being forced to wear big, heavy clothes, realizes that he has more bust than hips and that women's clothing suits him better. When asked about the specific meaning that the term "transgendered" has for him, Micheline Montreuil stated that it is a person who wants to live with breasts and a penis. To him, a transgendered person is one who does not want to have an operation but rather wants to stay in between the two, and one of the advantages of being transgendered is that the condition can be reversed.

[845] Doctor Beltrami notes that, on the basis of the results from the MMPI test that he administered to Micheline Montreuil, Micheline Montreuil scored a V on the validity scales (L, F and K), which can be considered defensive. Doctor Beltrami believes that the test is not invalid.

[846] Doctor Beltrami notes that the rather high score for the L scale may indicate a tendency toward denial, repression, lack of self-scrutiny and the desire to present oneself as virtuous.

Doctor Beltrami notes that the score for the K scale, while not overly high, may indicate a defensive attitude or a feeling that everything is going well and a feeling of being well adjusted, confident and reluctant to seek help.

[847] In conclusion, Doctor Beltrami states that, on the basis of the scores themselves, the recommendations of a known author, and comparison with someone applying to the army and someone applying to the air force, he believes that the MMPI test he administered to Micheline Montreuil is valid.

[848] Having found the MMPI test to be valid, Doctor Beltrami goes on to interpret the results. He infers that Micheline Montreuil does not have bipolar disorder, has no tendency toward major or minor depression, even during breakdowns, has no antisocial tendencies, does not have pathological suspiciousness or paranoia, is well adjusted, organized, punctual, accurate, able to act logically and thoughtfully, and is stable. He observes that Micheline Montreuil does not have obsessive anxiety, frequent work conflicts, delusion or any sign of dissociation.

[849] In conclusion, Doctor Beltrami, unlike Doctor Assalian, excludes borderline personality disorder but notes histrionic traits (tendency toward making himself look good) and narcissistic traits. As for the five axes of the DSM-IV, Doctor Beltrami finds that, on Axis I, Micheline Montreuil has a gender identity disorder not well documented in the scientific literature with respect to transgendered persons, on Axis II, Micheline Montreuil has slight histrionic and narcissistic traits not severe enough to be considered personality disorders, on Axis III, Micheline Montreuil is in good physical health, on Axis IV, Micheline Montreuil does not appear to be affected much by legal disputes, which Doctor Beltrami does not consider automatically to be stress factors, and on Axis V, Micheline Montreuil is functioning at 80%, which indicates adequate functioning in society.

[850] As an overall conclusion to his report, Doctor Beltrami states that he found it difficult to truly see inside or be capable of empathizing with what drove to this point Micheline Montreuil's desire to present himself as a woman, especially since Micheline Montreuil claims to have nothing against his masculine side, his penis or the pleasures of the penis, and is not so verbal or insistent as to consider himself completely female and nothing else, as transsexuals usually are. Doctor Beltrami states that he finds it difficult to see the dynamic forces driving Micheline Montreuil to live as a woman rather than as a man. He notes that, when Micheline Montreuil says that she prefers women's clothing to men's clothing because they are more pleasant to wear, he is unable to sense the intensity driving her to take such drastic action, noting that that is more philosophical than medical.

[851] What is important to Doctor Beltrami is that there is no depression or borderline personality disorder, and that there is proper social adjustment-that the only problem is a desire to present oneself as belonging to a sex other than one's own, with no desire for a complete transformation; to Doctor Beltrami, the fact that there is no operation being planned and no hormonal fluctuation appears to indicate a certain stability.

[852] However, Doctor Beltrami acknowledged that Micheline Montreuil has dissociative moments characterized by a certain sleepiness, as opposed to dissociative traits or disorders. Doctor Beltrami stated that dissociative disorders hamper a person's functioning, while dissociative traits do not. Doctor Beltrami stated that he did not notice any dissociative disorder or multiple personality disorder in Micheline Montreuil.

(3) Third report

[853] Doctor Beltrami's third report is an analysis of the document by Doctor Assalian and his team on Doctor Côté's 1998 report and of Doctor Assalian's addendum to his report dated June 21, 2006.

[854] Regarding those documents, on the basis of the contents of Doctor Côté's report, Doctor Beltrami states that Micheline Montreuil is more stable than he may appear to be, there is no multiple personality or dissociative disorder, the statement that Micheline Montreuil is a lightening rod against intrusions from the outside world that eases Pierre Montreuil's suffering is a bald assertion, and Doctor Beltrami believes that there are no dissociative symptoms. In the end, Doctor Beltrami considers the statements in the addendum to be spurious.

(ii) Gender identity disorder

[855] In the case at bar, the issue was raised as to whether or not Micheline Montreuil, who considers himself to be a transgendered person, has a gender identity disorder. In his testimony, Micheline Montreuil vehemently denied having a gender identity disorder, whether specific or not, because he believes that being transgendered is a social reality and in no way a psychiatric pathology.

[856] The evidence shows that, psychiatrically speaking, gender identity disorder (also called gender dysphoria) is included in the psychiatric diseases listed in the DSM-IV (*Diagnostic Statistical Manual for Mental Disorders*) of the American Psychiatric Association (APA).

[857] It should be noted here that the DSM-IV makes no reference to transsexuality or transsexual persons, while the preceding version, DSM-III-R (1987), does. There is also no reference to the concept of "transgendered." The DSM-IV (1994) prefers the concept of "gender identity disorder," which encompasses the concepts of "transsexual person" and "transsexuality" or "transsexualism."

[858] However, the medical profession does recognize that, medically speaking, gender identity disorders include issues of transvestism, transsexuality and transgenderism. Moreover, both Doctor Beltrami and Doctor Assalian stated that transsexual and transgendered persons are covered under the heading "Gender Identity Disorders" in the DSM-IV.

[859] For purposes of this case, it is worthwhile to consider gender identity disorder in relation to the DSM-IV, as well as gender identity disorder in relation to Micheline Montreuil.

a) Gender identity disorder and the DSM-IV

[860] In the medical world, especially the world of psychiatry, the DSM (*Diagnostic and Statistical Manual of Mental Disorders*) is considered to be the international bible of psychiatric disorders, the purpose of which is to be a diagnostic aid and provide physicians with a common language for classifying psychiatric disorders. The DSM-IV was, in this proceeding, at the heart of discussions regarding whether or not Micheline Montreuil has a gender identity disorder or borderline personality disorder. Doctor Assalian explained to the Tribunal the scope of the diagnostic criteria in the DSM-IV.

[861] From Doctor Assalian's explanations and the DSM-IV, it is apparent that a physician making a psychiatric diagnosis must do so on the basis of five axes, each axis representing a specific assessment area, that may help the clinician in making a therapeutic choice.

1. The five axes

[862] Under the DSM-IV, a psychiatric pathology must be identified (or the mental state of person assessed) on the basis of five axes. Doctor Assalian commented at length in his testimony on the five axes described in the DSM-IV for assessing a person.

[863] Doctor Assalian stated that Axis I, Clinical Disorders, establishes the principal pathology for which a person is receiving psychiatric attention, such as gender identity disorder, depression or anxiety; Axis II, Personality Disorders, establishes secondary pathologies, such as paranoia, borderline personality and narcissism; Axis III, General Medical Conditions, involves physical diseases that may exist concurrently; Axis IV, Psychosocial and Environmental Problems, involves stressors, such as loss of employment, loss of self-esteem or financial loss; and Axis V deals with the patient's level of function immediately prior to assessment.

[864] It should be noted that Axis IV deals with psychosocial problems that can affect the diagnosis, treatment and prognosis of mental disorders. Under the DSM-IV, a psychosocial or environmental problem may present itself in the form of a negative life event, an environmental difficulty or disability, family or interpersonal stress, inadequate social support or personal resources, or any other problem relating to the context in which the patient's difficulties developed.

[865] Axis V of the DSM-IV enables the clinician to make a global assessment of the patient's level of functioning. This is coded on a special "Global Assessment of Functioning (GAF) scale." The GAF scale can be especially useful for globally tracking an individual's clinical progress by means of a single code. An assessment using this scale must take into account only the psychological, social and occupational functioning of the patient. The scale is divided into ten levels of function. To make an assessment using this scale means to choose the level the best reflects the global level of function.

[866] For example, if a person appears to be at level 80, as is the case for Micheline Montreuil, then that person may show symptoms, but they are temporary, expectable reactions to stressors, and there is no more than slight impairment in social, occupational or school functioning.

2. Clinical criteria

[867] The DSM-IV distinguishes between *three categories* of gender identity disorder, namely, Gender Identity Disorder in Children F64.2 (302.6), Gender Identity Disorder in Adolescents or Adults F64.0 (302.85) and Gender Identity Disorder Not Otherwise Specified F64.9 (302.6). In the case at bar, only gender identity disorders in adults and gender identity disorders not otherwise specified will be considered.

i. Gender identity disorders in adults F64.0 (302.85)

[868] Under the DSM-IV, the following criteria must be met to diagnose a gender identity disorder in adolescents or adults:

A. A strong, persistent cross-gender identification, that is, the desire to belong to the other sex or the insistence that one is of the other sex. This cross-gender identification must not merely be a desire for cultural advantages of being the other sex.

In adolescents and adults, the disturbance is manifested by symptoms such as a stated desire to be the other sex, frequent passing as the other sex, or desire to live or be treated as the other sex.

B. Persistent discomfort with one's sex or sense of inappropriateness in the gender role of that sex. In boys, an assertion that one's penis or testes are disgusting or will disappear or assertion that it would be better not to have a penis.

C. The diagnosis of gender identity disorder is not made if the individual has a concurrent physical hermaphrodite-type intersex condition.

D. Clinically significant distress or impairment in social, occupational, or other important areas of functioning.

[869] The DSM-IV published in 1994 also states: "*Adults with Gender Identity Disorder are preoccupied with their wish to live as a member of the other sex. This preoccupation may be manifested as an intense desire to adopt the social role of the other sex or to acquire the physical appearance of the other sex through hormonal or surgical manipulation. Adults with this disorder are uncomfortable being regarded by others as, or functioning in society as, a member of their designated sex. To varying degrees, they adopt the behavior, dress, and mannerisms of the other sex*."

(2) Gender identity disorders not otherwise specified F64.9 (302.6)
[870] If an individual does not meet the four formal criteria of the DSM-IV, the DSM-IV has another diagnostic category, namely, gender identity disorders not otherwise specified. According to the literature, that category includes a variety of individuals, including those who desire only castration or penectomy without a desire to develop breasts, those who wish hormone therapy and mastectomy without genital reconstruction, those with a congenital intersex condition, those with transient stress-related cross-dressing, and those with considerable ambivalence about giving up their gender status (*The Harry Benjamin International Gender Dysphoria Association's Standards of Care for Gender Identity Disorders*, 6th version, February 2001).

[871] Doctor Assalian stated in his testimony that, in the DSM-IV, gender dysphoria is included under the heading "Gender Identity Disorder," and the two terms are synonymous. Doctor Assalian stated that the category "Gender Identity Disorder" also includes transsexualism. He stated that, according to the DSM-IV categories, transgendered persons are equated with transsexual persons and persons suffering from a gender identity disorder. For purposes of the DSM-IV, transgendered persons fall under the category "Gender Identity Disorder Not Otherwise Specified" (GIDNOS).

[872] Therefore, to Doctor Assalian, there is no real difference between the terms "transsexual," "transgendered," "gender dysphoria" and "gender identity disorder." The terms are interchangeable, and they are all included under the broad category of gender identity disorders. Doctor Assalian believes that Micheline Montreuil is a secondary transsexual, since Micheline Montreuil discovered later in life that he was not comfortable in his body, and then decided to come out of the closet.

[873] Doctor Assalian believes that, under the DSM-IV, gender identity disorder is characterized by the strong, persistent identification of a person, who was born a biological male, for example, to identify as a female, through women's clothing, makeup, hairstyles, change of name, undergarments, the desire to pass as a member of the other sex and the desire to live and be accepted as a person of the opposite sex. Doctor Assalian stated that the person's desire to live as a member of the opposite is so intense that the person also wishes to adopt the social role of the other sex.

[874] Doctor Assalian further stated in his testimony that another characteristic of gender identity disorder is persistent discomfort with one's sex or identity as a man or woman. Doctor Assalian believes that persons with a gender identity disorder feel trapped in the wrong sex or body and want to belong to the other sex. They want to fix the problem by requesting hormone treatments or surgery. For example, a man will feel that his genital sex is inappropriate for his role; he will feel a certain aversion or repulsion for his genitalia, his penis and testicles.

[875] Doctor Assalian acknowledges, however, that there are people identified as having gender identity disorder who do not want to go as far as sex reassignment surgery, but who want to transform their body to make it congruent with their internal conviction that they are of the opposite sex.

[876] Doctor Assalian stated that another characteristic of a person with a gender identity disorder is dysfunction that causes distress associated with social or occupational problems. To Doctor Assalian, a person with a gender identity disorder is suffering from extreme distress, if not depression.

[877] Lastly, Doctor Assalian believes as a psychiatrist that transgenderism is a part of gender identity disorder, but it is different for people in the transgendered realm.

b) Gender identity disorder and Micheline Montreuil

[878] It is worthwhile to examine the viewpoints expressed by Micheline Montreuil himself, in addition to Doctor Assalian and Doctor Beltrami, who both assessed Micheline Montreuil.

1. Micheline Montreuil's position

[879] Micheline Montreuil forcefully argued that he is not suffering from gender dysphoria or gender identity disorder, or any mental illness or pathology. As well, Micheline Montreuil denied being a transsexual person in the traditional sense of the term. Micheline Montreuil repeatedly stated that he does not want an operation and he is fine as he is, with breasts and a penis and preserved male sexual functioning. Micheline Montreuil also maintained that, since he does not want an operation and is no longer taking hormones, he should not be considered to be a person with a gender identity disorder or a transsexual person.

[880] Micheline Montreuil stated in his testimony that a person with a sexual identity disorder is called a transsexual person, and one who is suffering from a gender identity disorder is called a transgendered person. Doctor Assalian stated in his testimony that that is very confusing to him. To Doctor Assalian, Micheline Montreuil is suffering from a gender identity disorder (his diagnosis), and, whether it be transgendered, transsexual or gender dysphoria, it is the same pathological category to Doctor Assalian.

[881] Micheline Montreuil defined "gender identity disorder" by stating in his testimony that the condition refers to a person's desire to live in the opposite sex and the belief that the person is trapped in a body of the wrong sex. Micheline Montreuil believes that the definition applies to transsexual individuals in the traditional sense of the term, that is, individuals who have felt trapped in their body since childhood and who have required psychological attention since childhood. That is not the case for Micheline Montreuil.

[882] Micheline Montreuil also considers himself to be a perfectly rational and stable person. He stated that he has never been under a psychiatrist's care. He stated in vivid terms throughout his testimony that he is not crazy or nuts, and he accused Doctor Assalian of trying to make him appear that way. Moreover, Micheline Montreuil emphasized-and Doctor

Beltrami acknowledged-that neither Doctor Côté nor Doctor Tremblay specifically diagnosed gender identity disorder.

[883] Micheline Montreuil relies on the fact that Doctor Côté wrote in his 1999 report that Micheline Montreuil was not suffering from any psychiatric pathology that might prevent Micheline Montreuil from joining the Canadian Forces to cast doubt on the credibility of Doctor Assalian, who maintains that Micheline Montreuil was suffering from a gender identity disorder in 1999 and had broken down under stress.

[884] The Tribunal emphasizes that Micheline Montreuil fails to mention that Doctor Côté has never assessed him to determine whether or not he had a gender identity disorder. The only assessment Doctor Côté conducted was to determine whether or not Pierre Montreuil was capable of making an informed decision regarding his resignation from Collège Garneau in 1997. The report that Doctor Côté prepared dealt only with events before the resignation, not after. The evidence shows that Doctor Assalian, in writing his opinion, had the advantage of knowing about the affidavit dated June 21, 2000, and the events described therein, and of being able to interpret them as a psychiatrist.

[885] Moreover, Micheline Montreuil argued that he does not satisfy a number of DSM-IV diagnostic criteria for gender identity disorder. In particular, Micheline Montreuil testified that he feels no discomfort about his condition, he has a penis and a pair of breasts and that suits him perfectly fine, he is not uncomfortable with his penis, he does not have an irresistible urge to cut it off or remove it (criterion B), and he is not suffering from any clinically significant distress or impairment in social, occupational, or other important areas of functioning (criterion D). Unlike Doctor Assalian, Micheline Montreuil believes that he satisfies only one of the formal criteria for gender identity disorder, namely, a strong, persistent cross-gender identification.

[886] Micheline Montreuil pointed out in his testimony that gender dysphoria was not originally included in the DSM and that, in versions II and III of the DSM, homosexuality was classified as a mental illness, but was removed from version IV. Micheline Montreuil argued that the same thing could happen one day with gender identity disorder. In fact, Micheline Montreuil believes that gender dysphoria or transgenderism should not be included in the DSM-IV. Doctor Boddam pointed out that, were that the case, a psychiatrist would still have to assess the symptoms of a patient who felt uncomfortable in his or her body.

[887] To Micheline Montreuil, the respondent's classifying gender dysphoria as a diagnosed medical condition effectively prevents all transsexuals from enrolling in the Canadian Forces. Moreover, Micheline Montreuil maintained that, even though transgendered people are not transsexual people, because they do not intend to have an operation, the respondent is including them in the transsexual category for purposes of excluding them.

[888] Micheline Montreuil also mentioned in his testimony that he believes that there are psychiatrists who would be happy if transgendered people were considered mentally ill, like transsexuals, and placed under their control; in Micheline Montreuil's opinion, transgendered people should not be subjected to that kind of medical mafia.

[889] Micheline Montreuil vigorously disputes the conclusions drawn by Doctor Assalian in diagnosing Micheline Montreuil with a gender identity disorder. Micheline Montreuil believes that he does not have a gender identity disorder and Doctor Assalian has incorrectly assessed his condition.

[890] Micheline Montreuil just as vigorously disputes Doctor Assalian's position that all individuals with gender dysphoria must undergo a complete sex reassignment process, a process that Micheline Montreuil would never undergo. However, Doctor Assalian stated in his testimony that, to be cured of his gender identity disorder, Micheline Montreuil must undergo therapy, and it is only then that the final outcome can be determined.

[891] Micheline Montreuil maintains that Doctor Assalian was biased in his reports and testimony, and that Doctor Assalian's opinions were based on preconceived notions and not supported by any significant material facts. Micheline Montreuil criticizes Doctor Assalian for not distinguishing between transgendered people and transsexual people, and for presuming that they all have a gender identity disorder under the criteria set in the DSM-IV.

[892] Micheline Montreuil believes that Doctor Assalian incorrectly concluded that any man who puts on a dress must be suffering from a gender identity disorder. To Micheline Montreuil, a person with a gender identity disorder also has a number of mental pathologies that prevent him or her from functioning appropriately in society, which is not the case with Micheline Montreuil. After describing his life, Micheline Montreuil stated that there is nothing to indicate that he is unable to function in society, given the various jobs and positions he has held over the years, as shown by the evidence.

[893] In addition, Micheline Montreuil disputes Doctor Assalian's conclusion that Micheline Montreuil may have suffered from major depression after his forced resignation from Collège Garneau and emphasizes Doctor Côté, who has performed more than 8,000 assessments during his career and who was asked to assess Micheline Montreuil regarding his resignation on December 4, 1997, found no severe pathology, such as schizophrenia, but only a certain anxiety.

[894] It should be noted here, once again, that Doctor Côté's March 1998 assessment dealt only with one specific element, namely, Micheline Montreuil's ability to make an informed decision on December 4, 1997. Logically, Doctor Côté therefore did not assess Micheline Montreuil with respect to his reaction to his decision to resign from Collège Garneau and to the events that followed.

[895] It appears from Micheline Montreuil's testimony that he considers himself to be his own judge. In his opinion, everyone has the right to self-determination, the right to make personal choices. Micheline Montreuil considers all life choices to fall within his exclusive domain. Pursuant to that right, Micheline Montreuil believes that it is up to him alone to determine the treatments that he needs and, if treatments are required for a specific condition such as hormones for breast development, to decide on the way to take the substances that the physician has prescribed.

[896] Micheline Montreuil stated that it was up to him to determine the frequency with which to take the hormones prescribed by Doctor Tremblay and to adjust it according to his goals, namely, to develop breasts without sacrificing his masculinity. Micheline Montreuil attempted throughout his testimony to show that all his life choices have been logical and rational.

[897] He stated that he agrees that men should be free to determine whether or not they will take female hormones, as well as the dosage, since it is their responsibility to decide, although they may receive and benefit from the advice of physicians.

[898] Micheline Montreuil therefore believes that the only person who has the right to decide whether or not a transgendered individual will take hormones is the individual himself or herself. Micheline Montreuil also believes that an endocrinologist who agrees to prescribe hormones must inquire about the reasons behind the request for a hormone prescription. That is a moral and legal obligation. To Micheline Montreuil, if the physician disagrees with the request, he or she ought to refuse it. Micheline Montreuil also acknowledged that it is legitimate, to the extent that a physician believes it to be relevant, for the physician to investigate the psychological condition of an individual who appears to be a male presenting himself as a female and asking for a hormone prescription.

2. Doctor Assalian's assessment

[899] The evidence shows that Doctor Assalian and his team conducted their psychiatric assessment of Micheline Montreuil on the basis of the following: (1) documentation that the respondent sent to Doctor Assalian, in particular the reports by Doctor Côté and Doctor Tremblay; (2) the interview on May 18, 2006, and the results of the MMPI-2 test that was administered to Micheline Montreuil on that day; (3) the affidavit signed by Micheline Montreuil in June 2000; (4) Micheline Montreuil's website; and (5) Doctor Côté's report dated March 18, 1998. Doctor Assalian testified that it was on the basis of all those elements, as well as the DSM-IV and scientific literature, that he came to develop the [translation] "clinical impression," as he calls it, that Micheline Montreuil has a gender identity disorder.

[900] Although it is not mentioned in his first report that he performed an analysis using the five axes, Doctor Assalian testified that that analysis was done in this case. As for the five axes by which an individual is psychiatrically assessed, Doctor Assalian stated that Micheline Montreuil has a gender identity disorder on Axis 1, borderline personality disorder on Axis 2, no significant pathology on Axis 3, no psychosocial problems on Axis 4, and a score of 80 on Axis 5 for global functioning, which is adequate.

[901] Doctor Assalian stated in his testimony that individuals in Micheline Montreuil's situation do not go to see psychiatrists, because they do not consider themselves as having a gender identity disorder, but instead see themselves as being a part of an acceptable social realm.

[902] To Doctor Assalian, Micheline Montreuil is biologically a man, functions sexually as a man, dresses as a woman and wants to be recognized by society not as a woman, but as being *in between male and female*. Doctor Assalian believes that the desire to be a man and a woman simultaneously or to be in between the two is a psychological pathology that must be treated.

[903] Doctor Assalian believes that a person can be only male or female, while Micheline Montreuil believes that a person can be *in between the two sexes*. Doctor Assalian believes that an individual belongs to one of the two sexes regardless of the transformations he or she undergoes. Moreover, Doctor Assalian believes that Micheline Montreuil's desire to live or keep himself in between the two sexes indicates that he wants to avoid distress.

[904] To Doctor Assalian, a person who considers himself neither male nor female but *in between the two* genders or sexes, when in fact the person is living as a member of both genders, is a confused person, according to the literature. Doctor Assalian therefore believes that a person who, on the one hand, considers himself or herself in transition between the two sexes and, on the other hand, considers himself or herself comfortable in between the two sexes is confused and ambivalent. Doctor Assalian pointed out Micheline Montreuil's ambivalence in his writings, in particular the letters he wrote in support of his application for

enrolment, the ambivalence in calling himself transgendered or transsexual, and the interruption and subsequent resumption of his hormonal therapy.

[905] To Doctor Assalian, the expression "person in transition" used by Micheline Montreuil refers to a person wishing to go from male to female and implies sex reassignment and a transsexual person with a gender identity disorder.

[906] Doctor Assalian emphasized in his testimony that a person with an unresolved gender identity disorder lives in ambiguity in that the door is always open to the possibility of undergoing surgery. Doctor Assalian relied on Micheline Montreuil's alleged statement to Doctor Beltrami during their interview that, if it were possible to be completely female and have children (as a woman), the operation might be worthwhile.

[907] Doctor Assalian does not believe that a person can find stability in between the two genders. To Doctor Assalian, the fact that Micheline Montreuil initially talks about sex reassignment, and then changes his mind midway to consider himself transgendered and in between the two is a sign of instability.

[908] Therefore, Doctor Assalian believes that Micheline Montreuil is suffering from an *unresolved* gender identity disorder, despite Micheline Montreuil's statements about feeling fine the way he is, and not suffering or being depressed. In the end, it matters little whether the disorder is specific or not. It is still an unresolved gender identity disorder. Moreover, Doctor Assalian stated that, if Micheline Montreuil sees himself as transgendered, he would then fall under the DSM-IV category of gender identity disorder not otherwise specified. However, the assessment by Doctor Assalian and his colleagues shows that Micheline Montreuil has a *pure gender identity disorder*.

[909] Doctor Assalian emphasized in his testimony that a diagnosis of gender identity disorder does not rely on an isolated event, but on the patient's *longitudinal history*. Doctor Assalian stated that, to determine whether or not Micheline Montreuil has a gender identity disorder, one must examine a set of elements specific to him, such as the fact that he is biologically a man, has chosen a woman's name, always dresses as a woman and wears dresses, wears makeup, has taken hormones, has had laser hair removal, wants to be recognized socially as a woman, and gives what Doctor Assalian calls a "clinical impression" of having an unresolved gender identity disorder to which, according to the medical literature Doctor Assalian consulted, a borderline personality disorder is associated.

[910] To that must be added, according to Doctor Assalian, the fact Micheline Montreuil had an early interest in women's clothing, occasionally dressed as a woman during a certain period, wanted at some point to live as a woman 24 hours a day, wants to have breasts but also keep his penis, considers himself a woman but entertains thoughts of being a father, and has a hospital card that says he is female but a health insurance card that says he is male. It is all those elements together that, for Doctor Assalian, create a "clinical impression" that Micheline Montreuil is suffering from a gender identity disorder, even though Micheline Montreuil has never stated that he met with a surgeon to prepare for sex reassignment or wanted to cut off his penis, and even though Micheline Montreuil claims that he does not have an identity disorder.

[911] Given that Micheline Montreuil claims not to want to become the other sex, Doctor Assalian testified that Micheline Montreuil's *longitudinal history* suggests that his development is that of a transsexual person, a person suffering from a gender identity disorder who started at adolescence with cross-dressing, went on to hormone therapy, and

then breast development. Moreover, Doctor Assalian stated that the correspondence produced in the case at bar suggests that Micheline Montreuil is a transsexual in transition. That said, Doctor Assalian emphasized that, at some point, Micheline Montreuil stopped saying that he was transsexual and stated that he would stop taking hormones, did not want an operation, was a transgendered person and wanted to have children from his own sperm. Doctor Assalian believes that those elements provide further indications that Micheline Montreuil is suffering from a gender identity disorder.

[912] To Doctor Assalian, it is not necessary for all the criteria to be met before diagnosing a gender identity disorder, since the DSM-IV is not a recipe book that prescribes diagnoses. Doctor Assalian emphasized that the DSM-IV is not a *psychiatry textbook*, but a mental illness classification tool with criteria that help physicians make the most accurate diagnosis possible for purposes of classifying psychiatric diseases. It should never supplant the physician's clinical experience and professional judgment.

[913] Doctor Assalian acknowledged that Micheline Montreuil does not strictly satisfy all the criteria in the DSM-IV for gender dysphoria, but nevertheless maintains his "clinical impression" that Micheline Montreuil suffers from gender dysphoria. Doctor Assalian stated that, even though Micheline Montreuil claims that he is not averse to or disgusted by his penis and therefore fails to satisfy the third criterion for gender identity disorders, and that he functions well in society and therefore fails to satisfy the fourth criterion, Doctor Assalian still believes that Micheline Montreuil has a gender identity disorder. To Doctor Assalian, those elements notwithstanding, Micheline Montreuil remains a person who wants to change his gender and who is confused or ambivalent about his gender identity.

[914] Doctor Assalian believes that an unresolved gender identity disorder is a time bomb. A person with such a disorder is at significant risk of losing control under stress. Doctor Assalian relied in his testimony on the affidavit signed by Micheline Montreuil in June 2000 to reinforce his position that Micheline Montreuil had lost control when he resigned, in a situation in which his cross-dressing had resulted in his forced resignation. Among other things, Doctor Assalian relied on the account of the facts in the June 2000 affidavit, described above, to illustrate that Micheline Montreuil reported being in a depressive state for a rather lengthy period, from December 1997 to March 1998.

[915] On the basis of facts in the detailed affidavit, specifically the facts surrounding Micheline Montreuil's resignation from Collège Garneau, Doctor Assalian concluded that Micheline Montreuil is frail, loses control under extreme stress (his resignation based on the fact that he was seen dressed as a woman in a shopping centre), and becomes anxious. Doctor Assalian believes that that frailty is inherent in individuals suffering from gender identity disorder.

[916] In cross-examination regarding the resignation on December 4, 1997, and its effect on Micheline Montreuil, Doctor Assalian acknowledged in his testimony that the situation on December 4, 1997, may have caused Micheline Montreuil to be in a state of stress for a certain period. When asked if he had noted any facts during the interview with Micheline Montreuil suggesting that Micheline Montreuil was in crisis, Doctor Assalian answered no, adding that his opinion on the possibility of Micheline Montreuil psychologically breaking down under stress was based on the literature and his clinical experience.

[917] Doctor Assalian maintains that, even though Micheline Montreuil does not appear to have had a breakdown since 1997, the risk of Micheline Montreuil breaking down under

stress remains. Doctor Assalian's opinion is based largely on Micheline Montreuil's reaction to the Collège Garneau incident.

[918] Doctor Assalian testified that the main reason that he believes that the Canadian Forces physicians were justified in assigning Micheline Montreuil a medical employment limitation resides in his conviction that it is highly probable that Micheline Montreuil, suffering from a gender identity disorder, may break down in stressful situations during his employment in the Canadian Forces.

[919] As part of this proceeding, Doctor Assalian had the opportunity to comment on Doctor Beltrami's testimony. Doctor Assalian identified certain points of agreement and disagreement between them.

[920] Doctor Assalian stated that Doctor Beltrami agrees with him when he states that the Canadian Forces physicians understood that Micheline Montreuil was a transsexual person planning to undergo complete sex reassignment and considered Micheline Montreuil's development to be that of a transsexual person. Doctor Assalian shares Doctor Beltrami's opinion that a request for clarification from Canadian Forces physicians was justified under the circumstances.

[921] To Doctor Beltrami, Micheline Montreuil is not a typical transsexual, because he wants to have children. To Doctor Assalian, Micheline Montreuil is suffering from gender dysphoria regardless of whether he is a typical transsexual or atypical transsexual.

[922] Unlike Doctor Beltrami, who diagnosed Micheline Montreuil with a gender identity disorder not otherwise specified, Doctor Assalian diagnosed Micheline Montreuil with an unresolved, recurrent, chronic, pure gender identity disorder. To Doctor Assalian, a man who dresses as a woman because he is uncomfortable in his gender has a gender identity disorder. That said, it should be noted that both agree that Micheline Montreuil has a gender identity disorder. Doctor Assalian stated that, whatever the case may be, the important thing is that Micheline Montreuil has an unresolved gender identity disorder that may lead to disaster in stressful situations.

[923] Doctor Assalian disagrees with Doctor Beltrami when the latter states that a person must meet all the DSM-IV gender dysphoria criteria before the person can be said to be suffering from gender identity disorder. Doctor Assalian does not believe that it is absolutely necessary for a person to dislike his penis to be considered as having a gender identity disorder.

[924] Doctor Assalian believes that a gender identity disorder exists, whether specific or non-specific, and, to make a diagnosis, one must refer not only to the DSM-IV criteria, but also to the *longitudinal history of the individual*, one's practical experience and one's clinical judgment. Doctor Assalian believes that a psychiatrist making a diagnosis must use his or her clinical judgment, supported by relevant scientific literature. A "clinical impression" can then be formed. The psychiatrist is responsible for determining the DSM-IV criteria that are met.

[925] Doctor Assalian testified that, according to the literature, a gender identity disorder is usually accompanied by a personality disorder, borderline personality disorder in the case of Micheline Montreuil, which Doctor Beltrami disputes. Doctor Assalian stated in his testimony that, to him, the fact that Doctor Beltrami acknowledges that Micheline Montreuil has dissociative moments confirms the existence of borderline personality disorder. Doctor

Assalian disagrees with Doctor Beltrami, who considers Micheline Montreuil to be a stable person.

[926] Doctor Assalian agrees with Doctor Beltrami when he says that a multidisciplinary team can help with gender identity disorder issues. Doctor Assalian also agrees with Doctor Beltrami when he states that a person's self-assessment for gender identity disorder is unacceptable and of no value as a scientific diagnosis. He agrees with Doctor Beltrami that an external assessment would have been appropriate.

3. Doctor Beltrami's assessment

[927] To Doctor Beltrami, gender dysphoria is part of the DSM-IV and related to psychiatry. Doctor Beltrami stated in his testimony that a person who wishes to live in the opposite sex and who receives the desired care will no longer have symptoms that are truly psychiatric, once the transformation is complete. Doctor Beltrami stated that the person can function perfectly adequately once the transformation is complete.

[928] Doctor Beltrami acknowledged in his testimony that, currently, many psychiatric professionals believe that people who do not accept their biological sex and wish to dress as the opposite sex have a gender identity disorder. He stated that others believe that the phenomenon does not necessarily fall under the category of gender identity disorders. That said, Doctor Beltrami observes that a person's dressing as the opposite sex may be the result of a gender identity disorder or gender dysphoria. If that is the case, the criteria in the DSM must be satisfied.

[929] Doctor Beltrami stated that all gender identity disorders are considered psychiatric illnesses, including disorders in transgendered people. To Doctor Beltrami, once a person requires a physician, especially for hormones, and requires attention, the person enters the psychiatric category of gender identity disorder not otherwise specified. Therefore, Doctor Beltrami believes that a person who at some point has a desire to change his sex, has taken hormones, has feminized his phenotype and who goes by a woman's name falls under the DSM-IV.

[930] To Doctor Beltrami, a transgendered person is a man who appears to be female but has kept his male genitalia. According to Doctor Beltrami, Micheline Montreuil believes that a transgendered person is a permanent or full-time transvestite. According to Doctor Beltrami, Micheline Montreuil considers himself in an intermediate group that is neither the typical man nor the overly feminine woman.

[931] That said, Doctor Beltrami has no doubt that Micheline Montreuil is biologically a man. Doctor Beltrami stated that Micheline Montreuil's motivation to live as a woman is that women's clothing is much less cumbersome and more pleasant to wear that men's clothing, and it is more comfortable to be dressed as a woman than as a man. Doctor Beltrami stated that Micheline Montreuil is a person who must live with breasts and a penis.

[932] Doctor Beltrami further testified that Micheline Montreuil told him that, were it possible to be completely female and have children as a woman, the operation would no doubt be worthwhile. Doctor Beltrami emphasized in his testimony that Micheline Montreuil's current spouse considers Micheline Montreuil to be her big, handsome Viking, and therefore projecting a masculine image.

[933] Doctor Beltrami acknowledged in his testimony that Micheline Montreuil does not have the classic profile of a transsexual person who generally scorns his penis and its paternal

function. Doctor Beltrami also acknowledged in his testimony that there appears to have been a change of direction in Micheline Montreuil's development, from transsexual to transgendered, a situation that Doctor Beltrami describes as unusual.

[934] Doctor Beltrami also testified that Micheline Montreuil does not have a typical gender identity disorder. Doctor Beltrami stated that, without diagnosing Micheline Montreuil with a gender identity disorder, as identified in his report, it is possible to see that Micheline Montreuil has a *gender identity issue*, since there is the issue of being male or female. Doctor Beltrami was absolutely clear on that point. Doctor Beltrami therefore classifies Micheline Montreuil's condition under gender identity disorders not otherwise specified, on Axis 1.

[935] Doctor Beltrami also finds that Micheline Montreuil has an adjustment disorder related to gender identity. Doctor Beltrami believes that that disorder results from interaction between society and an individual with a gender identity disorder. More specifically, Doctor Beltrami stated that the gender identity issue in Micheline Montreuil's case stems from the interaction between society and his wish or desire to be accepted as part male and part female.

[936] Doctor Beltrami testified that, psychiatrically speaking, there is no direct relationship between Micheline Montreuil's issue and the inability to function in the tasks described by the Canadian Forces. He therefore finds that there is no psychiatric functional impairment. Doctor Beltrami also stated that Micheline Montreuil may have narcissistic traits; however, narcissistic traits, unlike narcissistic disorders, do not cause functional impairment from a psychiatric point of view.

[937] To Doctor Beltrami, the only remaining psychiatric diagnosis for Micheline Montreuil is gender identity disorder not otherwise specified. Doctor Beltrami believes that a person who wishes to live in the sex that is opposite to his or her biological sex does not necessarily have psychiatric problems. Moreover, Doctor Beltrami believes that a person with a gender identity disorder does not automatically have a personality disorder, which Doctor Assalian appears to dispute.

[938] Doctor Beltrami stated that, to talk about a psychiatric pathology, the patient must have a certain dysfunction. The patient must have interpersonal, occupational or functional difficulties. Doctor Assalian disagrees. To Doctor Assalian, many people have psychiatric pathologies but can function in society, such as schizophrenics.

[939] When asked to comment on the reliability of a person's assessment of his or her own psychiatric condition, Doctor Beltrami stated in his testimony that such an assessment is unreliable. Doctor Beltrami believes that a person's self-judgment cannot be relied upon once the person has started consulting a specialist.

[940] Doctor Beltrami noted in his testimony that the problem in this case is that a precise, clear diagnosis of Micheline Montreuil's condition was never made. Doctor Beltrami acknowledged that Doctor Tremblay uses the term "transsexual" in his letter dated October 26, 1999, and Doctor Beltrami concludes that Doctor Tremblay had diagnosed Micheline Montreuil with transsexuality.

[941] From the above, the Tribunal finds that both Doctor Assalian and Doctor Beltrami agree that, psychiatrically speaking, with respect to the DSM-IV classification of mental illnesses, Micheline Montreuil has a gender identity disorder, specific according to Doctor Assalian and non-specific according to Doctor Beltrami. That finding is based on an

evaluation of the documents submitted to the experts and their assessment of Micheline Montreuil in interviews.

[942] Moreover, the Tribunal shares Doctor Assalian's opinion that the diagnosis of gender identity disorder is based on an analysis of the individual's longitudinal history, as well as the clinical experience and professional judgment of the physician making the diagnosis, that the DSM-IV is not a recipe book but a tool to help psychiatrists clinically characterize psychiatric conditions, such as gender dysphoria or borderline personality disorder, as precisely as possible.

[943] Micheline Montreuil may not strictly satisfy the classic criteria for gender identity disorder listed in the DSM-IV. However, both Doctor Assalian and Doctor Beltrami agree that Micheline Montreuil is suffering from a gender identity disorder, specific and unresolved according to Doctor Assalian, and non-specific according to Doctor Beltrami.

[944] From all the expert evidence, the Tribunal finds that, psychiatrically speaking, with respect to the DSM-IV classification, transgendered persons, like transsexual persons, fall under the category of persons with a gender identity disorder. That in no way changes the fact that transgendered persons are also an undeniable social reality.

[945] Whether or not Micheline Montreuil meets the classic profile of a person with a gender identity disorder and whether or not he has a non-specific gender identity disorder, the Tribunal finds, on the basis of all the testimony heard, documentation entered in evidence and opinions given by experts (Doctor Assalian and Doctor Beltrami), that it was reasonable for the Canadian Forces physicians who assessed Micheline Montreuil to believe that Micheline Montreuil had a gender identity disorder under the DSM-IV, so that more information was required from Micheline Montreuil's physicians, and not Micheline Montreuil himself, to clarify his true condition and eliminate the existence of a potential gender identity disorder. There is no evidence that the diagnostic impression of the Canadian Forces physicians was discriminatory.

[946] Therefore, the Tribunal finds that the Canadian Forces physicians cannot be criticized or found to be unreasonable for detecting a gender identity issue in Micheline Montreuil, whether pathological or not. Doctor Beltrami testified that it is not always easy to understand a nonconformist like Micheline Montreuil. The impression of the Canadian Forces physicians was therefore not unreasonable under the circumstances, and the Tribunal cannot criticize them.

(iii) Personality disorders

[947] In the case at bar, Micheline Montreuil was assessed for personality disorder by Doctor Assalian, with the help of Doctor Karmel, and by Doctor Beltrami.

a) Personality disorders and the DSM-IV

[948] Personality disorders are dealt with on Axis 2 of psychiatric assessments. Under the DSM-IV, Axis 2 is used to indicate personality disorders and mental retardation. It can also be used to note the main characteristics of personality maladjustment and defence mechanisms.

[949] Placing personality disorders and mental retardation, factors that are not at issue here, on a separate axis ensures that they will be taken into account and not neglected when attention is focused on Axis 1 disorders. Under the DSM-IV, Axis 2 can also be used to note the main characteristics of personality maladjustment when they are not severe enough to

reach the threshold for personality disorder. Habitual use of inappropriate defence mechanisms may also be indicated on Axis 2.

[950] The DSM-IV describes the following personality disorders: paranoid personality disorder, schizoid personality disorder, schizotypal personality disorder, antisocial personality disorder, borderline personality disorder, histrionic personality disorder, narcissistic personality disorder, avoidant personality disorder, dependent personality disorder, obsessive-compulsive personality disorder and personality disorder not otherwise specified.

[951] Under the DSM-IV, the general diagnostic criteria for personality disorder are as follows:

A. An enduring pattern of inner experience and behaviour deviating markedly from the expectations of the individual's culture. This pattern is manifested in two or more of the following areas:

(1) cognition (perception and interpretation of self, others and events)
(2) affect (the range, intensity, lability and appropriateness of emotional response)
(3) interpersonal functioning
(4) impulse control

B. The enduring pattern is inflexible and pervasive across a broad range of personal and social situations.

C. The enduring pattern leads to clinically significant distress or impairment in social, occupational or other important areas of functioning.

D. The pattern is stable and of long duration and its onset can be traced back at least to adolescence or early adulthood.

E. The enduring pattern is not better accounted for as a manifestation or consequence of another mental disorder.

F. The enduring pattern is not due to the direct physiological effects of a substance (e.g., a drug of abuse, a medication) or a general medical condition (e.g., head trauma).

[952] It was raised during expert testimony that Micheline Montreuil might have borderline personality disorder, histrionic personality disorder or narcissistic personality disorder. It is worthwhile, for a better understanding of this case, to examine the characteristics of each of those pathologies under the DSM-IV.

1. Borderline personality disorder

[953] Under the DSM-IV, borderline personality disorder is characterized by nine elements:

A pervasive pattern of instability of interpersonal relationships, self-image and affects, as well as marked impulsivity, beginning by early adulthood and present in a variety of contexts, as indicated by five (or more) of the following:

(1) frantic efforts to avoid real or imagined abandonment
(2) a pattern of unstable and intense interpersonal relationships characterized by alternating between extremes of idealization and devaluation
(3) identity disturbance: markedly and persistently unstable self-image or sense of self

(4) impulsivity in at least two areas that are potentially self-damaging (e.g., spending, sex, substance abuse, reckless driving, binge eating)
(5) recurrent suicidal behaviour, gestures, threats or self-injuring behaviour
(6) affective instability due to a marked reactivity of mood (e.g., intense episodic dysphoria, irritability or anxiety usually lasting a few hours and only rarely more than a few days)
(7) chronic feelings of emptiness
(8) inappropriate anger or difficulty controlling anger (e.g., frequent displays of temper, constant anger, recurrent physical fights)
(9) transient, stress-related paranoid ideation, delusions or severe dissociative symptoms

2. Histrionic personality disorder

[954] Under the DSM-IV, histrionic personality disorder is characterized by the following diagnostic criteria:

A pervasive pattern of excessive emotionality and attention seeking, beginning by early adulthood and present in a variety of contexts, as indicated by five (or more) of the following:

(1) is uncomfortable in situations in which he or she is not the centre of attention
(2) interaction with others is often characterized by inappropriate sexually seductive or provocative behaviour
(3) displays rapidly shifting and shallow expression of emotions
(4) consistently uses physical appearance to draw attention to self
(5) has a style of speech that is excessively impressionistic and lacking in detail
(6) shows self-dramatization, theatricality, and exaggerated expression of emotion
(7) is suggestible, i.e., easily influenced by others or circumstances
(8) considers relationships to be more intimate than they actually are

3. Narcissistic personality disorder

[955] Under the DSM-IV, narcissistic personality disorder is characterized by the following diagnostic criteria:

A pervasive pattern of grandiosity (in fantasy or behavior), need for admiration, and lack of empathy, beginning by early adulthood and present in a variety of contexts, as indicated by five (or more) of the following:

(1) has a grandiose sense of self-importance (e.g., exaggerates achievements and talents, expects to be recognized as superior without commensurate achievements)
(2) is preoccupied with fantasies of unlimited success, power, brilliance, beauty, or ideal love
(3) believes that he or she is "special" and unique and can only be understood by, or should associate with, other special or high-status people (or institutions)
(4) requires excessive admiration
(5) has a sense of entitlement, i.e., unreasonable expectations of especially favourable treatment or automatic compliance with his or her expectations
(6) is interpersonally exploitative, i.e., takes advantage of others to achieve his or her own ends
(7) lacks empathy: is unwilling to recognize or identify with the feelings and needs of others
(8) is often envious of others or believes others are envious of him or her
(9) shows arrogant, haughty behaviours or attitudes

b) Personality disorders and the MMPI test

1. Doctor Karmel's assessment

[956] The Tribunal heard testimony from Dr. Richard Karmel, a psychologist, regarding personality disorders. The Tribunal recognized Doctor Karmel as a specialist in administering and interpreting MMPI test results. That recognition was not extended to Doctor Beltrami,

who administered an MMPI test himself to Micheline Montreuil, rather than finding a psychologist do it.

[957] It appears from Doctor Karmel's testimony and the scientific literature entered in evidence that the MMPI test is a psychological test that the subject completes himself or herself. The test is a series of 563 questions intended to enable the subject to make a self-assessment. The test is interpreted using a series of validity scales and clinical scales. The validity scales indicate if the subject was defensive in answering the questions and if the subject tended to overestimate strengths and downplay weaknesses. The MMPI test is a tool for psychiatrists to fine-tune their clinical diagnoses.

[958] The evidence shows that Doctor Karmel administered an MMPI-2 test to Micheline Montreuil as part of Doctor Assalian's clinical assessment in May 2006. Since the test showed that Micheline Montreuil had a defensive attitude, Doctor Karmel decided not to interpret the test and did not perform a clinical scale results analysis. He informed Doctor Assalian in the report he submitted. Doctor Karmel stated that it was up to Doctor Assalian to determine how the clinical results might be used.

[959] When asked about why he did not assess the clinical scales, Doctor Karmel testified that the clinical scale results would probably have been inaccurate and he had warned Doctor Assalian about that. Doctor Karmel emphasized that, in light of the profile obtained, he believes that Micheline Montreuil very likely under-reported certain negative aspects of his personality (negation) and omitted the psychopathological aspects (repression). However, Doctor Karmel believes that Micheline Montreuil's MMPI test results do not mean that the test is invalid.

[960] Doctor Karmel believes that the defensive MMPI test results raise serious questions about the reliability of the clinical and validity scale results of the test itself. They could render the clinical scale results problematic. Doctor Karmel stated in his testimony that Micheline Montreuil's MMPI profile indicates that he is a manipulative person.

2. Doctor Beltrami's assessment

[961] The evidence shows that Doctor Beltrami also administered an MMPI test to Micheline Montreuil as part of his assessment of Micheline Montreuil. The evidence shows that Doctor Beltrami, for purposes of his second report, merged the clinical elements from his interview with Micheline Montreuil and the results of the MMPI-2 test. Doctor Beltrami explained in his testimony the way in which he administered the MMPI test and the scope of the test. The main purpose of the test is to alert the psychiatrist to elements for investigation in a clinical assessment.

[962] The evidence shows that Doctor Beltrami also noted a defensive profile in Micheline Montreuil's MMPI test responses, but he did not believe that the level of defensiveness was great enough to invalidate the test and discard the results.

[963] Notwithstanding the high scores that could cast doubt on the validity of the test, Doctor Beltrami believed that they were not high enough to stop him from assessing the clinical scales and using the results in his global assessment of Micheline Montreuil. Doctor Beltrami points out in his testimony that a defensive person is not necessarily a liar. Doctor Beltrami testified that he took the defensive factor observed in the MMPI test into account in his assessment of Micheline Montreuil.

[964] The evidence shows that Doctor Karmel was very critical of Doctor Beltrami's approach, suggesting that there was a potential conflict with respect to Doctor Beltrami's role of psychiatric assessor between the disappointing MMPI test results and Doctor Beltrami's global assessment of Micheline Montreuil. Doctor Karmel criticized Doctor Beltrami for not having given sufficient weight to the validity scale results and the questions they raised regarding the accuracy of the information Micheline Montreuil provided. Doctor Karmel emphasized in his testimony that, as Doctor Beltrami administered the MMPI test himself to Micheline Montreuil, any warning he could have given would have been addressed to himself.

c) Personality disorders and Micheline Montreuil

[965] The Tribunal heard testimony from Doctor Assalian and Doctor Beltrami regarding whether or not Micheline Montreuil had a personality disorder.

1. Doctor Assalian's assessment

[966] Doctor Assalian believes that Micheline Montreuil is suffering from a borderline personality disorder or, at the very least, shows certain traits of personality disorder, such as narcissistic traits and dissociative symptoms. That finding is based mainly on the interview he had with Micheline Montreuil on March 18, 2006. Doctor Assalian stated in his testimony that, according to the literature, a personality disorder is usually associated with individuals with a gender identity disorder, and, in the case of Micheline Montreuil, it was borderline personality disorder.

[967] Doctor Assalian believes that Micheline Montreuil satisfies five of the nine criteria for borderline personality disorder that are listed in the DSM-IV, namely, criteria 3, 6, 7, 8 and 9. His opinion contrasts with that of Doctor Beltrami, who believes that Micheline Montreuil does not have borderline personality disorder per se, but has certain narcissistic traits. Micheline Montreuil maintains that he does not meet any of the criteria.

[968] Doctor Assalian acknowledged in his testimony that Micheline Montreuil does not satisfy a number of criteria or statements regarding borderline personality disorder, specifically, sudden changes in career path, recurring suicidal behaviour, affective instability, anger, panic, despair, chronic feelings of emptiness with respect to one's existence, chronic bitterness. Doctor Assalian testified, however, that the individual need not meet every criterion to be diagnosed with borderline personality disorder. Doctor Assalian's basic argument on borderline personality disorder is that the literature indicates that gender identity disorder goes hand in hand with borderline personality disorder.

[969] When asked about the materials in Micheline Montreuil's file that show that Micheline Montreuil has associated pathologies often linked to typical primary or secondary transsexuals as described by Doctor Watson, Doctor Assalian had difficulty identifying them.

2. Doctor Beltrami's assessment

[970] Doctor Beltrami believes that Micheline Montreuil does not have borderline personality disorder, but notes the presence of narcissistic traits. Doctor Assalian testified that he does not share Doctor Beltrami's opinion. As mentioned above, Doctor Assalian relies on the literature to state that gender identity disorder goes hand in hand with borderline personality disorder, so that a person suffering from a gender identity disorder will have borderline personality disorder.

[971] To Doctor Beltrami, Micheline Montreuil meets only one of the DSM-IV criteria for borderline personality disorder, namely, criterion 3. The DSM-IV requires that an individual meet five of the nine criteria to be considered as having borderline personality disorder.

[972] Given the MMPI-2 test results and his own clinical assessment of Micheline Montreuil, Doctor Beltrami found that Micheline Montreuil did not have bipolar disorder, major depression, obsessive traits, borderline personality or psychosis that might, from a psychiatric point of view, prevent him from completing the tasks described in the Generic Task Statement.

[973] From all of the expert testimony, the Tribunal is unable to determine with a degree of certainty, on a balance of probabilities, whether or not Micheline Montreuil has a borderline personality disorder within the meaning of the DSM-IV. The evidence is contradictory, with Doctor Assalian believing that Micheline Montreuil satisfies five of the criteria and Doctor Beltrami believing that Micheline Montreuil satisfies only one. However, it appears that Micheline Montreuil has narcissistic traits and dissociative moments associated with a potential borderline personality disorder.

[974] In any event, whether or not Micheline Montreuil has a borderline personality disorder-Doctor Assalian says yes, while Doctor Beltrami says no-that element is not a determinative one in deciding the outcome of the complaint. What is determinative is Micheline Montreuil having a gender identity disorder.

[975] Both Doctor Assalian and Doctor Beltrami acknowledged that Micheline Montreuil has a gender identity disorder: Doctor Assalian believes it is an unresolved gender identity disorder and Doctor Beltrami believes it is a gender identity disorder not otherwise specified. That is important in determining the question, "Given the information provided by Micheline Montreuil on his condition and the findings made by the physician assistants, were the Canadian Forces physicians justified in suspecting that Micheline Montreuil had a gender identity disorder that might affect his enrolment in the Canadian Forces?"

D. Medical assessment of Micheline Montreuil by the Canadian Forces

[976] The evidence shows that, as part of his application for enrolment in the Canadian Forces, Micheline Montreuil underwent medical examinations by two Canadian Forces physician assistants, Warrant Officer Dumais and Warrant Officer Leroux. Moreover, it appears from the evidence that Micheline Montreuil's medical record was assessed by various Canadian Forces physicians, namely, Doctor Collins, Doctor Newnham, Doctor Wright, Doctor Boddam, Doctor Georgantopoulos and DMedPol physicians.

[977] It is worthwhile to consider the ways in which they assessed Micheline Montreuil's medical file, to determine whether or not they were justified in imposing medical employment limitations on Micheline Montreuil and to determine if they behaviour was discriminatory in any way.

(i) Assessment by physician assistants

[978] Doctor Newnham was asked during testimony to describe the role of physician assistants in the enrolment process of the Canadian Forces. Doctor Newnham stated that physician assistants work under the supervision of a recruiting medical officer. They work in recruiting offices across Canada. They are responsible for completing the *Report of Physical Examination (For Enrolment)*, form CF2027. They then assign the applicant a medical category. If the applicant appears to have no medical condition, category G2 is assigned.

[979] Doctor Collins was also asked to comment during testimony on the role of physician assistants. He stated that physician assistants are highly trained. They are not merely mailboxes in the enrolment process. Their role is to complete the questionnaire in the *Report of Physical Examination (For Enrolment)*, record the applicant's medical history and conduct a medical examination of the applicant. Moreover, it appears from Doctor Collins' testimony that physician assistants make their own decision on an applicant's medical category. The medical category they assign is not final and is revised by a recruiting medical officer, such as Doctor Collins.

[980] The duties of physician assistants are described in a document entitled [translation] "Physician Assistant Job Description." The document states that physician assistants are responsible for completing parts 1 and 2 of the medical report, interpreting medical history, conducting basic physical and laboratory investigations for recruitment, ensuring that all relevant documentation has been placed in the medical file before it is sent to the recruiting medical office, answering questions from applicants regarding the medical examination in a professional and able manner, behaving professionally, courteously and fairly at all times with all applicants and personnel and being an example for the public and subordinates, liaising with the base surgeon and the recruiting medical office when there are questions, identifying complex files and determining if it would be appropriate to discuss them with the recruiting medical office.

a) Physician assistant Dumais

[981] The evidence shows that Warrant Officer Dumais is the physician assistant who interviewed and carried out the medical examination of Micheline Montreuil when Micheline Montreuil applied for enrolment in the Canadian Forces in October 1999. Warrant Officer Dumais has been a physician assistant for 25 years. He was heard as a witness.

[982] Warrant Officer Dumais explained in his testimony the various steps performed when an applicant arrives at the recruiting office. As part of the enrolment process, the applicant must complete part 1 of form CF2027, which deals with medical history. Once that is done, the applicant undergoes certain preliminary tests, for hearing, urine, blood pressure, etc. The physician assistant then conducts a medical examination of the applicant, which includes verifying the information provided by the applicant on the initial questionnaire.

[983] The physician assistant asks the applicant questions about the questionnaire, especially for questions that the applicant has answered affirmatively, examines the various body systems and inquires about any consultations the applicant may have had with physicians and whether or not the applicant has had a nervous breakdown. If yes, he elaborates on the matter. The physician assistant then conducts a physical examination of the applicant. Once the examination has been completed, the physician assistant writes his or her notes. The physician assistant normally completes section H of the form, regarding the applicant's medical category.

[984] However, Warrant Officer Dumais stated that the geographical and occupational categories are left blank if the applicant reports having a health problem that requires a medical opinion; in that case, the physician assistant completes a medical information disclosure request form and gives it to the applicant. The boxes for the geographical and occupational categories are filled in after the physician assistant has received the requested medical information.

[985] Warrant Officer Dumais explained in his testimony that the medical information disclosure request form is completed in front of the applicant and handed directly to the applicant. Warrant Officer Dumais stated that he specifies the information he wishes to obtain and the applicant signs the form. Warrant Officer Dumais stated that the file is put on hold until the requested information is received. Once the requested information has arrived, the physician assistant completes the parts of section H of the form that deal with the geographical and occupational categories. If a physician assistant has questions about an application, he or she can call the supervising physician for instructions. In fact, a physician assistant can call his or her supervising physician at any time, even before having received the requested documents.

[986] Warrant Officer Dumais stated that he became involved with Micheline Montreuil's file when Captain Labonté informed him that Micheline Montreuil would be applying to the Canadian Forces and Micheline Montreuil was a man who dressed as a woman who should be treated in accordance with the *Canadian Charter of Rights and Freedoms* and addressed by his female name, Micheline. The evidence shows that Warrant Officer Dumais telephoned Doctor Collins before meeting Micheline Montreuil to find out how he should treat Micheline Montreuil, as a man or a woman, and what documents he should request. According to Warrant Officer Dumais, Doctor Collins said to treat Micheline Montreuil as a woman and obtain the same information as for any other applicant.

[987] Warrant Officer Dumais testified that he considered Micheline Montreuil's file to be a special case. To Warrant Officer Dumais, it was a special case because that was the first time that he would have to conduct a medical examination of a person who identified as a woman but was still a man. Warrant Officer Dumais testified that he considered Micheline Montreuil to be biologically and physiologically a man and circled "male" on page 2 of the medical report even though Micheline Montreuil had indicated that he was female on page 1.

[988] The evidence shows that Micheline Montreuil completed page 1 of the *Report of Physical Examination* in the presence of Corporal Laflamme. Warrant Officer Dumais then performed a medical examination of Micheline Montreuil, reviewing the questionnaire with him, especially the items that he answered affirmatively, and writing the appropriate remarks on page 2 of the report.

[989] Warrant Officer Dumais testified that he wrote the following on page 2 of the *Report of Physical Examination:* [translation] "Applicant in transition for sex reassignment and currently taking hormones." Under cross-examination, Warrant Officer Dumais stated that he was told that information by Micheline Montreuil, and it was not something he himself had determined, and that he records in his file what people tell him. He added that, to him, a person in transition for sex reassignment is a person awaiting sex reassignment, and if a person wants to change his or her sex, that means that he or she wants an operation. Warrant Officer Dumais was unable to say whether or not Micheline Montreuil told him during the interview that he was a transgendered person who wanted to remain in between the two sexes.

[990] Warrant Officer Dumais added in his testimony that he asked Micheline Montreuil which physician he had seen because he had answered yes to the question, "Have you had any other investigations, tests or treatment by doctors, psychiatrists, psychologists or social workers?" According to Warrant Officer Dumais, Micheline then stated that he was seeing an endocrinologist and was taking hormones. Warrant Officer Dumais then asked him why he was taking hormones. Micheline Montreuil responded that he was in transition for sex

reassignment. Warrant Officer Dumais stated that Micheline Montreuil never told him that he had suffered from depression.

[991] Warrant Officer Dumais testified that he left the boxes for the geographical and occupational factors of the medical category on page 4 of the *Report of Physical Examination* blank. He then gave Micheline Montreuil a medical information disclosure request form on which was written "sex reassignment transition summary." It should be noted that no physician is named on the information request. Warrant Officer Dumais stated that he gave Micheline Montreuil only one copy of the medical information disclosure request form.

[992] The evidence shows that, a few weeks later, Warrant Officer Dumais received three reports from Micheline Montreuil, that is, the reports from Doctor Côté, Doctor Tremblay and Doctor Lehoux. From Doctor Tremblay's letter, Warrant Officer Dumais stated that he understood that Micheline Montreuil was in transition for sex reassignment, was under hormonal therapy and awaiting surgery. From Doctor Lehoux's letter, Warrant Officer Dumais stated that he understood that Micheline Montreuil was in transition for sex reassignment, was receiving medical attention and was under the care of an endocrinologist who was having him take hormones. Lastly, from Doctor Côté's report, Warrant Officer Dumais stated that he understood that it was important to consider Micheline Montreuil as a woman with respect to the sex reassignment process, even though the transformation was not yet complete.

[993] Warrant Officer Dumais testified that his understanding of the file at that time was what Micheline Montreuil had told him during the medical examination, that is, that Micheline Montreuil was in a sex reassignment process, as confirmed by the three letters, and was intending to have an operation, but was waiting until the hormonal therapy was finished. Warrant Officer Dumais stated that it was clear to him that Micheline Montreuil was receiving medical attention and was under the care of a multidisciplinary team as part of a sex reassignment process.

[994] After he received the three medical reports, Warrant Officer Dumais wrote "4" for both the geographical and occupational factors of the medical category, which Doctor Collins later crossed out and replaced with "3" and "2," respectively. Warrant Officer Dumais also wrote the comment, [translation] "temporarily unfit, awaiting sex reassignment operation." The evidence shows that Warrant Officer Dumais then sent the file to Doctor Collins for review.

[995] When asked to comment on the category of G4O4 assigned, Warrant Officer Dumais testified that he assigned a G4 because that is the rating he usually assigns to individuals awaiting an operation, regardless of the type of operation. To Warrant Officer Dumais, a person awaiting an operation cannot be deployed to a remote area, such as Afghanistan. Warrant Officer Dumais added that the rating of 4 that was assigned to Micheline Montreuil was temporary.

[996] The reason for the O4 was that Micheline Montreuil was taking hormones with many side effects and therefore required medical attention. Warrant Officer Dumais stated that he followed what was stated on those matters in the medical literature, specifically the CPS, and the standards of the medical and administrative system. He stated that he had to assign Micheline Montreuil an O4, given that Micheline Montreuil was taking hormones and receiving regular medical attention.

[997] Warrant Officer Dumais also explained in his testimony that the goal in this case was not to say that Micheline Montreuil necessarily had side effects, but that side effects were

possible, according to the CPS, and Micheline Montreuil's work could be affected, and the medical category was assigned to protect Micheline Montreuil.

[998] Warrant Officer Dumais testified that, when a physician assistant in the Canadian Forces receives information in response to a medical information disclosure request, he or she normally looks at the information, assesses it, assigns the factors of the medical category that have not yet been assessed and sends the file to the recruiting medical officer. Warrant Officer Dumais stated that he does not telephone the physician who sent the information to ask for clarification on the physician's report.

[999] Warrant Officer Dumais testified that Micheline Montreuil's examination went smoothly. Warrant Officer Dumais treated Micheline Montreuil as a female, and the answers given were logical and rational. Micheline Montreuil answered all the questions. Warrant Officer Dumais noted that Micheline Montreuil's emotional state was stable.

[1000] Micheline Montreuil testified that it was Warrant Officer Dumais who asked him to provide a *psychiatric diagnosis*, who made the decision, who wrote [translation] "sex reassignment transition" on the form and wanted information regarding that, who wrote [translation] "applicant in transition for sex reassignment" on his own, without Micheline Montreuil having mentioned anything to that effect.

[1001] On the basis of the testimony heard, the Tribunal prefers the version of Warrant Officer Dumais, who stated that he simply records in an individual's medical file what the individual tells him, without any interpretation.

[1002] Warrant Officer Dumais appears to the Tribunal to be a conscientious, competent, honest and sincere member of the Canadian Forces. The Tribunal does not believe Micheline Montreuil when he insinuates that Warrant Officer Dumais fabricated the expression [translation] "sex reassignment transition." The Tribunal notes that Micheline Montreuil tends to distort facts to serve his own interests. Consequently, the Tribunal finds that the information regarding the remark "sex reassignment transition" that appears in the medical report and medical information request form completed by Warrant Officer Dumais came from Micheline Montreuil. The Tribunal also notes that the terms "transgendered" and "transsexual" do not appear in either document.

[1003] Moreover, the Tribunal finds that Warrant Officer Dumais acted professionally in assessing Micheline Montreuil. He followed accepted practice and complied with the medical and administrative standards in effect. He did not demonstrate any discriminatory behaviour with respect to Micheline Montreuil. In the case at bar, Warrant Officer Dumais cannot be criticized for assigning Micheline Montreuil a medical category of G4O4. Warrant Officer Dumais clearly explained in his testimony the reasons behind assigning that category. He followed Doctor Collins' instructions to treat Micheline Montreuil as a female and assess Micheline Montreuil according to the rules in effect, in accordance with the *Charter of Rights and Freedoms*.

[1004] In addition, the Tribunal finds that Warrant Officer Dumais' interpretation of the reports received from Doctor Côté, Doctor Tremblay and Doctor Lehoux was reasonable with respect to the contents of those reports. In the Tribunal's opinion, it was reasonable for Warrant Officer Dumais to consider Micheline Montreuil to be a man who was in a sex reassignment process, being actively treated with hormones and receiving regular medical attention. Under the circumstances, given the information that he had, Warrant Officer Dumais was justified in assigning Micheline Montreuil the medical category G4O4.

Warrant Officer Dumais cannot be criticized for not having contacted Doctor Collins for an explanation of the terminology in the reports when the reports arrived. Warrant Officer Dumais followed standard procedures, that is, he sent the file to Doctor Collins for review. As well, Warrant Officer Dumais cannot be considered to have made an assessment error with respect to the standards and criteria in effect. He has experience and integrity, and he performed his work in a highly professional manner.

b) Physician assistant Leroux

[1005] The evidence shows that Micheline Montreuil had to submit to a second medical examination for his application for enrolment, because more than a year had passed since his last medical examination. The evidence shows that the second medical examination was performed by Warrant Officer Leroux on October 11, 2001. Warrant Officer Leroux was not summoned as a witness.

[1006] The Tribunal notes that, on page 1 of the report, Micheline Montreuil indicates that he is female, has undergone other investigations, tests or treatments by doctors, psychiatrists, psychologists or social workers, is not taking any medications, and has not (as a woman) had any gynecological or obstetrical problems. On page 2 of the report, Warrant Officer Leroux indicates that the applicant is female and stopped hormonal therapy eight months earlier, a sperm count was done, and the applicant wishes to have children. On page 3 of the medical report, it appears that Warrant Officer Leroux initially wrote "G2" and "O2" in the boxes for the geographical and occupational categories. It appears from the medical file that the G2 rating was later changed to G5(T6).

(ii) Assessment by recruiting medical officers

[1007] The evidence shows that three recruiting medical officers assessed Micheline Montreuil's medical file, namely, Doctor Collins, Doctor Newnham and Doctor Wright.

[1008] In her testimony, Doctor Newnham describes the role of the recruiting medical officer. Doctor Newnham stated that the recruiting medical officer is responsible for reviewing medical files that are sent to him or her from across Canada. The recruiting medical officer must ensure that the applicant does not have any condition that raises medical concerns and decide whether or not further information is required to decide if an applicant is fit for enrolment. Doctor Newnham stated that when a recruiting medical officer reviews a file, he or she determines whether or not the applicant meets the Common Enrolment Medical Standard.

[1009] Doctor Newnham stated that the recruiting medical officer must in the course of his or her work review the medical category assigned to the applicant by the physician assistant. If the recruiting medical officer disagrees with the medical category assigned, he or she may change any of the factors and assign the applicant a temporary medical category while awaiting the requested information.

[1010] Doctor Newnham also testified that, once the recruiting medical officer has received all the relevant documentation, he or she must make a decision on medical employment limitations. However, the recruiting medical officer may ask for the opinion of a specialist or send the file to the Director of Medical Policy (DMedPol), who will then decide on the medical employment limitation to be assigned.

[1011] It appears from Doctor Newnham's testimony that the final authority on assigning medical categories is the DMedPol. Doctor Newnham stated that the DMedPol is responsible for reviewing files in which permanent limitations have been assigned. Nevertheless, the

recruiting medical officer has the authority to make a final decision on the file unless it is a complex file.

a) Doctor Collins' assessment

[1012] Doctor Collins is a general practitioner. When Micheline Montreuil applied for enrolment, Doctor Collins was an officer in the Canadian Forces, working as a recruiting medical officer at Borden, Ontario. The evidence shows that he stopped working in July 2001, left the Canadian Forces in November 2001 and was subsequently a consultant working as a recruiting medical officer.

[1013] Doctor Collins testified that, as a recruiting medical officer, he was responsible for reviewing thousands of enrolment applications and assigning medical categories and limitations where appropriate. As a recruiting medical officer, he was also responsible for providing opinions to recruiting officers and to headquarters on whether an applicant should or should not be enrolled

[1014] Doctor Collins testified that he did not speak French fluently, but his understanding of French when he was a recruiting medical officer at Borden was better than it is now. He also testified that, when he was at Borden, he could rely on a physician assistant who was able to work in French. Translation services were also available to him at the time.

[1015] Doctor Collins testified that he was involved with Micheline Montreuil's file as a recruiting medical officer from October 1999 to June 2000, and then Doctor Newnham became the recruiting medical officer responsible for Micheline Montreuil's file.

[1016] Doctor Collins testified that, in his practice in the Canadian Forces, he had never handled a transsexual person's file, and Micheline Montreuil is the only person with a gender identity disorder whose file he was called upon to assess. Doctor Collins stated in his testimony that he is unfamiliar with the term "transgendered."

[1017] Doctor Collins stated in his testimony that he was the second person to review medical files for enrolment applications. Doctor Collins stated that the physician assistant performs the first assessment and the recruiting office provides its opinion. As explained above, under the procedure then in effect, the physician assistant assessed the applicant and obtained relevant medical information from the physicians who may have provided the applicant with medical care. Doctor Collins stated that his role was to review the file once all the information had been obtained. Doctor Collins testified that he could from time to time ask Doctor Boddam, Doctor Ménard or Doctor Georgantopoulos for their opinion on assigning a limitation or medical category.

[1018] Doctor Collins stated that his role in the medical file review process was, first, to determine whether or not the applicant had a medical condition on the basis of the documentation in the medical file, specifically documents provided by the applicant to the physician assistant and, second, to determine whether or not the medical condition identified required a medical employment limitation and determine the medical category that should be assigned. To Doctor Collins, if the applicant required the care of a psychiatrist, a rating of G5 was justified.

[1019] Doctor Collins testified that he received the letters from Doctor Lehoux, Doctor Côté and Doctor Tremblay and, from the information in those letters-especially Doctor Côté's and Doctor Tremblay's-he concluded that Micheline Montreuil had a medical condition for which he was being treated. He therefore requested further information from Micheline Montreuil's

physicians to determine whether or not Micheline Montreuil met the Common Enrolment Medical Standard. He inferred from the letters that Micheline Montreuil was undergoing active treatment and was in transition for sex reassignment. Doctor Collins also testified that he assumed, on the basis of the file, that Doctor Côté was Micheline Montreuil's attending physician.

[1020] Doctor Collins stated in his testimony that at no time did Micheline Montreuil meet the Common Enrolment Medical Standard, and Doctor Collins had no authority regarding a possible exemption or waiver with respect to Micheline Montreuil's medical category.

[1021] When asked to comment on the G factor of the medical category, Doctor Collins acknowledged that the "medical care available" item applied to Micheline Montreuil. Doctor Collins also acknowledged that category G3 does not prevent a person from being deployed and, with a medical category of G3, Micheline Montreuil could be deployed if he were to obtain a waiver.

[1022] Doctor Collins referred in his testimony to the Canadian Forces policy on assessing the physical fitness of members of the Canadian Forces, as well as the medical category system. Doctor Collins stated that, if a person is assigned a rating of O2, it means that he or she has not been assigned any medical employment limitation that involves physical activities, as indicated in the document on the medical category system. Doctor Collins also elaborated on the criteria for distinguishing between the elements related to factor G and those related to factor O.

[1023] It appears from Doctor Collins' testimony that the two factors are unrelated. However, Doctor Collins acknowledged that, while the two factors are not the same, one involving a person's work and the other involving the person's deployment, from the recruiting medical officer's point of view, the important thing is to look at the person's medical condition, especially whether the person has a medical employment limitation, and determine the medical category, in particular factors G and O, that should be assigned, if any.

[1024] Doctor Collins was also asked for his opinion on the circumstances under which a person could be assigned the category G5O2. Doctor Collins reiterated that the factors that make up the medical category are not interrelated. The rating assigned to each is based on the description of the factors listed in the Canadian Forces medical category. The medical officer initially determines the limitation, and then determines the appropriate rating for each factor of the medical category, with respect to the *medical category system*. A rating of G5 is assigned if the person requires medical care by a specialist more frequently than every six months.

[1025] In his testimony, Doctor Collins summarized his handling of Micheline Montreuil's file as follows. He received the file, observed that Micheline Montreuil had been treated with hormones for potential sex reassignment (transsexuality), noted that transsexuality is included in the category of gender identity disorders under the DSM-IV and therefore wondered if there was a psychiatric component to the file. He summarizes his testimony a second time by stating that, according to his reading of the file, Micheline Montreuil applied while undergoing treatment for sex reassignment (transsexuality), a transition from one sex to the other, and he believes that the transsexualism or transition, hormones and electrolysis are related to gender identity issues. He also wanted to know if there was a psychiatric diagnosis or psychiatric problem of which the Canadian Forces should be made aware. He stated that he relied mainly on Doctor Tremblay's letters.

[1026] Doctor Collins testified that, on the basis of the information he had, he did not medically diagnose Micheline Montreuil but inferred that Micheline Montreuil might have a mental illness (gender identity disorder under the DSM-IV), given the information he had after studying Micheline Montreuil's file and the physicians' letters it contained, but he needed more information to complete his assessment before deciding on the medical category. That is why he approached Doctor Boddam, a psychiatrist, on November 9, 1999.

[1027] Doctor Collins stated in his testimony that he was intrigued, as he studied Micheline Montreuil's medical file, that Micheline Montreuil answered no to the question "Are you suffering from or under treatment for any disease or disability?" on page 1 of form CF2027. Doctor Collins stated that he was also intrigued that, although no psychiatric problem was recorded on the form, Micheline Montreuil nevertheless produced a psychiatric report from Doctor Côté in response to the medical information disclosure request. Based on those facts, Doctor Collins concluded that the file should be studied further to clearly establish Micheline Montreuil's medical condition. Can he be criticized for that?

[1028] Doctor Collins repeated throughout his testimony that his main concern was, as a recruiting medical officer, to assess whether or not Micheline Montreuil could be provided with the care required, given Micheline Montreuil's condition, wherever Micheline Montreuil might be. Doctor Collins' was not concerned about the sex reassignment. His task was to determine Micheline Montreuil's medical category in light of the information available to him. Doctor Collins testified that he chose to err on the side of caution in handling Micheline Montreuil's file.

[1029] From reading the letters from Micheline Montreuil's various physicians, Doctor Collins believed that Micheline Montreuil was a transsexual person under treatment at the time of the assessment. Doctor Collins repeated throughout his testimony that, when a file indicates that the person is under treatment or taking medications, then he believes it is appropriate to obtain further information from the person's physicians regarding the prognosis, diagnosis and risk or recurrence.

[1030] When asked to comment on the contents of a number of letters written by Micheline Montreuil, Doctor Collins added that he believes that people are honest in their letters, but he gives little weight to a person's assessment of his or her own condition, for example, stating that he or she will not need hormones in the future or does not currently need hormones, as Micheline Montreuil stated.

[1031] Doctor Collins appears to the Tribunal to be a highly credible witness. His testimony was clear and precise. The explanations of the reasons that led to his assigning Micheline Montreuil a G3 rating are coherent and make sense. The Tribunal finds that Doctor Collins acted as a competent, conscientious professional who was concerned about Micheline Montreuil's well-being, as well as the necessity for the Canadian Forces to enrol healthy individuals who would be able to serve the Canadian Forces fully. The Tribunal finds nothing in Doctor Collins' behaviour to indicate that he acted in a discriminatory manner regarding Micheline Montreuil or that his decision to assign Micheline Montreuil a rating of G3 was based on Micheline Montreuil's gender or sex.

b) Doctor Newnham's assessment

[1032] The Tribunal heard the testimony of Doctor Newnham, a general practitioner, regarding Micheline Montreuil's file. Doctor Newnham is a member of the Canadian Forces. She was required, as a recruiting medical officer, to review Micheline Montreuil's file in 2001 and 2002. The evidence shows that she replaced Doctor Collins when he left his

position in the Canadian Forces. As a recruiting medical officer, she testified that her office reviews 17,000 to 18,000 applications for enrolment annually.

[1033] Doctor Newnham testified that the medical category and medical standards documentation should be considered as guidelines for medical officers who must determine if a medical employment limitation should be imposed on a person, as well as the nature of the limitation, if any. It follows that the recruiting medical officer must exercise judgment to determine if a limitation should be imposed and, if so, which one. The decision or determination must not be arbitrary, but be based on facts.

[1034] As for the category of G5 that was assigned to Micheline Montreuil, the limitation was initially related to Micheline Montreuil's need, in Doctor Newnham's opinion, for specialist follow-up, in this case by two specialists, a psychiatrist and an endocrinologist, based on references in the letters to a transsexual person in transition taking hormones.

[1035] Doctor Newnham testified that, when it was determined from correspondence submitted by Micheline Montreuil that he did not require regular specialist follow-up because he had stopped his hormonal therapy, the medical employment limitation was changed to be consistent with Micheline Montreuil's situation, namely, that he had a chronic condition-gender dysphoria or gender identity disorder, according to Doctor Newnham's testimony-the treatment for which had not been completed.

[1036] When asked to give her opinion on the information that would need to be provided to change a medical category G5 to G2, Doctor Newnham stated in her testimony that the person's physicians would have to provide an update on the person's file. However, Doctor Newnham stated that in Micheline Montreuil's case, Micheline Montreuil would have to start from scratch, since an enrolment medical examination is valid only for one year, unless the Tribunal found that the respondent had shown discrimination against Micheline Montreuil and found that Micheline Montreuil was fit for enrolment.

[1037] Doctor Newnham was asked if she had reviewed Micheline Montreuil's file with the understanding that there was a diagnosis linked to a gender issue. Doctor Newnham acknowledged that the expression "gender issue" appeared on certain documents, as well as the term "transsexual" and the expression "sex reassignment." It was also mentioned that Micheline Montreuil was taking hormones.

[1038] In response to the gender issue question Doctor Newnham stated that the recruiting medical officer's role is to determine if there are medical issues that must be investigated, regardless of the term used in the report regarding those medical issues. What is important to the recruiting medical officer is the treatment plan, requirement for medical care with respect to the person's condition, medications involved and the prognosis.

[1039] Doctor Newnham stated that there were enough medical items in Micheline Montreuil's file, especially that Micheline Montreuil was taking hormones, to require clarification. To Doctor Newnham, regardless of the name given to Micheline Montreuil's condition, there were medical items with respect to the process that Micheline Montreuil was undergoing that required clarification when his file was assessed.

[1040] When asked whether or not Micheline Montreuil's file contained a specific indication that he was suffering from a gender identity disorder, Doctor Newnham testified that the problem she encountered was that the specialists did not provide in their reports the information that the Canadian Forces physicians were seeking. There was no specific

diagnosis of gender identity disorder, treatment plan, progress plan or prognosis. To Doctor Newnham, those shortcomings form the basis of the problem. The Canadian Forces physicians had only an incomplete picture of Micheline Montreuil's condition. To Doctor Newnham, the information provided by Micheline Montreuil's physicians was insufficient. The information provided did not answer the questions of the Canadian Forces physicians.

[1041] In Doctor Newnham's opinion, it was up to Micheline Montreuil to prove his good health and, without that proof, Doctor Newnham could not assign Micheline Montreuil a medical category of G2O2. Moreover, Doctor Newnham testified that the mere fact that Micheline Montreuil was taking hormones, for whatever reason, aesthetic or other, justified assigning a category of G5, for as long as clarification was lacking regarding Micheline Montreuil's condition. Confronted with the fact that Micheline Montreuil had stopped taking hormones, Doctor Newnham stated that, to reactivate the file, she would need to receive an updated assessment of Micheline Montreuil's condition and, as long as that was not done, the medical category of G5 would remain.

[1042] When asked to explain the basis of her decision regarding Micheline Montreuil, Doctor Newnham testified that, given the information that she had, namely, the medical reports by Micheline Montreuil's physicians and the letters and notes from Doctor Collins and Doctor Boddam, she thought it necessary to send the file to the recruiting office to obtain more information from Doctor Côté and Doctor Tremblay and, in the meantime, assign a temporary medical category of G5O2.

[1043] Doctor Newnham added that, when she made the decision to assign a temporary medical category of G5O2, her understanding from the file was that Micheline Montreuil was under the care of two physicians. Doctor Newnham also stated that her understanding from Doctor Tremblay's letter dated October 26, 1999, was that Micheline Montreuil was taking hormones, was transsexual, and was in transition, and that the hormonal therapy was in preparation for a surgical operation. To Doctor Newnham, that was a potential risk in the event that care could not be provided, a risk that had to be considered in the assessment. Moreover, Doctor Newnham added that she would have liked to have a specific diagnosis from Micheline Montreuil's physicians, and that was in fact what she was requesting but not receiving. What she wanted was more information on Micheline Montreuil's medical condition so she could deal with his file. She acknowledged that there was not a specific diagnosis of gender identity disorder in the documentation submitted.

[1044] When asked to comment on the contents of Doctor Côté's letter indicating that Micheline Montreuil did not have any psychiatric pathology, Doctor Newnham testified that the letter is saying that Micheline Montreuil has no psychiatric pathology that could compromise his work in the Canadian Forces, and not simply that he has no psychiatric pathology. To Doctor Newnham, the nuance is significant.

[1045] When asked to comment on the information in Doctor Tremblay's responses on the medical information disclosure request form dated November 22, 2001, Doctor Newnham testified that the most troubling piece of information sent was Doctor Tremblay's statement that the risk of recurrence was not foreseeable. To her, the fact remained that Doctor Tremblay had used the expression [translation] "person behaving like a transsexual person" in his response on the medical information request form. Those are the words that he himself had used.

[1046] Doctor Newnham noted in her testimony that, while the picture was relatively clear in 1999, that is, according to information in the letters submitted, a transsexual person under

hormonal therapy, in transition prior to sex reassignment surgery, the picture was less so in 2001, according to Doctor Newnham. To Doctor Newnham, hormonal therapy had been stopped, but there was no indication of the risk of having to resume hormone treatments in the future.

[1047] When asked about how she viewed Micheline Montreuil's file, Doctor Newnham stated that it was relevant for her not to determine whether Micheline Montreuil was a traditional woman, transgendered person, transsexual or transvestite, but to determine if he should be assigned a medical employment limitation. She stated that she considered the documentation she had and the fact that Micheline Montreuil was under the care of a specialist. To Doctor Newnham, whether Micheline Montreuil presented himself as a man or woman, or acted like a man or woman, was irrelevant to the decision she had to make.

[1048] Doctor Newnham acknowledged that there are members of the Canadian Forces with the categories G3, G4 and G5. In those cases, according to Doctor Newnham's testimony, the file is sent to DMCARM for assessment and determination regarding the member's career. When asked about the possibility of an administrative waiver when an applicant does not meet the minimum enrolment standards, Doctor Newnham testified that if a former member of the Canadian Forces who was in a specific occupation applies for re-enrolment in the same occupation, a waiver may be granted if he or she does not have the category required under the minimum enrolment standards, that is, G2O2, and the decision is an administrative one.

[1049] When asked to explain her understanding of the term "transgendered," Doctor Newnham stated that, to her, a transgendered person is a person who functions in between a man and a woman.

[1050] Like Doctor Collins, Doctor Newnham appears to the Tribunal to be a highly credible and professional person who is mindful of the recruiting medical officer's role in the Canadian Forces. The explanations provided on the way in which she handled Micheline Montreuil's file shows that Doctor Newnham is a very conscientious person. The Tribunal notes that she took time to review the history of the file and analyze the various pieces of information in it to make an informed decision on the basis of the enrolment standards in effect in the Canadian Forces. Nothing in Doctor Newnham's behaviour indicates that she acted in a discriminatory manner against Micheline Montreuil because he was transsexual or transgendered.

c) Dr. K. M. Wright's assessment

[1051] The evidence shows that Dr. K. M. Wright is the recruiting medical officer who replaced Doctor Newnham when she took maternity leave in spring 2002.

[1052] The evidence shows that Doctor Wright sent Micheline Montreuil's medical file to the DMedPol on April 4, 2002, for purposes of review and assigning a medical category and medical employment limitations. In her letter, she states that she has assigned Micheline Montreuil a rating of G5(T6) while waiting for the file to be reviewed. It appears from the file that, in response to the letter dated April 4, 2002, Doctor Deilgat assigned Micheline Montreuil the rating G5O2 because no new information had been provided. According to the evidence, Doctor Wright informed Micheline Montreuil about the DMedPol's decision on April 25, 2002, and explained the reasons for the DMedPol's decision not to change the previous limitations, namely, that he required regular specialist follow-up.

[1053] The evidence shows that Micheline Montreuil wrote to Doctor Wright on May 15, 2002, to inform her that he had completely stopped taking hormones and had stopped the sex

reassignment process. Micheline Montreuil asks Doctor Wright to submit his file to the medical review panel.

[1054] According to the evidence, Doctor Wright sent Micheline Montreuil's file to the DMedPol on May 31, 2002, for a fourth time to have the medical category reviewed and medical employment limitations determined, if any. She writes in her letter that she has assigned the category G4(T6) while awaiting the review of the file.

[1055] On June 14, 2002, the DMedPol responded to the letter dated May 31, 2002. The letter states that the rating G5 remains unchanged, but with a new medical employment limitation description, namely, that it has been determined that Micheline Montreuil has a chronic condition.

[1056] Nothing in the evidence submitted to the Tribunal indicates that Doctor Wright, as a recruiting medical officer, behaved in a discriminatory manner against Micheline Montreuil. The evidence shows that she followed standard procedure and acted on Micheline Montreuil's request to have his file reviewed by the medical review panel.

(iii) Canadian Forces psychiatrist's assessment

[1057] The respondent summoned Doctor Boddam, a psychiatrist in the Canadian Forces, regarding Micheline Montreuil's file. Doctor Boddam explained the various steps in recruiting an applicant: questionnaire, medical history, medical examination, review of the file by a recruiting medical officer and, if required, further investigation or request for medical information from the applicant's physician.

[1058] The evidence shows that Doctor Boddam was required to review Micheline Montreuil's file twice as a psychiatrist. When asked to explain his role, Doctor Boddam stated that his role is to determine the appropriate medical employment limitation to protect both the future member and the Canadian Forces. In the case at bar, Doctor Boddam's role was that of a consultant.

[1059] Regarding his first assessment of Micheline Montreuil's file, dated November 30, 1999, Doctor Boddam stated that, after receiving the file from Doctor Collins, he reviewed all the documents he had. Doctor Boddam stated that Micheline Montreuil indicated on page 1 of the *Report of Physical Examination* that he was female and not under treatment for any disease or disability, even though the file indicates that he was in a sex reassignment process. Moreover, Doctor Boddam stated that his attention was drawn to the fact that Micheline Montreuil indicated that he had had no nervous trouble or breakdowns, but it was indicated that he was in a sex reassignment process.

[1060] Doctor Boddam also stated that he noted that Micheline Montreuil had answered yes to the question, "Have you had any other investigations, tests or treatment by doctors, psychiatrists, psychologists or social workers?" and, on the following page of the *Report of Physical Examination* was written [translation] "applicant in transition for sex reassignment." Doctor Boddam also noted that Micheline Montreuil wrote on page 1 of the report that he was taking hormones. Doctor Boddam inferred that Micheline Montreuil was in a sex reassignment process. Moreover, that impression appears to have been reinforced by the fact that Warrant Officer Dumais wrote that Micheline Montreuil was male. Doctor Boddam also noted that Warrant Officer Dumais wrote [translation] "temporarily unfit, awaiting sex reassignment operation" in section H of the *Report of Physical Examination*.

[1061] When asked to comment on Doctor Lehoux's letter, Doctor Boddam suggested that the document is in between a letter and a report. Doctor Boddam testified that two things caught his attention, namely, that Micheline Montreuil was feminizing her appearance and that she was in a sex reassignment process. Doctor Boddam mistakenly assumed that Doctor Lehoux was a dermatologist. To Doctor Boddam, the reference to Doctor Tremblay and hormonal therapy, in addition to the other information, indicates a person in a sex reassignment because he or she as a gender identity disorder.

[1062] When asked to comment on Doctor Côté's report, Doctor Boddam stated that it is a short letter containing little information, and it was hard to know where things stood psychiatrically. That said, Doctor Boddam testified that the information that struck him the most was the reference to a sex reassignment process. He inferred that Micheline Montreuil was not stable, therapeutically speaking, and was under treatment to become a woman. As well, he concluded that Micheline Montreuil identified as a woman and had begun a sex reassignment process. He also inferred from the letter that the transformation was incomplete.

[1063] When asked to comment on Doctor Tremblay's letter, Doctor Boddam simply repeated the various pieces of information in the letter, in English.

[1064] Doctor Boddam stated that, from all the documentation that Doctor Collins sent him, he believed that the evidence suggested that Micheline Montreuil was suffering from a gender identity disorder, was under treatment, had at least three physicians involved in his treatments, and was compliant with respect to the treatments.

[1065] Doctor Boddam also testified that his biggest concern was with the long-term outlook with respect to the treatments that Micheline Montreuil was receiving and the fact that Micheline Montreuil was still under treatment. Doctor Boddam stated that he was intrigued by the lack of information from Doctor Côté and that, to him, the assessment process for gender identity disorder is quite involved. In addition, Doctor Boddam wondered how it would be possible for Micheline Montreuil's condition not to make him vulnerable with respect to the demands of military training. In short, on November 30, 1999, Doctor Boddam believed that Micheline Montreuil had a gender identity disorder.

[1066] The evidence shows that, on January 17, 2000, Doctor Boddam was required to write a second note regarding Micheline Montreuil's file. Doctor Boddam testified that, having read all the documents that he had received, he was perplexed about Doctor Côté's letters, considering that, two months earlier, Doctor Côté had indicated that Micheline Montreuil was in a sex reassignment process, and then later indicated that a partial transformation was beneficial for Micheline Montreuil. To Doctor Boddam, there had been a change in direction in a six-week period that was not explained in the documentation submitted. Doctor Boddam mentioned in his testimony that he would have expected to receive Micheline Montreuil's medical history and an assessment of Micheline Montreuil's treatment. Doctor Boddam stated that he was disappointed by the lack of information received.

[1067] Doctor Boddam also acknowledged in his testimony that he had the letter that Micheline Montreuil wrote to Doctor Collins dated December 22, 1999. Doctor Boddam emphasized in his testimony that Micheline Montreuil uses the term "transsexual" and, to him, that refers to a person wishing to change his or her gender.

[1068] Given the information available to him, Doctor Boddam believed that sex reassignment surgery was the way in which the gender identity disorder problem would be resolved. Given the documentation submitted to him, he believed that what he perceived as

being Micheline Montreuil's health care team was planning for sex reassignment surgery. However, Doctor Boddam does not believe that sex reassignment surgery is the only option for a person with a gender identity disorder.

[1069] On the issue of the existence of a health care team, Doctor Boddam testified that all the information received from Micheline Montreuil suggested that he was in a sex reassignment process, and such a process usually involves follow-up by an interdisciplinary team, and, in this case, the file contained assessments from three physicians.

[1070] Doctor Boddam inferred from that information that Micheline Montreuil was in a treatment process for a gender identity disorder. Later, when the file shows a change in the sex reassignment process, with Micheline Montreuil stopping his hormonal therapy and stating that he no longer wanted sex reassignment surgery, Doctor Boddam wanted to find out from the medical team that he had identified what their opinion was on the change of direction.

[1071] Doctor Boddam believes that it is up to the Canadian Forces, specifically the recruiting medical officer or DMedPol, to determine whether or not a person is fit to serve in the Canadian Forces. Doctor Boddam noted in his testimony that fields of operation involve many stressful situations, and there are few psychiatrists available to provide psychiatric care to members of the Canadian Forces who may need it. Doctor Boddam believes that stressful situations can worsen the illness of a person with a mental illness.

[1072] Doctor Boddam also stated that Canadian Forces physicians do not interview applicants. Doctor Boddam added that he did not meet Micheline Montreuil. When asked to explain, Doctor Boddam stated that the problem that Micheline Montreuil had was unresolved, and Canadian Forces physicians sought further information from his physicians but did not receive the desired information, that is, satisfactory answers to their questions. In Doctor Boddam's opinion, an interview would have made no difference, because the information sought was held by Micheline Montreuil's physicians.

[1073] When asked about the psychiatric assessment of a person, Doctor Boddam stated that the person's medical history is important, as well as the person's answers to questions; however, he emphasized that the person may downplay his or her weaknesses and overstate his or her strengths, so that is important to obtain information from a number of sources for corroboration.

[1074] When asked to explain his understanding of the term "transgendered," Doctor Boddam stated that, to him, the term refers to a person who likely suffers from a gender identity disorder. To Doctor Boddam, gender identity disorder is a state in which a person's biological sex is different from the person's psychological gender. Doctor Boddam acknowledged in his testimony that there were individuals in the Canadian Forces who have or have had a gender identity disorder.

[1075] As for a person not yet in the Canadian Forces but wishing to join, Doctor Boddam stated that the concern of the Forces is about the functional impact of that state on the person's service in the Canadian Forces and the person's potential path. Doctor Boddam stated that the Canadian Forces would recommend that an applicant in such a state seek treatment and return after the problem has been resolved. Doctor Boddam also stated that the Canadian Forces does not enrol individuals with an unresolved health problem, whether it is a gender identity disorder or other health problem, and the Canadian Forces does not have a specific policy on gender identity disorders.

[1076] In light of the information provided by Doctor Boddam and all the evidence, the Tribunal finds that Doctor Boddam acted as a competent and conscientious professional, well aware of his responsibilities in the selection of applicants for enrolment in the Canadian Forces and the supremacy of the universality of service principle, as well as the necessity of staffing the Canadian Forces with healthy applicants who do not pose a non-negligible risk to the service in the Canadian Forces, with respect to either their own well-being or the well-being of co-workers.

(iv) Assessment by Doctor Georgantopoulos and the DMedPol

[1077] The evidence shows that Doctor Georgantopoulos wrote two notes regarding Micheline Montreuil. Doctor Georgantopoulos was not summoned as a witness. It appears from the evidence that Doctor Georgantopoulos works in the service or the Office of the Director of Medical Policy (DMedPol), the superior authority on assigning medical employment limitations.

[1078] It appears from his first note, dated February 23, 2000, that Doctor Georgantopoulos discussed Micheline Montreuil's file with Colonel Cameron. Doctor Georgantopoulos states in his note that it has been agreed that Micheline Montreuil should be assigned at least a category of G3O2 until the gender issue is resolved. He emphasized that Micheline Montreuil is currently taking hormones, has undergone a partial transformation and has stated that the hormones will be stopped in the future. Doctor Georgantopoulos states in his note that it would be prudent to reassess Micheline Montreuil once the effects of the hormones have ceased and to obtain a clear confirmation from Micheline Montreuil's physician that no other treatment is required for the gender identity issue.

[1079] The evidence shows that, on April 7, 2000, Doctor Georgantopoulos wrote another note regarding Micheline Montreuil's file. In that note, Doctor Georgantopoulos writes that, regarding the question from Micheline Montreuil, what must be obtained is a clear statement from Micheline Montreuil's psychiatrist that, from a mental health standpoint, Micheline Montreuil will not require any treatment for the gender identity issue. *In other words*, (emphasis added), he wants to know if the specialist is willing to say that Micheline Montreuil can go without psychotherapy or medical support for 30 years. To Doctor Georgantopoulos, that is the question that needs answering.

[1080] It appears from the evidence that Doctor Collins, in a letter to Micheline Montreuil on May 17, 2000, informed the latter about the contents of Doctor Georgantopoulos's note, without specifically referring to Doctor Georgantopoulos or his note. In his letter, Doctor Collins repeats the contents of Doctor Georgantopoulos's note almost verbatim.

[1081] The 30-year requirement was the subject of lively debate in the case at bar. As seen above, several physicians who testified were required to comment on the 30-year requirement without having seen the complete note written by Doctor Georgantopoulos or the context of the note.

[1082] Taken out of context, it is clearly impossible for a psychiatrist to certify that a person will not require medical or psychological attention for 30 years. No one can predict the future. The near unanimous answer of the physicians who were asked the question was that it was impossible. Some acknowledged that it was a bad choice of words on the part of Doctor Georgantopoulos, and that Doctor Georgantopoulos was actually referring to the length of time that Micheline Montreuil would be in the Canadian Forces.

[1083] The Tribunal, like the physicians who were asked to comment on the 30-year requirement, believes that it is logically and professionally impossible to have a physician certify that one of his or her patients will not require medical care for the 30 years that follow.

[1084] However, Doctor Georgantopoulos's statements should be placed in context. It should be noted that Doctor Georgantopoulos's statements deal only with the mental health aspect of the file. They do not deal with Micheline Montreuil's hormonal therapy that was stopped.

[1085] According to the note, Doctor Georgantopoulos is seeking a clear statement from Micheline Montreuil's psychiatrist that Micheline Montreuil, from a mental health standpoint, will not require any further treatment for his gender identity issues: "[W]hat we need is a clear comment from her psychiatrist that she will not, from a mental health point of view, require any further treatment of her gender identity issues." That is essentially what Doctor Georgantopoulos is seeking-information that is not forthcoming from Doctor Côté, and for good reason, when one considers the nature and circumstances of his involvement in Micheline Montreuil's file. Doctor Georgantopoulos and, therefore, the DMedPol, is basically seeking confirmation from Micheline Montreuil's psychiatrist that the gender identity disorder that was detected by Canadian Forces physicians and later diagnosed by Doctor Beltrami and Doctor Assalian has been resolved. In light of the duties of medical personnel involved in selecting applicants for enrolment in the Canadian Forces, it was imperative that that information be provided to the Canadian Forces physicians.

[1086] The Tribunal's understanding of those statements is that the Canadian Forces physicians wanted to be certain that the gender identity disorder they detected in Micheline Montreuil had in fact been resolved, once and for all. To clarify his statement, Doctor Georgantopoulos writes, "In other words, will the specialist commit to a statement that this individual can go 30 years without any psychotherapy or medical support for this issue. That is the question that needs answering."

[1087] To determine if that element in itself is a discriminatory element tied to the fact that Micheline Montreuil is perceived as having a gender identity disorder, it should not be isolated from all the other elements shown by the evidence, especially the fact that Doctor Côté prepared reports on Micheline Montreuil's condition that were of poor quality, which he himself acknowledged. In his first report, he states that, while the physical transformation is not complete, the identity is primarily female. In his second report, he states that the incomplete transformation appears to be beneficial for Micheline Montreuil.

[1088] Given that information, the Tribunal believes that Doctor Georgantopoulos was justified in wanting more information on what was meant by an incomplete transformation, since the Canadian Forces do not enrol individuals with pathologies that prevent them from satisfying the universality of service principle. That is the gist of his note.

[1089] The Tribunal notes that it is ironic that Micheline Montreuil uses the 30-year requirement, which he considers impossible to fulfill, as one of his main arguments to show that he was the victim of discrimination on the basis of gender or sex, when he himself has made many undertakings for the future that he could not really make, such as assuring the Canadian Forces in a letter to Doctor Collins dated December 22, 1999, that he would not undergo sex reassignment surgery or breast implant surgery while he was in the Canadian Forces, promising in the same letter to stop his hormonal therapy in late January 2000, when the evidence shows that he stopped his hormonal therapy in February 2001, stating in a letter to Doctor Collins dated March 21, 2000, that he would postpone all medical treatment until

he retired from the Canadian Forces, and stating in a letter to Lieutenant-General Couture dated November 13, 2001, that he would not require any medical care or treatment for his identity change *for fifteen years*, by which time he would have reached retirement age.

[1090] The Tribunal finds that, in its immediate context and in the context of the evidence produced in this proceeding, the 30-year requirement in Doctor Georgantopoulos's note and Doctor Collins' letter is not a discriminatory element against Micheline Montreuil on the basis of his condition as a transgendered or transsexual person, but the expression of a certain frustration on the part of the Canadian Forces with not having received the information sought from a psychiatrist whom Micheline Montreuil presents as his psychiatrist, when that is not in fact the case.

(v) Assessment by the Director of Medical Policy (DMedPol)

[1091] The evidence shows that, in the Canadian Forces, the Director of Medical Policy (DMedPol) is the final authority on assigning medical categories and medical employment limitations. The evidence shows that Micheline Montreuil's file was reviewed four times by medical officers in the DMedPol. There is no evidence that the medical officers in the DMedPol acted in a discriminatory manner against Micheline Montreuil on the basis of his condition as a transgendered person.

E. Errors and decisions of the Canadian Forces

[1092] The Tribunal could end its analysis of the evidence here; however, given the details of this case, the Tribunal believes it should analyze a number of elements that have repeatedly fuelled this case.

[1093] The evidence shows that Micheline Montreuil believes that a number of errors were made regarding his condition and the handling of his file by the Canadian Forces. Micheline Montreuil goes as far as to say that the Canadian Forces have demonstrated wilful blindness against him. Moreover, Micheline Montreuil believes that the Canadian Forces made bad decisions, for example, by refusing to have one of its medical officers meet him so that he could explain himself. It is worthwhile to consider each of those elements.

(i) Errors

[1094] Micheline Montreuil criticizes the Canadian Forces for being mistaken about his condition as a transgendered person, the goal of his hormonal therapy, his intention to change his sex, the care provided by a team of physicians and the identity of his physicians.

a) Error regarding medical condition

[1095] Regarding the Canadian Forces' assessment of his condition, Micheline Montreuil criticizes the Canadian Forces for being misdirected right from the start and remaining misdirected for three years, mistakenly assuming that he was a transsexual person in a sex reassignment process, when he was merely a transgendered person who wanted to live in between the two sexes with a pair of breasts and a penis.

[1096] Micheline Montreuil stated that a misunderstanding arose with Warrant Officer Dumais, Doctor Collins and Doctor Boddam. Micheline Montreuil stated that they did not understand his special condition. Micheline Montreuil testified that he repeatedly stated that he was transgendered and not transsexual, but the Canadian Forces physicians never understood or wanted to understand that.

[1097] To Micheline Montreuil, the Canadian Forces physicians could not accept that he was telling them that he was not a transsexual and would not be having an operation.

Micheline Montreuil stated that the Canadian Forces physicians detected that he had a disability in October 1999, but did not take the time to ask him questions about his actual condition and intentions.

[1098] Micheline Montreuil referred often in his testimony to the fact that nowhere in the documentation produced is it written that she is a transsexual who has obtained the required approvals and will undergo an operation on a given date. To Micheline Montreuil, the fact that he has never had a scheduled operation is evidence that he would never undergo a sex reassignment process, and the people involved in his file should have understood that.

[1099] One need only read a few letters written by Micheline Montreuil to see that he himself created the confusion regarding his condition. In the letter he sent to Doctor Collins, a recruiting medical officer, on December 22, 1999, Micheline Montreuil states that he does not intend to undergo a *sex reassignment* in the next three years, and even if his condition were treated completely, he would still have difficulties as a woman or as a *transsexual*. In the letter he sent to Doctor Collins on March 21, 2000, Micheline Montreuil states that he knows that if he continues his hormonal therapy and the process to become to a *transsexual person*, he will be unemployed for five years. He adds that he does not intend to receive any medical treatment to *change his sex* or his body.

[1100] The Tribunal emphasized that, during oral argument, Micheline Montreuil often referred to the fact that Doctor Côté had stated in his report that Micheline Montreuil did not have any pathology that might compromise his return to the Canadian Forces as a woman, and drew inference that he did not have any psychiatric pathology.

[1101] The Tribunal must emphasize Micheline Montreuil's bad faith in that regard. The evidence shows that Doctor Côté never commented on Micheline Montreuil's mental state with respect to his physical transformation or male-to-female transition. He only assessed in 1998 whether or not Pierre Montreuil had been capable of giving informed consent. One cannot in good faith use Doctor Côté's report to argue that Doctor Côté never found in Micheline Montreuil any psychiatric pathology related to his transgendered condition.

[1102] The Tribunal believes that, in the case at bar, Micheline Montreuil himself created the confusion regarding his condition, and it cannot in good faith criticize the Canadian Forces physicians, who acted with competence and in good faith, for not having understood that Micheline Montreuil was not a transsexual preparing to have a sex reassignment operation. On the contrary, the correspondence entered in evidence and the testimony heard clearly suggest that Micheline Montreuil is a transsexual person in transition, and the fact that it is not noted that he does not want to cut off his penis and have a vagina is of little importance.

b) Error regarding hormonal therapy

[1103] Micheline Montreuil stated repeatedly in his testimony and comments that the reason that he saw Doctor Tremblay had nothing to do with the fact that he was ill, but was simply to develop breasts and feminize his body as a transgendered person. Micheline Montreuil criticizes the Canadian Forces for not having understood that his hormonal therapy was for cosmetic or aesthetic purposes, simply to develop a pair of breasts, and that the development would be monitored by a physician and was not related to any sex reassignment process.

[1104] The evidence shows that Micheline Montreuil took hormones, according to the documentation sent to Canadian Forces physicians, in a context that involved, mistakenly or not, a transition process of a person identified as being transsexual or behaving as a transsexual.

[1105] Doctor Lehoux's report dated October 20, 1999, Doctor Tremblay's report dated October 26, 1999, Micheline Montreuil's letter to Doctor Collins dated September 22, 1999, and Doctor Tremblay's letter to Captain Labonté dated March 15, 2000, are prime examples. In the Tribunal's opinion, it cannot be said that the hormonal therapy was not related to a potential sex reassignment.

[1106] From the above, the Tribunal finds that it was reasonable, under the circumstances, for the Canadian Forces physicians to think that Micheline Montreuil's hormonal therapy was not only for aesthetic purposes, to develop a pair of breasts, but also formed part of a sex reassignment process.

c) Error regarding sex reassignment

[1107] Micheline Montreuil stated repeatedly at the hearing that, as a transgendered person, he never wanted to change his sex. To support his position that he never wanted to change his sex and was never in a sex reassignment process, Micheline Montreuil stated that nowhere in the correspondence with the Canadian Forces is it indicated that he wanted to cut off his penis and showed a desire to have a vagina. As seen above, Micheline Montreuil also referred to the fact that nowhere in the documentation produced is it written that he is a transsexual person who has obtained the required approvals for surgery and who will have an operation on a given date. To Micheline Montreuil, the fact that he has never had a scheduled operation is evidence that he would never undergo a sex reassignment process.

[1108] Moreover, as seen above, Micheline Montreuil maintained throughout his testimony and during oral argument that the sole purposes of the hormonal therapy was to develop breasts, that the treatment was in no way related to a sex reassignment process and that the Canadian Forces should have realized that. An analysis of the letters that Micheline Montreuil himself sent to the Canadian Forces tends to prove otherwise.

[1109] As seen above, in the letter he sent to Doctor Collins on December 22, 1999, Micheline Montreuil tells Doctor Collins, "I do not intend and I give you my words [*sic*] that I will not *go through surgery* while I will be in the Canadian Armed Forces. The initial contract is always a three year contract and I will not submit myself to *any surgery for sex change* or any other kind of surgery for the same thing like *breast implants*."

[1110] In addition, in the letter that he sent to Doctor Collins 15 months later, on March 21, 2001, Micheline Montreuil writes: "As I told you, I have decided to stop the *hormonal therapy* because I do not need hormones right now. I prefer to have a job and I know that if I continue the hormonal therapy and the *process to become a transsexual*, I will be out of work for at least five years." Lastly, in a letter he sent to Doctor Wright, a recruiting medical officer, 14 months later, on May 15, 2002, Micheline Montreuil writes: "So and because I want to be back in the Canadian Forces, I have completely stopped the *hormonal therapy* since February 2001 and have completely stopped any *sex change process*."

[1111] In the Tribunal's opinion, there exists every indication in those three letters that the hormonal therapy or breast development is part of a sex reassignment process.

[1112] Finally, it should be noted that, in his detailed affidavit dated June 21, 2000, Micheline Montreuil refers to the fact that, in 1997, he applied for a change of name as a *prerequisite to his sex reassignment*. Although that document was not available to the Canadian Forces, it is nevertheless important in that it shows Micheline Montreuil's true intentions, the Tribunal assuming that what is stated under oath is true and the facts in an application supported by an affidavit must be taken to be true.

[1113] Therefore, the Tribunal finds that it was completely legitimate for the Canadian Forces physicians to think that Micheline Montreuil was, at the time of his application for enrolment in the Canadian Forces and afterward, not only under therapy to develop breasts but also in a sex reassignment process.

d) Error regarding the health care team

[1114] Micheline Montreuil maintains that the Canadian Forces physician mistakenly thought that he was under the care of a team of professionals, as transsexual individuals are, as shown by the evidence in this case, or that he was under the care of a psychiatrist, namely, Doctor Côté.

[1115] The Tribunal notes that, although he had only one attending physician, Doctor Tremblay, with Doctor Lehoux performing only laser hair removal on the face and chest, Micheline Montreuil's actions clearly opened the door for the Canadian Forces physicians to think in good faith that Micheline Montreuil was under the care of a team of physicians when he applied for enrolment in the Canadian Forces.

[1116] First, is should be noted that Micheline Montreuil, while not under the care of a psychiatrist, nevertheless required Doctor Côté to prepare medical reports. If he had been forthright, Micheline Montreuil would not have approached Doctor Côté, knowing that Doctor Côté had never assessed him for his transgendered condition.

[1117] Second, the fact that Micheline Montreuil asked Doctor Côté and Doctor Lehoux, who had no expertise on transsexuality, as well as Doctor Tremblay, to recommend that he return to the Canadian Forces as a woman, made it appear as though the three physicians were working together. The reference in Doctor Lehoux's letter dated October 20, 1999, to the fact that Micheline Montreuil was under the medical care of [translation] "one of her colleagues" also suggested that there was an emerging team or at least cooperation between the two physicians.

[1118] Third, it should be noted that Micheline Montreuil himself described Doctor Lehoux, Doctor Tremblay and Doctor Côté as [translation] "three of the best specialists" in the Québec region. Seeing those physicians described as part of a whole, a reasonable, fair-minded person could certainly think that they were a team or at least working together.

[1119] Therefore, the Tribunal finds that it was reasonable for the Canadian Forces physicians to think that Micheline Montreuil was under the care of a group of physicians, if not a team of physicians, and the Canadian Forces physicians cannot be criticized in that regard.

e) Error regarding physicians

[1120] Micheline Montreuil testified that he has never consulted a psychiatrist, psychologist or social worker for anything, and he only requested an assessment from Doctor Côté in a specific situation. However, that point was never brought to the attention of the Canadian Forces physicians.

[1121] Micheline Montreuil instead chose to request medical reports from a person who claims in a letter to be Micheline Montreuil's psychiatrist when in fact he is not. Can the Canadian Forces physicians be criticized for having thought that Doctor Côté was Micheline Montreuil's psychiatrist? As mentioned above, why obtain a report from Doctor Côté if Micheline Montreuil was not under his care?

[1122] The Tribunal finds that it was completely justified and reasonable for the Canadian Forces physicians to conclude that Micheline Montreuil was under the medical care of a psychiatrist or had previously been treated by a psychiatrist. It must be remembered that the initial request of the Canadian Forces was for a sex reassignment transition summary.

[1123] Micheline Montreuil may well say that Doctor Côté has never been his attending physician, and Doctor Côté can provide corroboration; however, on the basis of the correspondence sent to them, the Canadian Forces physicians were nevertheless fully justified in understanding that Micheline Montreuil was under the care or had been under the care of a psychiatrist and an endocrinologist.

[1124] In conclusion, to summarize everything, the Tribunal notes that, in the case at bar, Micheline Montreuil repeatedly complained that the Canadian Forces did not understand that he is transgendered, even though he uses the term "transsexual," did not understand that he was not seeing a medical team, even though he submitted three medical reports, did not understand that he could not be a transsexual person in the traditional sense of the term because he did not want an operation, did not understand that he was not receiving psychiatric care, even though he twice submitted a psychiatric report or psychiatrist's letter containing comments on his condition, did not understand that his desire to have breasts and undergo hormonal therapy was not part of a transition or sex reassignment process, but was solely for cosmetic or aesthetic purposes, did not understand that there are people like him who believe that they do not need to see a psychiatrist, because they are not transsexual and do not want sex reassignment, even though he himself approached a psychiatrist, and did not understand that he was seeking to have a body that agreed with his aesthetic taste, and nothing more.

[1125] Therefore, regarding the various errors for which Micheline Montreuil criticizes the Canadian Forces, given the points above, the Tribunal believes that Micheline Montreuil is the author of his own misfortune. If there has been any confusion, Micheline Montreuil has been the main cause and has only himself to blame. Forthrightness and transparency would have been better allies than confusion and ambiguity.

(ii) Decisions

[1126] Micheline Montreuil maintains that all the errors made regarding her file could have easily been dispelled if the Canadian Forces had agreed to meet with him so he could explain himself. Moreover, he maintains that it would have been appropriate for the Canadian Forces to arrange for an external assessment in his case. In addition, he states that the decision to close his 1997 enrolment file when he had just submitted a new application was unjustified. From all Micheline Montreuil's testimony, it is clear to the Tribunal that Micheline Montreuil has constantly criticized the Canadian Forces for medicalizing his file, for having dared to consider that he might be suffering from a gender identity disorder when he told them he did not have one, for not understanding that it was his absolute right to take or stop taking feminizing hormones as he pleased, without anyone challenging his decision, Micheline Montreuil being the ultimate authority on the matter and the Canadian Forces simply having to accept that state of affairs, period, it being inappropriate for Canadian Forces physicians to wonder why Micheline Montreuil wanted breasts, since that was a personal choice.

a) Refusal to hold face-to-face meeting

[1127] Micheline Montreuil criticizes the Canadian Forces physicians for declining his invitation to meet with them and maintains that it would have been appropriate for them to meet with him because he was a special case. At a meeting, he would have been able to

explain his condition as a transgendered person. The evidence shows that he was even ready to meet with the Canadian Forces psychiatrist, Doctor Boddam, to explain to him what a transgendered person was. Doctor Boddam turned him down.

[1128] The evidence shows that the standard procedure in the Canadian Forces is for applicants not to be interviewed after the initial interview with the physician assistant. It is apparent from the evidence that, once the applicant has been assessed by the physician assistant, all questions on the applicant's state of health are answered by contacting the physicians from whom the applicant is receiving or has received care and asking those physicians for file summaries, since they know the applicant better than anyone else.

[1129] The recruiting medical officers and other medical officers of the Canadian Forces were merely following standard procedure in not interviewing Micheline Montreuil. There is nothing discriminatory in their attitude about which Micheline Montreuil can complain.

[1130] Moreover, it is hard to see how a simple meeting with Doctor Boddam could have solved the problem. The evidence shows that Canadian Forces physicians are seeking medical information that will enable them to decide whether or not an applicant is fit to serve in the Canadian Forces and whether or not a medical employment limitation is required because of a problematic medical condition.

[1131] In the Tribunal's opinion, a simple meeting with an applicant who is supposedly a special case would not provide the Canadian Forces physicians with the answers they seek.

b) Refusal to arrange for an independent external assessment

[1132] It appears from Doctor Beltrami's testimony that he believed, given the insufficient information received by Canadian Forces physicians from Micheline Montreuil's physicians, that the Canadian Forces physicians should have arranged for an external expert to assess Micheline Montreuil, which the Canadian Forces did not do.

[1133] Doctor Beltrami states in his report that, if there was confusion on Micheline Montreuil's situation, it would have been prudent and desirable to have requested an external, independent assessment before making a decision. Doctor Assalian testified that he agrees with Doctor Beltrami on that point, that it was paramount to request an assessment by an expert.

[1134] In the Tribunal's opinion, the Canadian Forces physicians cannot be criticized for not having requested an external assessment. The procedure in effect in the Canadian Forces did not provide for that. Moreover, if the Canadian Forces had done that, it is likely that they would have approached Doctor Assalian, as they did for assessment purposes in this proceeding, with the conclusions described above.

[1135] On one hand, the evidence shows that there are few psychiatrists in Canada specializing in gender identity disorders. On the other hand, a memorandum from Mélanie Morier of the Canadian Human Rights Commission dated April 21, 2004, entered in evidence in the case at bar, reports that Micheline Montreuil told her that he had no objection to meeting with a third-party expert, if that was necessary for the investigation to run smoothly, and that he suggested Dr. Pierre Assalian, a recognized expert in the area. In his testimony, Micheline Montreuil did not deny the content of the remarks in the note.

[1136] If that scenario came to pass, given the opinion expressed by Doctor Assalian in the case at bar, it is reasonable to think that, if an external expert had been requested, in this case

Dr. Pierre Assalian, the psychiatric verdict would have been the same as the existing one, namely, that Micheline Montreuil has a gender identity disorder.

[1137] The Tribunal finds that, in the case at bar, an external assessment was not required to assess Micheline Montreuil's medical condition, but that the relevant information should have come from Micheline Montreuil's physicians. The evidence shows that they failed to provide the information requested by the Canadian Forces, or provided information that failed to answer the questions asked. Moreover, if the Canadian Forces had requested such an assessment, it would likely have been done by Doctor Assalian and his team.

c) Incorrect diagnosis

[1138] Micheline Montreuil also criticizes the Canadian Forces physicians for being entrenched behind a [translation] "diagnosed medical condition" and assigning him a rating of G5 without having met with him, stating that their position constitutes discrimination, the Canadian Forces attempting to transform a discrimination case into a medical case.

[1139] In the case at bar, it is interesting to note that, although he criticizes the Canadian Forces physicians for erring in their diagnosis, Micheline Montreuil appears to be sure of his diagnosis of himself, which is that he is of sound mind. Is a reminder needed that, in the application for judicial review of the adjudicator for his grievance, Pierre Montreuil refers to the diagnosis under the DSM-IV criteria provided by Doctor Côté during the hearing, with reference to the transcript?

[1140] That said, could it be that Micheline Montreuil, whom the evidence shows as having a tendency to self-assess and self-medicate, would have only to be interviewed by a Canadian Forces physician or psychiatrist, explain his development, declare that he has no pathology, state that his condition is a social reality and not a medical pathology for the Canadian Forces physicians to consider him to be in good health and of sound mind?

[1141] When asked to comment on the reliability of a person's assessment of his or her own psychiatric condition, Doctor Beltrami stated in his testimony that such an assessment is unreliable. More specifically, Doctor Beltrami stated that a person's self-judgment cannot be relied upon once the person has started consulting a specialist.

[1142] In the Tribunal's opinion, the responsibilities of recruiting medical officers are too great for them to rely blindly on an applicant's statements about his or her own physical or mental health. At best, the Canadian Forces could theoretically call upon an external expert.

[1143] The Tribunal believes that recruiting imperatives, specifically the imperatives to recruit physically and mentally healthy individuals, make it so that it is up to the applicant to show that he or she satisfies the Common Enrolment Medical Standard by being forthright and clear in the information that he or she gives the Canadian Forces physicians and not convoluted and devious like Micheline Montreuil.

d) Rejection of medical opinions

[1144] Regarding the letters that Micheline Montreuil's physicians sent to the Canadian Forces physicians, Micheline Montreuil insisted throughout his testimony that his three physicians recommended that he be enrolled as a woman and the Canadian Forces physicians should have proceeded on the strength of that recommendation, period, without wondering about the appropriateness of such an enrolment. Micheline Montreuil emphasizes the fact that his physicians were more aware of his condition that the Canadian Forces physicians, because his physicians had met him, but the Canadian Forces physicians had not.

[1145] Micheline Montreuil states in a letter to Doctor Wright dated May 15, 2002, that [translation] "three physicians have met him, examined him and assessed him a number of times and have come to the conclusion that he is fit to serve in the Forces," while Doctor Collins, who has never examined him, tells him that he does not meet the Common Enrolment Medical Standard. Moreover, Micheline Montreuil maintains that his psychiatrist, Dr. Serge Côté, has never diagnosed him with a mental illness.

[1146] The evidence shows that the position of the Canadian Forces has been that it is not enough for a physician to state something; one must also inquire about the context and points supporting those statements.

[1147] In any case, a Canadian Forces physician must maintain his or her critical judgment and exercise his or her professional judgment by conducting his or her own assessment as a recruiting medical officer. It is worthwhile to recall the crucial role of the recruiting medical officer in the enrolment process for people wishing to join the Canadian Forces. Recruiting medical officers are responsible for ensuring that those enrolled are healthy, can be provided with any care they may require and will at any time be able not only to perform the tasks required of all soldiers but also those required for the military occupation code to which they belong.

[1148] Given that it has been shown that Micheline Montreuil readily manipulated Doctor Côté to make him prepare, on three occasions, reports or letters or answers to information requests from the Canadian Forces and readily lied to the Canadian Forces physicians regarding the care by the three physicians he had approached, it is easy to see how wise the Canadian Forces physicians were not to have blindly relied on reports from physicians outside the Forces, especially when their reports raised basic questions, as in the case at bar, and it is painful to observe Micheline Montreuil's deviousness with respect to his enrolment in the Canadian Forces.

e) Imposition of medical employment limitations

[1149] The evidence shows that, after a very long process, the Canadian Forces imposed the following limitation on Micheline Montreuil: chronic medical condition the treatment for which has not been completed, so that the applicant's condition is at risk of deteriorating, requiring intervention and treatment by a specialist and a rating of G5. The Canadian Forces had previously imposed on Micheline Montreuil a rating of G5 and the following limitation: requires regular specialist follow-up.

[1150] Micheline Montreuil believes that his physicians have always cooperated with the Canadian Forces physicians by sending them the reports that they requested. Micheline Montreuil claims that they all answered the questions from the Canadian Forces physicians.

[1151] In the case at bar, Micheline Montreuil disputes the medical employment limitations imposed on him by the respondent. To Micheline Montreuil, given the information they had, the Canadian Forces physicians should have concluded that he was fit to serve in the Canadian Forces.

[1152] In their testimony, the experts summoned as witnesses by the parties were asked to comment on whether or not the information provided to the Canadian Forces physicians by Micheline Montreuil's physicians was sufficient and on the relationship between the information and the Canadian Forces decision to assign Micheline Montreuil a medical enrolment limitation.

[1153] It appears from the testimony of Doctor Beltrami and Doctor Assalian that the information provided was clearly insufficient and the Canadian Forces physicians, short of obtaining an independent assessment, were justified in requesting more information. Doctor Assalian stated that the responses given were confusing and did not answer the questions of the Canadian Forces physicians.

[1154] Based on those points, were the Canadian Forces physicians acting in an arbitrary or unreasonable fashion when, in light of Micheline Montreuil's specific situation and the information in their possession, they required more information regarding Micheline Montreuil's condition and treatment? On the basis of the information in the letters, reports and information request forms completed by Micheline Montreuil's physicians, were the Canadian Forces physicians not justified in concluding that Micheline Montreuil had a chronic medical condition the treatment for which was incomplete, namely, an unresolved gender identity disorder or an active sex reassignment process?

[1155] As for the those two questions, the Tribunal finds that the conduct of the Canadian Forces physicians was reasonable and their assessment fully justified under the circumstances, and there is nothing to indicate that they acted in a discriminatory fashion against Micheline Montreuil because of his condition as a transgendered person.

f) Closing the 1995 enrolment file

[1156] The evidence shows that the enrolment file submitted by Pierre Montreuil in 1995 was closed in August 1999, a few weeks after Micheline Montreuil had presented an application for enrolment in the Canadian Forces.

[1157] Micheline Montreuil maintained in his testimony that the Canadian Forces could have stopped Pierre Montreuil's file from being closed so that Micheline Montreuil's file could take over. Micheline Montreuil stated that he would then have remained in the Forces and could have been reassigned and sent on course immediately, that it was simply a technicality. Micheline Montreuil believes that, in his words, he has been [translation] "shafted by the system."

[1158] In the Tribunal's opinion, that argument is fallacious. The evidence shows that Micheline Montreuil had to submit a new application for enrolment and undergo a new medical examination, since the last medical was more than one year old.

VIII. OVERALL CONCLUSION

[1159] From all the documentary and testimonial evidence, the Tribunal finds that Micheline Montreuil did not present *prima facie* evidence of discrimination and, therefore, the burden of proof is not shifted to the respondent.

[1160] In the case at bar, it was not enough for Micheline Montreuil, to satisfy his burden of proof, simply to allege that he is transgendered and his application for enrolment in the Canadian Forces was rejected, for the Tribunal to be able to infer that there had been discrimination on the basis of sex or disability. According to settled case law, the complainant's allegations must, if they are believed, be complete and sufficient to justify a verdict in the complainant's favour, in the absence of an answer from the respondent. In light of the evidence presented in this proceeding, the Tribunal finds that the allegations are not credible and Micheline Montreuil is not credible.

[1161] The evidence shows that, in the case at bar, Major Labonté, Warrant Officer Dumais, Doctor Collins, Doctor Newnham, Doctor Wright, Doctor Boddam and the medical officers

of the DMedPol all performed their duties conscientiously, mindful of their responsibilities to enrol healthy applicants in the Canadian Forces in compliance with the universality of service principle.

[1162] The Tribunal believes and finds that the Canadian Forces physicians who assessed Micheline Montreuil's medical file were justified in thinking, if not concluding, that he might have a gender identity disorder and that it was Micheline Montreuil's responsibility to clarify his condition. Micheline Montreuil chose to try to dupe the Canadian Forces regarding his condition by approaching physicians who were not what Micheline Montreuil said they were.

[1163] More specifically, the Tribunal believes and finds that, given the comments made by the Canadian Forces physicians who testified on the rules governing the enrolment of applicants in the Canadian Forces, given their vast recruiting responsibilities with respect to the universality of service principle, and given the opinions of the experts heard in this proceeding, the medical employment limitations imposed on Micheline Montreuil were justified and, in the absence of clear information on Micheline Montreuil's medical condition, they were fully justified in assigning a rating of G5.

[1164] Lastly, the Tribunal finds that there is no evidence to show that the Canadian Forces demonstrated discrimination against Micheline Montreuil because of his condition as a transgendered or transsexual person.

IX. CLOSING REMARKS

[1165] Psychiatrically speaking, the transgendered condition can certainly be included in the DSM-IV category of gender identity disorders. The evidence clearly shows that. The evidence is equally clear that the transgendered condition or transgenderism is an undeniable social reality.

[1166] Society in general will have to deal with that reality increasingly in the years to come. There is a great danger that society, conservative in many respects, will shun people who, by choice, decide to change their sexual appearance, and even change their sex.

[1167] It is clear from the testimony of Doctor Dufour and Doctor Watson that transsexual people, that is, people who decide to change their sex through sex reassignment, must deal with immense challenges, many self-analyses and numerous obstacles in society. The same is true for transgendered people. Fortunately, there are institutions, though not perfect, to help and support them, in particular clinics set up in Montreal and formerly in Vancouver for people seeking consultations regarding gender identity disorders. Specifically regarding the case at bar, the evidence shows that the Canadian Forces, while they do not have a policy on the matter, have taken measures to retain members of the Canadian Forces who decide during their career to change their sex and avoid disruptions as much as possible. Therefore, the Canadian Forces have been exposed to the reality of transsexual people.

[1168] If there is one indisputable point, it is that a person is free to decide the appearance under which he or she will live in society. A man can decide to wear women's clothing and even feminize his body through procedures such as hormonal therapy and laser hair removal. Society must respect those life choices and not jump to the conclusion, on the basis of a person's outward appearance, that the person has a pathological condition.

[1169] It is therefore possible, as is apparent from the evidence in the case at bar, that numerous people will want to make their body consistent with they psychological experience and will want to undergo a sex reassignment process that will lead to a radical, permanent

change to their biological sex. Others will want to change only a few physical aspects. Society must not discriminate against those people.

[1170] Society must be open to new ways of life and must not reject the people who adopt those new ways or automatically view those people as having a psychiatric pathology. That said, it does not follow that a person who chooses to be physically different from the current standards of beauty and aesthetics by rejecting dress codes or traditional physiology can unilaterally impose his or her views on others and force them to adopt his or her new reality, when the person himself or herself does not comply with existing social requirements. A person who chooses to live as person of the other sex cannot claim that society must comply with all his or her whims or inclinations and take society hostage under the unjustified threat of a discrimination lawsuit. Living in society involves openness to others and their way of life. It also involves true constraints that all must respect.

[1171] People with a gender identity disorder, whether transgendered, transsexual or transvestite, as well as those who do not have a gender identity disorder but decide to publicly challenge the established norms and customs for their gender identity, are likely targets for discrimination not only in society in general but also in their home and workplace. The decisions in *Ferris v. Office and Technical Employees Union, Local 15, supra*, *Mamela v. Vancouver Lesbian Connection, supra*, *Sheridan v. Sanctuary Investments Ltd., supra*, *Kavanagh v. Canada (Attorney General), supra*, *Commission des droits de la personne et des droits de la jeunesse du Québec v. Maison des jeunes à-Ma-Baie*, (1998) 33 C.H.R.R. D/263 (Tri. Qué.) are prime examples.

[1172] As the Tribunal québécois des droits de la personne aptly points out, transsexualism, like transgenderism, remain controversial medical, social and legal phenomena (*Commission des droits de la personne et des droits de la jeunesse du Québec v. Maison des jeunes à-Ma-Baie), supra*.

[1173] It is important that people wishing to enrol in the Canadian Forces not have a medical condition that places them at risk in the field of operation or compromises the effectiveness or safety of co-workers. It is important that transgendered people, regardless of how they define themselves (and this is their burden) and despite their uniqueness and nonconformism, meet the Common Enrolment Medical Standard. Therefore, to satisfy the Canadian Forces, their condition must not warrant a medical employment limitation.

[1174] Although there is no policy on transgendered people in the Canadian Forces, one cannot conclude that the Canadian Forces discriminate against people with a gender identity disorder in their recruiting process. That said, the Tribunal agrees with the statements of Anne Mactavish, then chairperson of the Canadian Human Rights Tribunal, that health care providers must keep from imposing their own values on a chronically marginalized group of people *(Kavanagh v. Canada (Attorney General)), supra*.

[1175] The Canadian Forces, like any other federal institution, is subject to the *Canadian Human Rights Act* of which they must respect the spirit and letter. It is important that the Canadian Forces be aware of the fragility of people who must go through a sex reassignment process and support them in their search for identity as long as the universality of service principle is not compromised.

[1176] It is not the role of a court to determine whether or not a third sex exists. That is a question of science, medicine, psychology, biology, anthropology and sociology. However, it is important for the courts, an important function of which is to ensure the respect of

individuals and their rights to physical integrity, freedom and equality, to indicate to society in general who a just society should treat its members, whoever they may be.

X. REMEDY

[1177] Regarding the case at bar, the Commission requests that the Canadian Forces, in cooperation with the Commission, put in place awareness and integration programs for people with a gender identity disorder.

[1178] In the Tribunal's opinion, in light of all the evidence, in particular that the Canadian Forces provide support to members of the Canadian Forces who undergo a sex reassignment process and considering that no discriminatory behaviour was identified with respect to the handling of Micheline Montreuil's application for enrolment by the Canadian Forces, the Tribunal need not order the introduction of awareness or integration programs for people with a gender identity disorder in the Canadian Forces, even though the evidence shows that the Canadian Forces do not have a policy for the integration of transsexual people, transgendered people or transvestites. However, the evidence suggests that the Canadian Forces do have a policy on discrimination and harassment. The evidence shows that, on November 19, 1996, Pierre Montreuil signed a document entitled [translation] *Canadian Forces Policy on Discrimination and Harassment*. The text of the document reads as follows:

[Translation]

The Canadian Forces are committed to respecting the principle of equality of all individuals, as well as the dignity and value of each human being free of discrimination on any prohibited ground, including race. Members of the Canadian Forces must always be guided by this principle in their mutual relationships with the public and all those with whom they communicate in Canada and abroad. Racist attitudes are completely incompatible with military ethics and the effectiveness of military service. Any behaviour that reflects such attitudes will not be tolerated. The Canadian Forces also have specific policies prohibiting discrimination, personal or sexual harassment, sexual misconduct and abuse of authority. That includes inappropriate behaviour by a member of the Canadian Forces to another individual, on the basis of personal characteristics, such as race, colour, ethnic origin, sex, sexual orientation, physical characteristics or habits.

[1179] However, given the results of the report on the "military ethos" (*Canada's Soldiers: Military Ethos and Canadian Values in the 21st Century, 2004*), the Tribunal believes that the Canadian Forces must remain vigilant and proactive in developing an internal culture that fosters respect for people and the harmonious integration-while complying with the universality of service principle-of people with a gender identity disorder or people who do not have a gender identity disorder but have specific behaviours (such as wearing the clothing of the opposite sex, wearing makeup, for example, for men) that do not prevent them from meeting the Common Enrolment Medical Standard.

[1180] Regarding his complaint, Micheline Montreuil seeks the following remedy:

a) under paragraph 53(2)(*a*) of the *Act*, that the respondent end the discriminatory action and take measures, in consultation with the Commission, to prevent similar actions;

b) under paragraph 53(2)(*b*) of the *Act*, that the respondent be ordered to enrol the complainant in the regular force as a logistics officer effective January 1, 2008;

c) under paragraph 53(2)(*c*) of the *Act*, that the respondent be order to pay the complainant the sum of $547,149, as calculated by the Canadian Forces actuary, as compensation for lost wages and benefits from January 1, 2001, to December 31, 2007;

d) under paragraph 53(2)(*d*) of the *Act*, that the respondent be ordered to compensate the complainant for rent totalling $24,248, hearing expenses (parking and meals) totalling $2,669 (94 × $12.40 = $1,165 and 94 × $16 = $1,504), travel expenses related to the interview with Doctor Assalian, Doctor Dufour and Doctor Wilchesky in Montreal in May 2006 totalling $351.10, and expenses to produce documents for the case at bar totalling $3,000;

e) under paragraph 53(2)(*e*) of the *Act*, that the respondent be ordered to compensate the complainant up to $20,000 for pain and suffering, damage to the complainant's reputation and denigration suffered by the complainant;

f) under subsection 53(3) of the *Act*, that the respondent be ordered to pay the complainant up to $20,000 in compensation for the respondents wilful and reckless actions; and

g) under subsection 53(4) of the *Act*, that interest be paid to the complainant as provided for by the *Act*.

[1181] The Tribunal heard testimony from Maj. Pierre Labonté, Josh Pankurst and Daniel Hébert regarding the Micheline Montreuil's potential loss of income. It appears from the evidence that the parties are in agreement that, unless there is evidence that Micheline Montreuil would not have, given the circumstances, remain employed by the Canadian Forces, the loss incurred amounts to $547,149.

[1182] The Tribunal having found that Micheline Montreuil's complaint is not substantiated, in that he has not shown on a balance of evidence that the respondent discriminated against him, the Tribunal need not deal with the remedy requested by Micheline Montreuil, except for the sum of $351.10 in travel expenses that he incurred when he went to meet with Doctor Assalian, Doctor Dufour and Doctor Wilchesky in Montreal in May 2006.

[1183] Whether or not there was a verbal agreement between Micheline Montreuil and the respondent's counsel regarding the reimbursement of travel expenses, the Tribunal believes that Micheline Montreuil was entitled to reimbursement for his trip to Montreal to meet with Doctor Assalian, Doctor Wilchesky and Doctor Dufour as part of an assessment required by the respondent. The amount requested appears to be perfectly reasonable.

XI. DISPOSITION AND ORDER

[1184] For all the above reasons, the Tribunal

a) dismisses the discrimination complaint of the complainant, Micheline Montreuil; and

b) orders the respondent to pay the complainant the sum of $351.10.

[1185] Simple annual interest on the sum of $351.10 shall be calculated on the basis of the official bank rate published by the Bank of Canada as of the interview date, May 18, 2006.

Pierre Deschamps

OTTAWA (Ontario)

August 19, 2009

PARTIES OF RECORD

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