ARMED FORCES

Judicial review of decision by Canadian Forces review authority determining that guilty verdict against applicant appropriate, that sentence fair, justified — Following summary trial, applicant found absent without leave, contrary to *National Defence Act*, R.S.C., 1985, c. N-5 (NDA), s. 90, sentenced to $1,000 fine — Applicant arguing, inter alia, Canadian Forces' summary trial procedure constitutionally invalid, violating member's rights under *Canadian Charter of Rights and Freedoms*, ss. 7, 11(d), 12 — Review authority of opinion, *inter alia*, that applicant demonstrating clear understanding of nature, object of proceedings, not producing sufficient evidence to allow presiding officer to find reasonable grounds to believe applicant unfit to stand trial or suffering from mental disorder at time of offence — Main issues whether review authority's decision reasonable, whether Canadian Forces' summary trial procedure constitutionally invalid — Review authority making reasonable determination that applicant not suffering from mental disorder at time of offence, particularly in view of NDA, s. 202.13(1) — No evidence suggesting that applicant unfit to stand trial within meaning of NDA, s. 2(1) or s. 163(1)(e) — S. 163(1)(e) setting lower threshold than balance of probabilities standard under s. 202.13(1) — While language of "incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong" not appearing in s. 163(1)(e), this language providing context for interpreting term "mental disorder" in Act, reinforcing reasonableness of review authority's decision — Definition of "disease of the mind" as stated by Supreme Court in *Cooper v. R.*, [1980] 1 S.C.R. 1149 virtually identical to that in *Military Justice at the Summary Trial Level*, version 2.2 — "Mental disorder" a legal concept, not a medical concept — Applicant's medical employment limitations (MEL) not automatically giving rise to factual conclusion that he was suffering from mental disorder at time of offence — Impairment must be such that accused unable to appreciate nature or quality of act or that it was wrong, pursuant to s. 202.13(1) — Merely knowing that applicant having ongoing MEL insufficient — Applicant's *Charter* rights not breached — Record devoid of notice of constitutional question as stipulated by *Federal Courts Act*, R.S.C., 1985, c. F-7, s. 57 — While notice requirement not applying where constitutional question raised before service tribunal, Federal Court not service tribunal within meaning of NDA, notice requirement mandatory for proceedings challenging constitutionality of Act of Parliament before it — Applicant's submissions on constitutional invalidity of Canadian Forces summary trial process therefore not considered — Moreover, in any event, applicant not adducing proper evidentiary record to show whether summary trial process affecting Charter rights of any Canadian Forces member other than himself — Applicant establishing neither necessary adjudicative nor legislative facts to ground challenge to constitutionality of summary trial regime — Not even establishing that his own Charter rights were engaged — Fine not engaging applicant's right to life, liberty, or security of person, not meeting high threshold for cruel, unusual punishment — Application dismissed.

THURROTT V. CANADA (ATTORNEY GENERAL) (T-1546-17, 2018 FC 577, Boswell J., judgment dated June 4, 2018, 26 pp.)