

**Court Martial Appeal Court
of Canada**



**Cour d'appel de la cour martiale
du Canada**

Date: 20230627

Docket: CMAC-632

Citation: 2023 CMAC 8

**CORAM: CHIEF JUSTICE BELL
SCANLAN J.A.
PARDU J.A.**

BETWEEN:

CORPORAL (RET'D) RYAN WADE COOKSON

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Ottawa, Ontario, through written representations filed by the Appellant on May 11, 2023 and by the Respondent on May 25, 2023, with a Notice of Constitutional Question having been filed on June 14, 2023 and following advice from the parties that they consent to having the appeal considered on the basis of written reasons only.

Judgment delivered at Ottawa, Ontario, on June 27, 2023.

REASONS FOR JUDGMENT BY:

THE COURT

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REASONS FOR JUDGMENT

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[1] On January 31, 2023 a Military Judge sitting as a Standing Court Martial convicted Cpl. Cookson (the “Appellant”) of one count of conduct to the prejudice of good order and discipline contrary to s. 129 of the *National Defence Act* R.S.C. 1985, c. N-5 (“NDA”), in that he harassed another member of the Canadian Armed Forces by showing her an image of genitalia. On the

same date the Military Judge sentenced the Appellant to the payment of a fine in the amount of \$2000.

[2] The Appellant raises one ground of appeal, namely, was the Military Judge independent and impartial? The Appellant asserts he was not. The Appellant served a Notice of Constitutional Question on the Attorney General of Canada and the Attorneys General of each Province and Territory of Canada. That question is whether the status of military judges as officers, is inconsistent with judicial independence and impartiality by virtue of their executive functions.

[3] The present appeal raises the same issue that was raised in *R. v. Remington* 2023 CMAC 3 [*Remington*]. For substantially the same reasons set out in *Remington*, we dismiss the appeal. We remain of the view this Court's decisions in *R. v. Edwards*; *R. v. Crépeau*; *R. v. Fontaine*; *R. v. Iredale* 2021 CMAC 2; *R. v. Proulx*; *R. v. Cloutier* 2021 CMAC 3; *R. v. Christmas* 2022 CMAC 1; *R. v. Brown* 2022 CMAC 2; *R. v. Thibault* 2022 CMAC 3; and *Remington* constitute sound jurisprudence and reflect the current state of the law. We would answer the constitutional question in the negative. The fact military judges are also officers in the Canadian Armed Forces does not render them partial and lacking independence.

[4] For the reasons set out above, we are of the view there is no merit to the assertion the Military Judge lacked independence and impartiality. We dismiss the appeal.

“B. Richard Bell”

Chief Justice

“J. Edward Scanlan”

J.A.

“Gladys I. Pardu”

J.A.

COURT MARTIAL APPEAL COURT OF CANADA

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

CMAC-632

STYLE OF CAUSE:

CORPORAL (RET'D) RYAN
WADE COOKSON and HIS
MAJESTY THE KING

**CONSIDERED IN WRITING WITHOUT PERSONAL APPEARANCE OF THE
PARTIES**

REASONS FOR JUDGMENT BY:

THE COURT

DATED:

JUNE 27, 2023

IN WRITING:

Major Francesca Ferguson

FOR THE APPELLANT

Lieutenant-Colonel Karl Lacharité

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE APPELLANT

Canadian Military Prosecution Service
Ottawa, Ontario

FOR THE RESPONDENT