

Court Martial Appeal Court  
of Canada



Cour d'appel de la cour martiale  
du Canada

**Date: 20130426**

**Docket: CMAC-555**

**Citation: 2013 CMAC 1**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**PRESENT: Chief Justice Blanchard**

**BETWEEN:**

**CORPORAL J.S.F. CYR**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Motion decided in writing without appearance of the parties

Order delivered at Ottawa, Ontario, April 26, 2013.

**REASONS FOR ORDER BY:**

**CHIEF JUSTICE BLANCHARD**

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**REASONS FOR ORDER**

**BLANCHARD C.J.**

[1] The appellant requests approval for the appointment of counsel by the Director of Defence Counsel Services (DCS) under Rule 20 for the following reasons:

[TRANSLATION]

- “(a) He is in a precarious financial situation. In support of this motion, the applicant submits an affidavit that describes his financial situation.
- (b) He needs counsel to make his argument effectively.

- (c) His appeal raises issues of importance for the military justice system, particularly with respect to the treatment of detainees by the military police and the free and voluntary nature of incriminating statements made at the request of a superior officer.”

[2] The appellant appeals from a decision of a Standing Court Martial that found him guilty of stealing tools, selling them improperly to a pawnbroker and making a false statement to his superior. He was also found guilty of possession of three ammunition magazines.

[3] Before the Court Martial, the appellant was represented by counsel appointed by the Director of Defence Counsel Services (DDCS). He is not represented by the DDCS on appeal, since his application before the Appeal Board was dismissed on March 14, 2013.

[4] In his response to the motion, the respondent submits that the motion should be dismissed for the following reasons:

[TRANSLATION]

- “4. First, the Minister argues that the motion is inadmissible and should be dismissed because it is submitted by the DDCS, who has no authority and or standing. In fact, the Appeal Board, an administrative process prescribed in the regulations of the Governor in Council, made its decision, refusing to authorize the DDCS to assign counsel to represent the appellant before this court.
- 5. The Minister submits that allowing this motion for some of the reasons alleged by the DDCS could fatally compromise the Appeal Board’s procedure designed by the executive under the *National Defence Act* (NDA) and would divert valuable legal resources on an issue that should be resolved through the designated internal procedure.
- 6. In any case, the appellant’s financial situation is not sufficiently precarious for him to be eligible for legal aid in his province of

residence. The appellant put forward no facts warranting the approval of a form of legal aid from federal funds in this case.”

[5] The appellant, in his reply to the Minister’s response, claims that the motion should be allowed to proceed and that assisting the appellant so that he may obtain the services of counsel assigned by the DDCS for the appeal is a legal service that the DDCS is authorized to provide under section 249.19 of the *National Defence Act* RSC c N-4 [NDA].

[6] The determinative issue in this case is whether the appellant is “a party who is not represented by counsel of record” for the purposes of Rule 20 of the *Court Martial Appeal Court Rules* (the Rules).

[7] The issue of representation by counsel is addressed in Rule 19(3), which provides:

19(3) When a party files any document in the Registry signed on his behalf by counsel, that counsel shall be and remain the party’s counsel of record until a change is effected in a manner provided for by this Rule.

19(3) L’avocat qui a signé pour le compte d’une partie un document déposé par cette dernière au greffe reste l’avocat inscrit au dossier tant qu’il n’y a pas eu de changement effectué conformément aux présentes règles.

[8] In my view, the wording of the rule is clear and can only be interpreted in one way, i.e. that when counsel signs a document “on ... behalf” of a party and this document is filed at the Registry, he or she becomes counsel of record and remains so until a change is effected in a manner provided for by the Rules.

[9] In this case, Captain Mark Letourneau, who signed the motion, claims that he filed it [TRANSLATION] “on behalf of Corporal J.S.F. Cyr, and not as counsel of record”. It is not being disputed that Captain L  tourneau is a practising lawyer and is under the command of the DDCS. Further, the appellant argues that in filing the motion this way, Captain L  tourneau was acting in accordance with his professional obligations to assist the appellant to prepare a motion within a proceeding.

[10] Notwithstanding how well-founded the motives of Captain L  tourneau and the DDCS are, I cannot agree with this interpretation of the Rules. The Rules do not provide for establishing a particular status enabling a lawyer to represent a party without becoming counsel of record. The motion in question is essentially a motion within a proceeding. Counsel was retained by the appellant and reviewed the whole file so as to draft the motion. In a professional sense, he is responsible for the file. There could be potentially serious practical concerns to identify other than the role of counsel in such circumstances.

[11] Therefore, I find that Captain L  tourneau, in preparing and signing the motion in question on behalf of the appellant, put himself on the record as counsel for the appellant. I am also of the view that this interpretation is consistent with the scheme provided under the NDA and the Rules regarding the assignment of counsel by the Director of Defence Counsel Services. It follows that the appellant is represented by counsel of record and thus cannot file his motion under Rule 20.

[12] In the circumstances, it is open to the appellant to file another application that is consistent with Rule 20. This application will have to be accompanied by an application by Captain Létourneau stating that he is withdrawing from the case.

“Edmond P. Blanchard”

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Chief Justice

Certified true translation

Catherine Jones, Translator

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:**

CMAC-555

**STYLE OF CAUSE:**

CORPORAL J.S.F. CYR v HER  
MAJESTY THE QUEEN

**MOTION IN WRITING DECIDED WITHOUT APPEARANCE OF THE PARTIES**

**REASONS FOR ORDER BY:**

CHIEF JUSTICE BLANCHARD

**DATED:**

April 26, 2013

**WRITTEN REPRESENTATIONS:**

Corporal Mark Létourneau

FOR THE APPELLANT

Frigate Captain J.B.M. Pelletier

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Corporal Mark Létourneau

FOR THE APPELLANT

Director of Military Prosecutions

FOR THE RESPONDENT