Court Martial Appeal Court of Canada

Cour d'appel de la cour martiale du Canada

Date: 20161130

Docket: CMAC-586

Citation: 2016 CMAC 3

In attendance: Chief Justice Bell

BETWEEN:

MASTER CORPORAL D.D. ROYES

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard by teleconference at Fredericton, New Brunswick on July 12, 2016.

Order delivered at Ottawa, Ontario, November 30, 2016.

REASONS FOR ORDER BY: CHIEF JUSTICE BELL

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ORDER AND REASONS

CHIEF JUSTICE BELL

I. Background

[1] On June 8, 2016, Master Corporal D.D. Royes, who is not currently in custody, filed a Notice of Motion seeking "release" pending appeal pursuant to s. 248.2 of the *National Defence Act*, R.S.C. (1985), c. N-5 [the Act]. The procedural steps, rather unique to this case, whereby a convicted person currently not in custody is seeking "release" from custody, are somewhat complicated. While it may seem laborious to the reader, I consider it useful and relevant to

summarize the procedural steps which bring the Court to this place, in what constitutes a rather lengthy saga.

[2] On December 12, 2013, a Standing Court Martial convicted MCpl Royes of sexual assault for which he was sentenced to a term of imprisonment of 36 months and other ancillary relief. The conviction and sentence are reported respectively at 2013 CM 4033 and 2013 CM 4034. MCpl Royes sought release pending appeal before a Standing Court Martial pursuant to s. 248.1 of the Act. The Standing Court Martial ordered his release from custody on December 14, 2013. On December 18, 2013, MCpl Royes filed and served a Notice of Appeal pursuant to s. 232(1) of the Act. He based his appeal on several grounds, including the legality of the Standing Court Martial's dismissal of his motion for a declaration that paragraph 130(1)(*a*) of the Act violates s. 7 of the *Canadian Charter of Rights and Freedoms* [the Charter]. The Standing Court Martial's decision in that regard is found at 2013 CM 4032.

[3] In *R. v. Royes*, 2014 CMAC 10, this Court dismissed all grounds of appeal with the exception of the constitutional question. The Court did not dispose of that issue because MCpl Royes had failed to serve a Notice of Constitutional Question pursuant to Rule 11.1 of the *Court Martial Appeal Court Rules*, SOR/86-959. As a result, the Court adjourned the hearing on that issue until January 23, 2015 in order to permit MCpl Royes to serve the necessary notice. During the interim, MCpl Royes remained at liberty.

[4] On October 28, 2014, MCpl Royes filed and served a Notice of Constitutional Question in which he contended that s. 130 of the Act violates s. 7 of the Charter due to overbreadth.

However, prior to this Court having considered that question, the Supreme Court of Canada provided the answer in *R. v. Moriarity*, 2015 SCC 55, [2015] 3 S.C.R. 485. The Supreme Court concluded paragraph 130(1)(*a*) does not violate s. 7 of the Charter. The Supreme Court's decision resulted in the filing of a second Notice of Constitutional Question by MCpl Royes in which he contended that paragraph 130(1)(*a*) of the Act, which denies him the right to a jury trial, violates paragraph 11(*f*) of the Charter. In a decision rendered on June 3, 2016 (*R. v. Royes*, 2016 CMAC 1 [*Royes*]), this Court unanimously concluded the impugned paragraph does not violate paragraph 11(*f*) of the Charter and dismissed MCpl Royes' appeal. That decision came almost three years and two months following MCpl Royes' sentence for a serious sexual assault. The Crown and MCpl Royes agreed that he would not be incarcerated until he had had the opportunity to seek an order for his "release" from this Court pending his application for leave, and potential appeal, to the Supreme Court of Canada. It is that application for "release" that is presently before me.

[5] On July 12, 2016, I heard the parties on the motion. I reserved my decision and maintained the *status quo* pending the release of this decision. The Crown, while not consenting, did not oppose MCpl Royes' continued liberty pending this Court's decision on the motion. The Supreme Court has not yet rendered a decision on MCpl Royes' application for leave to appeal.

[6] For the reasons set out herein, I vacate my order made on July 12, 2016, and order MCpl Royes begin serving his term of imprisonment and comply with the ancillary orders made at the time of his sentencing.

II. Legislative Scheme

[7] Section 232 of the Act sets out the mechanism for commencing and proceeding with an appeal under the Act:

Entry of Appeals	**Mode d'interjection**
Form	**Avis d'appel**
232 (1) An appeal or application for leave to appeal under this Division shall be stated on a form to be known as a Notice of Appeal, which shall contain particulars of the grounds on which the appeal is founded and shall be signed by the appellant.	**232 (1)** Les appels ou les demandes d'autorisation d'appel prévus par la présente section doivent être énoncés sur un imprimé particulier appelé « avis d'appel », qui doit en exposer les motifs détaillés et porter la signature de l'appelant.
Validity	**Validité**
(2) A Notice of Appeal is not invalid by reason only of informality or the fact that it deviates from the prescribed form.	**(2)** L'avis d'appel n'est pas nul du seul fait d'un vice de forme ou de non-conformité à la formule réglementaire.
Limitation period	**Délai d'appel**
(3) No appeal or application for leave to appeal under this Division shall be entertained unless the Notice of Appeal is delivered within thirty days after the date on which the court martial terminated its proceedings to the Registry of the Court Martial Appeal Court or, in such circumstances as may be prescribed by the Governor in Council in regulations, to a person prescribed in those	**(3)** L'appel interjeté ou la demande d'autorisation d'appel présentée aux termes de la présente section ne sont recevables que si, dans les trente jours suivant la date à laquelle la cour martiale met fin à ses délibérations, l'avis d'appel est transmis au greffe de la Cour d'appel de la cour martiale ou, dans les circonstances prévues par un règlement du gouverneur en conseil, à toute personne

regulations.	désignée par ce règlement.
Extension	**Prolongation**
(4) The Court Martial Appeal Court or a judge thereof may at any time extend the time within which a Notice of Appeal must be delivered.	**(4)** La Cour d'appel de la cour martiale ou un de ses juges peut en tout temps prolonger la période pendant laquelle un avis d'appel doit être transmis.
Forwarding statement	**Acheminement des avis**
(5) Where a Notice of Appeal is delivered pursuant to subsection (3) to a person prescribed by the Governor in Council in regulations, the person shall forward the Notice of Appeal to the Registry of the Court Martial Appeal Court.	**(5)** Lorsqu'un avis d'appel est transmis conformément au paragraphe (3) à une personne désignée par les règlements du gouverneur en conseil, cette personne transmet l'avis d'appel au greffe de la Cour d'appel de la cour martiale.
[My Emphasis.]	[Je souligne.]

[8] Section 248.1 of the Act provides for judicial interim release by a military judge or the Court Martial:

Release Pending Appeal	**Mise en liberté pendant l'appel**
Release by court martial	**Mise en liberté par la cour martiale**
248.1 Every person sentenced to a period of detention or imprisonment by a court martial has, within twenty-four hours after being so sentenced, the right to apply to that court martial or, in any circumstances that may be provided for by regulations made by the Governor in Council, to a military judge, for a direction that the person	**248.1** Toute personne condamnée à une période de détention ou d'emprisonnement par la cour martiale a, dans les vingt-quatre heures suivant sa condamnation, le droit de demander à la cour martiale ou, dans les cas prévus par règlement du gouverneur en conseil, au juge militaire une ordonnance de libération

be released from detention or imprisonment until the expiration of the time to appeal referred to in subsection 232(3) and, if there is an appeal, until the determination of the appeal.	jusqu'à l'expiration du délai d'appel visé au paragraphe 232(3) et, en cas d'appel, jusqu'à ce qu'il soit statué sur celui-ci.
[My Emphasis.]	[Je souligne.]

III. Issues

[9] There are four issues to be addressed by this Court:

(1) Does the order for judicial interim release made by the Standing Court Martial pursuant to s. 248.1 of the Act remain in force until the conclusion of the application for leave to appeal and possible appeal to the Supreme Court?

(2) In the event this Court determines the order for judicial interim release made by the Standing Court Martial is no longer in force, does this court have jurisdiction, as contended by MCpl Royes, to grant judicial interim release pursuant to s. 248.2 of the Act pending the determination of the application for leave to appeal and possible appeal to the Supreme Court?

(3) In the event the first and second issues are answered in the negative, does this Court have jurisdiction to stay the imposition of the sentence, or any part of it, pursuant to s. 65.1(1) of the *Supreme Court Act*, R.S.C., 1985, c. S-26 [Supreme Court Act]?

(4) Presuming the answer to the third issue is in the positive, should this Court order a stay of the sentence imposed by the Standing Court Martial in the circumstances?

IV. Analysis

A. *Does the Standing Court Martial's order for judicial interim release remain in force?*

[10] The issue to be addressed is whether the appeal as referred to in s. 248.1 of the Act is determined upon the conclusion of matters before this Court; or whether the term "determination of the appeal" extends to an application for leave to appeal and possible appeal to the Supreme Court of Canada.

[11] The interpretation of the words "determination of the appeal" must be considered within the context of the words of the section and the Act as a whole (Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (LexisNexis Canada 2014) at 403 [Sullivan]). It may also be useful to consider any related legislation dealing with the same subject matter. Such statutes "are presumed to be drafted with one another in mind, so as to offer a coherent and consistent treatment of the subject" (Sullivan, above at 416).

[12] Section 248.2 of the Act provides that a person who has been sentenced by a court martial, who appeals under Division 9, and has not applied under s. 248.1 of the Act may apply to this Court for judicial interim release until "determination of the appeal":

Release by judge of the CMAC	**Mise en liberté par un juge de la CACM**
248.2 Every person sentenced to a period of detention or imprisonment by a court martial who appeals under Division 9 has the right, if the person has not applied under	**248.2** Toute personne condamnée à une période de détention ou d'emprisonnement par la cour martiale a, si elle a interjeté appel en vertu de la section 9

section 248.1, to apply to a judge of the Court Martial Appeal Court or, in any circumstances that may be provided for by regulations made by the Governor in Council, to a military judge, for a direction that the person be released from detention or imprisonment until the determination of the appeal.	mais n'a pas présenté la demande visée à l'article 248.1, le droit de demander à un juge de la Cour d'appel de la cour martiale ou, dans les cas prévus par règlement du gouverneur en conseil, au juge militaire une ordonnance de libération jusqu'à ce qu'il soit statué sur l'appel.
[My Emphasis.]	[Je souligne.]

[13] That section is relevant in understanding the context within which s. 248.1 operates. The reference to appeals under Division 9 of the Act is of particular importance. Section 234(1) of the Act (see Appendix 'A') identifies this Court as the Court designated to hear and determine all appeals referred to it in Division 9. In my view ss. 248.1 and 248.2 apply only to appeals before this Court, which will be further elaborated upon below. This interpretation is supported by the fact that entry of appeals before this Court referred to in s. 232 is found in Division 9. That appeal provision is the foundation upon which release powers set out in ss. 248.1 and 248.2 are premised.

[14] Furthermore, the view that "determination of the appeal" is limited to appeals before this Court is supported by the context within which those words appear in other sections unrelated to this matter. Each of subsections 233(2)(*a*), (*b*) and (*c*) (see Appendix 'A') also refer to "determination of the appeal" as it relates to issues concerning the mental condition of the accused and whether treatment should be administered, pursuant to ss. 201, 202 and 202.16 of the Act.

[15] The appeal before this Court in *Royes* has been determined. Moreover, in deciding the application for release pending appeal, the military judge verbally stated that "[t]he offender will have to serve his sentence if the Court Martial Appeal Court upholds the verdict". I share the military judge's view of the limits of his ability to order judicial interim release. It only extends to the determination of an appeal before this Court.

B. *Does this Court have jurisdiction to grant judicial interim release pursuant to s. 248.2 of the Act?*

[16] MCpl Royes contends this Court is clothed with jurisdiction to order judicial interim release pursuant to s. 248.2 of the Act until determination of his application for leave to appeal and possible appeal to the Supreme Court. The Crown asserts MCpl Royes may apply to this Court for release pursuant to s. 248.2 of the Act once leave to appeal to the Supreme Court has been granted. The Crown contends that since the Supreme Court has not yet rendered a decision on MCpl Royes' application for leave to appeal, this Court has no jurisdiction to order his release. I share neither MCpl Royes' view, nor that of the Crown. As stated above, "determination of the appeal" is limited to appeals before this Court, regardless of the status of an application for leave to appeal or an appeal before the Supreme Court. As the appeal has already been determined by this Court, I have no jurisdiction to release MCpl Royes from detention pursuant to s. 248.2.

[17] If Parliament had intended to extend s. 248.2 to determinations of appeals before the Supreme Court of Canada, it could easily have done so. In this regard, I note that the *Criminal Code*, R.S.C., 1985, c. C-47 [the Code], paragraph 679(1)(*c*) (see Appendix 'A') explicitly

permits provincial and territorial appellate courts to order interim release pending the determination of an appeal to the Supreme Court. In my view, the omission of such language in the Act is demonstrative of the legislative intent that this Court is not clothed, under the Act, with such jurisdiction.

C. *Does this Court have jurisdiction to stay the imposition of the sentence, or any part of it, pursuant to s. 65.1(1) of the Supreme Court Act?*

[18] Both parties contend that should this Court conclude it does not have jurisdiction to order MCpl Royes' release under the Act, it has jurisdiction to order a stay of proceedings, with respect to the imposition of the sentence, pursuant to s. 65.1(1) of the Supreme Court Act. They both contend that I may, by applying that section, permit MCpl Royes to remain at liberty pending the conclusion of his application for leave to appeal to the Supreme Court and any potential appeal. Section 65.1(1) reads as follows:

Stay of execution - application for leave to appeal	**Demande d'autorisation d'appel**
65.1 (1) The Court, the court appealed from or a judge of either of those courts may, on the request of the party who has served and filed a notice of application for leave to appeal, order that proceedings be stayed with respect to the judgment from which leave to appeal is being sought, on the terms deemed appropriate.	**65.1 (1)** La Cour, la juridiction inférieure ou un de leurs juges peut, à la demande de la partie qui a signifié et déposé l'avis de la demande d'autorisation d'appel, ordonner, aux conditions jugées appropriées, le sursis d'exécution du jugement objet de la demande.

[19] Section 245 of the Act (see Appendix 'A') provides a right of appeal from this Court to the Supreme Court. Section 41 of the Supreme Court Act (see Appendix 'A') provides for

appeals to that Court where permitted by any other statute. Clearly, the Supreme Court Act and the *Rules of the Supreme Court of Canada*, SOR/2002-156 are engaged on appeals from this Court. The question that arises is whether, absent a specific provision providing for judicial interim release by this Court, it may provide a similar remedy by applying s. 65.1(1) of the Supreme Court Act. While both parties agree that I may impose a stay under s. 65.1(1), they differ on its application in the circumstances. MCpl Royes encourages me to order a stay of the sentence while the Crown requests I decline to do so. A refusal to grant the stay, will, of course, result in the requirement that MCpl Royes begin to serve his sentence immediately.

[20] It is trite law that stay provisions require the application of the tri-partite test articulated by the Supreme Court in *RJR-MacDonald Inc. v. Canada (A.G.)*, [1994] S.C.J. No. 17, [1994] 1 S.C.R. 311 [*RJR-MacDonald*]. See also: *American Cyanamid Co. c. Ethicon Ltd.*, [1975] A.C. 396; *Manitoba (A.G.) v. Metropolitan Stores Ltd.*, [1987] S.C.J. No. 6, [1987] 1 S.C.R. 110. That test differs from the test to be applied when considering judicial interim release as found in paragraph 248.3(*b*) of the Act, or alternatively, s. 679(3) of the Code (see Appendix ‘A’). For ease of reference, I set out the two tests in columnar fashion. The differences are readily apparent:

***RJR-MacDonald*:**	**Paragraph 248.3(b) of the Act:**
(i) A serious issue exists;	(i) The appeal is not frivolous;
(ii) There would be irreparable harm if the relief were not granted; and	(ii) If the appeal is against sentence only, it would cause unnecessary hardship if the person was detained or imprisoned;
(iii) The balance of	(iii) The person will surrender

convenience favours granting the relief sought.	himself or herself into custody when directed to do so; and (iv) The person's detention or imprisonment is not necessary in the interest of the public or the Canadian Forces.

[21] There are several factors which militate in favour of the interpretation of s. 65.1(1) advanced by both the Crown and MCpl Royes. First, Parliament, when it introduced the stay provision in the Supreme Court Act in 1992 (S.C. 1990, c. 8, s. 40), is presumed to have known about the then existing right to appeal to the Supreme Court set out in the Act, which was originally enacted in 1950 (1950, c. 43, s. 196). If Parliament had intended the stay provision would not apply to those convicted and sentenced under the Act, it could easily have included such an exception in the Supreme Court Act. Furthermore, s. 12 of the Interpretation Act, R.S.C. 1985, c. I-21 provides that "[e]very enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects". Given the broad language of section 65.1(1) and the Supreme Court's expansive interpretation of s. 65.1(1) (*Baier v. Alberta*, 2006 SCC 38, [2006] 2 S.C.R. 311 at p. 315 [*Baier*]; *RJR-MacDonald*, above at p. 329), as well as the established jurisprudence regarding the test for stays of proceedings, Parliament is presumed to have intended to clothe this Court with that stay jurisdiction. Second, and perhaps most importantly, statutes are not to be interpreted in a manner that would lead to an absurd result (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] S.C.J. No. 2, [1998] 1 S.C.R. 27 at p. 43; *Morgentaler v. The Queen*, [1975] S.C.J. No. 48, [1976] 1 S.C.R. 616 at p. 676; *R. v. McIntosh*, [1995] S.C.J. No. 16, [1995] 1 S.C.R. 686 at p. 722, from the dissenting judgment of McLachlin J., as she then was, La Forest, L'Heureux-Dubé and Gonthier JJ.; Sullivan, above at 307). I here note that the Supreme Court's power to order a stay is also

included in s. 65.1(1). *Baier*, above, holds that the Supreme Court has the authority to stay the effect of a judgment of a provincial court of appeal pursuant to s. 65.1(1). In my view, it would frustrate the legislative purpose to permit courts martial and this Court the power to grant or refuse the release of a convicted member of the Canadian Forces pending determination of an appeal before this Court, but not grant this Court the power to continue or discontinue that liberty upon further appeal to the Supreme Court.

[22] In the circumstances, I am of the view this Court is clothed with jurisdiction to grant a stay of the imposition of the sentence of MCpl Royes pending the final determination of his leave application, or, in the event leave is granted, the determination of his appeal before the Supreme Court.

[23] I now turn to whether, in the circumstances, MCpl Royes' release should be continued or whether it is appropriate for him to begin serving his sentence.

D. *Should this Court order a stay of the sentence imposed by the Standing Court Martial in the circumstances?*

[24] As set out in paragraph 20, above, an applicant seeking a stay must establish: (i) there exists a serious issue to be tried; (ii) he or she would suffer irreparable harm if the stay were not granted; and (iii) the balance of convenience favours the granting of the stay. The test for the establishment of a serious issue to be determined is not onerous. Essentially, if an appellant can establish the appeal is neither frivolous nor vexatious (*RJR-MacDonald*, at paragraphs 337-338), the threshold is met. For purposes of the present analysis, given that the very question decided in

Royes is currently under deliberation by a different panel of this Court, I prefer to presume the first prong of the test is met rather than conduct any analysis. As for the second part of the test, it is my view that irreparable harm is established if MCpl Royes is incarcerated for a crime he did not commit or as a result of an enactment that is unconstitutional. I therefore conclude that he meets the requirements of the first two prongs of the test for a stay of his sentence.

[25] I now turn to the issue of balance of convenience. I preface my analysis by acknowledging that MCpl Royes is not a flight risk, and that he has, in the past, never failed to appear. However, it must be noted that MCpl Royes was convicted of a serious sexual assault. The only issue for which leave is sought before the Supreme Court is the constitutionality of the make-up of the trial Court which found MCpl Royes guilty. The factual underpinnings of the conviction are not contested before the Supreme Court, nor were they contested in *Royes*, above. This Court has upheld both the factual underpinnings of the conviction and the constitutionality of the impugned provision of the Act.

[26] As I noted in paragraphs 3 and 4, above, MCpl Royes has caused significant delays in the judicial process: first by his failure to serve a Notice of Constitutional Question on the first appeal to this Court; and, second, by his bifurcation of the two constitutional challenges to the same legislative provision. The delays, for which MCpl Royes must take full responsibility, have ensured his continued liberty while the various appeal processes make their way through the court system.

[27] Public confidence in the administration of the justice system is an important factor in considering the balance of convenience: see, *R. v. Beaudry*, 2016 CMAC 2 at paragraph 6; and *R. v. Black*, [2008] N.B.C.A. no 484, 342 N.B.R. (2d) 12. When I consider: (1) the underlying facts regarding the sexual assault committed by MCpl Royes, which are not being challenged; (2) the fact he was convicted based upon a law this Court has twice deemed constitutional; (3) the procedural delays caused by his own conduct; (4) the interest of the victim in having some degree of closure to this matter; and (5) the public's and the Canadian Forces' need for confidence that court orders are respected and enforced in a timely fashion, I am of the view the balance of convenience favours the Crown.

V. Conclusion

[28] As a result of all of the above, I dismiss MCpl Royes' motion for a stay of proceedings, or as he originally framed it, his application for judicial interim release. The order of the Standing Court Martial directing his incarceration is enforceable, having been upheld on appeal to this Court. It follows that the order made by this Court on July 12, 2016, in which I ordered the maintenance of the status quo pending release of this decision, is vacated. MCpl Royes is to commence serving his sentence, including his term of imprisonment and all ancillary orders, immediately.

THIS COURT ORDERS that the motion for judicial interim release and a stay of proceedings is dismissed, without costs.

"B. Richard Bell"
Chief Justice

APPENDIX A

Appeals from Dispositions	**Appels de décisions**
Discretionary powers respecting suspension of dispositions	**Pouvoirs relatifs à la suspension de décisions**
233 (2) A judge of the Court Martial Appeal Court may, on application of any party who gives notice to each of the other parties within the time and in the manner prescribed under subsection 244(1), where the judge is satisfied that the mental condition of the accused justifies the taking of such action,	**233 (2)** Un juge de la Cour d'appel de la cour martiale peut, à la demande d'une partie et à la condition que celle-ci ait donné aux autres parties, un préavis dans le délai et de la manière prévus par règlement pris aux termes du paragraphe 244(1) :
(a) by order, direct that the application of a disposition made under section 202 or paragraph 202.16(1)(a) not be suspended pending the determination of the appeal;	**a)** rendre une ordonnance portant que l'application d'une décision rendue en vertu de l'article 202 ou de l'alinéa 202.16(1)a) ne soit pas suspendue jusqu'à la décision sur l'appel;
(b) by order, direct that the application of a disposition appealed from that was made under section 201 or paragraph 202.16(1)(b) or (c) be suspended pending determination of the appeal;	**b)** rendre une ordonnance portant suspension de l'application de toute décision rendue en vertu de l'article 201 ou de l'alinéa 202.16(1)b) ou c) jusqu'à la décision sur l'appel;
(c) where the application of a disposition is suspended pursuant to subsection (1) or by virtue of an order made under paragraph (b), make such other disposition, other than a disposition under section 202 or paragraph 202.16(1)(a), in respect of the accused as is applicable and	**c)** lorsque l'application d'une décision est suspendue en vertu du paragraphe (1) ou par suite d'une ordonnance visée à l'alinéa b), rendre à l'égard de l'accusé toute autre décision applicable - à l'exception d'une décision visée à l'article 202 ou à l'alinéa 202.16(1)a) - qu'il estime justifiée dans les

appropriate in the circumstances pending the determination of the appeal; and	circonstances jusqu'à ce que la décision soit rendue sur l'appel;
...	…
Court Martial Appeal Court of Canada	**Cour d'appel de la cour martiale**
Court established	**Constitution**
234 (1) There is hereby established a Court Martial Appeal Court of Canada, which shall hear and determine all appeals referred to it under this Division.	**234 (1)** Est constituée la Cour d'appel de la cour martiale du Canada, chargée de juger les appels qui lui sont déférés sous le régime de la présente section.
Appeal to Supreme Court of Canada	**Appel à la Cour suprême du Canada**
Appeal by person tried	**Appel par l'accusé**
245 (1) A person subject to the Code of Service Discipline may appeal to the Supreme Court of Canada against a decision of the Court Martial Appeal Court	**245 (1)** Toute personne assujettie au code de discipline militaire peut interjeter appel à la Cour suprême du Canada d'une décision de la Cour d'appel de la cour martiale sur toute question de droit, dans l'une ou l'autre des situations suivantes :
(a) on any question of law on which a judge of the Court Martial Appeal Court dissents; or	**a)** un juge de la Cour d'appel de la cour martiale exprime son désaccord à cet égard;
(b) on any question of law, if leave to appeal is granted by the Supreme Court of Canada.	**b)** l'autorisation d'appel est accordée par la Cour suprême.
Appeal by Minister	**Appel par le ministre**
(2) The Minister, or counsel instructed by the Minister for that purpose, may appeal to the	**(2)** Le ministre ou un avocat à qui il a donné des instructions à cette fin peut interjeter appel

Supreme Court of Canada against a decision of the Court Martial Appeal Court

à la Cour suprême du Canada d'une décision de la Cour d'appel de la cour martiale sur toute question de droit, dans l'une ou l'autre des situations suivantes :

(a) on any question of law on which a judge of the Court Martial Appeal Court dissents; or

a) un juge de la Cour d'appel de la cour martiale exprime son désaccord à cet égard;

(b) on any question of law, if leave to appeal is granted by the Supreme Court of Canada.

b) l'autorisation d'appel est accordée par la Cour suprême.

Hearing and determination by Supreme Court of Canada

Compétence de la Cour suprême du Canada

(3) The Supreme Court of Canada, in respect of the hearing and determination of an appeal under this section, has the same powers, duties and functions as the Court Martial Appeal Court has under this Act, and sections 238 to 242 apply with such adaptations and modifications as the circumstances require.

(3) Dans l'audition et le jugement des appels visés par le présent article, la Cour suprême du Canada exerce les attributions conférées par la présente loi à la Cour d'appel de la cour martiale, et les articles 238 à 242 s'appliquent, compte tenu des adaptations de circonstance.

***Criminal Code*, R.S.C., 1985, c. C-46**

***Code criminel*, L.R.C. (1985), ch. C-46**

Procedure on Appeals

Procédures en appel

Release pending determination of appeal

Mise en liberté en attendant la décision de l'appel

679 (1) A judge of the court of appeal may, in accordance with this section, release an appellant from custody pending the determination of his appeal if,

679 (1) Un juge de la cour d'appel peut, en conformité avec le présent article, mettre un appelant en liberté en attendant la décision de son appel :

…

(c) in the case of an appeal or an application for leave to appeal to the Supreme Court of Canada, the appellant has filed and served his notice of appeal or, where leave is required, his application for leave to appeal.

…

Circumstances in which appellant may be released

(3) In the case of an appeal referred to in paragraph (1)(a) or (c), the judge of the court of appeal may order that the appellant be released pending the determination of his appeal if the appellant establishes that

(a) the appeal or application for leave to appeal is not frivolous;

(b) he will surrender himself into custody in accordance with the terms of the order; and

(c) his detention is not necessary in the public interest.

***Supreme Court Act*, R.S.C., 1985, c. S-26**

Appellate Jurisdiction

Appeals under other Acts

41 Notwithstanding anything

…

c) si, dans le cas d'un appel ou d'une demande d'autorisation d'appel devant la Cour suprême du Canada, l'appelant a déposé et signifié son avis d'appel ou, lorsqu'une autorisation est requise, sa demande d'autorisation d'appel.

...

Circonstances dans lesquelles l'appelant peut être mis en liberté

(3) Dans le cas d'un appel mentionné à l'alinéa (1)a) ou c), le juge de la cour d'appel peut ordonner que l'appelant soit mis en liberté en attendant la décision de son appel, si l'appelant établit à la fois :

a) que l'appel ou la demande d'autorisation d'appel n'est pas futile;

b) qu'il se livrera en conformité avec les termes de l'ordonnance;

c) que sa détention n'est pas nécessaire dans l'intérêt public.

***Loi sur la Cour suprême*, L.R.C. (1985), ch. S-26**

Juridiction d'appel

Appels fondés sur d'autres lois

41 Malgré les autres

in this Act, the Court has jurisdiction as provided in any other Act conferring jurisdiction.	dispositions de la présente loi, la Cour a la compétence prévue par toute autre loi attributive de compétence.

COURT MARTIAL APPEAL COURT OF CANADA

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	CMAC-586
STYLE OF CAUSE:	MASTER CORPORAL D.D. ROYES v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	FREDERICTON, NEW BRUNSWICK
DATE OF HEARING:	JULY 12, 2016
ORDER AND REASONS BY:	CHIEF JUSTICE BELL
DATED:	NOVEMBER 30, 2016

APPEARANCES:

Lieutenant Commander Mark Létourneau	FOR THE APPELLANT
Major Dylan Kerr	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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