

Court Martial Appeal Court  
of Canada



Cour d'appel de la cour martiale  
du Canada

Date: 20201210

Docket: CMAC-605

Citation: 2020 CMAC 7

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 10, 2020

Present: Chief Justice Bell

**BETWEEN:**

**CAPT. ÉRIC DUQUETTE**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

**ORDER**

On November 17, 2020, this Court dismissed a motion brought by the Appellant for an extension of time within which to file the Appellant's Memorandum of Fact and Law. The Court dismissed the motion because it was unsupported by any evidence in support of the relief sought. The Appellant now brings a motion, pursuant to the *Court Martial Appeal Court Rules*, SOR/86/959 (Rules), Rule 24(2) to set aside the November 17, 2020 order.

On the within motion, the Appellant filed two (2) affidavits in support, including a report from a medical doctor. It is evident that counsel was unable to respect the timelines for the filing of the Appellant's Memorandum of Fact and Law, as required by Rule 17(1) of the Rules, for medical reasons.

There is authority for an appellate court to revoke or rescind previous orders made by it. In *R. v. Stewart*, 1992 C.M.A.C. 339 this Court revoked the dismissal of an appeal because it was in the interests of justice to do so. In *R. v. Blaker*, (1983) B.C.C.A. 308, (1983), 46 B.C.L.R. 344 the Court held, at para 18, that an appeal court may set aside its own order dismissing an appeal, if the order is not based upon the merits of the case and it is in the interests of justice to do so. See also, *R. v. Dunbrook*, [1978] OJ No 2127, 44 CCC (2d) 264, para. 9, where the Court held that an Appeal Court Justice has the power to rescind a previous order where it is in the interests of justice to do so.

These rulings are consistent with the direction of the Supreme Court of Canada in *R. v. Jacobs*, [1971] S.C.R. 92, 2 C.C.C. (2d) 26, para. 7, wherein the Court held that a party should not be denied justice based on the conduct of his or her counsel. I note, in passing, that counsel on the within motion was not counsel on the earlier motion at which no evidence was filed;

Based upon all of the above, I grant the motion seeking rescission of my Order dated November 17, 2020 and extend the time for filing of the Appellant's Memorandum of Fact and Law in this appeal.

**THIS COURT ORDERS:**

1. The motion seeking rescission of this Court's order made on November 17, 2020 is granted;
2. The time for serving and filing the Appellant's Memorandum of Fact and Law is extended to November 18, 2020. The filing having already been made, it is hereby accepted as Rules compliant;
3. On consent of the parties, the time for service and filing of the Respondent's Memorandum of Fact and Law is, pursuant to Rule 17(1), extended to February 26, 2021.

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"B. Richard Bell"

Chief Justice