

**Court Martial Appeal Court
of Canada**



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

Date: 20211112

Docket: CMAC-617

Citation: 2021 CMAC 8

Present: BELL C.J.

BETWEEN:

HER MAJESTY THE QUEEN

Appellant/Responding Party

and

LIEUTENANT (NAVY) C.A.I. BROWN

Respondent/Moving Party

Motion determined on the basis of written submissions filed by the Moving Party on the 6th day of October, 2021 and by the Responding Party on the 20th day of October, 2021.

Reasons for Order delivered at Ottawa, Ontario, on November 12, 2021.

REASONS FOR ORDER BY:

CHIEF JUSTICE BELL

Court Martial Appeal Court
of Canada



Cour d'appel de la cour martiale
du Canada

Date: 20211112

Docket: CMAC-617

Citation: 2021 CMAC 8

Present: BELL C.J.

BETWEEN:

HER MAJESTY THE QUEEN

Appellant/Responding Party

and

LIEUTENANT (NAVY) C.A.I. BROWN

Respondent/Moving Party

REASONS FOR ORDER

CHIEF JUSTICE BELL

I. Overview

[1] By way of Notice of Motion filed on the October 6, 2021, the Respondent Lieutenant (Navy) C.A.I. Brown requests this Court “re-impose the stay of proceedings until the matter of R. v. Edwards, et al has been disposed of conclusively”. For the following reasons, I dismiss the motion and refuse to reinstate the stay of proceedings which was originally granted on June 11, 2021 and lifted on July 26, 2021.

II. Background and Procedural Steps undertaken to date

[2] On October 20, 2018 an incident occurred on board one of Her Majesty's Canadian Ship in Reykjavik, Iceland. As a result of that incident, Lieutenant Brown was charged with the following offences: sexual assault and forcible confinement under s. 130 of the *National Defence Act*, RSC 1985, c N-5 (NDA) pursuant to sections 271 and 279(2) of the *Criminal Code of Canada*, RSC 1985, c C-46 respectively.

[3] On November 2, 2020 Lieutenant Brown filed an application for a stay of proceedings based on an alleged violation of his right under s. 11(d) of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act*, 1982 (UK), 1982, c 11 (Charter) to a trial before an independent and impartial tribunal.

[4] On March 23, 2021, Military Judge Pelletier concluded Her Majesty the Queen had violated Lieutenant Brown's s. 11(d) Charter right and ordered a stay of proceedings. The charges are serious, and, in the event of successful appellate review of the military judge's March 23, 2021 decision, should be tried on their merits.

[5] Similar stay orders were issued by military judges in *R. v. Edwards*, 2020 CM 3006; *R. c. Crépeau*, 2020 CM 3007; *R. c. Fontaine*, 2020 CM 3008; *R. v. Christmas*, 2020 CM 3009; *R. v. Iredale*, 2020 CM 4011; *R. v. Proulx*, 2020 CM 4012; and, *R. v. Cloutier*, 2020 CM 4013. On January 29, 2021 this Court heard the appeals in *Edwards*, *Crépeau*, *Fontaine* and *Iredale*. On January 26, 2021 the appeal in *Christmas* was adjourned *sine die* due to circumstances beyond

the control of the parties. On March 11, 2021 this Court heard the appeals in *Proulx* and *Cloutier*.

[6] On June 11, 2021 a stay of proceedings was ordered in *Brown* and the matter adjourned *sine die*. It appeared to be in the interests of justice given that the singular issue upon which the stay had been granted in *Brown*, was common to the *Edwards*, *Crépeau*, *Fontaine*, *Iredale*, *Proulx*, and *Cloutier* appeals which were under reserve at the time and *Christmas* had been similarly adjourned *sine die*. The stay would therefore permit both *Christmas* and *Brown* to be resolved once this Court had rendered its decision in these other matters.

[7] On June 11, 2021 this Court rendered its unanimous decision in *R. v. Edwards; R. v. Crépeau; R. v. Fontaine; R. v. Iredale*, 2021 CMAC 2 allowing the Crown appeal and ordering the trials to proceed. On June 17, 2021 this Court rendered its unanimous decision in *R. v. Proulx; R. v. Cloutier*, 2021 CMAC 3 again dismissing the appeals and ordering those trials to proceed.

[8] This Court, following the release of the reasons in *Edwards et al.* and *Proulx et al.*, on motion by the Crown, lifted the stay in the within appeal on July 26, 2021.

[9] On September 10, 2021, the respondents in *Edwards et al* sought leave to appeal to the Supreme Court of Canada. As a result of that leave application, Lieutenant Brown brings the within motion to “re-impose” the stay of proceedings.

III. Analysis

[10] There have been significant delays in this matter already afforded at the expense of the timely delivery of justice. An application for leave to appeal to the Supreme Court of Canada is not intended to freeze the wheels of justice. Indeed, our legal system seeks to prevent unnecessary delays where possible. The Supreme Court must still decide upon the leave application and, should it allow the application, it must then hold a hearing and then deliberate prior to rendering a decision on the appeal.

[11] The reasons for the original stay imposed in this matter are no longer relevant. Whatever the outcome of a hearing of this matter on its merits before this Court, it is in the interests of all, including the interests of the administration of justice, that an outcome be provided expeditiously. The parties will then proceed accordingly from there.

[12] For the above reasons :

IT IS ORDERED THAT the motion to reinstate the stay of proceedings is dismissed.

“B. Richard Bell”
Chief Justice

COURT MARTIAL APPEAL COURT OF CANADA

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

CMAC-617

STYLE OF CAUSE:

HER MAJESTY THE QUEEN v.
LIEUTENANT (NAVY) C.A.I.
BROWN

DEALT WITH IN WRITING WITHOUT APPEARANCES OF THE PARTIES

REASONS FOR ORDER BY:

CHIEF JUSTICE BELL

DATED:

NOVEMBER 12, 2021

IN WRITING:

LCdr Florence Gonsalves

FOR THE APPLICANT

Major Patrice Germain

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Defence Counsel Services
Gatineau (Quebec)

FOR THE APPLICANT

Canadian Military Prosecution Services
Ottawa (Ontario)

FOR THE RESPONDENT