

**Court Martial Appeal Court  
of Canada**



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

**Date: 20211112**

**Docket: CMAC-610**

**Citation: 2021 CMAC 7**

**Present: BELL C.J.**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**Appellant/Responding Party**

**and**

**CORPORAL K.L. CHRISTMAS**

**Respondent/Moving Party**

Motion determined on the basis of written submissions filed by the Moving Party on the 7<sup>th</sup> day of October, 2021 and by the Responding Party on the 22<sup>nd</sup> day of October, 2021.

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

**REASONS FOR ORDER BY:**

**CHIEF JUSTICE BELL**

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**REASONS FOR ORDER AND ORDER**

**CHIEF JUSTICE BELL**

I. Overview

[1] By way of Notice of Motion filed on the October 7, 2021, the Respondent Corporal K.L. Christmas 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 January 26, 2021 and lifted on July 26, 2021.

II. Background and Procedural Steps undertaken to date

[2] On March 17, 2019 an incident occurred at the Truro Armouries in Truro, Nova Scotia. As a result of that incident some charges were initially laid by way of a Record of Disciplinary Proceedings on June 25, 2019.

[3] On February 21, 2020 the charge sheet was signed by a representative of the Director of Military Prosecutions (DMP) pursuant to art. 110.06(4) of the *Queen's Regulations and Orders* (QR&O) and on March 2, 2020 the DMP preferred, pursuant to ss. 165 and 165.12 of the NDA and art. 110.01 of the QR&O. Corporal Christmas was charged with the offences of sexual assault under s. 130 of the *National Defence Act*, RSC 1985, c N-5 (NDA) pursuant to s. 271 of the *Criminal Code of Canada*, RSC 1985, c C-46 (Criminal Code); disgraceful conduct under s. 93 of the NDA; and drunkenness under s. 97 of the NDA.

[4] On November 10, 2020, Military Judge d'Auteuil concluded Her Majesty the Queen had violated Corporal Christmas's right to be tried by an independent and impartial tribunal pursuant to 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) and ordered a stay of proceedings. The charges are serious, and, in the event of successful appellate review of the military judge's November 10, 2020 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. Iredale*, 2020 CM 4011; *R. v. Proulx*, 2020 CM 4012; *R. v. Cloutier*, 2020 CM 4013. On January 29, 2021 this Court heard the appeals in *Edwards*, *Crépeau*, *Fontaine* and *Iredale*. By January 8, 2021 counsel for each of the

Respondents in *Proulx, Cloutier* and *Christmas* had agreed to joinder of their appeals. On January 12, 2021, I ordered a case management conference be held in the appeals concerning *Proulx, Cloutier* and *Christmas*.

[6] Following a case management conference held on January 19, 2021, I ordered expedited hearings of the appeals involving *Cloutier* and *Proulx*, severed the Crown appeal involving Corporal Christmas from the previous joinder order and adjourned *Christmas sine die*. The adjournment of *Christmas* arose from circumstances beyond the control of any of the parties involved in the litigation. Furthermore, it appeared to be in the interests of justice given that the singular issue upon which the stay had been granted in *Christmas*, was common to the *Edwards, Crépeau, Fontaine, Iredale, Proulx, and Cloutier* appeals. Justice delayed on the other matters would have constituted justice denied. It was not in the interests of justice that the appeal involving Corporal Christmas delay other proceedings involving the exact same issue.

[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, Corporal Christmas 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.

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“B. Richard Bell”  
Chief Justice

**COURT MARTIAL APPEAL COURT OF CANADA**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** CMAC-610  
**STYLE OF CAUSE:** HER MAJESTY THE QUEEN v.  
CORPORAL K.L. CHRISTMAS

**DEALT WITH IN PERSON WITHOUT APPEARANCE OF THE PARTIES**

**REASONS FOR ORDER AND ORDER BY:** CHIEF JUSTICE BELL  
**DATED:** NOVEMBER 12, 2021

**APPEARANCES:**

Major Patrice Germain FOR THE  
APPELANT/RESPONDING  
PARTY  
Capt Carlos Da Cruz FOR THE  
RESPONDENT/MOVING  
PARTY

**SOLICITORS OF RECORD:**

Canadian Military Prosecution Services FOR THE  
Ottawa (Ontario) APPELANT/RESPONDING  
PARTY  
Defence Counsel Services FOR THE  
Gatineau (Quebec) RESPONDENT/MOVING  
PARTY