

**Court Martial Appeal Court
of Canada**



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

Date: 20211117

Docket: CMAC-618

Citation: 2021 CMAC 9

Present: BELL C.J.

BETWEEN:

HER MAJESTY THE QUEEN

Appellant/Responding Party

and

CORPORAL EULER

Respondent/Moving Party

Motion determined on the basis of written submissions filed by the Moving Party on the 20th day of October, 2021 and by the Responding Party on the 5th day of November, 2021.

Order delivered at Ottawa, Ontario, on November 17, 2021.

REASONS FOR ORDER BY:

CHIEF JUSTICE BELL

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REASONS FOR ORDER

CHIEF JUSTICE BELL

[1] By way of Notice of Motion brought pursuant to Rule 8(1) of the *Court Martial Appeal Court Rules*, SOR86/-959 (Rules), filed on October 20, 2021, Corporal P.J.M. Euler, the Moving Party, requests this Court quash the appeal on the basis that the Appellant has not shown a substantial ground of appeal in its Memorandum of Fact and Law. For the following reasons I dismiss the motion.

[2] The power to quash an appeal should be exercised sparingly: *Schmidt v. Toronto Dominion Bank*, (1995) 24 O.R. (3d) 1 (ONCA) at para. 6, 82 OAC 233; *Christo v. Woon*, 2017 ONSC 5127 at para. 22, 282 A.C.W.S. (3d) 617.

[3] In their submissions, the parties present differing interpretations of the Military Judge's reasons. The Appellant contends that the Military Judge required corroboration of the complainant's testimony. The Moving Party, Corporal P.J.M. Euler contends that the Military Judge did not require corroboration. Such differing interpretations are more appropriately dealt with by way of a hearing on the merits, rather than by way of a motion to quash.

[4] For the above reasons :

IT IS ORDERED THAT the motion to quash the appeal is dismissed.

"B. Richard Bell"
Chief Justice

COURT MARTIAL APPEAL COURT OF CANADA

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

CMAC-618

STYLE OF CAUSE:

HER MAJESTY THE QUEEN v.
CORPORAL EULER

**MOTION DETERMINED ON THE BASIS OF WRITTEN SUBMISSIONS, WITHOUT
APPEARANCE OF THE PARTIES.**

REASONS FOR ORDER BY:

CHIEF JUSTICE BELL

DATED:

NOVEMBER 17, 2021

IN WRITING:

Maj Patrice Germain

APPELLANT/RESPONDING
PARTY

LCol D. Bernstein

RESPONDENT/MOVING
PARTY

SOLICITORS OF RECORD:

Canadian Military Prosecution Services
Ottawa, Ontario

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PARTY

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Gatineau, Quebec

RESPONDENT/MOVING
PARTY