

**Court Martial Appeal Court  
of Canada**



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

**Date: 20220113**

**Docket: CMAC-610**

**Citation: 2022 CMAC 1**

**CORAM: CHIEF JUSTICE BELL  
PHELAN J.A.  
GREEN J.A.**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**Appellant**

**and**

**CORPORAL K.L. CHRISTMAS**

**Respondent**

Heard at Halifax, Nova Scotia, on December 15, 2021.

Judgment delivered from the Bench at Halifax, Nova Scotia on December 15, 2021, and edited for syntax and grammar, with added reference to the relevant case law.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**THE COURT**

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**REASONS FOR JUDGMENT**

[1] This is the third of three sets of appeals in which very similar issues are raised. The first concerned Court Martial Appeal Court of Canada (CMACC) files 606, 607, 608, and 609, which was heard on January 29, 2021. The decision on those appeals was rendered on June 11, 2021 and is reported as: *R. v. Edwards; R. v. Crépeau; R. v. Fontaine; R. v. Iredale*, 2021 CMAC 2 [*Edwards et al.*]. Those appeals focused largely on whether the Code of Service Discipline

(CSD) applies to military judges; whether they can be tried through courts martial and whether the Chief of Defence Staff Order of October 2, 2019 (the impugned order) as well as sections 12, 17, 18, and 60 of the *National Defence Act*, R.S.C., 1985, c. N-5 (NDA), create a structure which violates an accused's right to be tried by an independent and impartial tribunal as guaranteed by section 11(d) of the *Constitution Act*, 1982, Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 (Charter). The second appeal in this series, CMACC files 612 and 614 and reported as *R. v. Proulx*; *R. v. Cloutier*, 2021 CMAC 3 [*Proulx et al.*], determined that neither the impugned order, the subjugation of military judges to the CSD, the creation of the Office of the Chief Military Judge, nor ss. 12, 17, 18, and 60 of the NDA violates s. 11(d) of the Charter.

[2] The present appeal raises the same issues that were raised in *Edwards et al.* and *Proulx et al.*, with the exception of the challenge to ss. 12, 17, 18, and 60 of the NDA.

[3] In *R. v. Christmas*, 2020 CM 3009, Military Judge d'Auteuil ordered a stay of proceedings of the within matter on the basis that, despite the suspension of the impugned order, there remained a structure in place subjugating military judges to the CSD while in office. The military judge held that such subjugation would lead a reasonable and informed observer to conclude military judges are not free from the pressure of the executive. Consequently, he found that structure resulted in a violation of Corporal Christmas's s. 11(d) Charter rights.

[4] Her Majesty the Queen appeals from the stay of proceedings.

[5] For substantially the same reasons set out in *Edwards et al.* and *Proulx et al.*, we allow the appeal, lift the stay and order the trial to proceed.

“B. Richard Bell”

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Chief Justice

“Michael L. Phelan”

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J.A.

“J. Derek Green”

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J.A.

**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

**PLACE OF HEARING:** HALIFAX, NOVA SCOTIA

**DATE OF HEARING:** DECEMBER 15, 2021

**REASONS FOR JUDGMENT OF THE COURT  
BY:** CHIEF JUSTICE BELL  
PHELAN J.A.  
GREEN J.A.

**DATED:** JANUARY 13, 2022

**APPEARANCES:**

Major Patrice Germain FOR THE APPELLANT

Captain Carlos Da Cruz FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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