

**Court Martial Appeal Court  
of Canada**



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

**Date: 20220330**

**Docket: CMAC-617**

**Citation: 2022 CMAC 2**

**CORAM: CHIEF JUSTICE BELL  
HENEGHAN J.A.  
SCANLAN J.A.**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**Appellant**

**and**

**LIEUTENANT (NAVY) C.A.I. BROWN**

**Respondent**

Heard at Fredericton, New Brunswick, on February 8, 2022.

Judgment delivered from the Bench at Fredericton, New Brunswick on February 8, 2022, 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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**LIEUTENANT (NAVY) C.A.I. BROWN**

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**REASONS FOR JUDGMENT**

[1] This is the fourth in a series of appeals in which very similar issues are raised. The first concerned Court Martial Appeal Court of Canada (CMACC) files CMAC-606, CMAC-607, CMAC-608, and CMAC-609, heard on January 29, 2021. The decision in those appeals was rendered on June 11, 2021 and 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 before 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).

[2] In the second appeal in this series of appeals, CMACC files CMAC-612 and CMAC-614, reported as *R. v. Proulx*; *R. v. Cloutier*, 2021 CMAC 3 [*Proulx et al.*], this Court concluded that the impugned order; the subjugation of military judges to the CSD; the creation of the Office of the Chief Military Judge; and sections 12, 17, 18, and 60 of the NDA, individually or collectively, do not violate section 11(d) of the Charter. The third appeal in this series, CMACC file CMAC-613, reported as *R. v. Christmas*, 2022 CMAC 1 [*Christmas*], affirmed these earlier decisions.

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

[4] In *R. v. Brown*, 2021 CM 4003, Military Judge Pelletier ordered a stay of proceedings on the basis that there remained a structure in place, which subjugates military judges to the CSD while in office.

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

[6] 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.

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“B. Richard Bell”

Chief Justice

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“E. Heneghan”

J.A.

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“J. Edward Scanlan”

J.A.

**COURT MARTIAL APPEAL COURT OF CANADA**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

<b>DOCKET:</b>	CMAC-617
<b>STYLE OF CAUSE:</b>	HER MAJESTY THE QUEEN v. LIEUTENANT (NAVY) C.A.I. BROWN
<b>PLACE OF HEARING:</b>	FREDERICTON, NEW BRUNSWICK
<b>DATE OF HEARING:</b>	FEBRUARY 8, 2022
<b>REASONS FOR JUDGMENT OF THE COURT BY:</b>	CHIEF JUSTICE BELL HENEGHAN J.A. SCANLAN J.A.
<b>DATED:</b>	MARCH 30, 2022

**APPEARANCES:**

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LCdr Gonsalves	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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