

**Court Martial Appeal Court
of Canada**



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

Date: 20230310

Docket: CMAC-625

Citation: 2023 CMAC 3

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

BETWEEN:

NAVAL CADET REMINGTON

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Ottawa, Ontario, on February 17, 2023.

Judgment delivered at Ottawa, Ontario, on March 10, 2023.

REASONS FOR JUDGMENT BY:

THE COURT

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REASONS FOR JUDGMENT

[1] This is the fifth of five 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).

[2] 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.

[3] The third and fourth appeals in this series, CMACC file CMAC-613, reported as *R. v. Christmas*, 2022 CMAC 1 (*Christmas*), and CMACC file CMAC-617 reported as *R. v. Brown*, 2022 CMAC 2 (*Brown*) affirmed these earlier decisions.

[4] In *R. v. Remington*, 2022 CM 5006, Naval Cadet Remington was found guilty of one charge of sexual assault contrary to s. 271 of the *Criminal Code* (R.S.C., 1985, c. C-46), punishable via s. 130 of the NDA.

[5] The present appeal raises the same issue as that were raised in *Edwards et al.*, *Proulx et al.*, *Christmas*, and *Brown*, with the exception of the challenge to sections 12, 17, 18, and 60 of the NDA and the challenge to the impugned order of the Chief of Defence Staff, which has since been repealed.

[6] For substantially the same reasons set out in *Edwards et al.*, *Proulx et al.*, *Christmas*, and *Brown*, we dismiss the appeal.

“B. Richard Bell”

Chief Justice

“Elizabeth A. Bennett”

J.A.

“J. Edward Scanlan”

J.A.

COURT MARTIAL APPEAL COURT OF CANADA

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: CMAC-625

STYLE OF CAUSE: NAVAL CADET REMINGTON v.
HIS MAJESTY THE KING

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: FEBRUARY 17, 2023

REASONS FOR JUDGMENT OF THE COURT: CHIEF JUSTICE BELL
BENNETT J.A.
SCANLAN J.A.

DATED: MARCH 10 2023

APPEARANCES:

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Lt(N) Brian Wentzell

FOR THE APPELLANT

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Major Patrice Germain

FOR THE RESPONDENT

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