Court Martial Appeal Court of Canada

Cour d'appel de la cour martiale du Canada

Date: 20251106

Docket: CMAC-645

Citation: 2025 CMAC 3

CORAM: **GLEASON C.J.**
STRATAS J.A.
TROTTER J.A.

BETWEEN:

DOUG ALLISON

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Ottawa, Ontario, on September 12, 2025.

Judgment delivered at Ottawa, Ontario, on November 6, 2025.

REASONS FOR JUDGMENT BY: THE COURT

Court Martial Appeal Court of Canada

Cour d'appel de la cour martiale du Canada

Date: 20251106

Docket: CMAC-645

Citation: 2025 CMAC 3

CORAM: **GLEASON C.J.**
STRATAS J.A.
TROTTER J.A.

BETWEEN:

DOUG ALLISON

Appellant

and

HIS MAJESTY THE KING

Respondent

REASONS FOR JUDGMENT BY THE COURT

[1] Mr. Allison appeals from the judgment of the Standing Court Martial. The Standing Court Martial found him guilty of operating a conveyance while impaired, contrary to section 130 of the *National Defence Act*, R.S.C. 1985, c. N-5, contrary to paragraph 320.14(1)(a) of the *Criminal Code*, R.S.C. 1985, c. C-46. As he has been found guilty of similar offences on other occasions, the Standing Court Martial sentenced him to imprisonment for a period of 30 days.

[2] For the following reasons, we would dismiss Mr. Allison's appeal.

[3] Mr. Allison is a civilian who lived in Belgium with his spouse who is a Canadian Armed Forces member. In this case, Belgian law enforcement authorities found Mr. Allison off-base, in a car, impaired. This was not an offence under Belgian law. But it is an offence under Canadian law: paragraph 320.14(1)(a) of the *Criminal Code* (operating a conveyance while impaired).

[4] Although Mr. Allison lived in Belgium, the *Criminal Code* applies to him, notwithstanding the legality of his conduct in Belgium. Specifically, section 481.2 of the *Criminal Code* provides:

481.2 Subject to this or any other Act of Parliament, where an act or omission is committed outside Canada and the act or omission is an offence when committed outside Canada under this or any other Act of Parliament, proceedings in respect of the offence may, whether or not the accused is in Canada, be commenced, and an accused may be charged, tried and punished within any territorial division in Canada in the same manner as if the offence had been committed in that territorial division.	**481.2** Sous réserve des autres dispositions de la présente loi et de toute autre loi fédérale, le fait — acte ou omission — survenu à l'extérieur du Canada et constituant, même dans ce cas, une infraction à la présente loi ou à une autre loi fédérale peut être poursuivi, jugé et puni dans toute circonscription territoriale du Canada comme s'il était survenu dans cette circonscription, que l'accusé soit présent ou non au Canada.

[5] This is also the case under various provisions of the *National Defence Act*. Mr. Allison was a civilian "dependant" within the meaning of paragraph 61(1)(c) of the *National Defence Act* and was a person "accompan[ying] [an] element of the Canadian Forces that is on service or active service in any place" within the meaning of paragraph 60(1)(f) of the Act. Thus, under subsection 60(1) and section 67, Mr. Allison was subject to being dealt with and tried under the Code of Service Discipline under the *National Defence Act*. And under subsection 130(1) of the

National Defence Act, any "act or omission" that "takes place outside Canada" that would, if "it had taken place in Canada", have been "punishable under…the *Criminal Code*" is "an offence".

[6] Before the court martial, Mr. Allison filed a notice of application for a plea in bar of trial. He submitted that there was no jurisdiction to try him in the military justice system and that he should be dealt with by the civilian justice system in Canada. As the Chief Military Judge said, "…the issue to determine is whether the prosecution of the charge against the applicant in the military justice system is arbitrary and disproportionate, infringing section 7 of the [*Charter*]": *R. v. Allison*, 2024 CM 5013 at para. 3. In thorough reasons, the Chief Military Judge dismissed the application.

[7] Mr. Allison's sole ground of appeal challenges the correctness of this ruling.

[8] This appeal is greatly simplified by the fact that there is much common ground between the parties. In this appeal, no one takes issue with the following propositions:

- The *Criminal Code* applies to Mr. Allison even though the conduct giving rise to offence took place in Belgium.

- Mr. Allison committed the offence of operating a conveyance while impaired, contrary to paragraph 320.14(1)(a) of the *Criminal Code*.

- Mr. Allison is not challenging the constitutional validity of the provisions in the *National Defence Act* that caused Canadian law to be applied to Mr. Allison in this case.

- Mr. Allison has not explicitly alleged that the exercise of prosecutorial discretion to charge and pursue the charge against Mr. Allison was an abuse of process.

[9] We consider these propositions, seen in light of governing authorities from the Supreme Court that we discuss below, to lead inexorably to the dismissal of Mr. Allison's appeal.

[10] Mr. Allison invokes this Court's decision in *R. v. Wehmeier*, 2014 CMAC 5 [*Wehmeier*] and submits that as a civilian he should only be tried in a military tribunal in "very exceptional circumstances" and only when "absolutely essential" (appellant's memorandum, at paras. 1 and 3).

[11] We reject this submission. It amounts to a rewriting of the above provisions of the *National Defence Act*. They clearly provide that Canadian law can be applied to Mr. Allison. They do not restrict their application to "very exceptional circumstances" or only when "absolutely essential". The language of statutory provisions, seen in light of their context and purpose, is the anchor in the statutory interpretation process: *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43, 498 D.L.R. (4th) 316 at para. 24. *CISSS A* postdates this Court's decision in *Wehmeier* and, thus, binds us. There is nothing in the language of the relevant provisions of the

National Defence Act or in their text and context that would support limiting their application in this case, as Mr. Allison urges us to do.

[12] In substance, Mr. Allison attacks the discretion exercised by the prosecutorial authorities to charge and prosecute him in the military justice system. On the basis of Supreme Court authorities, we reject this attack.

[13] In *R. v. Anderson*, 2014 SCC 41, [2014] 2 S.C.R. 167 [*Anderson*], the Supreme Court held (at paras. 40 and 44) that the decision to charge and prosecute, the discretions in issue in this case, lie at the core of prosecutorial discretion. *Anderson* is a decision of the Supreme Court that postdates this Court's decision in *Wehmeier*, the authority the appellant almost exclusively relies upon in this appeal.

[14] *Anderson* adds that the prosecutorial discretion to charge and prosecute "must not be subjected to routine second-guessing by the courts": *Anderson* at para. 46. This discretion is subject to "considerable deference": *Anderson* at paras. 46 and 48, citing *Kreiger v. Law Society of Alberta*, 2002 SCC 65, [2002] 3 S.C.R. 372 at para. 32 [*Krieger*], *R. v. Nixon*, 2011 SCC 34, [2011] 2 S.C.R. 566 at para. 31 [*Nixon*] and *Miazga v. Kvello Estate*, 2009 SCC 51, [2009] 3 S.C.R. 339 at para. 46.

[15] The test to set aside such a discretion is a "stringent one": *Anderson* at para. 54, citing *Nixon* at para 63. Only "flagrant impropriety" amounting to an "abuse of process" such as "egregious" conduct that "undermines the integrity of the judicial process" or "seriously

compromises trial fairness" will suffice: *Anderson* at paras. 49–51, citing *Krieger* at para. 49 and *Nixon* at paras. 64 and 68.

[16] Needless to say, there is nothing in the facts of this case that would give rise to the setting aside of the decision to charge and prosecute Mr. Allison. The *Criminal Code* applied to Mr. Allison and the evidence and the law strongly suggested that Mr. Allison committed an offence under the *Criminal Code*. So the authorities decided to prosecute Mr. Allison. These facts fall way below the necessary threshold for interfering with prosecutorial discretion.

[17] It cannot be said, as Mr. Allison says in this appeal, that his prosecution was arbitrary and grossly disproportionate and contrary to section 7 of the Charter. In *Anderson*, the Supreme Court held (at para. 37, citing *Sriskandarajah v. United States of America*, 2012 SCC 70, [2012] 3 S.C.R. 609 at para. 27) that absent an abuse of process—and none has been identified or asserted in this case—prosecutorial discretion "accord[s] with the principles of fundamental justice" under section 7 of the Charter. Indeed, the prosecution itself, and the decision to prosecute Mr. Allison under the military justice system, is in complete accord with the purpose of the Code of Service Discipline as stated in section 55 of the *National Defence Act*. This provision, which was amended by 2019, c. 15, s. 4, provides:

Purpose	**Objet**
55. (1) The purpose of the Code of Service Discipline is to maintain the discipline, efficiency and morale of the Canadian Forces.	**55. (1)** Le code de discipline militaire a pour objet de maintenir la discipline, l'efficacité et le moral des Forces canadiennes.

Clarification	**Précision**
(2) For greater certainty, the behaviour of persons who are subject to the Code of Service Discipline relates to the discipline, efficiency and morale of the Canadian Forces even when those persons are not on duty, in uniform or on a defence establishment.	**(2)** Il est entendu que le comportement des justiciables du code de discipline militaire touche à la discipline, à l'efficacité et au moral des Forces canadiennes, même lorsque ces justiciables ne sont pas de service, en uniforme ou dans un établissement de défense.

[18] This fundamental purpose of military justice has been endorsed by the Supreme Court of Canada: *R. v. Moriarity*, 2015 SCC 55, [2015] 3 S.C.R. 485, at paras. 33 and 48; *R. v. Stillman*, 2019 SCC 40, [2019] 3 S.C.R. 144, at paras. 35–36.

[19] For the foregoing reasons, we dismiss the appeal and order that Mr. Allison surrender within 7 days of the date of this Court's judgment to the institution named in the Committal Order issued on September 18, 2024 by the Chief Military Judge.

"Mary J.L. Gleason"
Chief Justice

"David Stratas"
J.A.

"Gary T. Trotter"
J.A.

COURT MARTIAL APPEAL COURT OF CANADA

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	CMAC-645
STYLE OF CAUSE:	DOUG ALLISON v. HIS MAJESTY THE KING
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	SEPTEMBER 12, 2025
REASONS FOR JUDGMENT BY:	GLEASON C.J. STRATAS J.A. TROTTER J.A.
DATED:	NOVEMBER 6, 2025

APPEARANCES:

Major Francesca Ferguson Major Isabelle Gagné	FOR THE APPELLANT
Lieutenant-Colonel Karl Lacharité Lieutenant-Commander Emmanuelle Léonard-Dufour	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Directorate of Defence Counsel Services Gatineau, Quebec	FOR THE APPELLANT
Canadian Military Prosecution Service Ottawa, Ontario	FOR THE RESPONDENT