Court Martial Appeal Court of Canada

Cour d'appel de la cour martiale du Canada

Date: 20260109

Docket: CMAC-600

Citation: 2026 CMAC 1

[ENGLISH TRANSLATION]

PRESENT: GLEASON C.J.

BETWEEN:

SIMON CADIEUX

Appellant

and

HIS MAJESTY THE KING

Respondent

Dealt with in writing without appearance of the parties.

Order delivered at Ottawa, Ontario, on January 9, 2026.

REASONS FOR ORDER BY: GLEASON C.J.

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REASONS FOR ORDER

GLEASON C.J.

[1] The appellant seeks an order granting him leave to file a late notice of appeal that will resurrect an abandoned appeal. For the reasons set out below, the motion is granted and the notice of appeal received on August 26, 2025, may be filed.

I. Summary of Relevant Facts

[2] In 2019, the appellant was found guilty of sexual assault by the court martial under section 271 of the *Criminal Code*, R.S.C. 1985, c. C-46 (the *Criminal Code*) and paragraph 130(1)(a) of the *National Defence Act*, R.S.C. 1985, c. N-5 (the *NDA*): *Cadieux S. (Corporal), R. v.*, 2019 CM 2011. Because sexual assault is a primary offence under subparagraph 490.011(1)(a)(xvii) of the *Criminal Code*, Mr. Cadieux's inclusion on the sex offender registry for 20 years was mandatory, in accordance with section 227.01 of the *NDA*: *Cadieux S. (Corporal), R. v.*, 2019 CM 2019.

[3] On September 9, 2019, the appellant commenced an appeal before this Court against the court martial's finding and sentence (docket number CMAC-600). The appellant subsequently abandoned the appeal by notice of abandonment dated September 19, 2019.

[4] In 2022, the Supreme Court of Canada released its decision in *R. v. Ndhlovu*, 2022 SCC 38, [2022] 3 S.C.R. 52 [*Ndhlovu*]. At paragraphs 10 and 12 of this decision, the majority held that mandatory inclusion on the sex offender registry is overbroad and violates section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (the Charter). The decision also noted, at paragraph 140, that individuals registered before that day would be able to ask for a personal remedy under subsection 24(1) of the Charter.

[5] In July 2024, the Court Martial Appeal Court affirmed in *R. v. O'Dell*, 2024 CMAC 5 [*O'Dell*] that *Ndhlovu* applies to section 227.01 of the *NDA*.

[6] On August 26, 2025, the appellant filed in this Court a notice of motion for an extension of time to appeal the court martial's 2019 judgment. The appellant seeks to resurrect and continue his appeal from the order issued under section 227.01 of the *NDA*.

[7] On October 2, 2025, I requested written submissions from the parties in respect of the impact of the abandonment on the motion for an extension of time to file an appeal.

II. Parties' Positions

[8] The appellant is of the view that the abandonment has no impact on the motion for an extension of time, citing *Philipos v. Canada (Attorney General)*, 2016 FCA 79 at paragraph 9 [*Philipos*]. He argues that abandonment extinguishes the initial appeal, not the right of appeal. The appellant goes on to assert that he could not file his request to be removed from the sex offender registry in 2019, before the relevant sections were declared invalid in *Ndhlovu* and *O'Dell*. According to the appellant, *Ndhlovu* represents a development in the law, a fundamental event that is likely to strike at the very root of the decision regarding inclusion on the registry. The appellant wants his inclusion on the registry to be reassessed in light of this development, which constitutes new facts.

[9] The respondent supports the motion for an extension of time filed by the appellant, considering the circumstances of the case and the interests of justice. In the respondent's view, an appeal had little chance of success before the development in the law in *Ndhlovu*, affirmed by *O'Dell*. In addition, according to the respondent, given the circumstances of the assault and Mr. Cadieux's personal characteristics, it is possible that the appellant will be able to obtain a remedy under subsection 24(1) of the Charter if an appeal is heard.

III. Analysis

[10] There are two issues for determination: whether the abandonment precludes consideration of this motion and whether an extension of time to file the notice of appeal should be granted.

[11] With respect to the first issue, the *Rules of Appeal Practices and Procedures of the Court Martial Appeal Court of Canada*, S.O.R./86-959 (the *Rules*) allow a party to abandon a proceeding begun by the party by filing a notice of abandonment. After the unilateral filing of a notice of abandonment under Rule 36(1), parties need not take any further steps. Upon abandonment, the Court file is closed. The *Rules* do not expressly provide for the resurrection and continuance of a proceeding after abandonment by notice filed, but Rule 3(1) is intended to ensure that the law is carried out to secure the just resolution of proceedings.

[12] In *Philipos*, the Federal Court of Appeal considered the factors that must be weighed to resurrect an abandoned proceeding. Abandonment is a form of proceeding that involves "finality", and the strict enforcement of finality is important for the administration of justice

(*Philipos* at para. 17). Accordingly, "[o]nly circumstances that strike at the root of the decision to [abandon] can allow [an abandoned] proceeding to be resurrected and continued" (*Philipos* at para. 18). The Federal Court of Appeal therefore raised three elements that must be present to resurrect a proceeding: (1) there must be some fundamental event that strikes at the root of the decision to abandon the proceeding; (2) the Court must be satisfied that the abandoned proceeding sought to be resurrected has some reasonable prospect of success, to ensure judicial economy; and (3) resurrecting the abandoned proceeding must not cause undue prejudice.

[13] In this case, there is no mechanism for reviewing an order to comply with the sex offender registry under the *NDA*, but in the present context, an appeal may allow for the legality of such an order to be reviewed.

[14] In application of the considerations raised in *Philipos*, the development in the law through *Ndhlovu* and *O'Dell* is a fundamental event that strikes at the root of the decision to abandon the proceeding. In light of this development and the facts of this case, the appellant has a reasonable prospect of success. Reopening the appeal is not likely to either cause prejudice or call into question the broader "finality" of abandonment given the circumstances of this case. This leads me to conclude that abandonment should not be an obstacle to a successful motion for an extension of time to file an appeal from the court martial's sentence.

[15] In respect of the second issue, the Court has the power to extend the time frame for filing a notice of appeal under subsection 232(4) of the *NDA*. In assessing a motion for an extension of time, the Court must ensure that justice is done, considering all of the circumstances and factors:

R. v. Houde, 2023 CMAC 10 at paras. 10–11, citing *R. v. Roberge*, 2005 SCC 48, [2005] 2 S.C.R. 469; *R. v. Stevens*, 2008 CMAC 5, 7 C.M.A.R. 244; and *Kadder c. R.*, 2018 QCCA 936.

[16] In this case, the declaration of invalidity in *Ndhlovu* is a timely legal development that opened up the possibility of a judicial reconsideration likely to provide the remedy sought by the appellant. The motion rests on the application of a provision that has been found unconstitutional, thereby raising a serious question. The prejudicial impact of an order to comply with the sex offender registry in application of section 227.01 of the *NDA* is considerable (*Ndhlovu* at para. 5). Furthermore, the respondent supports the motion, and reopening the proceeding causes the respondent no prejudice.

[17] Granting the motion and making it possible for an appeal to be analyzed in light of the development in the law thus serves the interests of justice. In the circumstances, the motion for an extension of time to appeal the judgment of the court martial of August 9, 2019 should be granted.

"Mary J.L. Gleason"
Chief Justice

COURT MARTIAL APPEAL COURT OF CANADA

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	CMAC-600
STYLE OF CAUSE:	SIMON CADIEUX v. HIS MAJESTY THE KING

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF THE PARTIES

REASONS FOR ORDER BY:	GLEASON C.J.
DATED:	JANUARY 9, 2026

WRITTEN SUBMISSIONS:

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Lieutenant Commander Emmanuelle Léonard-Dufour	FOR THE RESPONDENT

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