

**Court Martial Appeal Court
of Canada**



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

Date: 20050804

Docket: CMAC-481

Citation: 2005 CMAC 5

**CORAM: BLANCHARD C.J.
ROTHSTEIN J.A.
DAWSON J.A.**

BETWEEN:

CORPORAL M. J. KEMP

Applicant/Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Ottawa, Ontario, on August 4, 2005.

Judgment delivered from the Bench at Ottawa, Ontario, on August 4, 2005.

REASONS FOR JUDGMENT OF THE COURT BY:

ROTHSTEIN J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, on August 4, 2005)

[1] The Appellant challenges the credibility findings of the military judge. In spite of the able arguments of counsel for the Appellant, we have not been persuaded that the military judge made a palpable and overriding error that would justify this Court interfering with her decision. The appeal in respect of the conviction ordered by the military judge will be dismissed.

[2] Insofar as sentence is concerned, even taking account of the evidence sought to be introduced, and the issue of parity, and having regard to all the circumstances, we have not been persuaded that the sentence imposed is demonstrably unfit so as to justify this Court's interference with it. The appeal of the sentence will be dismissed. It is therefore not necessary to decide the motion for the admission of new evidence pertaining to sentence.

“Marshall Rothstein”

J.A.

COURT MARTIAL APPEAL COURT OF CANADA

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: CMAC-481

STYLE OF CAUSE: Corporal M. J. Kemp and Her Majesty the Queen

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: August 4, 2005

**REASONS FOR JUDGMENT
OF THE COURT:** Blanchard C.J., Rothstein and Dawson JJ.A.

**RENDERED FROM THE
BENCH BY:** Rothstein J.A.

APPEARANCES:

Col. (Ret'd) Michel W. Drapeau	FOR THE APPELLANT
Ms. Laura C. Snowball	
Major R. F. Holman	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Ottawa, Ontario	