

SUPREME COURT OF CANADA

(ON APPEAL FROM A JUDGMENT OF THE COURT MARTIAL
APPEAL COURT OF CANADA)

NO. CMAC-588

BETWEEN:

HER MAJESTY THE QUEEN

APPLICANT
(APPELLANT)

– and –

CORPORAL R.P. BEAUDRY

RESPONDENT
(RESPONDENT)

APPLICANT'S LETTER IN REPLY TO THE RESPONSE TO THE
APPLICANT'S MOTION TO SUSPEND THE DECLARATION OF INVALIDITY
(Section 65.1 of the *Supreme Court Act* and Rule 50
of the *Rules of the Supreme Court of Canada*)

Her Majesty the Queen

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2 October 2018

Supreme Court of Canada Registry
Attention: Registrar
301 Wellington Street
Ottawa ON K1A 0J1

Dear Registrar:

Letter in reply to the response to the motion to suspend the declaration of invalidity in *R. v. Beaudry* – file # 38308

Contrary to the Respondent's submission, there will be no irreparable prejudice to the Respondent if this Court grants the request to suspend the declaration of invalidity. There will be significant prejudice to a number of ongoing cases should the Court decline to do so. –

If this Court grants the application, any prejudice to the Respondent will be mitigated if he applies to the CMAC for release pending appeal pursuant to s. 248.2 of the *NDA*. Alternatively, the Respondent may apply to this Court for a suspension of the sentence pronounced at trial pursuant to s. 65.1 of the *Supreme Court Act*. The Applicant will consent to either option.

Conversely, the Respondent's suggestion that the 38 cases affected by the CMAC decision could easily be tried in the civilian courts is inaccurate for four reasons. Firstly, this Court has recognised the need for a separate military justice system operating in parallel to the civilian justice system that is concerned with ensuring the maintenance of discipline, efficiency and morale of the armed forces.¹ In each case affected by the CMAC decision, a determination regarding whether to proceed through the military or civilian justice system has been made by the Director of Military Prosecutions (DMP) after careful consideration of all relevant factors.² For each affected case, the DMP took into account the differences between the military and

¹ *R. v. Moriarity*, 2015 SCC 55 at paras 48, 52-56. See also *R. v. Généreux*, [1992] 1 SCR 259 at 293-95.

² *DMP Policy Directive 003/00 – Post-Charge Review* (updated 1 September 2018) at paras 25-27.

civilian justice systems, including those outlined by the Respondent. This analysis has led to a decision that the military justice system was the appropriate venue.

Secondly, since courts martial operate across Canada, transferring these cases would result in significant delay, as extensive coordination would be required with both provincial and federal prosecution services in multiple provinces. Any case transferred to a civilian prosecution service would require a repeat of the post-charge review and trial preparation already completed by military prosecutors. Furthermore, the DMP has no authority to compel other prosecution services to prioritise any of these cases over others.

Thirdly, of the 38 cases, two courts martial have commenced and the prosecution evidence has been heard, including testimony from complainants. Complainants and other witnesses would be required to testify again regarding traumatic events in new trials in front of civilian courts.

Finally, in cases involving a victim, military prosecutors are under a duty to seek the alleged victim's views regarding whether the case should proceed within the military or civilian justice system before preferring any charge.³ In each case where charges have been preferred, contact with the alleged victims has been established and maintained by the assigned military prosecutor.⁴ Changing jurisdiction mid-course as suggested by the Respondent will adversely affect those alleged victims who have expressed a preference for the case to proceed in the military justice system.

Respectfully,



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cc.: LCdr Mark Létourneau and LCol Jean-Bruno Cloutier, Counsel for the Respondent

³ [DMP Policy Directive 003/00 – Post-Charge Review](#) (updated 1 September 2018) at paras 28-32.

⁴ [DMP Policy Directive 004/00 – Sexual Misconduct Offences](#) (updated 15 December 2017) at paras 26-30; [DMP Policy Directive 012/00 – Witness Interviews](#) (updated 15 December 2017).