



Case in Brief: **R. v. Edwards**

Judgment of April 26, 2024 | On appeal from the Court Martial Appeal Court of Canada

Neutral citation: 2024 SCC 15

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***The Supreme Court holds that the military status of military judges does not violate the constitutional guarantee of judicial independence to which persons tried before courts martial are entitled.***

These appeals are about whether the requirement under the *National Defence Act* that military judges be military officers violates the right to a hearing by an independent and impartial tribunal guaranteed under Section 11(d) of the *Canadian Charter of Rights and Freedoms*.

The appeals were brought by nine members of the Canadian Armed Forces who were accused of various service offences under the Code of Service Discipline, which forms part of the *National Defence Act*. Service offences, which include offences specific to military personnel and offences under the *Criminal Code* and other Canadian laws, are tried before a court martial, a military court that has the same powers, rights, and privileges as a superior court of criminal jurisdiction. Courts martial are presided over by military judges, who are required by the *National Defence Act* to have been lawyers and military officers for at least 10 years. As officers, military judges are part of the chain of command.

In the courts martial, most of the nine accused members challenged the requirement under the *National Defence Act* that the military judges presiding over their courts martial be officers. They argued that this requirement violates their right to a hearing by an independent and impartial tribunal under Section 11(d) of the *Charter*. The divided loyalties of military judges as judge and officer were said to deflect them from a proper exercise of their judicial duties and leaves them vulnerable to pressures from the chain of command.

Under Canadian law, courts must evaluate independence and impartiality under Section 11(d) by asking whether an informed and reasonable person would perceive the tribunal at issue as independent. In the courts martial, some of the military judges held that they lacked judicial independence because of their dual status of judge and officer, and that for this reason, the accused members' Section 11(d) rights were infringed. The Court Martial Appeal Court disagreed, and said that an informed person, viewing the matter realistically and practically and having thought the matter through, would conclude that military judges are sufficiently impartial and independent to meet the requirement under Section 11(d) of the *Charter*. Therefore, the accused members' rights were not infringed. The accused members appealed to the Supreme Court of Canada.

The Supreme Court has dismissed the appeals.

**The status of military judges as officers under the *National Defence Act* is not incompatible with their judicial functions for the purpose of Section 11(d) of the *Charter*.**

Writing for the majority, Justice Kasirer affirmed that accused members of the Canadian Armed Forces who appear before military judges are entitled to the same guarantee of judicial independence and impartiality under Section 11(d) as accused persons who appear before civilian criminal courts, but this does not require that the two systems be identical in every respect. He held that as presently configured in the *National Defence Act*, Canada's system of military justice fully ensures judicial independence for military judges in a way that takes account of the military context, and specifically of the legislative policies of maintaining discipline, efficiency and morale in the forces and public trust in a disciplined armed forces. Justice Kasirer concluded that properly understood, the military context does not diminish judicial independence.

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**Breakdown of the decision:** *Majority:* Justice [Kasirer](#) dismissed the appeals (Chief Justice [Wagner](#) and Justices [Côté](#), [Rowe](#), [Jamal](#) and [O'Bonsawin](#) agreed) | *Dissent:* Justice [Karakatsanis](#) would have allowed the appeals and declared the legislative scheme under the *National Defence Act* of no force or effect insofar as it subjects military judges to the disciplinary process administered by military authorities.

**More information:** [Decision](#) | [Case information](#) | [Webcast of hearing](#)

**Lower court rulings:** [Court Martial Decision](#) (in the case of Leading Seaman C.D. Edwards) | [Court Martial Decision](#) (in the case of Captain C.M. C. Crépeau) (in French only) | [Court Martial Decision](#) (in the case of Gunner K.J.J. Fontaine) (in French only) | [Court Martial Decision](#) (in the case of Captain M.J. Iredale) | [Court Martial Decision](#) (in the case of Sergeant S.R. Proulx) | [Court Martial Decision](#) (in the case of Sergeant J.R.S. Cloutier) | [Court Martial Decision](#) (in the case of Corporal K.L. Christmas) | [Court Martial Decision](#) (in the case of Lieutenant (N) C.A.I. Brown) | [Court Martial Decision](#) (in the case of Sergeant A.J.R. Thibault) (in French only) | [Court Martial Appeal Court Decision](#) (in the case of Leading Seaman C.D. Edwards, Captain C.M.C. Crépeau, Gunner K. Fontaine and Captain M.J. Iredale) | [Court Martial Appeal Court Decision](#) (in the case of Sergeant S.R. Proulx and Master-Corporal J.R.S. Cloutier) | [Court Martial Appeal Court Decision](#) (in the case of Corporal K. L. Christmas) | [Court Martial Appeal Court Decision](#) (in the case of Lieutenant (N) C.A.I. Brown) | [Court Martial Appeal Court Decision](#) (in the case of Sergeant A.J.R. Thibault)

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