

CANADA / JUDGMENT

R. v. Houde

2024 CMAC 6

COURT

Court Martial Appeal Court of Canada

DECIDED

27 June 2024

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R. v. Houde Collection Court Martial Appeal Court Date 2024-06-27 Neutral citation 2024 CMAC 6 File numbers CMAC-644 Decision-makers Bennett, Elizabeth A. Decision Content Date: 20240627 Docket: CMAC-644 Citation: 2024 CMAC 6 Present: The Honourable Madam Justice Bennett, Acting Chief Justice BETWEEN: MASTER CORPORAL C. HOUDE Appellant and HIS MAJESTY THE KING Respondent Heard by online video conference hosted by the Ottawa, Ontario, Registry on June 27, 2024. Judgment delivered from the Bench at Vancouver, British Columbia, on June 27, 2024 REASONS FOR JUDGMENT BY: ACTING CHIEF JUSTICE BENNETT Date: 20240627 Docket: CMAC-644 Citation: 2024 CMAC 6 Present: The Honourable Madam Justice Bennett, Acting Chief Justice BETWEEN: MASTER CORPORAL C. HOUDE Appellant and HIS MAJESTY THE KING Respondent REASONS FOR ORDER ACTING CHIEF JUSTICE BENNETT

- [1] Master Corporal Houde appeals his conviction for sexual assault. He filed his notice of appeal in a timely way and the 29 volumes of Appeal Books have been filed as of June 5, 2024. He now applies for an extension of time to file his Memorandum of Fact and Law.
- [2] The time for filing the Memorandum expires on July 5, 2024, however, the Crown has reasonably agreed to an extension to August 5, 2024, pursuant to rules 7(1) and 17(1). Master Corporal Houde seeks an extension of time until September 20, 2024.
- [3] The reasons for the longer than usual extension are that counsel on appeal was not trial counsel and will need to review 29 volumes of Appeal Books, which in my view is reasonable; the trial was long and complex, including 13 voir dres and 89 exhibits; counsel of choice has work and family matters that interfere with her ability to promptly attend to filing the Memorandum; and no other suitable counsel is available from Defence Counsel Services, according to the affidavit filed.
- [4] The prosecution opposes the long extension of time submitting that other counsel should be provided if Major Ferguson cannot meet her statutory obligation, including the canvassing of the civil bar for appropriate defence counsel.
- [5] The factors governing an extension of time to file a memorandum are similar to those of filing a notice of appeal, with the necessary modifications.

- [6] This Court may extend the time to file a notice of appeal or application for leave to appeal or any other extension necessary: Rule 17 CMACC rules. The criteria applicable to granting an extension of time are found in *Davies v. CIBC*, 1987 CanLII 2608 (BCCA), and are summarized as follows: A. Was there a bona fide intention to appeal? B. When were the respondents informed of the intention? C. Would the respondents be unduly prejudiced by an extension of time? D. Is there merit in the appeal? E. Is it in the interests of justice that an extension be granted? [7] In *Davies*, Seaton J.A. for the Court said the fifth factor “encompasses” the other factors and “states the decisive question” (at para 22). These same factors apply in the criminal context: *R v Smith*, 1990 CanLII 1028 (BCCA) at 2–3.
- [8] The interests of justice encompass a myriad of factors, including the interests of the parties and compliance with the Rules of Court.
- [9] Also included in the interests of justice is the community’s interest in avoiding a wrongful conviction: *R v Caron*, 2013 BCCA 475 at para 26.
- [10] However, the factors should not be treated as an exhaustive checklist. The governing principle is that the applicant must establish special circumstances, and different factors may be accorded different weights in the analysis.
- [11] The Supreme Court of Canada has enumerated a set of factors to guide a court in exercising its discretion to grant an extension of time to appeal to that Court in a criminal matter: *R v Roberge*, 2005 SCC 48 at para 6. Those factors, as well as the factors outlined by other provincial appellate courts are similar to those identified by this Court, but vary somewhat in wording.
- [12] The first two factors are not part of the consideration as the notice of appeal has been filed. I turn then to the prejudice to the prosecution. There is always prejudice inherent in delay, however, other than a general assertion of prejudice, the prosecution has not identified any specific instance where a delay of an additional month, beyond what they originally agreed too, will prejudice their position. Sometimes the delay itself will suffice, however, the additional time sought here is not significant given the fact that appeal counsel was not trial counsel, that the trial was complex and produced 29 volumes of appeal books and that appeal counsel has indicated certain matters that will interfere with her ability to produce a memorandum in the period prescribed by the rules.
- [13] The next issue is whether there is merit to the appeal. This was not addressed in the written material. However, counsel made oral submissions on this point. I should note that the merit material should be addressed in the written material filed. The merit test has a low threshold to meet at this juncture. It is not in the interests of justice to grant an extension if the appeal has no merit. However, I am satisfied based on counsel submissions that the threshold has been met.

- [14] Finally, I must consider whether it is in the interests of justice to grant the extension. Finality in criminal proceedings is important, however, so is an appellant's right to bring his appeal. Major Ferguson has set out the difficulties she is facing in terms of carving out sufficient time to prepare the appeal. She is Mr. Houde's counsel of choice and, according to the material filed, the only counsel available to conduct the appeal from Defence Counsel Services. I do not think in these circumstances the Director of Defence Counsel Services is required to canvass the civil bar in order to try to find someone to take conduct of this appeal. Any counsel in the civil bar would also require a significant amount of time to prepare the appeal, given the volume of the material filed.
- [15] In my view, it is in the interests of justice to grant an extension of time to file the memorandum. However, it will not be as long as sought by Major Ferguson. In my view, even with the additional pressures identified by her, the memorandum could be filed by September 13, 2024, and I grant the extension of time to that date. THE COURT HEREBY ORDERS that:
- [16] The Appellant shall file the Appellant's Memorandum of Fact and Law on or before September 13, 2024. "Elizabeth A. Bennett" Acting Chief Justice COURT MARTIAL APPEAL COURT OF CANADA NAMES OF COUNSEL AND SOLICITORS OF RECORD DOCKET: CMAC-644 STYLE OF CAUSE: MASTER CORPORAL C. HOUDE v. HIS MAJESTY THE KING PLACE OF HEARING: HEARD BY VIDEO CONFERENCE HOSTED BY THE OTTAWA, ONTARIO, REGISTRY DATE OF HEARING: June 27, 2024 REASONS FOR JUDGMENT BY: ACTING CHIEF JUSTICE BENNETT DATED: June 27, 2024 APPEARANCES: Major Francesca Ferguson For The Appellant LCol Karl Lacharité For The Respondent SOLICITORS OF RECORD: Defence Counsel Services Gatineau, Quebec For The Appellant Canadian Military Prosecution Services Ottawa, Ontario For The Respondent

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Prepared on 26 October 2026 · Esheria