



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

Judgment of July 26, 2019 | On appeal from the Court Martial Appeal Court of Canada
Neutral citation: 2019 SCC 40

Military members charged with civilian crimes don't have the right to be tried by a jury if they are tried in the military justice system, the Supreme Court has ruled.

In Canada, the military justice system has always been separate from the civilian justice system. This is because the military has unique needs, like discipline, efficiency, and morale. The *National Defence Act* sets out the rules for the military justice system. It says that when a military member commits a crime under a federal law (such as the *Criminal Code*), that is a “service offence.” Service offences can be tried in the military justice system.

Several military members were accused of serious crimes, like sexual assault and forgery. They wanted to be tried by jury. But the military justice system, unlike the civilian system, has never had juries. Trials can take place before a judge and a military panel, but a panel isn't the same as a jury. While a jury is made up of twelve people from all parts of Canadian society, a military panel is made up of only five people, all from the military.

The accused military members argued that the *National Defence Act* breached their constitutional right to be tried by a jury. They said this was guaranteed under section 11(f) of the *Canadian Charter of Rights and Freedoms*, part of Canada's Constitution. Section 11(f) says people charged with crimes have the right to be tried by a jury if they could go to jail for five years or more. But there is an exception: the right does not apply to crimes under military law tried before military courts. This is called the “military exception.” The accused military members argued that this exception applied only to “pure” military crimes, like spying or mutiny. They said it didn't apply to civilian crimes that any Canadian (military member or not) could be charged with. The military prosecutors, on the other hand, said the exception applied to *all* service offences, including civilian crimes by military members.

All but one of the challenges failed, and appeals followed. In the first appeal (*Stillman*), the Court Martial Appeal Court of Canada (a military court) ruled that they didn't have a right to be tried by a jury. But in the second appeal (*Beaudry*), the same court reached the opposite result. This meant there were conflicting rulings.

The majority at the Supreme Court said military members could be tried for civilian crimes without juries. The Constitution gives Parliament power over the military. This includes the power to pass a law saying that civilian crimes committed by military members are service offences. This makes them offences under military law. The majority noted that when a military member commits a civilian crime (even in a non-military setting), that has an impact on discipline, efficiency, and morale. Because of all this, the majority concluded that when a military member is charged with a civilian crime, the military exception under section 11(f) of the *Charter* applies. That means there is no right to be tried by a jury.

Juries have been part of the common law system for over 900 years. They are meant to protect the individual from the heavy powers of the state (or, in older times, the king or queen). They are also meant to inform the public about the law and how the legal system works, and apply community standards to trial verdicts. Juries play an important role in the justice system, but the *Charter* makes clear that the right to a jury has an exception.

Breakdown of the decision: **Majority:** Justices Michael [Moldaver](#) and Russell [Brown](#) dismissed the *Stillman* appeals (37701) and allowed the appeal in *Beaudry* (38308) (Chief Justice [Wagner](#) and Justices [Abella](#) and [Côté](#) agreed) | **Dissenting:** Justices Andromache [Karakatsanis](#) and Malcolm [Rowe](#) said that there must be a connection between the military and the circumstances of the offence in order to deny the right to a jury trial to members of the armed forces

More information (case # 37701 & 38308): [Decision](#) | Case information ([37701](#), [38308](#)) | [Webcast of hearing](#)

Lower court rulings: 37701: court martial decisions for [Master Corporal Stillman](#), ex-Petty Officer Second Class Wilks, Warrant Officer Gagnon, Corporal Pfahl, [Corporal Thibault](#), Second Lieutenant Soudri, Petty Officer Second Class Blackman (Standing Courts Martial, not all decisions available online) | order allowing accused to

raise constitutional issue (not available online), [decision on constitutional challenge](#) (Court Martial Appeal Court of Canada) | **38308**: [decision on constitutional challenge](#), [court martial decision](#), and [sentence](#) for Corporal Beaudry (Standing Court Martial) | [decision on constitutional challenge](#) (Court Martial Appeal Court of Canada)
