



## COURT MARTIAL

**Citation:** *R. v. Riley*, 2024 CM 5010

**Date:** 20240424

**Docket:** 202241

Preliminary Proceedings

Asticou Courtroom  
Gatineau, Quebec, Canada

**Between:**

**Petty Officer 1st Class S.M. Riley, Applicant**

- and -

**His Majesty the King, Respondent**

**Before:** Captain(N) C.J. Deschênes, C.M.J.

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### **DECISION ON AN APPLICATION FROM DEFENCE FOR THE POSTPONEMENT OF THE PROCEEDINGS**

(Orally)

#### **I. Introduction**

[1] The applicant, Petty Officer 1st Class (PO1) Riley, is facing charges of theft, forgery, breach of trust and negligent performance of military duty in relation to allegations of stealing non-public funds using forged cheques and mishandling the non-public funds account of Her Majesty's Canadian Ship *Regina*, between December 2015 and September 2019 while in Victoria, British Columbia. Following the alleged commission of the offences, the deterioration of the applicant's mental health caused him to consult and since 30 October 2019, he has been treated by a register psychologist, Dr Anthony. In March 2021, the applicant was placed on medical employment limitation for being "unfit [to] work in any military environment" until his medical release from the Canadian Armed Forces, in relation to experiencing post-traumatic stress disorder (PTSD) symptoms. Following the preferral signed on 12 October 2022, the trial proceedings were convened at a later date due to the applicant's

situation, at his request. A few days before the trial was to commence on 11 September 2023, an application to postpone the trial was submitted. The application was granted, and I ordered that the trial be postponed to 6 May 2024. In March 2024, counsel for the applicant sought an order to stay the charges, contending that PO1 Riley's situation would result in his trial being unfair contrary to paragraph 11(d) of the *Charter*. In April 2024, he submitted his application to postpone the trial, should his other application be dismissed. A hearing was held for both applications. I dismissed the first application alleging a *Charter* breach.

[2] I must now decide if it would be in the interest of justice to postpone this trial by General Court Martial (GCM) to allow additional time for the applicant to develop coping skills.

## **II. Background**

[3] In considering the application, a brief review of the record, and of the undisputed evidence in support of the application, is required. A teleconference with the acting-chief military judge was held at the request of counsel for a change of trial dates, trial that was initially scheduled to commence on 5 June 2023. The GCM was then convened for 11 September 2023. On 7 September 2023, counsel for the applicant submitted a notice of application seeking to postpone the trial arguing that, as his trial date drew closer, the applicant became more stressed; his anxiety continually worsened, and he realized that he may not be able to engage or fully participate in his trial by court martial. In support of his argument, he provided a letter from the applicant's treating registered psychologist, Dr Anthony, dated 16 August 2023. Dr Anthony's letter indicates that PO1 Riley, "being required to attend an on-base function would likely exacerbate his PTSD". Dr Anthony requested accommodations be provided for the applicant's service-related condition. Another letter was produced by counsel, dated 6 September 2023, where Dr Anthony clarified that there was a likelihood that the applicant would experience an emotional breakdown in a courtroom setting on a military base and recommended treatment to develop coping skills to manage the "anxiety related to attending a military court martial". Based on these contentions and on the fact that continued therapy for the next six to nine months would likely stabilize his condition and should allow him to properly engage and participate in his own defence, and based on the prosecution not opposing the application I, as the military judge assigned to preside the GCM, granted the request and ordered that the trial be postponed to 6 May 2024 in order for counsel for the applicant to obtain clarity on the applicant's mental health condition, and to determine whether or not his fitness to stand trial was an issue. The order also included a schedule that counsel had agreed to, in particular that counsel for the applicant was to provide an update on the mental health situation of the applicant no later than 15 December 2023, which would confirm PO1 Riley's attendance or participation to therapy or other related treatment. A hearing was also scheduled to be held, as required, on 18 March 2024, for any applications to be heard regarding whether there was an issue with the fitness of PO1 Riley to stand trial in May 2024. Counsel for the applicant specified that on 6 May 2024, the GCM of PO1 Riley would proceed, or alternatively, a fitness application would be heard. He

would also consider subsidiarily whether any accommodations should be sought to mitigate the risk that the applicant's symptoms would manifest themselves during the trial.

[4] In December 2023, counsel for the applicant provided a letter from Dr Anthony dated 15 December 2023 confirming that PO1 Riley was attending therapy. The letter indicated that the applicant was “making slow but steady progress on stabilizing the anxiety that had developed” in relation to his mental health condition. Later on, another letter dated 1 February 2024 from Dr Anthony was provided by counsel for the applicant. Dr Anthony reiterated that there was slow but steady progress and explained that the applicant is irritable and easily angered, that he expressed resentment towards military command and complained that he was unfairly charged. Dr Anthony also stated that he expected the applicant would be able to attend trial in May, but that he would do so in “a diminished capacity” and that he is likely to become argumentative or he may shut down and withdraw. Dr Anthony also clarified that the applicant's response to the stress associated with the trial was difficult to predict. He finally recommended accommodation be imposed to mitigate any risk associated with triggering PTSD symptoms, specifically that the trial not be on base, and that the applicant not be in uniform. The last letter provided by the applicant is dated 11 March 2024. In that correspondence, Dr Anthony confirmed his opinion regarding the impact the military trial proceedings may have on the applicant, and that he is unable to provide a prognosis for his mental health during his attendance at his trial in May 2024, but repeated that “regarding PO1 Riley being an effective participant in his trial, it would be helpful if the trial was scheduled off base, and that trial participants and spectators do not wear military attire”. He explained that military uniforms and proximity to Canadian Forces Base Esquimalt are “major triggers” that could cause the applicant into fight or flight, and he “may become agitated and angry, or emotionally shut down”.

[5] The applicant served his notice of application alleging a *Charter* breach on 15 March 2024. His notice of application seeking subsidiarily to postpone the trial proceedings, was submitted early April 2024. The hearing for both applications was held on 13 April 2024. Dr Anthony was called as a witness and was qualified as an expert following a *voir dire*. Dr Anthony testified that he is a cognitive behavioural clinician advising on developing coping skills and managing stress. The letters he wrote between August 2023 and March 2024 as referred to above, were admitted on consent. Dr Anthony generally confirmed his opinion as conveyed in his letters. He also testified that, at the date of the hearing of the two applications, PO1 Riley had participated in seventy-six individual cognitive behavioural therapy sessions with him for a duration of one hour to one hour fifteen minutes each.

### **III. Whether the applicant has met his burden to prove that another postponement of the trial would serve the interest of justice.**

#### *Positions of parties*

[6] The applicant contended that an order to postpone the trial for at least six months would give more time for PO1 Riley's mental health to improve. The applicant would waive any delays arising from such order. The respondent argued that granting the request for postponement would have significant effects on the unit and on the Ship's company.

*Applicable law or test*

[7] Section 189 of the *National Defence Act* states that, "A court martial may adjourn its proceedings whenever the court martial considers adjournment desirable."

*Analysis*

[8] I am of the view that the applicant failed to demonstrate that his trial should be further postponed. Indeed, the applicant conceded in his application that his therapy did not take him as far as was hoped and his mental health remains largely the same as in early September 2023. He continues to experience the same symptoms. This is consistent with Dr Anthony's evidence that it would take years for the applicant's symptoms to be under control, and he may not, even at that time, be necessarily free from a risk to experience an onset. In his letter from 6 September 2023, Dr Anthony wrote that "engaging in therapy for the next six to nine months to stabilise his anxiety and develop coping skills to be able to manage the anxiety related to attending a military court martial" would be required. Although PO1 Riley has shown some progress in managing anger and anxiety, his level of stress increases as the trial approaches. Thus, seven months later, the same recommendation is made by Dr Anthony, leading up to another application for postponement. Ideally, PO1 Riley's mental health would be resolved in time for his trial. Unfortunately, that is not going to happen, particularly since the evidence I have accepted reveal that the applicant's symptoms of anger and anxiety are triggered when in a military environment.

[9] Consequently, granting yet another request to postpone the trial proceedings risks maintaining this case into a cycle of continued postponements caused by the applicant's anxiety and stress as the date of the trial approaches. Postponing the trial for another six to eight months would not serve the interest of the applicant, and of the military justice system.

**IV. Conclusion**

[10] The applicant did not meet his burden to prove that delaying further the commencement of his trial would serve the interest of justice. I am unconvinced that ordering another postponement for an accused who has demonstrated slow progress to prevent onset of PTSD symptoms, would serve justice. The application's evidence is that it will most likely take years for him to manage his symptoms. PO1 Riley is able to understand and engage or fully participate in these proceedings. His time in court has come. When the proceedings are terminated, he will be able to move on.

**FOR THESE REASONS, THE COURT:**

[11] **DISMISSES** the application.

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**Counsel:**

Lieutenant(N) B. Wentzell, Defence Counsel Services, Counsel for Petty Officer  
1st Class S.M. Riley, Applicant

The Director of Military Prosecutions as represented by Major D.G. Moffat, Counsel  
for the Respondent.