

**SUPREME COURT OF CANADA**

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| **Citation:** R. *v.* St-Onge, 2011 SCC 16, [2011] 1 S.C.R. 625 | **Date:** 20110401**Docket:** 33864 |

**Between:**

**Her Majesty The Queen**

Appellant

and

**Ex-Private St-Onge, D.**

Respondent

**Official English Translation**

**Coram:** McLachlin C.J. and Binnie, Deschamps, Fish, Charron, Rothstein and Cromwell JJ.

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| **Reasons for Judgment:**(paras. 1 to 4): | Fish J. (McLachlin C.J. and Binnie, Deschamps, Charron, Rothstein and Cromwell JJ. concurring) |

R. *v.* St-Onge, 2011 SCC 16, [2011] 1 S.C.R. 625

Her Majesty The Queen *Appellant*

v.

Ex‑Private St‑Onge, D. *Respondent*

**Indexed as:**R. ***v.*** St-Onge

2011 SCC 16

File No.: 33864.

2011:  March 24; 2011:  April 1.

Present: McLachlin C.J. and Binnie, Deschamps, Fish, Charron, Rothstein and Cromwell JJ.

on appeal from the court martial appeal court of canada

 *Armed forces — Military offences — Criminal law — Sentencing — Military judge imposing sentence of imprisonment for 30 days — Court of Appeal substituting fine for sentence of imprisonment — Whether majority in Court of Appeal erred in substituting its own balancing of factors relevant to sentencing for that of military judge — Whether Supreme Court of Canada has jurisdiction to hear appeal — National Defence Act, R.S.C. 1985, c. N‑5, s. 245(2)(a).*

 *Held*: The appeal should be allowed and the sentence imposed by the trial judge restored.

**Cases Cited**

 **Referred to:** *R. v. Gardiner*, [1982] 2 S.C.R. 368.

**Statutes and Regulations Cited**

*Criminal Code*, R.S.C. 1985, c. C‑46, ss. 691 to 693.

*National Defence Act*, R.S.C. 1985, c. N‑5, s. 245(2)(*a*).

*Supreme Court Act*, R.S.C. 1985, c. S‑26, s. 40.

 APPEAL from a judgment of the Court Martial Appeal Court of Canada (Pelletier, Trudel and Cournoyer JJ.A.), 2010 CMAC 7, [2010] C.M.A.J. No. 7 (QL), 2010 CarswellNat 4985, varying the sentence imposed by D’Auteuil M.J., 2008 CM 3012, 2008 CarswellNat 3475. Appeal allowed.

 Cdr Martin Pelletier and *LCol* Mario Léveillée, for the appellant.

 François Baril and Guy Régimbald, for the respondent.

 English version of the judgment of the Court delivered by

1. Fish J. — The appellant appeals against a decision by the majority in the Court Martial Appeal Court of Canada (2010 CMAC 7, [2010] C.M.A.J. No. 7 (QL)) allowing the respondent’s appeal from the sentence imposed on him by the trial judge (2008 CM 3012 (CanLII)).
2. The appeal is brought as of right under s. 245(2)(*a*) of the *National Defence Act*, R.S.C. 1985, c. N‑5, which provides that the Minister, or counsel instructed by the Minister for that purpose, may “appeal to the Supreme Court of Canada . . . on any question of law on which a judge of the Court Martial Appeal Court dissents”. Under this provision, unlike under the *Criminal Code*, R.S.C. 1985, c. C‑46 (ss. 691 to 693), a sentence may be appealed to the Supreme Court as of right. In matters governed by the *Criminal Code*, an appeal against sentence lies to the Court only under s. 40 of the *Supreme Court Act*, R.S.C. 1985, c. S‑26, and only with leave of the Court (*R. v. Gardiner*, [1982] 2 S.C.R. 368, at pp. 402‑5).
3. In this case, Cournoyer J.A., who dissented in the Court of Appeal, would have dismissed the respondent’s appeal on the basis that, if the appropriate standard were applied, it was not open to the Court of Appeal to interfere with the trial judge’s decision.
4. After reviewing the record and hearing counsel’s submissions, we are satisfied that the dissent was on a question of law within the meaning of s. 245(2)(*a*) of the *National Defence Act*. Moreover, with all due respect for the majority of the Court of Appeal, we would allow the appeal for the reasons given by Cournoyer J.A. and would restore the sentence imposed by the trial judge.

 *Appeal allowed.*

 *Solicitor for the appellant:  Canadian Military Prosecution Service, Ottawa.*

 *Solicitors for the respondent:  Gowling Lafleur Henderson, Ottawa.*