COURT MARTIAL

Citation: *R. v. Remington*, 2021 CM 5023

Date: 20210831
Docket: 202047

Standing Court Martial

Halifax Courtroom Suite 505
Halifax, Nova Scotia, Canada

Between:

Naval Cadet L.R. Remington, Applicant

- and -

Her Majesty the Queen, Respondent

Before: Commander C.J. Deschênes, M.J.

Pursuant to section 179 of the *National Defence Act* and section 486.4 of the *Criminal Code*, the Court directs that any information that could disclose the identity of the person described in these proceedings as the complainant, including the person referred to in the charge sheet as "T.T.", shall not be published in any document or broadcast or transmitted in any way.

REASONS ON AN APPLICATION PURSUANT TO SUBSECTION 24(1) AND PARAGRAPH 11(*b*) OF THE *CANADIAN CHARTER OF RIGHTS AND FREEDOMS*

(Orally)

Introduction

[1] Naval Cadet Remington is charged with one offence punishable pursuant to section 130 of the *National Defence Act* (*NDA*); that is to say, sexual assault, contrary to section 271 of the *Criminal Code*. It is alleged that the offence was committed on or about 3 November 2018 at or near Saint-Jean-sur-Richelieu, Quebec. In his application dated 13 August 2021, Naval Cadet Remington contends that his trial was not held within

a reasonable time, violating his rights under paragraph 11(*b*) of the *Canadian Charter of Rights and Freedoms*. The applicant seeks an order directing a stay of proceedings.

History of the proceedings

[2] The chronology of the proceedings is generally not contested. The Record of Disciplinary Proceedings (RDP) was signed on 9 January 2020 and the charge was preferred on 16 October 2020. Following a re-election from the accused for a trial by General Court Martial (GCM) to a Standing Court Martial (SCM), the Court Martial Administrator (CMA) signed a convening order on 25 March 2021 for the trial to commence on 31 May 2021 at the Royal Military College (RMC) Saint-Jean, Saint-Jean-sur-Richelieu, Quebec. I was assigned as the military judge to preside the court martial.

[3] At the informal request of counsel, the Court granted an order on 5 May 2021 for a change of date for the trial to commence 7 June 2021, as there were preliminary applications that would be filed by both parties. The hearing for these applications was scheduled for the week of 31 May 2021 in the Asticou Centre, Gatineau, Quebec, with counsel appearing via video link. In the same court order, I granted a request from counsel to change the venue of the trial from Saint-Jean-sur-Richelieu, Quebec, to Halifax, Nova Scotia.

[4] On 7 May 2021, defence counsel served a notice of expert witness, and on 13 May 2021, the prosecution served a notice of application seeking an order restricting the publication of the complainant's identity. On the same day, the prosecution also served a notice of application seeking to permit the use of testimonial aids, specifically permitting the complainant to testify with a support person close to her and permitting her to testify behind a screen.

[5] Subsequently, on 20 May 2021, Naval Cadet Remington filed an application for hearing of a preliminary proceeding pursuant to section 187 of the *NDA* as a matter to be heard by the military judge assigned to preside at the court martial. The applicant alleged in his paragraph 11(*d*) *Charter* application that his right to be tried by an independent and impartial tribunal was infringed by the application, real or perceived, of the Code of Service Discipline to military judges.

[6] This application prompted the respondent to serve a notice of application on 25 May 2021 asking for a postponement of the trial *sine die* pending deliberation in two series of appeals to be decided by the same panel of judges of the Court Martial Appeal Court (CMAC) following hearings held on 29 January 2021 and 11 March 2021 on the same issue of judicial independence. Contending that postponing the hearing of the 11(*d*) *Charter* application as well as the trial would allow Naval Cadet Remington to benefit from appeal decision(s) on the issue of judicial independence, the respondent contended in his written submissions that other courts martial had recently granted similar postponement applications, or have adjourned the trial, in particular in *R. v. Cogswell*, *R. v. MacPherson*, *R. v. Mainguy*, *R. v. Beaulieu*, *R. c. Bruyère*, and *R. v. Murphy*, pending the outcome of the appeals in *R. v. Edwards*, *R. v. Crepeau*, *R. v. Fontaine*, *R. v. Iredale*,

R. v. Proulx and *R. v. Cloutier*. The respondent informed the Court that when the CMAC took its decision(s) under reserve in these latter cases, the Chief Justice of the CMAC informed counsel that the CMAC was aware of the impact of the question of judicial independence on the military justice system and would render its decision (s) in a reasonable period of time.

[7] On 31 May 2021, the Court heard the application for a postponement of these court martial proceedings. Considering amongst other things that counsel for the applicant agreed to postponing the trial as well as the hearing of his paragraph 11(*d*) application, and considering that postponing the trial to a later date would do more to preserve the rights of the accused, on 1 June 2021 the Court granted the application to postpone the trial, directing that the trial of Naval Cadet Remington was to commence on 30 August 2021 in Halifax, Nova Scotia. This date was chosen since it was anticipated that the CMAC would have rendered its decision(s) on the merits of the issue of judicial independence before then, bringing certainty in relation to this issue while not unduly delaying the commencement of the trial proceedings.

[8] On 11 and 17 June 2021 respectively, the CMAC rendered its decisions in ***R. v. C.D. Edwards***; ***R. v. Crépeau***; ***R. v. Fontaine***; ***R. v. Iredale***, 2021 CMAC 2, as well as in ***R. v. Proulx***; ***R. v. Cloutier***, 2021 CMAC 3. These decisions confirmed the independence of the military judges and resolved the 11(*d*) issue.

[9] Less than two weeks before his trial was scheduled to commence, Naval Cadet Remington served his notice of application dated 13 August 2021, alleging the violation of his rights under paragraph 11(*b*) of the *Charter*; namely, that his trial was not held within a reasonable time.

Issue

[10] I must determine if the delays incurred in this file exceed the presumptive ceiling as established in *R. v. Jordan*, 2016 SCC 27. If it does, I must determine if there was any delay caused or waived by the defence, or due to exceptional circumstances, that should be subtracted.

Position of the parties

The applicant

[11] The applicant contends that the total delay from the charge to the anticipated end of trial exceeds the eighteen-month ceiling established by the Supreme Court of Canada (SCC) in *Jordan*. In his notice of application, the applicant provided details of the timeline of his case, starting from the date of the alleged offence of 3 November 2018, and including the date the charge was laid by way of the RDP on 9 January 2020 and the delays caused by the accused's former chain of command in exercising its obligation to inform the accused of his entitlement to retain counsel (12 November 2020). He also contends there were delays in receiving the disclosure caused by the translation of the

investigation report. He explains that during a coordinating call with the prosecution on 17 September 2020, he was informed by d'Auteuil A/C.M.J. that the first judicial availability for his two-week trial was in May 2021. He further explained that in the court martial proceedings of *R. v. Brown*, counsel for the applicant was informed that the Director of Military Prosecutions (DMP) had taken the position to seek postponement of cases where an 11(*d*) application was served, in light of the upcoming release of CMAC decisions that would provide a ruling on this issue of judicial independence of military judges. He contends that this position was a calculated policy decision of DMP, not a sudden event that would qualify as exceptional circumstances.

[12] He submits that the 11(*d*) application regarding judicial independence was a matter that could have been resolved in two days. He contends that because the Court mentioned the judicial calendar was "packed," the defence reluctantly consented to the request for adjournment, as the applicant was placed in a situation where he had to choose between two competing *Charter* rights. He explains the delays in serving his 11(*d*) application was related to his choice to wait as late as possible for the CMAC to release its decisions. Regardless, he affirms that as the court martial rules require three days' notice, he was well within the required time to serve his 11(*d*) application. Further, since both defence counsel are reserve force members, they serve part-time and are therefore not easily available. He lastly informed the Court that he did not solicit a conference call with the presiding judge and the prosecution following the CMAC's decisions, to explore the possibility to move the trial to an earlier date because there was a "tight window", meaning that there was very little time between the CMAC decisions being rendered and the commencement of the trial of Naval Cadet Remington.

The respondent

[13] The respondent contends that there is no counsel complacency. The respondent continuously ensured that these proceedings would unfold as expeditiously as possible the moment the charge was referred to DMP, proactively assuming her role in relation to these proceedings.

[14] Suggesting the Court take judicial notice of the COVID-19 situation, the respondent contends that the initial stage of the pandemic had an impact on the scheduling of these trial proceedings.

[15] In addition, when the applicant chose to serve his 11(*d*) application in May 2021, the trial had to be postponed until the CMAC had rendered its decisions, as this was the most appropriate course of action to preserve the applicant's rights, particularly in light of the absence of judicial comity within the military bench on the judicial independence issue. Consequently, the delays incurred by the postponement of the trial should be deducted from the total delays for the commencement of the trial.

[16] The respondent argues that the specific situation of the applicant qualifies as a discrete event, part of the exceptional circumstances established in *Jordan*. Thus, the delay associated with the exceptional circumstances which arose as a result of the 11(*d*)

litigation at courts martial should be deducted from the entirety of the delay that this file incurred. Properly deducted, the case would conclude before the eighteen-month mark. In particular, the period running from 7 June 2021 to 30 August 2021, which he contends accounts for eighty-five days, constitutes exceptional circumstances and therefore must be subtracted. With that delay deducted, the case is expected to be completed within a total delay of seventeen months and nine days

[17] Counsel for the respondent also submits that it would have taken a lot longer than two days to hear the 11(*d*) matter back in May, therefore the commencement of the trial proceedings would have nevertheless been delayed, had the application to postpone been denied.

[18] Furthermore, had the 11(*d*) application been granted in May 2021, the applicant would be in a worse situation from a delay perspective because his trial would have been further delayed, possibly for another year.

[19] The respondent finally contends that the conduct of the applicant is very relevant; he had a duty to proactively engage the judiciary to seek an earlier trial date following the CMAC decisions. Remaining passive or silent was an untenable position for the applicant. There is no violation of the applicant's 11(*b*) rights.

Evidence

[20] The defence evidence in support of this application was composed of:

(a) Exhibit M2-1, the defence application with authorities; and

(b) Exhibit M2-2, a compact disc containing audio recordings of conference calls between d'Auteuil A/C.M.J., with counsel, as well as recordings of conference calls between myself as the presiding judge, and counsel.

[21] The respondent introduced as evidence in the application:

(a) Exhibit M2-3, a response to applicant's 11(*b*) *Charter* application dated 26 August 2021;

(b) Exhibit M2-4, a DMP email chain covering the period 3 to 5 November 2020;

(c) Exhibit M2-5, the Notice of Application to Referral Authority & Legal Counsel Wishes;

(d) Exhibit M2-6, a letter dated 16 November 2020 regarding the assignment of defence counsel for Naval Cadet Remington;

(e) Exhibit M2-7, a court order in the case of *R. v. Mainguy*, issued by Pelletier M.J. on 22 January 2021;

(f) Exhibit M2-8, a court order in the case of *R. v. Murphy*, issued by Pelletier M.J. on 12 April 2021;

(g) Exhibit M2-9, a court order in the case of *R. c. Bruyère*, issued by Deschênes M.J. on 25 March 2021;

(h) M2-10, an unofficial translation of Exhibit M2-4;

(i) M2-11, a letter from Commandant of the Canadian Defence Academy dated 5 August 2020, received by DMP on 20 August 2020; and

(j) Judicial notice of certain facts and matter, in particular the global pandemic related to COVID-19.

Analysis

The law

[22] Paragraph 11(*b*) of the *Charter* guarantees the right to be tried within a reasonable time to any person charged with an offence. Tailored to the military justice system, the obligation for the chain of command to deal with any charge laid under the Code of Service Discipline as expeditiously as the circumstances permit is found at section 162 of the *NDA*.

[23] In 1992, in *R. v. Morin*, [1992] 1 S.C.R. 771, the SCC established a framework when applying paragraph 11(*b*). The *Morin* framework required courts to balance four factors in determining whether there was a *Charter* breach caused by delays in the proceedings:

(a) the length of the delay;

(b) the presence of a defence waiver;

(c) the reasons for the delay; and

(d) the prejudice to the accused's interests in liberty, security of the person and a fair trial.

[24] In 2016, the state of the law in this regard took a significant turn with the *Jordan* case. In overruling *Morin*, the SCC established that the *Morin* framework suffered from a number of doctrinal shortcomings, one of which was that it was unduly complex, requiring an accounting of each day of proceedings from charge to trial when considering the third factor. This exercise was cumbersome, and often relied upon judicial

"guesstimations". *Jordan* imposed a new framework, with a ceiling beyond which an eighteen-month delay for cases going to trial in provincial court would be presumptively unreasonable. In simplifying the determination of reasonableness of the delays when examining the presumptive ceiling, defence delay is to be deducted from the total delay. Furthermore, to rebut this presumption, the Crown must establish the presence of exceptional circumstances. If it cannot do so, the delay is deemed unreasonable and a stay will follow. This approach was subsequently reaffirmed in *R. v. Cody*, 2017 SCC 31.

[25] Court martials have ruled in *R. v. Thiele*, 2016 CM 4015, *R. v. Cubias-Gonzalez*, 2017 CM 3003, *R. v. McGregor*, 2019 CM 4011, *R. v. Tuckett*, 2019 CM 3006, and in *R. v. Stacey*, 2019 CM 3017, that the presumptive ceiling of eighteen months for cases before provincial courts as established by the SCC decisions in *Jordan* and *Cody* applies in the military justice system. In particular in *Stacey*, the military judge stated that the majority in the SCC decision of *R. v. K.J.M.*, 2019 SCC 55 confirmed that the presumptive ceiling of eighteen months is applicable for a separate system of courts for which a need of timeliness is clearly recognized.

[26] When applying the framework set out in *Jordan*, the Court must therefore calculate the total number of months from the time a charge is laid to the actual or anticipated completion of the trial. The Court must subtract the number of months waived or caused by the defence. If the resulting delays after this subtraction exceed the eighteen-month ceiling, the delay is presumptively unreasonable. The onus then shifts to the prosecution to justify the delay due to exceptional circumstances, which falls into two categories: discrete events and particularly complex cases. Once this delay caused by exceptional circumstances is subtracted, if the remaining delay exceeds the presumptive ceiling, paragraph 11(*b*) of the *Charter* is violated. Otherwise, if the remainder is below the relevant ceiling, the defence must demonstrate that the delay was nonetheless unreasonable to establish a paragraph 11(*b*) *Charter* violation.

Application to this case

[27] In consideration of the *Jordan* approach, although some of the delays present in this case are unfortunate, the Court is not required to account for the date of every single step taken leading up to, or part of, the judicial proceedings. The details of the timeline are generally helpful to understand the context. However the Court need not trouble itself with this information as part of its analysis, unless the delays fall within one of the criteria calling for its subtraction.

[28] The starting date for the case at bar is when the RDP was signed on 9 January 2020, making the eighteen-month mark for this case 8 July 2021 as contended by both parties. The anticipated completion of the trial is set for 10 September 2021, bringing the total delay to exceed the presumptive ceiling by two months and two days.

Delays caused or waived by the defence

[29] The Court must next determine if there were delays caused or waived by the defence. Prior to serving its 11(*d*) application, there is no indication that the defence caused or waived delays. That said, the issue of judicial independence of military judges is not novel; as recognized by the defence, it is in fact a notorious issue within the legal military community since at least when *R. v. Pett*, 2020 CM 4002 was made available to the public in January 2020. It has been consistently litigated at courts martial since then, with some decisions being the subject of the highly anticipated CMAC decisions rendered last June. Nevertheless, the applicant chose to serve his 11(*d*) application on 20 May 2021, eleven days before the scheduled date of the hearing of the other preliminary applications pertaining to this case.

[30] The applicant admits that he waited until the last minute to serve his 11(*d*) application because he was hoping the CMAC would release its decisions on the issue of judicial independence before the hearing of the preliminary applications of this case. Further, counsel for the applicant knew at the hearing held on 31 May 2021, as a result of their appearance in a separate case, *R. v. Brown*, 2021 CM 4003, that the DMP had adopted the position that it would seek postponement of trial in cases where an 11(*d*) application is served, to allow accused persons to benefit from the upcoming CMAC decisions on this very issue so as to be applied subsequently at courts martial for these cases that had been postponed or adjourned.

[31] Therefore, when he served his 11(*d*) application on 20 May 2021, the applicant knew that the prosecution would seek to postpone the trial, and that there was a likelihood that an application to postpone would be granted. Although the applicant contends that he reluctantly agreed to the postponement of the trial, and stated during a conference call held on 26 May 2021 between myself and both parties that it refused to waive the delays that would be incurred should the request for postponement be granted, the defence nevertheless did not oppose the request for postponement of these trial proceedings. On the contrary, during this same conference call, counsel for the applicant stated that it would be preferable to wait for the CMAC to release its decisions before the commencement of this trial, decisions that were in fact released close to two weeks after the request to postpone the trial was granted.

[32] Further, once the CMAC decisions were released in June 2021, counsel for the applicant did not contact the Office of the Chief Military Judge to request a conference call with the presiding judge to explore the possibility of changing the trial date to an earlier date, nor did he raise concerns in any fashion in relation to the delays until now. Counsel for the applicant explained, during the hearing of the 11(*b*) application, that he did not solicit a conference call at that time because there was too little time before the commencement of the trial, a statement I view as implying that the defence was waiving the delays.

[33] Consequently, the Court finds that the applicant did waive the delays caused by the postponement of the trial, which was granted to allow him to benefit from the most positive outcome: the possibility of being granted a stay of proceedings as a result of favourable CMAC decisions; or a trial to commence as early as possible after the CMAC

decisions were rendered. In other words, the Court decided on 1 June 2021 that, in consideration of the last-minute serving of the 11(*d*) application regarding judicial independence of military judges, which triggered a prosecution's request to postpone the case, and considering the soon-to-be-rendered CMAC decisions on this very issue of judicial independence, the best course of action to protect and preserve the applicant's *Charter* rights was to grant the request to postpone the trial. The Court did so with the understanding that the delay caused by granting the request to postpone would bring this case past the eighteen-month mark.

[34] In summary, the applicant's tactical choice to serve his 11(*d*) application at the last minute, his knowledge that a request from the prosecution to postpone the trial would automatically follow his 11(*d*) application, the acceptance of the defence to postpone the trial in the hope that the CMAC decision would be favourable and his omission to seek earlier trial dates following the CMAC decisions are sufficient facts for me to conclude that the delays incurred following the order granting the postponement of the trial were waived by the defence and should be subtracted from the total delay.

[35] The trial was originally set to commence on 7 June 2021 and was postponed to 30 August 2021, representing a period of two months and twenty-four days as suggested by the prosecution. With that delay subtracted, the anticipated duration for these trial proceedings from the charge being laid to completion of the trial is seventeen months and nine days. This delay is beneath the presumptive ceiling set out in *Jordan*.

Exceptional circumstances

[36] If I am wrong on qualifying these delays, they would nevertheless be attributable to a discrete event constituting an exceptional circumstance. In order to be exceptional, the circumstances must have been reasonably unforeseen or reasonably unavoidable. Circumstances do not need to be rare or entirely uncommon (see *Jordan*, at paragraph 69). There are two broad categories of exceptional circumstances; discrete, exceptional events. In *Jordan*, the SCC expanded on the concept of discrete, exceptional events:

> [73] Discrete, exceptional events that arise at trial may also qualify and require some elaboration. Trials are not well-oiled machines. Unforeseeable or unavoidable developments can cause cases to quickly go awry, leading to delay. For example, a complainant might unexpectedly recant while testifying, requiring the Crown to change its case. In addition, if the trial goes longer than reasonably expected— even where the parties have made a good faith effort to establish realistic time estimates —then it is likely the delay was unavoidable and may therefore amount to an exceptional circumstance.
>
> [74] Trial judges should be alive to the practical realities of trials, especially when the trial was scheduled to conclude below the ceiling but, in the end, exceeded it. In such cases, the focus should be on whether the Crown made reasonable efforts to respond and to conclude the trial under the ceiling. Trial judges should also bear in mind that when an issue arises at trial close to the ceiling, it will be more difficult for the Crown and the court to respond with a timely solution. For this reason, it is likely that unforeseeable or unavoidable delays occurring during trials that are scheduled to wrap up close to the ceiling will qualify as presenting exceptional circumstances.

> [75] The period of delay caused by any discrete exceptional events must be subtracted from the total period of delay for the purpose of determining whether the ceiling has been exceeded. Of course, the Crown must always be prepared to mitigate the delay resulting from a discrete exceptional circumstance. So too must the justice system. Within reason, the Crown and the justice system should be capable of prioritizing cases that have faltered due to unforeseen events (see *R. v. Vassell*, 2016 SCC 26, [2016] 1 S.C.R. 625). Thus, any portion of the delay that the Crown and the system could reasonably have mitigated may not be subtracted (i.e. it may not be appropriate to subtract the entire period of delay occasioned by discrete exceptional events).

[37] When the defence served its 11(*d*) application a few days before the scheduled date of the trial, and around the time that the CMAC decisions were expected to be released, the Court had little choice but to order a postponement of the trial, otherwise the Court may have released a decision counter to the appeal decisions that followed approximately two weeks later. The Court was aware that this would have had a more serious and detrimental impact on the accused's *Charter* rights in a time where there was an absence of judicial comity in the military justice system on the question of judicial independence of military judges.

COVID-19

[38] Lastly, I was asked by the respondent to draw the inference that the pandemic likely contributed to cause delay for scheduling these proceedings, for example, with regard to delays incurred during the referral process. Such delay would constitute an exceptional event that should be subtracted from the total delay. I have asked both counsel to provide their view regarding whether the impact of the pandemic could constitute a discrete, exceptional event that should be accounted for in this case. In this regard, I had personal knowledge of, and considered, three consecutive directives issued by the A/C.M.J. on 16 March 2020, 3 April 2020 and 5 May 2020, where the A/C.M.J. directed the CMA to cancel all convening orders for courts martial that were scheduled to be held between 16 March 2020 and 31 May 2020.

[39] While it is a fair assumption to believe that the stopping of court martial proceedings for over two months in 2020 as a result of the pandemic would cause a backlog and delay courts martial case not yet convened at that time, this Court is not in a position to draw the conclusion that the convening of the court martial for the trial of Naval Cadet Remington was delayed as a result of the pandemic. The record shows that counsel attended the coordinating call with the A/C.M.J. on 17 December 2020 to discuss trial dates, resulting in a first convening order signed in January 2021, well after the period courts martial temporarily ceased their operations. There was no evidence adduced demonstrating that the pandemic caused in some way the referral of this case to be delayed. Although the jurisprudence provided by the prosecution has indeed recognized that the pandemic does constitute an exceptional event, fair assumptions are not sufficient to draw the inference suggested by the respondent.

[40] Additionally, the recordings produced in Exhibit M2-2 by the applicant proved that there was no judicial availability between January and end May 2021 as a result of several trials by GCM scheduled during that period. It is well known that trials by GCM

are lengthier and would consequently reduce judicial availability, particularly when more than one trial by GCM is convened during a given time. The court martial system may very well have, at the time the case at bar was scheduled, caught up on any backlog it may have experienced by the pandemic. Consequently, in the absence of convincing evidence to this effect, I am unable to draw the conclusion that the pandemic likely contributed to cause further delay in the proceedings.

Below the presumptive ceiling

[41] The Court finds that when subtracting the delays waived by the defence, the resulting total delay incurred in this case falls below the presumptive ceiling. Consequently, the burden is shifting to the defence and, as stated by the SCC in *Jordan*:

> [113] The new framework also encourages the defence to be part of the solution. If an accused brings a s. 11(*b*) application when the total delay (minus defence delay and delay attributable to exceptional circumstances that are discrete in nature) falls below the ceiling, the defence must demonstrate that it took meaningful and sustained steps to expedite the proceedings as a prerequisite to a stay. Further, the deduction of defence delay from total delay as a starting point in the analysis clearly indicates that the defence cannot benefit from its own delay-causing action or inaction.

Conclusion

[42] On the basis of the evidence submitted as part of this application, or lack thereof, the Court finds that Naval Cadet Remington has not met his burden to establish that the remaining overall delay is unreasonable. Considering my conclusion, the net delay to be considered by this Court for the purpose of this 11(*b*) application is seventeen months and nine days, and results in leaving the overall delay to be considered beneath the presumptive ceiling of eighteen months. The Court concludes that the delay is reasonable and that the rights of Naval Cadet Remington to be tried within a reasonable time have not been violated. Therefore, this Court concludes that his application for a stay of proceedings must be dismissed.

FOR THESE REASONS, THE COURT:

[43] **DENIES** the application made by Naval Cadet Remington.

Counsel:

Lieutenant(N) B. Wentzell and Lieutenant-Colonel A. Bolik, Defence Counsel Services, Counsel for Naval Cadet L.R. Remington, Applicant

The Director of Military Prosecutions as represented by Major J.D.H. Bernatchez and Lieutenant-Colonel M. Pecknold, Counsel for the Respondent