



COURT MARTIAL

Citation: *R. v. O'Brien*, 2015 CM 1012

Date: 20150831

Docket: 201522

Standing Court Martial

Canadian Forces Base Trenton
Trenton, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Master Corporal I.M.G. O'Brien, Applicant

Before: Colonel M. Dutil, C.M.J.

[OFFICIAL ENGLISH TRANSLATION]

**DECISION RESPECTING AN APPLICATION UNDER SECTION 7 OF THE
CANADIAN CHARTER OF RIGHTS AND FREEDOMS FOR VIOLATION OF
THE RIGHT TO SECURITY**

(Orally)

INTRODUCTION

[1] The applicant is facing two charges for offences punishable under section 130 of the *National Defence Act*, contrary to section 342.1 of the *Criminal Code*, for fraudulently obtaining, directly or indirectly, computer services between 1 January 2011 and 5 February 2013, i.e., one being the Security and Military Police Information System (SAMPIS),¹ the other being the Canadian Police Information Centre (CPIC).²

¹ In this judgment, the acronyms SAMPIS (Security and Military Police Information System) and the French version SISEPM (Système d'information – Sécurité et police militaire) are used interchangeably.

She submits that her rights under article 7 of the *Canadian Charter of Rights and Freedoms* were violated contrary to the principles of fundamental justice. The applicant does not raise a violation of paragraph 11(b) of the *Charter* relating to the right of an accused person to be judged within a reasonable delay. Based essentially on *Her Majesty the Queen v. Perrier*, [2000] CMAC-434, 24 November 2000, she submits that her right to security was violated contrary to the principle of fundamental justice that requires speedy justice within the military justice system set out in the above decision, and a violation of the principle of fundamental justice relating to the right to full answer and defence.

THE EVIDENCE

[2] Aside the judicial notice under section 15 of the *Military Rules of Evidence*, the evidence in support of the application is composed of the following elements:

- (a) a joint statement of facts (VD1-2);
- (b) the transcript of the interview of Master Corporal O'Brien with Petty Officer 2nd Class Dingwall dated 7 October 2013 (VD1-3);
- (c) a DVD of the recorded interview of 7 October 2013, of an approximate duration of three hours, viewed during the hearing of the application (VD1-4);
- (d) a copy of the following Canadian Forces Military Police Group Orders: 2-705, 2-705.1, 2-730 and 2-730.1 (VD1-5);
- (e) a letter, dated 3 June 2103, signed by Lieutenant-Colonel R.P. Delaney, to the effect that the military police credentials of Master Corporal O'Brien are suspended (VD1-6);
- (f) a letter, dated 8 April 2013, addressed to Master Corporal O'Brien and signed by Major P.G. Casswell, welcoming her on her new posting to the National Investigation Service (VD1-7);
- (g) three news articles relating to the regional and national badminton championships in 2014 and 2015, highlighting the performance of Master Corporal O'Brien (VD1-8, VD1-9 and VD1-10);
- (h) a document entitled [TRANSLATION]"Defence's Admissions" (VD1-11); and
- (i) the testimony of Master Corporal O'Brien and Petty Officer 2nd Class Dingwall.

² In this judgment, the acronyms CPIC (Canadian Police Information Centre) and the French version CIPC (Centre d'information de la police canadienne) are used interchangeably.

[3] For the better understanding of the case, I reproduce the joint statement of facts (VD1-2) and the defence's admissions (VD1-11):

[TRANSLATION]

JOINT STATEMENT OF FACTS (VD1-2)

1. On 6 May 2013, the NIS launched an investigation on the applicant, a military police member, for unauthorized use of computer services. The applicant was suspected of having conducted queries into four individuals on SAMPIS and CPIC for purposes other than law enforcement and having disclosed this information to her husband, contrary to the SAMPIS and CPIC usage policies.
2. On 7 May 2013, MCpl Beacom of the NIS was designated to investigate.
3. On 8 May 2013, MCpl Beacom initiated a request to obtain the reports of the applicant's queries on CPIC and SAMPIS for the previous two years. Investigator Beacom received and analyzed the CPIC report on 9 May 2013 and the SAMPIS report on 16 May 2013. MCpl Beacom observed that the applicant had queried some of four names. MCpl Beacom identified around 18 other individuals who were the subject of suspicious queries conducted by the applicant on SAMPIS and/or CPIC. MCpl Beacom noted this information in the investigation report.
4. On 30 May 2013, PO2 Dingwall, NIS investigator, was assigned to the case to replace MCpl Beacom. At the time of his assignment, PO2 Dingwall was on a course until 12 June 2013.
5. On 4 June 2013, the applicant's military police credentials were withdrawn in connection with the investigation that led to the charges in this case.
6. On 19 June 2013, PO2 Dingwall started to review the investigation.
7. From 26 June to 1 July and from 20 July to 5 August 2013, PO2 Dingwall was on leave.
8. From 6 to 9 August, 22 and 23 August 2013, PO2 Dingwall was assigned to other tasks. On 19 and 20 September 2013, PO2 Dingwall participated in another investigation.

9. During the months of August, September and October 2013, PO2 Dingwall was responsible for preparing a course.
10. On 7 October 2013, the applicant was interviewed by PO2 Dingwall. During her interview, the applicant admitted that she queried the individuals she was suspected of having fraudulently queried on SAMPIS and CPIC, she explained the reasons behind some of her queries, she recognized her signature on the documents dealing with the SAMPIS and CPIC usage policies and she explained her understanding of this usage policy.
11. The applicant was unable to recall the reasons for the queries she conducted on certain individuals in CPIC and SAMPIS but explained that she acted in good faith and her notes would indicate the reasons for the queries.
12. Between 15 October and 1 November 2013, PO2 Dingwall attended a course.
13. From 8 to 10, 15 and 16 November 2013, PO2 Dingwall was on leave.
14. From 17 to 19 November 2013, PO2 Dingwall participated in a training session.
15. From 29 November to 1 December 2013, PO2 Dingwall was on leave.
16. On 10, 16 and 17 December 2013, PO2 Dingwall was on training.
17. On 16 December 2013, PO2 Dingwall left a message for the applicant to provide her with an update and to ask her if she wanted to participate in a second interview.
18. On 17 December 2013, the applicant informed PO2 Dingwall that the investigation was taking too much time and that it was causing her stress.
19. Between 20 December 2013 and 5 January 2014, PO2 Dingwall was on leave.
20. As part of his investigation, on 31 January 2014, PO2 Dingwall attempted to obtain MCpl O'Brien's military police notebooks. Some notebooks were disclosed by the unit, the others being in

MCpl O'Brien's possession. As she was not authorized to keep her military police notebooks, MCpl O'Brien returned two notebooks on 10 April 2014. The last notebook was returned by MCpl O'Brien at her home on 3 July 2014.

21. From 6 to 10 February 2014, PO2 Dingwall participated in another investigation.
22. From 14 to 17 February, from 7 to 16 March 2014, PO2 Dingwall was on leave.
23. On 7 April, from 22 to 25 April, from 27 April to 17 May, and from 28 to 31 May 2014, PO2 Dingwall was on training.
24. From 6 to 8 June, on 11 and 12 June 2014, PO2 Dingwall was on leave.
25. On 18 and 19 and from 22 to 28 June 2014, PO2 Dingwall was on training.
26. From 28 June to 6 July 2014, PO2 Dingwall was on leave.
27. From 20 to 25 July 2014, PO2 Dingwall was called as a witness at a court martial.
28. From 26 July to 11 August 2014, PO2 Dingwall was on leave.
29. On 18 and 19 August 2014, PO2 Dingwall was on training.
30. During the months of September and October 2014, PO2 Dingwall participated in a course preparation.
31. From 14 to 21 September 2014, PO2 Dingwall participated in another investigation.
32. From 25 to 27 September 2014, PO2 Dingwall was on leave.
33. From 30 September to 2 October, on 6 and 7 October 2014, PO2 Dingwall was on training.
34. From 20 October to 7 November 2014, PO2 Dingwall attended a course.
35. On 12 November 2014, the investigation was completed.

36. On 3 December 2014, the applicant was charged under a record of disciplinary proceedings.
37. On 9 January 2015, Defence Counsel Services received a request for defence counsel.
38. On 9 January 2015, an application to a referral authority for disposal of a charge was forwarded to the referral authority.
39. On 15 January 2015, the referral authority sent this application to the Director of Military Prosecutions.
40. On 16 January 2015, LCdr Desbiens was assigned as defence counsel. A request for disclosure of the evidence was sent to the prosecutor the same day.
41. On 30 January 2015, a military prosecutor was assigned to the file.
42. From 2 February to 6 February 2015, the military prosecutor assigned to the file was in court on a case.
43. From 14 February 2015 to 1 March 2015, the military prosecutor assigned to the file was on leave.
44. From 9 to 13 March, the military prosecutor assigned to the case was in court on a case.
45. On 20 March 2015, the prosecutor preferred charges against the applicant.
46. On 25 March 2015, the defence received disclosure of the evidence.
47. On 13 April 2015, the prosecution invited the defence to participate in a coordination conference to set a trial date. The same day, counsel for the applicant informed the prosecution that he had not finished reviewing the evidence and that the applicant had not yet made a choice between a trial by General or Standing Court Martial. For this reason, he preferred waiting before participating in a conference.
48. On 21 April 2015, counsel for the applicant informed the prosecution that he had finished reviewing the evidence, that he had received the applicant's instructions and that he was ready to attend a conference.

49. On 22 April 2015, counsel for the applicant contacted the Deputy Court Martial Administrator to schedule a conference with the Chief Military Judge. The parties participated in a conference and discussed the possibility of conducting the trial in July.
50. The prosecution informed the Chief Military Judge that it could not proceed before 24 August. The trial date was set for 25 August 2015.

[TRANSLATION]

DEFENCE'S ADMISSIONS (VD1-11)

1. Lt(N) Desroches was MCpl O'Brien's supervisor as of her posting to Ottawa in the summer of 2013, until the summer of 2015.
2. Lt(N) Desroches is a Training Development Officer working during this period in the screening and individual training section of Provost Marshal HQ.
3. MCpl O'Brien works in this section as a MITE (military individual training and education) clerk. In addition to the messages relating to the training provided outside the Canadian Forces, she takes care of finances for this training, helps with the Canadian Forces Tasking Plans and Operations (CFTPO) program and with the qualification standard and the training plans. The "MITE" qualification is the only one required to perform these duties.
4. Lt(N) Desroches observed that MCpl O'Brien's performance came in waves. On days where MCpl O'Brien was tired and her duties required more energy for her to concentrate, the duties were adapted. The duties were divided into smaller duties with longer deadlines to allow her to complete them. MCpl O'Brien generally arrived at work at 0600 hrs. Lt(N) Desroches observed that if MCpl O'Brien felt too tired, she advised Lt(N) Desroches and arrangements were made so that MCpl O'Brien could leave earlier. Lt(N) Desroches would sometimes help MCpl O'Brien prioritize her duties so that it would be easier for her to identify priorities. MCpl O'Brien took some days of sick leave but not more than others.

5. According to Lt(N) Desroches, there was good communication in the team and MCpl O'Brien found Lt(N) Desroches approachable.
6. The purpose of MCpl O'Brien's chain of command was that she felt good in her work environment. According to Lt(N) Desroches' observations, MCpl O'Brien interacted well with the other members of the section and the dynamic was positive.
7. Lt(N) Desroches observed during the past two years that MCpl O'Brien was involved in her workplace and that she seemed to love this environment. MCpl O'Brien organized the Christmas party, a ball hockey tournament, a potluck and helped Lt(N) Desroches with the BBQs organized for the unit.
8. MCpl O'Brien was also involved in fitness training at the gym. If the person in charge of the fitness training was absent, MCpl O'Brien would take charge of the training. Indeed, other female members went to see her so that she could show them how to perform certain exercises. MCpl O'Brien trained at the gymnasium during work hours, generally between 1100 and 1200 hours. Lt(N) Desroches did cross-fit training with MCpl O'Brien.
9. The work environment was flexible with respect to work schedules. MCpl O'Brien's work schedule was her choice. MCpl O'Brien generally arrived at work early so that she could finish earlier and pick up her children at school. The important thing for the chain of command was that she carried out her duties.
10. MCpl O'Brien took civilian courses by correspondence. When she was required to go on site for her training, her chain of command would allow her to attend during work hours. She was also given some time to do exams. MCpl O'Brien had an Individual Learning Plan (ILP) and LCol Schneider was aware of it. Moreover, LCol Schneider requested that the members of the section find ideas for interesting projects for MCpl O'Brien. Furthermore, MCpl O'Brien did a university assignment on polygraph investigator work, for which LCol Schneider reviewed her work and provided her with his comments. As part of this assignment, MCpl O'Brien interviewed a polygraph investigator from the military police.
11. MCpl O'Brien expressed her distress to Lt(N) Desroches with respect to her not knowing what was going on. MCpl O'Brien told her that she felt stressed and distraught. Lt(N) Desroches referred MCpl O'Brien to a social worker so that she could get

tools for managing her stress. Lt(N) Desroches recalled suggesting to MCpl O'Brien to take each day one day at a time and see what would happen. On one occasion, CPO2 Rice expressed concerns to Lt(N) Desroches as to MCpl O'Brien and suggested that they monitor MCpl O'Brien more closely since she did not seem to be doing well. LCol Schneider was informed.

12. MCpl O'Brien expressed to Lt(N) Desroches her concerns regarding the uncertainty of her future since the proceedings were long. She also indicated that she felt stress regarding the fact that she was no longer an investigator. The chain of command tried to be close to MCpl O'Brien and have good communication. She had the support of her chain of command. Lt(N) Desroches noted that she was not aware if MCpl O'Brien already had suicidal thoughts.
13. MCpl O'Brien has never asked to be posted to another section, although she was disappointed not being posted to the National Investigation Service (NIS) and becoming a polygraph technician.
14. MCpl O'Brien submitted her application for close protection training but could not be selected because she did not have her military police credentials. When she received the news, MCpl O'Brien started to cry and seemed discouraged. MCpl O'Brien had prepared a lot for her application. On another occasion, positions were opened in Yellowknife but she could not go there since she did not have her military police credentials.

[4] All the evidence heard and submitted during the hearing of the application reveals that a complaint was sent and that it came from the unit of the applicant's spouse with respect to allegations that he had obtained information about four individuals from his unit to the effect that they had a criminal record. Since this type of information is not normally accessible by the public, but rather by authorized individuals such as police forces, including the military police, the investigator then suspected that the applicant, herself a military police member, could have been her husband's source. As it appears from the summary of the facts, the original investigator obtained the applicant's query reports on CPIC and SAMPIS and she noted that the four individuals' names were the subject of a query that seems to have been conducted by the applicant. The investigator also identified that eighteen individuals were also the subject of suspicious queries. It appears that, based on the information available and the seriousness of the allegations, the authorities of the Canadian Forces Provost Marshal decided to suspend Master Corporal O'Brien's military police credentials, as demonstrated by the letter dated 3 June 2013 (VD1-6). Paragraph 2 of said letter states the following:

“2. As the *National Defence Act* Section 156 suspending authority and in light of the seriousness of the allegations, I hereby suspend immediately the *NDA* Section 156 Military Police appointment of MCpl O’Brien for the alleged breaches of the Code under the following articles:

(a) 4(j), which states: no member of the Military Police shall: use military police information, military police resources or their status as a member of the military police for a private or unauthorized purpose; Reference A alleges that MCpl O’Brien has contravened this article of the Code by her actions, whereby in a complaint filed with the 2 Military Police Squadron on 19 March 2013 she accessed military police information using CPIC/SAMPIS without legitimate reason for a private purpose;

(b) 4(k), which states: no member of the Military Police shall; disclose military police information unless authorized; Reference A alleges that MCpl O’Brien has contravened this article of the Code by her actions, whereby in complaint filed with the 2 Military Police Squadron on 19 March 2013, she disclosed military police information to an unauthorized recipient; and

(c) 4(l) which states; no member of the Military Police shall engage in conduct that is likely to discredit the Military Police or calls into question the member’s ability to carry their duties in a faithful and impartial manner. Reference A alleges that MCpl O’Brien has contravened this article of the Code by her actions of accessing military police information through CPIC/ SAMPIS without legitimate reason and disclosing military police information to an unauthorized person.

3. The Commanding Officer, 2 Military Police Squadron is to remove the member’s credentials, firearm and MP accoutrements used in the continuum of force and advise the Deputy Commander when all disciplinary, criminal and unit action are completed. MCpl O’Brien can be employed, as with any other CF member, in CF functions not requiring the *NDA* Section 156 appointment and authorities, or requiring the use of MP intermediary weapons. The unit is to forward the member’s credentials to the CF MP Gp, Deputy Provost Marshal – Policy and Plans.

4. The Deputy Provost Marshal – Resource Management is to suspend the member’s CPIC and SAMPIS privileges.”

[5] As set out in the above letter, the applicant’s supervisor contacted her by telephone the next day when she was at home at the beginning of her leave. He told her

to come to work. She testified that once she took her place in her Commanding Officer's office, accompanied by her supervisor, she was informed that her military police credentials were suspended. Master Corporal O'Brien told the Court that when she heard this news and received the letter of 3 June, she became depressed. As she had little or no memory of this meeting, she told us that she was in shock. She cried and saw her dream of becoming an investigator at the National Investigation Service and a polygraph technician crumble. However, she stated that the meeting was long and that it allegedly took approximately forty-five minutes to explain the content of the letter. Master Corporal O'Brien allegedly left the meeting without remembering much and she went to work the next day, rather than staying home, when she was on leave, because she did not want to be alone with her young baby, because of her psychological state following her suspension. Master Corporal O'Brien then went to work in combat uniform and she felt demeaned and humiliated in front of her colleagues. Master Corporal O'Brien testified that it took her several months before recovering marginally from the shock that she experienced on 4 June 2013, when her military police credentials were suspended. She added that it was only when she met with Petty Officer 2nd Class Dingwall on 7 October 2013, during the interview, that she understood for the first time the reason why her credentials had been suspended. She, again, was in shock. She thought that the source of the measures taken against her were linked to what had happened between her husband and his sergeant major, she understood that the allegations were that she had illegitimately used CPIC and SAMPIS.

[6] Master Corporal O'Brien testified about the health impacts related to the suspension of her military police credentials on 4 June 2013, until today. She also met with social workers several times since the events in an attempt to deal with the anxiety, stress and anguish caused by this matter. She stated that she suffered memory loss and sleep difficulty. She also experienced marital difficulties, because she blamed her husband for being responsible for what was happening to her. This is in the past now, but she continues to have difficulty being a present and attentive mother to her three children. Master Corporal O'Brien also stated that there were times when she was depressed and had suicidal thoughts, particularly in February 2015, when she wanted to run a red light. Although she still feels awful, Master Corporal O'Brien has made every effort to perform her duties, because she is a perfectionist. As she has been anemic for several years, she has been training very hard physically and she is enthusiastically involved in several social activities of the military police to show that she is strong, competent and jovial, despite her sadness and the stress that has been eating away at her for more than two years. Moreover, Master Corporal O'Brien testified that she did not want to visit a doctor or therapist and that she refused to take medication that could help her, because she did not want it to negatively affect her career in the military police and because of the impression that she has had of the effectiveness of these methods on other people she knows. There is no doubt that the events that began with the suspension of her military police credentials until now caused her stress and anxiety and that the passage of time seems endless. The fact that she has worn her combat uniform for more than two years, rather than the military police uniform or civilian investigator clothes, contributes to the stigmatization that she believes she experienced because, in her view, the other military police members know that it means there is something

[TRANSLATION] “wrong with you”. Finally, Master Corporal O’Brien stated that in addition to having lost her posting to the National Investigation Service because of the suspension of her military police credentials, she was denied several courses and the opportunity for posting since that date.

[7] It should be noted that during the entire period following the suspension of her military police credentials, the applicant continued to be employed and paid in a unit of the Military Police Group and that she received the support of her chain of command during that period (see VD1-11).

[8] As well as what has been mentioned in the joint statement of facts, Petty Officer 2nd Class Dingwall explained that this investigation was the only one that he was responsible for, because of the position he held during that period as operations sergeant and person responsible for mobile surveillance, as well as the coordinator of training in a section of the National Investigation Service. It seems that he was given this investigation because of his experience and the fact that it involved a military police member. During his testimony, he explained that he became aware of the investigation file on 19 June 2013 and discussed it with the original investigator. He produced and sent an investigation plan to his supervisors shortly after. He met with several witnesses, including the source of the complaint against Master Corporal O’Brien and the applicant’s supervisors. He also requested the applicant’s query reports on CPIC and SAMPIS, which cover the duration of her posting to Trenton while she was there with her husband. Moreover, he obtained the positions that the applicant held in this period during her stay in Trenton, so as to determine the overlaps required for his investigation since the original investigator’s research only covered the period when the applicant’s husband was posted to his new unit. According to investigator Dingwall, this decision to widen the investigation was to cover a larger and more extensive period, even if it made it more complex, because it revealed approximately 6000 lines of additional reports. He had to comb through the information carefully and juxtapose it with the position held by the applicant at the time when she had made a specific query, so as to find evidence of the legitimacy of the applicant’s queries during the period in question. With respect to the applicant’s notebooks, which he obtained during the course of his investigation, it should be noted that the last one was returned on 3 July 2014 by the applicant, who had it in her possession at her home in Belleville, while she was posted to Ottawa. After obtaining the notes, the investigator was able to finalize his investigation and obtain legal opinions. The investigation was completed on 12 November 2014.

[9] In regard to the interview of 7 October 2013, (VD1-3 and VD1-4), it should be noted that during the interview in question the investigator clearly told the applicant that it was of a disciplinary and criminal nature for offences under section 129 of the *National Defence Act* and section 342.1 of the *Criminal Code*. During this interview, the applicant admitted conducting queries on individuals she was suspected of having queried fraudulently on CPIC and SAMPIS, but she had provided explanations for each of her queries. Furthermore, she added that her queries were legitimate and conducted in good faith. When she did not know the name of an individual that was submitted to

her with respect to a specific query, the applicant attempted to provide a logical explanation. The applicant also acknowledged that she understood the usage policies for these databases as well as her signature on documents to that effect.

THE POSITION OF THE PARTIES

The applicant

[10] The applicant submits that her right to security protected under section 7 of the *Charter* was violated because the circumstances of this case do not respect the principle of fundamental justice, expressed by the Court Martial Appeal Court in *Her Majesty the Queen v. Perrier*, according to which the military justice system requires speedy justice. She also added that because of the time that has elapsed since the alleged events against her and the impact of these delays on her ability to remember events, given her memory problems attributable to these delays, but also given the harmful effects on her mental and physical health since her military police credentials were suspended on 4 June 2013, her right to security was infringed because she is not able to exercise her right to full answer and defence.

[11] Based on *Perrier*, the applicant submitted that the start of the calculation period for all the delays in this case corresponds with the day that her military police credentials were suspended, i.e., 4 June 2013. The total delay for the purposes of the section 7 analysis would be twenty-six months. According to the applicant, she had already been charged as of 4 June 2013, the date of the suspension of her military police credentials, even if the charges were only brought on 3 December 2014. The applicant submitted that the effects of the suspension of her military police credentials are very serious to both her physical and mental health as well as her career, including losing the opportunity to serve in the National Investigation Service and being denied the opportunity to take some career courses and being posted by her chain of command. The applicant submitted that the suspension of her military police credentials, i.e., the stress, depression and stigmatization that she experienced during all the proceedings violated her security in a manner not in accordance with the principle of justice, according to which the military justice system requires speedy justice. Therefore, she stated that she experienced significant harm that can only increase unless the Court orders a stay of proceedings under subsection 24(1) of the *Charter*. According to the applicant, the investigation was not complex and nothing allowed the investigators to widen the scope of the investigation beyond the twenty-two names identified by the original investigator.

The respondent

[12] The respondent submitted that the application must be rejected because the suspension of the military police credentials under the relevant orders of the military police group (VD1-5) is in no way comparable to a suspension of military duties as was the case in *Perrier*. A member of the military police may have his or her credentials suspended if he or she is suspected of misconduct in the same way as a doctor could be

suspended by the College of Physicians if he or she is suspected of misconduct which is subject to subsequent disciplinary and criminal charges. The applicant recognized that the delays in this case are associated with the prosecution and that the starting point that should be retained for the purposes of calculating the delay corresponds to the date of the applicant's interview with investigator Dingwall on 7 October 2013. The respondent submitted that the source of the harm experienced by the applicant was when her military police credentials were suspended. Moreover, the respondent submitted that the applicant continued to be employed in the military police, although she occupied administrative positions, and that she continued to be paid. The respondent submitted that the applicant was not stigmatized, but rather that she was supported by her chain of command and her immediate supervisors.

[13] With respect to the applicant's claims that the investigation of the National Investigation Service was of an administrative nature, the respondent submitted that it was, on the contrary, of a criminal and disciplinary nature. The respondent rejected the applicant's claims that the suspension of her military police credentials are comparable to the treatment that Perrier was subjected to. She submits that it is well founded in view of Justice Goodwin's comments in *Larocque v. Her Majesty the Queen*, 2001 CMAC 002, 20 August 2001, at paragraph 54:

[54] How can the appellant claim his "life, liberty and security of the person" have been breached because his credentials as a military policeman were withdrawn, when at the same time he remains at work, he performs some duties and assumes some responsibilities compatible with his rank? Furthermore, he continues to be paid.

[14] The respondent argued that the applicant has been aware of the charges brought against her since December 2014, as well as the prosecution's evidence through disclosure, and that she did not request additional disclosure. According to the respondent, even if the applicant may have lapses in memory in some respects, her right to full answer and defence is not affected.

ANALYSIS AND DECISION

[15] Section 7 of the *Charter* reads as follows:

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Based on *Perrier*, the applicant argues that the Crown violated her right to security, because it did not respect the principle of fundamental justice requiring speedy justice in the military justice system as well as being contrary to the principle of fundamental justice relating to the right to full answer and defence.

[16] With respect, the Court is of the view that the Court Martial Appeal Court ruled on the effect of *Perrier* in two subsequent decisions made shortly after in the context of section 7 of the *Charter*. First, the Court Martial Appeal Court made a distinction between the situation in *Perrier* and that of *Master Corporal Larocque*, who had his military police credentials suspended following charges of criminal harassment,

disobeying an order from a superior as well as using a vehicle for unauthorized purposes. In his concurring reasons, Justice Goodwin expressed himself as follows, at paragraphs 54 and 55:

[54] How can the appellant claim his "life, liberty and security of the person" have been breached because his credentials as a military policeman were withdrawn, when at the same time he remains at work, he performs some duties and assumes some responsibilities compatible with his rank? Furthermore, he continues to be paid.

[55] This case is clearly distinguishable from that of Master Warrant Officer Perrier, in which this Court held, on November 24, 2000, there had been an infringement of his Charter right:

[Translation]
- Very briefly

Warrant Officer Perrier confessed to the theft of \$40,000 – The military judge in this trial had taken 24 months from the end of the investigation, thereby adding six months after the charge. This delay, with the other measures such as the relieving of his duties, the cessation of his pay, the commencement of clearance from the Forces, etc.... Furthermore, no evidence had been provided to explain this lengthy delay.

On the other hand, the Court Martial Appeal Court spoke again about the principle of fundamental justice addressed in *Perrier* in *Her Majesty the Queen v. Langlois*, 2001 CMAC 3 at paragraphs 16 to 18:

[16] In *Perrier*, it is true that this Court, at para. 44 of its reasons, referred to the "principle of fundamental justice that requires speedy justice", but in my view this was in the context of an abuse of process. It should be borne in mind that in *Perrier* the accused made a confession on August 7, 1997, was suspended without pay on August 13, 1997 and the indictment was not laid until June 22, 1999. In my opinion, *Perrier* only established as a principle of fundamental justice that there is a duty to act expeditiously in charging a person who admits having committed the crime.

[17] In *Larocque*, I noted that at para. 17 Létourneau J.A. identified the principle of fundamental justice more clearly than the Court did in *Perrier*. In his view, the principle in the circumstances was the following:

[TRANSLATION]

... a person arrested without a warrant because the authorities have reasonable grounds to believe he or she has committed an offence, whether detained or discharged, must be charged as soon as it is physically possible and without unnecessary delay, unless in the exercise of their discretion the authorities decide not to prosecute.

[18] The conclusion has to be, in my view, that the pre-charge delay is a factor that has an influence in identifying a principle of fundamental justice, but that factor does not by itself imply a breach of fundamental justice. The pre-charge delay should rather be taken together with other factors, the combined effect of which places the government's conduct in the "residual category" described by L'Heureux-Dubé J. in *O'Connor* (supra, para. 12) at 463:

... the panoply of diverse and sometimes unforeseeable circumstances in which a prosecution is conducted in such a matter as to connote unfairness or vexatiousness of such a degree that it contravenes fundamental notions of justice and thus undermines the integrity of the judicial process.

[17] The Court rejects the claims by the applicant that she was for all intents and purposes charged on 4 June 2013, when her military police credentials were suspended. The Court also rejected her claims that she only knew what the allegations were during the interview of 7 October 2013 with investigator Dingwall. First, the letter informing her of the suspension of her credentials sufficiently stated the reasons why her military police credentials were suspended. Although this letter did not mention the particular incidents that she was suspected of, she cannot claim that the information was insufficient and that the shock she had spanning several months, allegedly prevented her from rereading this letter and to understand it or to have it explained afterwards. The applicant is an experienced military police member whose application to become an investigator at the National Investigation Service was accepted. Moreover, the suspension of military police credentials is a preventative administrative measure that can be applied only to individuals appointed under section 156 of the *National Defence Act*, which should not be confused with a career review board or administrative measures applicable to all the members of the Canadian Forces, such as counselling and probation or suspension from military duty.

[18] With respect to the investigation of Master Corporal O'Brien, the Court rejects the applicant's claims that it was of an administrative nature and that investigator Dingwall did not have reasonable and probable grounds to believe that other offences had been committed by the applicant. First, the Court is satisfied that this investigation by an investigator of the National Investigation Service was aiming to establish the evidence or absence of evidence that could result in criminal and disciplinary charges being laid. Investigator Dingwall testified that the investigation was launched following a complaint by two individuals. This was not an administrative investigation conducted following a request from Master Corporal O'Brien's chain of command for administrative purposes related to the military police credentials review board (see orders 2-730 and 2-730.1, VD1-5). The investigator clearly indicated to the applicant, during the interview of 7 October 2013, that the scope of his investigation was of a criminal and disciplinary nature. Second, Investigator Dingwall's reasons for widening his investigation to cover the period when the applicant and her husband were posted at the same time to Trenton are logical and consistent. The widening of the scope of the investigation and the investigator's methods indeed contributed to prolonging the total duration of the investigation, but these actions were justified by the investigator. He did not have to close his investigation because the individual being investigated found that it had gone on long enough.

[19] The Court accepts that the applicant experienced significant stress, anxiety and moments of depression from the time that her military police credentials were suspended, based on her own testimony. However, it would be erroneous in fact and in law to find that her situation is similar to that of *Perrier*, in view of the other decisions in this trilogy, i.e., the decisions of the Court Martial Appeal Court in *Larocque* and

Langlois. Although the Court understands very well the applicant's reasoning on this question, the Court cannot uphold 4 June 2013 as the starting point of the delay. The Court finds that the starting point for calculating the delay is 7 October 2013, during the interview with Investigator Dingwall. This resulted in reducing the total duration of the period from twenty-six to twenty-two months, which in itself is a very significant delay that must be explained. The evidence does not support the conclusion that the total period of the investigation was unreasonable in the circumstances, given the complexity of the investigation attributable to the delays inherent in Investigator Dingwall's manual review of 6000 lines of information. Furthermore, Investigator Dingwall explained that it was a delicate investigation, since it related to a member of the military police and that he had to conduct it alone for all intents and purposes. He explained his use of time and the other duties he had to perform during this period. The applicant's testimony abundantly illustrates that the stress, anguish and anxiety that she experienced can be attributed in large part to the suspension of her military police credentials. It must be concluded that the circumstances of this case are not sufficient to establish a breach of section 7 in violation of the principle of fundamental justice, expressed in *Langlois*, that an individual must be charged as soon as physically possible and without unnecessary delay, unless in the exercise of their discretion the authorities decide not to prosecute. Here, the investigation ended on November 2014 and the initial charges were brought less than one year later.

[20] With respect to the part of the application that alleges the violation to the applicant's right to security because her mental health and memory loss prevent her from being able to exercise her right to full answer and defence, the Court is not satisfied that there is support on a balance of probabilities for such an assertion. For her to claim not to have known and still not know why her military police credentials were suspended because she was in shock for several months since the announcement of her suspension was not supported by the evidence. The letter of 3 June 2013 provided her with the reasons for the suspension of her military police credentials, although it did not note any specific incidents. These are sufficiently specific allegations in the context of the application of the rules surrounding the governance of the Military Police Group. The memory loss and the other elements that she raised for her inability to benefit from a full answer and defence must be assessed in the context of the proceedings of this court martial. The viewing of the interview that she granted on 7 October 2013 shows that she provided explanations to the investigator for each of the questions that she was asked. When she was unable to provide a specific explanation, she expressed her inability to do so by giving her reasons. For example, when the investigator gave her the name of an individual with respect to whom she allegedly performed a query and that she did not know said name, the applicant indicated that she might have performed the query at the request of another military police member. Such an explanation is logical and consistent in the circumstances. The applicant knew since December 2014 the allegations against her at the time of the laying of the initial charges and the charges were preferred in March 2015, at the same time that she received the disclosure of evidence. As an experienced military police member, she was able to or could have taken notes as part of her investigations or in completing all her military police duties for the entire period in question. Even if her memory had been failing in some respects

since June 2013, she had the means and the training required to use the tools to refresh her memory of the actions that she took as part of her duties during the period covered by the charges. Furthermore, the evidence indicated that the investigator obtained a number of the applicant's notebooks relating to the period covered by the charges. Again, the Court is not satisfied that the applicant established on a balance of probabilities that she is unable to exercise her right to full answer and defence because of her memory loss. If the applicant is dissatisfied with the details that appeared in the two charges, the Court grants her permission to present a new application for details.

FOR THESE REASONS, THE COURT

[21] **DISMISSES** the application.

Counsel:

The Director of Military Prosecutions, as represented by Major A.-C. Samson and Major A. Van der Linde

Lieutenant-Commander P.D. Desbiens, Defence Counsel Services, counsel for the applicant