COURT MARTIAL

Citation: *R. v. Tuckett*, 2019 CM 3006

Date : 20190717
Docket : 201845

Standing Court Martial

Canadian Forces Base Borden
Borden, Ontario, Canada

Between :

Master Corporal W.A. Tuckett, Applicant

- and -

Her Majesty the Queen, Respondent

Before : Lieutenant-Colonel L.-V. d'Auteuil, D.C.M.J.

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

(Orally)

Introduction

[1] Master Corporal Tuckett is charged with one offence of conduct to the prejudice of good order and discipline contrary to section 129 of *National Defence Act* (*NDA*) for having harassed Master Corporal Chedore between 1 January and 28 February 2017 at Canadian Forces Base (CFB) Borden, and with a second offence of the exact same nature for having said some comments to Master Corporal Laramee about Master Corporal Chedore on or about 20 February 2017, again at CFB Borden.

[2] At the opening of this trial by Standing Court Martial on 15 July 2019, by way of an application made pursuant to subparagraph 112.05(5)(*e*) of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O), and for which a notice in writing was received by the Office of the Chief Military Judge on 11 July 2019, Master

Corporal Tuckett indicated that he was seeking an order from the presiding military judge for a stay of proceedings pursuant to subsection 24(1) of the *Canadian Charter of Rights and Freedoms* for an alleged infringement of his right to be tried within a reasonable time guaranteed under paragraph 11(*b*) of the *Charter*.

[3] The applicant is claiming that the delay of 19 months and 18 days representing the time between the time the charges were laid on 6 December 2017 and the anticipated end of this court martial on 24 July 2019, or alternately the delay of 23 months and 28 representing the time between the end of the unit investigation and the anticipated end of this court martial on 24 July 2019, is unreasonable. According to the applicant, this overall delay is above the presumptive ceiling of 18 months established by the Supreme Court of Canada (SCC) in its decision of *R. v. Jordan*, 2016 SCC 27, and *R. v. Cody*, 2017 SCC 31. He is of the opinion that the prosecution is unable to prove exceptional circumstances that would justify such delay.

[4] The evidence on this application consisted of an Agreed Statement of Facts and a bundle of emails exchanged between the prosecution and defence counsel regarding further disclosure on the notice of expert testimony provided by the prosecution in the course of the preparation for the hearing on another application made by defence counsel challenging the constitutionality of section 129 of the *NDA*.

[5] The Agreed Statement of Facts reads as follows:

> "AGREED STATEMENT OF FACTS
>
> 1. On 6 December 2017, the Applicant was charged with three offences pursuant to section 129 of the *National Defence Act* (NDA).
>
> 2. The complainants, MCpl Chedore and MCpl Laramee, were interviewed by the military police on 20 March 2017.
>
> 3. The Applicant was met by the military police on 21 and 22 March 2017 and declined to be interviewed.
>
> 4. On 1 April 2017, the military police distributed its investigative report to the Applicant's unit and indicated that no further military police investigation was contemplated.
>
> 5. A Unit Disciplinary Investigation was then conducted by MWO Brogaard.
>
> 6. MCpl Laramee was interviewed by MWO Brogaard on 29 May 2017.
>
> 7. MCpl Chedore was interviewed by MWO Brogaard on 20 June 2017.

8. The Applicant was interviewed on 27 July 2017 by MWO Brogaard.

9. No other evidence was gathered after 27 July 2017 by the unit or the military police until charges were laid against the Applicant on 6 December 2017.

10. MWO Brogaard contacted the Assistant Judge Advocate General (AJAG) – Prairie Region for legal advice on 16 August 2017.

11. The AJAG`s office contacted the military police to obtain the GO report and corresponding audio and video recordings and received the disclosure on 1 September 2017.

12. MWO Brogaard received pre-charge advice from the Deputy Judge Advocate on 2 October 2017.

13. On 11 October 2017, MWO Brogaard requested disclosure from the military police because he needed to provide the disclosure to the Applicant and his presiding officer. He was not permitted to copy the disclosure he had previously received due to military police policy.

14. From 16 October to 20 November 2017, MWO Brogaard was participating in an exercise and had limited access to the Defence Wide Area Network.

15. Upon his return following the exercise, MWO Brogaard prepared the Record of Disciplinary Proceedings which was signed on 6 December 2017.

16. On 19 March 2018, a request for disclosure of the evidence by the Applicant through counsels was received by the Director of Military Prosecution (DMP). The request specifically asked for video and audio tapes made during the investigation.

17. On 23 March 2018 the Referral Authority forwarded the application to the DMP.

18. On 13 April 2018, the file was assigned to Lt(N) Besner, RMP Central Region.

19. On 18 May 2018, the first disclosure package was sent by the Respondent to the Applicant.

20. Charges were preferred by Lt(N) Besner on 16 July 2018. Lt(N) Besner had been posted to the Director of Military Prosecutions on 4 March 2018. Although the file had been assigned on 13 April 2018, at this time any preferral decisions required the approval of the Deputy Director of Military Prosecutions. Between 15 and 27 June 2018 Lt(N) Besner was assigned to a court martial in Halifax.

21. On 27 July 2018, the Respondent requested to participate in a teleconference to schedule the court martial of MCpl Tuckett. The Respondent also indicated that further additional evidence would be disclosed to the Applicant as soon as possible.

22. On 31 July 2018, the Applicant, through counsel, indicated that no discussion, negotiation nor plea offer had been made regarding the charges laid against the Applicant and that as such scheduling a trial appeared premature. The Respondent agreed to discuss and to make a plea offer.

23. On 15 October 2018, following, unsuccessful negotiations, the prosecution requested and the defence agreed to participate in a scheduling conference. Following the conference which took place on 18 October 2018, the Applicant's trial was scheduled for 18 February 2019.

24. Also on 18 October 2018, the Applicant requested the prosecution's will-say as no such document had yet been provided to the defence.

25. On 25 October 2018, the prosecutor provided a will-say to the Applicant.

26. On 29 January 2019, upon discovering that it had not previously been disclosed, the Respondent provided the Applicant with a one-page form allegedly signed by the Applicant, which indicated his acknowledgment of the Base Borden Standing Administrative Instructions (BBSAI).

27. On 30 January 2019, the defence requested in writing that the Respondent ensured that all documents it intended to use in court, or that were relevant, and any further interviews of witnesses had been disclosed to the Applicant.

28. On 1 February 2019, the Respondent disclosed to the Applicant the email from the Applicant's unit adjutant along with which the Respondent had received the BBSAI acknowledgment form itself, as well as emails between the Respondent and Sgt Mootrey, discussing the conditions under which the form had allegedly been signed by the

Applicant and the possibility that he would be called to testify as to this signature.

29. Also on 1 February 2019, the Respondent informed the Applicant that if he were unwilling to allow the BBSAI acknowledgment form to be entered on consent as evidence at trial, an additional witness would be called to authenticate this document.

30. On 4 February 2019, the Respondent notified the applicant by email that two of the witnesses whose names appeared on the will-say would not be called. The Applicant requested that the Respondent make these witnesses available for cross-examination; the Respondent did not agree to do so. On 7 February 2019, the Respondent provided the Applicant with a supplemental will-say indicating that three of the original witnesses would still be called, one new witness would be called and two original witnesses would not be called.

31. On 7 February 2019, the Applicant notified the Respondent and the court martial administrator of his intent to challenge the constitutionality of s. 129 of the *National Defence Act* (*NDA*), namely that the section violated s.2 (b) of the *Canadian Charter of Rights and Freedoms*.

32. On 15 February 2019, the prosecution requested an adjournment to prepare its response to the Applicant's constitutional challenge to s. 129 of the *NDA*, which would include the calling of expert evidence.

33. On 18 February 2019 the Court determined that the application hearing would begin on 15 April 2019 and that the trial proper would begin on 21 May 2019.

34. On 18 March 2019, the Respondent provided the Applicant with notices of expert testimony and summaries of the anticipated opinions for the expert witnesses it intended to call.

35. On 29 March 2019, the Applicant informed in writing the Respondent that the notices it provided did not contain a summary of the anticipated opinions of its experts. The Applicant explained that the notices briefly covered a list of topics but did not provide the specific opinion of the Respondent's experts on those topics nor their rational for reaching such conclusions. The Applicant further explained that as his experts were only called to rebut the Respondent's burden of proof, they would not be able to finalize their reports until they were provided a meaningful summary of the Respondent's expert opinions. The Applicant requested that this be done as soon as possible to avoid delay.

36. Also on 29 March 2019, the Respondent replied to the Applicant, without agreeing to the Applicant's claim that there was insufficient information, in an effort to provide further details to satisfy the request.

37. On 10 April 2019, the Respondent acknowledged in writing that the Applicant indicated that he still did not have enough information about the anticipated expert opinions to prepare. As a result, on the same date, the Respondent provided further information on the opinion of CWO Halpin and Commodore Patterson.

38. On 14 April 2019, the Respondent, without agreeing to the claim that it had previously been insufficient, in an effort to satisfy the Applicant's request, provided further information on the opinion of Dr. Dursun.

39. On 15 April 2019, the Applicant argued that he had not received sufficient and/or timely notice of the anticipated expert opinions and requested an adjournment to prepare. The Applicant provided the Court evidence of the content of the expert evidence notices provided by the Respondent and of the date when they were provided to the Applicant. The applicant was granted an adjournment until 21 May 2019, in part due to the unavailability of the prosecution expert witnesses before 21 May 2019. The applicant's trial was postponed until 15 July 2019, with proceedings scheduled to end on 24 July 2019.

40. On 31 May 2019, the prosecution mailed to the Applicant a fourth disclosure package containing the transcript of MCpl Chedore's interview.

41. On 6 June 2019, the Applicant received the transcript of the video-recorded interview of MCpl Chedore and inquired if a video recording of the interview existed as it had not been disclosed to the Applicant. After being informed by the Respondent that a video recording did exist, the Applicant requested an explanation as to why it had not been disclosed in light of the important delay already accrued in this case.

42. On 7 June 2019, the prosecution mailed the Applicant a fifth supplemental disclosure package which was received by the Applicant on 11 June 2019. The fifth disclosure package included the video recorded interview of MCpl Chedore, one of the complainants, lasting approximately 1 hour and 30 minutes. MCpl Chedore is the only witness of the alleged harassment referred to in the first charge that the Respondent is calling to testify. Though the recording had not previously been disclosed due to an oversight, the fact that the interview had been conducted and had been recorded was noted on a form contained in the

> military police report that had been previously disclosed on 18 May 2018.
>
> 43. On 11 July 2019, the Applicant provided notice to the Respondent and to the court martial administrator of his intention to raise the present preliminary application on 15 July 2019.
>
> 44. Prior to this application, the trial was scheduled to end on 24 July 2019."

[6] On the morning of 15 July 2019, prior to the commencement of this trial, I delivered my decision on the preliminary matter regarding the challenge on the constitutionality of section 129 of the *NDA.* I then opened the court martial and dismissed the prosecution's responding application to summarily dismiss the present *Charter* 11(*b*) application.

[7] Further to my decision dismissing the prosecution's application, I granted an adjournment to the parties to allow them to prepare an Agreed Statement of Facts for the purpose of easing the court martial proceedings. The hearing for this 11(*b*) *Charter* application was then held on 16 July 2019.

[8] Paragraph 11(*b*) of the *Charter* reads in part as follows:

> 11. Any person charged with an offence has the right
>
> . . .
>
> (b) to be tried within a reasonable time.

[9] As said by the Court Martial Appeal Court (CMAC) in *R. v. LeGresley*, 2008 CMAC 2 at paragraph 36:

> It is useful at this point to briefly review the interests that s. 11 of the *Charter* is designed to protect. The primary purpose of s. 11(*b*) is the protection of the individual rights of accused persons: (1) the right to security of the person, (2) the right to liberty, and (3) the right to a fair trial. The right to a fair trial is protected by attempting to ensure that proceedings take place while evidence is available and fresh. A secondary interest of society as a whole has also been recognized by the Supreme Court (*Morin*, above), namely that those who are accused of crimes are brought to trial and dealt with according to the law and are treated humanely and fairly.

[10] To determine if there has been an unreasonable delay in trial proceedings, contrary to paragraph 11(*b*) of the *Charter*, the SCC decided in 2016 in its decision of *Jordan* that a change of direction was required and set out a new framework for applying paragraph 11(*b*) of the *Charter*. The latter was confirmed in another SCC decision in *Cody* in 2017.

[11] The applicable test is as follows:

(a) the court must calculate the total number of months from the time a charge is laid to the anticipated completion of the trial;

(b) the court must subtract the number of months waived by the defence or caused by the defence;

(c) if the remainder is more than 30 months in superior court, more than 30 months in provincial court after a preliminary hearing, or more than 18 months in provincial court without a preliminary hearing, the delay is presumptively unreasonable. The onus then shifts to the prosecution to justify the delay due to exceptional circumstances; if it does not, paragraph 11(*b*) of the *Charter* is violated; and

(d) if the remainder is below the relevant ceiling, the defence must demonstrate that the delay was nonetheless unreasonable to demonstrate a paragraph 11(*b*) *Charter* violation.

[12] In *R. v. Thiele*, 2016 CM 4015, *R. v. Cubias-Gonzales*, 2017 CM 3003 and, more recently, *R. v. McGregor*, 2019 CM 4011, courts martial have established that a presumptive ceiling of 18 months is applicable to litigants in the military justice system.

[13] The minimum remedy for a paragraph 11(*b*) *Charter* violation is a stay of proceedings as stated in *R. v. Rahey*, [1987] 1 S.C.R. 588.

[14] Applying the test accepted by this Court, the first step is to calculate the total number of months from the time the charges were laid to the anticipated completion of the trial.

[15] According to the applicant, in circumstances as the ones in this case, the calculation of the overall delay should start from the time the unit investigation was terminated and not from the time charges were initially laid.

[16] To support its suggestions, he referred the Court to some decisions, such as *R. v. Luoma*, 2016 ONCJ 670, *R. v. Gleiser*, 2017 ONSC 2858 and *R. v. Albadry*, 2018 ONCJ 114. I read them carefully and I want to say that I am not bound by these decisions.

[17] The SCC decisions have clearly indicated, as in *R. v. Kalanj*, [1989] 1 S.C.R. 1594, at page 1607, in order to compute delay in a matter dealing with paragraph 11(*b*) of the *Charter*, the starting point is the moment when a charge is laid:

> To this extent, then, I am in agreement with the above quoted comments of Macfarlane J.A. in *Mackintosh* but, with respect, I do not agree with the majority in that case that "charged" has a flexible meaning varying with the circumstances of the case. I would therefore hold that a person is "charged with an offence" within the meaning of s. 11 of the *Charter* when information is sworn alleging an offence against him, or where a direct indictment is laid against him when no information is sworn. It would follow, then, that the reckoning of time in considering whether a person has been accorded a trial within a reasonable time under s. 11 (*b*) will

> commence with the information or indictment, where no information has been laid, and will continue until the completion of the trial: see *R. v. Rahey*, [1987] 1 S.C.R. 588, at p. 633, where La Forest J. said:
>
> > The question of delay must be open to assessment at all stages of a criminal proceeding, from the laying of the charge to the rendering of judgment at trial.
> > [Emphasis in original]

[18] The CMAC decision in *LeGresley*, at paragraph 41, has confirmed that approach and the fact that in the military justice system, the delay must be considered from the time a charge is laid when the charge is recorded in a RDP, dated and signed by a laying authority.

[19] The SCC and CMAC decisions are clearly binding on this Court and I do not see how it could be possible for this court martial to adopt a reasoning such as the judge's in *Luoma*. Consequently, decisions to which the applicant alluded were never followed, and as for the one in *Luoma*, other trial level decisions did not follow or distinguish themselves from adopting such reasoning. I understand the position taken by defence counsel regarding pre-charge delay in this very matter. He would like me to consider this pre-charge delay as being part of the overall delay to be assessed in accordance with the decision made by the SCC in *Jordan* and *Cody*. However, I do not see any reason to deviate from what has been expressed by the SCC in *Kalanj* at page 1609:

> Where, however, the investigation reveals evidence which would justify the swearing of an information, then for the first time the assessment of a reasonable period for the conclusion of the matter by trial becomes possible. It is for that reason that s. 11 limits its operation to the post-information period. Prior to the charge, the rights of the accused are protected by general law and guaranteed by ss. 7 , 8 , 9 and 10 of the *Charter* .

This reasoning has been confirmed by the CMAC in the decision of *R. v. Perrier*, [2000] CMAC- 434. Basically, even if it took some time from the time the unit investigation was over to the time charges were initially laid, there was a clear intent to proceed with the laying of charges. And for me, I do not see how it could be legally possible, in light of the comments made in *Kalanj* and the reasoning adopted in *Perrier*, to consider the pre-charge delay between July 2017 and December 2017 as a delay to be dealt with under sections 7 to 10 of the *Charter*. I think it would not be the proper way to deal with the pre-charge delay as raised by the applicant in this matter.

[20] Then, for this court martial, calculation of the total number of months goes from the time the charges were laid to the anticipated completion of the trial. Charges were laid on 6 December 2017 and the anticipated end of the trial is on 24 July 2019. Then, the overall delay is 19 months and 18 days, as suggested by both parties.

[21] The second step is to find out if any time is attributable to the applicant, which would automatically reduce the overall period considered for the analysis. It could be any delay waived by the defence or delay caused by:

(a) deliberate and calculated defence tactics;

(b) not being ready to proceed when the Court and the prosecution are ready; and

(c) other defence conduct or action as found by the trial judge.

[22] In this case, there is no evidence as a matter of delay that can attributed to Master Corporal Tuckett.

[23] A constitutional challenge of an *NDA* provision, even if the matter raised in this application was decided 22 years ago at trial level, does not appear to this Court as a frivolous or vexatious exercise by defence counsel, on behalf of his client, in order to delay things on its own. By raising such a serious issue, Master Corporal Tuckett limited himself putting before the Court a potential question concerning the respect of his right to freedom of expression, which he is clearly entitled to do.

[24] The remaining delay is still 19 months and 18 days, and it is above the presumptive ceiling of 18 months. As a result, the delay is presumptively unreasonable and the burden shifts to the prosecution to justify the delay as having been due to exceptional circumstances.

[25] 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 (*Jordan*, at paragraph 69). There are two broad categories of exceptional circumstances:

(a) discrete and exceptional events, including medical or family emergencies affecting the accused, witnesses, counsel or the trial judge, or exceptional events that arise at trial such as a complainant's unexpected recantation. Cases with international issues such as extradition may also qualify as having exceptional circumstances; and

(b) particularly complex cases which involve voluminous disclosure, large numbers of witnesses, significant expert evidence, charges covering long periods of time, large numbers of charges, pre-trial applications, novel or complicated issues and large numbers of issues in dispute.

[26] In *Jordan*, the SCC expanded on the concept of discrete and exceptional events at paragraphs 73 to 75 as follows:

> [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).

[27] The prosecution argued that the time taken to deal with the unforeseen constitutional challenge made by defence counsel on behalf of Master Corporal Tuckett must be considered as a discrete event, and consequently, would bring back the total delay to deal with the present charges before this Court below the presumptive ceiling of 18 months.

[28] According to the prosecution, the court martial should consider the relevant period from the time initially set for trial, which is 18 February 2019, to the time set when the preliminary hearing took place, on 21 May 2019, as exceptional circumstances to be subtracted from the entire period of the delay considered.

[29] Obviously, defence counsel is of the opinion that such delay cannot qualify as exceptional circumstances, especially because of the position and attitude taken by the prosecution regarding the time to prepare and to disclose some information for the hearing on the preliminary application he filed on 7 February 2019.

[30] From the Court's perspective, the delay that shall be considered to determine this issue goes from the time the court martial was initially delayed because of the preliminary application made by counsel, which is 18 February 2019, to the time final addresses were made by counsel on this specific issue, which is 4 June 2019. It represents 106 days or 3 months and 16 days.

[31] During that period of time, the Court is clearly of the opinion that every single actor involved acted in good faith. Clearly, when parties determined a suitable date for the trial in October 2018, none of the parties thought that such preliminary issue would be raised. When it was mentioned for the first time, the prosecution, defence counsel and the Court did all they could to mitigate the impact of such matter on the issue of delay: a schedule was set to hear the preliminary application and the trial if need be, and

for providing written submissions. All actors committed to and respected the schedule set by the Court for the presumptive ceiling of 18 months being respected.

[32] However, in the context of a tight schedule for the hearing of the preliminary matter involving some complexity, if a dispute arises, it may impact on the delay if it is not mitigated promptly. Here, concerning expert opinion evidence, the parties decided to govern themselves in accordance with a provision of the *Criminal Code* concerning the proper notice to be given for expert evidence. The prosecution provided the notice as quickly as it could, but defence counsel considered that notice to be insufficient. The matter found resolution without the intervention of the Court, but resulted in a situation where defence counsel was unable to proceed.

[33] From the Court's perspective, nobody has acted in ways to delay the hearing of the preliminary matter. On the contrary, the prosecution tried to provide additional information to defence counsel about its own experts, and a point in time was reached where defence counsel was satisfied. However, even if the latter considered that he had enough information, it impacted on the delay to deal with the trial itself.

[34] Being close to the 18-month ceiling, it is with that perspective that the Court considered rescheduling the preliminary hearing and the trial itself that would reflect the availability of all actors and experts. The first opportunity to proceed with the trial if need be, after having heard the preliminary matter and considering the overall circumstances, resulted in going beyond that presumptive ceiling of 18 months.

[35] I would agree with the prosecution that this period of time qualified as a discrete event and shall be qualified by the Court as exceptional circumstances. Everybody did their best to mitigate the impact on delay to proceed with the trial. Unfortunate events may arise in the course of litigation with no intent to delay anything. As *Jordan* suggests, the assessment of delay must take into consideration the time a legitimate question is raised before the court and how close that question comes before the presumptive ceiling is exceeded.

[36] Considering the matter as a whole, the Court concludes that the exceptional circumstances criteria were met in this case and, consequently, a period of 3 months and 16 days must be subtracted from the period of 19 months and 18 days.

[37] It leaves the Court with a total period of 16 months and 12 days, which is below the presumptive ceiling of 18 months.

[38] As a result, the Court concludes that the delay is reasonable and that the right of Master Corporal Tuckett to be tried within a reasonable time has not been violated.

[39] The Court would like to add that on the issue of late disclosure raised by defence counsel concerning the evidence disclosed for the main trial, I understand that this issue is an oversight by both parties who did not notice, despite the information they had in their respective possession, that a video-recorded interview of Master Corporal Chedore

existed. As a result, despite the late disclosure, and because of inherent circumstances in this case, such situation has not impacted on the fact that the defence is ready to proceed to trial. Consequently, the Court considers that this fact does not need to be the subject of an analysis in the context of this application.

FOR ALL THESE REASONS, THE COURT:

[40] **DECLARES** that the right of Master Corporal Tuckett to be tried within a reasonable time under paragraph 11(*b*) of the *Charter* was not infringed.

[41] **DISMISSES** the application made by Master Corporal Tuckett.

Counsel:

Major A. Gélinas-Proulx, Defence Counsel Services, Counsel for Master Corporal W.A. Tuckett

The Director of Military Prosecutions as represented by Major L. Langlois and Lieutenant(N) J. Besner