

**Citation:** *R. v. Corporal T. LeBlanc*, 2009 CM 4020

**Docket:** 200963

**GENERAL COURT MARTIAL  
CANADA  
ALBERTA  
CANADIAN FORCES BASE EDMONTON**

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**Date:** 10 November 2009

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**PRESIDING: LIEUTENANT-COLONEL J-G PERRON, M.J.**

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**HER MAJESTY THE QUEEN  
v.  
CORPORAL T. LEBLANC  
(Applicant)**

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**Warning**

**Restriction on publication:** By court order made under section 179 of the *National Defence Act* and section 486.4 of the *Criminal Code*, information that could disclose the identity of the person described in this judgement as the complainant shall not be published in any document or broadcast or transmitted in any way.

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**DECISION RESPECTING AN APPLICATION THAT THE GENERAL COURT MARTIAL IS NOT AN INDEPENDENT AND IMPARTIAL TRIBUNAL MADE UNDER S. 11(D) OF THE *CANADIAN CHARTER OF RIGHTS AND FREEDOMS*.  
(Rendered orally)**

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[1] The applicant, Corporal LeBlanc, has made an application under subparagraph 5(e) of article 112.05 of Queen's Regulations and Orders, alleging that paragraphs (2) and (3) of s. 165.21 and ss. 166 through 168 of the *National Defence Act* and articles 101.15 through 101.17 of Queen's Regulations and Orders breach s. 11(d) of the *Charter of Rights and Freedoms*.

[2] The applicant submits these sections and these articles are unconstitutional because a judge appointed or renewed in accordance with the present legislation does not

enjoy sufficient security of tenure, financial security or institutional independence to meet the requirements of the *Charter* and the applicable jurisprudence.

[3] The applicant is seeking a declaration that this General Court Martial is not an independent and impartial tribunal pursuant to s. 11(d) of the *Charter*; thus since this court cannot preside over the applicant's case, the applicant requests a conditional stay of proceedings until such time as Parliament remedies the problem.

[4] The respondent submits that s. 165.21 of the *National Defence Act* and articles 101.15 to 101.17 of the Queen's Regulations and Orders do not violate s. 11(d) of the *Charter*, and should the court find that s. 11(d) is violated by appointing military judges for a term of five years, the respondent submits that the words, "for a term of five years" should be severed from paragraph (2) of s. 165.21, and that paragraph (3) of s. 165.21 should be struck down and declared to be of no force and effect; and that should the court martial find that the renewal provisions of the Queen's Regulations and Orders are insufficient vis-à-vis security of tenure, the respondent asks that this court read in additional protections such that military judges can continue to exercise their functions. The respondent also objects to the conditional stay of proceedings.

[5] The only evidence presented by the applicant is the appointment of Commander Lamont as a military judge, 2008-1034, found in *The Canada Gazette. Part II*. Vol. 142, No. 26 (20 June 2008). The court took judicial notice of certain facts and matters under Military Rule of Evidence 15.

[6] I have considered the written and oral submissions of counsel. I have also reviewed the relevant case law as presented by counsel. I have carefully studied the decision respecting an application that the General Court Martial is not an independent and impartial tribunal under s. 7 and s. 11(d) of the *Charter*, made by Chief Military Judge Dutil in the *Master Seaman Middlemiss* General Court Martial.

[7] I find that the applicant in the present case has not brought any additional or different facts or legal arguments from what appears to have been presented at the *Middlemiss* application.

[8] I fully concur with Colonel Dutil's decision in the *Master Seaman Middlemiss* General Court Martial application. For the reasons contained in Colonel Dutil's decision on this exact, identical question, I, too, come to the conclusion that the rulings declaring the invalidity under s. 52 of the *Constitution Act* and the severance of the words, "for a term of five years" in paragraph (2) of s. 165.21 of the *National Defence Act*, as well as the striking down of paragraph (3) of s. 165.21 of the *National Defence Act* are still in effect. Therefore, the amended *National Defence Act* does not violate s. 11(d) of the *Charter*.

[9] For these reasons, this court denies the application challenging the judicial independence of this court martial made pursuant to paragraph 112.05(5)(e). These proceedings under subparagraph 5(e) of 112.05 are terminated.

LIEUTENANT-COLONEL J-G PERRON, M.J.

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