

**Citation:** *R. v. Captain S.H. Abu-Ghosh*, 2008 CM 1019

**Docket:** 200771

**DISCIPLINARY COURT MARTIAL  
CANADA  
ONTARIO  
8 WING TRENTON**

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**Date:** 16 June 2008

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**PRESIDING: COLONEL M. DUTIL, C.M.J.**

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**HER MAJESTY THE QUEEN**

**v.**

**CAPTAIN S. M. ABU-GHOSH**

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**DECISION ON PLEA IN BAR OF TRIAL APPLICATION FOR THE COURT  
LACKING JURISDICTION (QR&O ARTS 112.05(5)(b) AND 112.24)  
(Rendered orally)**

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[1] Pursuant to the application made by the defence that this court has no jurisdiction with regard to the fact that the accused has indicated that he doesn't wish to be tried by a Disciplinary Court Martial and that the Court Martial Appeal Court decision in *Trepanier* delivered on April 24, 2008 binds this court, and considering that the prosecution also agrees that, the accused having indicated that he doesn't wish to be tried by a Disciplinary Court Martial, the court has no jurisdiction to continue; the court, in adopting the reasoning by my colleague Judge d'Auteuil in *R. v. Strong* delivered on 15 May 2008, will grant the application presented by defence and terminate the proceedings on all charges pursuant to QR&O 112.24(6).

[2] For the record, the court is of the view that it is regrettable that judicial resources, as well as counsel and support staff, including panel members, had to come here today. Based on the prosecution's position this, in my view, could have been avoided considering the authority and powers vested in the prosecution provided at section 165.12 (2) and (3) of the *National Defence Act*, in particular, subsection (3) which states, and I quote:

Withdrawing a charge does not preclude it from being  
proceeded with at any subsequent time....

Colonel M. Dutil  
Chief Military Judge

Counsel:

Major J.J. Samson, Regional Military Prosecutions Atlantic  
Counsel for Her Majesty The Queen  
Captain D. Morel, 33 Canadian Brigade Group Headquarters  
Assistant Counsel for Her Majesty The Queen  
Lieutenant-Commander J. McMunagle, Directorate of Defence Counsel Services  
Counsel for Captain Abu-Ghosh