Citation: *R. v. Master Corporal J.R.J. McRae,* 2007 CM 4004

Docket: 200631

STANDING COURT MARTIAL
CANADA
QUÉBEC
GATINEAU

Date: 22 December 2006

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

HER MAJESTY THE QUEEN
v.
MASTER CORPORAL J.R.J. MCRAE
(Applicant)

DECISION RESPECTING AN APPLICATION PRESENTED UNDER 112.05(5(e) OF THE QUEEN'S REGULATIONS AND ORDERS FOR THE CANADIAN FORCES PURSUANT TO SUBSECTION 11(b) OF THE *CHARTER OF RIGHTS AND FREEDOMS* AND THE REMEDY PURSUANT TO SUBSECTION 24(1) OF THE *CHARTER*.
(Rendered orally)

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[1] The accused, C84 365 830 Master Corporal McRae, is charged with having committed three offences. He is charged with two counts of having disobeyed a lawful command of a superior and one charge of neglect to the prejudice of good order and discipline. The applicant, the accused, has made an application under sub-paragraph 112.05(5)(e) of the Queen's Regulations and Orders for the Canadian Forces. The applicant alleges that an unreasonable delay has occurred in this matter and, thus, his rights under subsection 11(b) of the *Charter of Rights and Freedoms* have been breached. The applicant requests that, as the appropriate remedy for this alleged breach, the court order a stay of proceedings pursuant to subsection 24(1) of the *Charter of Rights and Freedoms.*

[2] The evidence presented by the applicant consisted of an agreed statement of facts, as well as the testimony of four witnesses.

[3] The respondent, the prosecution, submits the applicant has not met the onus of demonstrating that the delay in bringing this matter to trial was unreasonable in

all the circumstances of this case. The respondent also submits that the applicant has not demonstrated that his right to a fair trial is affected by his inability to present full answer and defence to the charges, or that allowing the charges to proceed would result in an abuse of process. Finally, the respondent submits that this application requesting a stay of proceedings pursuant to section 24 of the *Charter of Rights and Freedoms* be dismissed. The evidence presented by the respondent in support of this position consisted of the testimony of two witnesses and of documentary evidence. Although the court took judicial notice of the facts contained in Military Rule of Evidence 15, the court was not asked by either the applicant or the respondent to take judicial notice of any other fact under Military Rule of Evidence 16.

[4] The relevant provisions of the *Charter of Rights and Freedoms* that apply in this matter are subsections 11(b) and paragraph 24(1). Subsection 11(b) reads:

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

[5] Paragraph 24(1) reads as follows:

> **24.** (1)Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

[6] Section 162 of the *National Defence Act* reads as follows:

> **162.** Charges under the Code of Service Discipline shall be dealt with as expeditiously as the circumstances permit.

The title of this section is, Duty to Act Expeditiously.

[7] The applicant and the respondent agree that the leading case in dealing with this type of *Charter* motion is the 1992 Supreme Court of Canada decision in *R. v. Morin* [1992] 1 S.C.R. 771. This decision provides lower courts with direction as to the purpose of section 11(b). At paragraphs 26 to 30, Sopinka J., writing for the majority, six of seven—Chief Justice Lamer providing the dissenting judgement—indicated:

> The primary purpose of s. 11(*b*) is the protection of the individual rights of accused ...

[8] The individual rights which the section seeks to protect are the right to security of the person, the right to liberty and the right to a fair trial.

[9] He then explains that the right to security of the person is protected by seeking to minimize the anxiety, concern and stigma of exposure to criminal proceedings. The right to liberty is protected by seeking to minimize exposure to the restrictions on liberty which result from pre-trial incarceration and restrictive bail conditions. The right to a fair trial is protected by attempting to ensure that proceedings take place while evidence is available and fresh. At paragraph 29, he states that society has an interest in seeing that the least fortunate of its citizens, who are accused of crimes, are treated humanely and fairly. In this respect, trials not conducted in a reasonable time, failed to enjoy the confidence of the public. Finally, at paragraph 30, citing *Conway*, a previous Supreme Court of Canada decision, he re-states the Supreme Court of Canada's recognition that the interests of the accused must be balanced by the interests of society and law enforcement. As the seriousness of the offence increases, so does the societal demand than the accused to be brought to trial.

[10] Justice Sopinka provides us with a general approach to a determination as to whether a right has been denied. At paragraph 31, he states that this general approach is a:

> ... judicial determination balancing the interests which the section is designed to protect against factors which either inevitably lead to delay [or are otherwise the cause of delay].

[11] He then indicates which factors are to be considered in analyzing how long is too long. These factors are: One, the length of the delay; two, the waiver of time periods; three, the reasons for the delay being inherent time requirements of the case, actions of the accused, actions of the Crown, limits on institutional resources and other reasons for delay; and finally, prejudice to the accused.

[12] The applicant and the respondent basically agree that this period of approximately 15 months from the time the charges were laid on 23 September 2005 to the date of the trial on 19 December 2006, is sufficient to raise the issue of the reasonableness of the delay. The respondent concedes that there is no explicit or implicit waiver by the applicant of his section 11(b) rights. The applicant suggests there were no actions by the Crown that added to the delay. The applicant and the respondent agree this matter deals with serious offences.

[13] The applicant and the respondent provided their analysis using these factors. As can be expected, each arrived at a different conclusion. Before I proceed with my analysis by following the factors provided in *Morin*, I will indicate the key dates and corresponding actions that I consider crucial in the determination of this motion.

[14] On 23 August and 9 September 2005, incidents allegedly took place. On 12 September 2005, a unit investigation by Warrant Officer Watters to substantiate charges was completed. On 23 September 2005, charges were laid. The applicant was provided with an Assisting Officer, Captain Gutoskie. On 27 September, the applicant was provided with the number for the DDCS duty counsel. On 28 September, the applicant elected to be tried by court martial.

[15] On 3 October, DJA Ottawa provided the CO of the accused, with the QR&O article 107.11 advice. On 20 October 2005, the commanding officer of the accused applied for disposal of the charges to the referral authority. On 28 October 2005, the referral authority referred the charges to Director of Military Prosecutions. On 31 October 2005, DMP received the referral package and Major J. Caron was assigned as the prosecutor.

[16] In early November, 2005 Master Corporal McRae sent an email to his Assisting Officer requesting to be represented by Lieutenant-Commander Lévesque, Defence Counsel Services. On 3 November, Captain Gutoskie replied to the applicant's email.

[17] From 13 December 2005 to 20 January 2006, Major Caron, the prosecutor, conducted additional interviews with potential witnesses, namely Warrant Officer Watters, PO2 De Guise and Corporal Tiffault.

[18] On 18 January 2006, Lieutenant-Colonel Lilienthal, the accused's commanding officer, informed the Director Defence Counsel Services, that Master Corporal McRae required the services of a defence counsel for his upcoming court martial and that he had specifically requested the services of Lieutenant-Commander J.C.P. Lévesque, should that officer be available. On 20 January 2006, Major Caron provided DDMP with a post-charge report. On 26 January 2006, Major Caron completed and signed the charge sheet. On 30 January, Major Caron sent the disclosure package to DDCS.

[19] On 1 February 2006, DDMP forwarded the charge sheet to the Court Martial Administrator, indicating the prosecution needed one day to present is case and was ready to proceed as of 15 February 2006, or on two weeks' notice. On 6 February 2006, the Court Martial Administrator, informed both the prosecution and defence that only two of the three military judges were available to preside during the early months of 2006 and that one military judge, with the exception of a couple of weeks, was already sitting until the end of May, 2006. The Court Martial Administrator also informed them that, due to the restriction in judicial availability, her office was unable to propose a trial date and request that a military judge be assigned in order to convene a court martial for that matter. The CMA also informed that this, and all cases that had not been convened at the time, would be prioritized based on the preferral date of that

matter. On 7 February, Lieutenant-Commander J.C.P. Lévesque was assigned as defence counsel for the applicant.

[20] On 11 April, an email was sent by Major Caron concerning rumours of a posting to Canada. The evidence does not tell me to whom the email was sent. On 19 April 2006, Major Caron inquired upon the Administrative Assistant to DDCS as to whom was assigned to represent Master Corporal McRae. On 20 April, Major Caron was informed Lieutenant-Commander Lévesque represented Master Corporal McRae.

[21] On 6 June, the prosecutor advised the offices of DDCS and DCMA of the posting of the accused to Canada.

[22] On 17 July, defence counsel advised the Deputy Court Martial Administrator that it would be difficult to set a trial date before October since he was on parental leave from 25 June until 9 September 2006, and would participate in a course from 10 to 15 September and would need two weeks to "resume cruise speed at the office." Finally, he reminded the Deputy Court Martial Administrator that the JAG conference would be held from 23 to 28 October. On 17 July, the Deputy Court Martial Administrator contacted the prosecutor stating that defence counsel is on parental leave and would resume court work in October, 2006. On 17 July also, in emails between counsel, the prosecutor indicates that he is ready to proceed in October, '06 but not during the JAG conference.

[23] On 3 October 2006, the Deputy Court Martial Administrator indicated there was judicial availability for the week of 19 December 2006. On 11 October 2006, Lieutenant-Commander Lévesque indicated, in an email to the Deputy Court Martial Administrator, that the defence would be ready to proceed on 19 December 2006. On 16 October, defence counsel requested additional disclosure. On 20 October, the prosecutor confirms his availability for the week of 19 December.

[24] On 11 November, defence counsel had further questions for the prosecutor concerning evidence issues. On 15 November, these questions were answered by the prosecutor, and on 1 December, the prosecutor provided the QR&O article 111.11 Will Say statements.

[25] Firstly, I agree with both counsel that, on its face, this 15 months' delay raises an issue as to its reasonableness. I also agree with both counsel that there has been no explicit or implicit waiver by the applicant of his section 11(b) rights.

[26] Inherent time requirements of the case. I must now address the reasons for the delay by firstly examining the inherent time requirements for this case. The applicant suggests that the inherent time requirements, or intake requirements, for this case is approximately six months. He breaks down this period as the first four months,

from 23 September 2005 to 1 February 2006, and then from 25 June 2006 to 15 September 2006. These two periods represent the initial process from the laying of the charge, on the 23rd of September, to the preferral of the charge by DMP and the period where defence counsel was on parental leave and attending the course.

[27] The respondent submits the period of 23 September 2005 to 1 February 2006 would form part of the inherent systemic delay of this case. The respondent also submits that the lack of judicial resources described in the 6 February 2006 CMA correspondence was due to the illness of the Chief Military Judge. This meant that only two of the three judges were available to hear cases and that these judges were booked until the end of July 2006 and that 32 cases were awaiting convening. The respondent argues that this lack of judicial resources, due to illness and the ensuing time period, should fall within the inherent time requirements in accordance with the reasoning provided by Justice McLaughlin in the *R. v. MacDougall* 1998 Supreme Court of Canada decision. Thus, I understand from his submission, that this four and a half month period, being from 06 February to end-June, would fall within the inherent time requirements for this case. Therefore, if I understand the respondent's submission, the inherent time requirements, or intake period, of this case would be a total of approximately eight and a half months. He concludes by saying that this intake period is neutral.

[28] Based on the evidence provided to me, I conclude that in the intake requirements of such a case should be approximately five months. This case, at first glance, does not appear overly complex. The prosecutor preferred the charges after having conducted a post-charge screening and indicated he only needed one day to make his case. One must also take into account that the preparation of this case included the 2005 Christmas period.

[29] Keeping in mind section 162 of the *National Defence Act*, I would question somewhat why, when already provided with the required legal advice, it would take over two weeks for a commanding officer to forward the application to the referral authority for disposal of the charge in accordance with QR&O article 109.03. There might be a simple and logical justification, but none have been presented to me in the evidence.

[30] What is even more troubling to me is the fact that the provisions of article 109.04 were not complied with until 18 January 2006, some three months after the commanding officer had referred the charges to the referral authority. On its face, this is an unacceptable delay and no explanation has been provided in evidence. To the contrary, and there is evidence, in the testimony of the applicant and in the 3 November '05 email from Captain Gutoskie, that Master Corporal McRae's chain of command would have attempted to make him change his mind and choose a summary trial. I find that this type of action by individuals responsible for the proper administration of

discipline, when viewed by a reasonable and well-informed person, could bring the administration of military justice into disrepute. Although the applicant has not argued this was an abuse of process in this case, I consider such actions, or inactions, very suspect at the least.

[31] What is the consequence on these proceedings of this unacceptable delay in complying with the provisions of article 109.04? It does not appear to me that it ultimately had a major impact on the applicant and on these proceedings. There was no evidence presented by the applicant that would indicate that having a defence counsel assigned to him in late September 2005 would have helped him to manage the stress associated with the legal proceedings.

[32] This three months' delay did prevent legal counsel from getting involved as early as possible with this case. Having said that, I note that it took approximately three weeks for Lieutenant-Commander Lévesque to be assigned to this case. I also note that Lieutenant-Commander Lévesque did not communicate immediately with the prosecution when he was assigned to this case. To the contrary, it was the prosecutor who, on 19 April 2006, contacted the administrative assistant at DDCS to find out who was assigned to defend the accused. He was told the next day that Lieutenant-Commander Lévesque was Master Corporal McRae's defence counsel. Even then, according to the agreed statement of facts, the first communication between counsel would have occurred by email on 17 July 2006. Finally on this isue, I understand from the agreed statement of facts that defence counsel seems to have put his mind to this case only when he was anticipating a set trial date. It is only on 16 October 2006 that defence counsel requested additional disclosure. On 11 November 2006, he asked further questions to the prosecution regarding evidence issues. On the other hand, the prosecutor provided defence counsel with the Will Say statements in accordance with article 111.11 of the QR&O on 1 December 2006. This indicates to me that defence counsel was not ready to proceed on this case before October '06 and that he prepared his case during the period of mid-October to late-November.

[33] I find it surprising that counsel, prosecutor and defence, would wait for so long before corresponding on this matter to determine the issues, as well as set a court date. Defence counsel referred to exhibit M2-3 entitled, General Instructions in Respect of Delay in the Court Martial Process, a JAG policy directive, to emphasize that the military justice system is there to maintain discipline. It is clear from the Supreme Court of Canada decisions in *Mills*, *Askov* and *Morin* that the onus of bringing a matter to trial falls squarely on the prosecution and not on the accused. The JAG policy directive, at paragraph 8, provides that both DMP and DDCS, must exercise their authorities and discretion in a manner that is consistent with the military expectation of expeditious justice. I find that taking three weeks to assign a counsel to a case and then that this counsel not communicate with the prosecutor for the first six months, is not a shining example of abiding by this policy directive on the part of the office of the

DDCS. I also find that the prosecution did not seem to put much effort in pushing this case along once the prosecutor heard rumours of the possible posting of Master Corporal McRae back to Canada. This said, it was the prosecutor who made some attempts to make contact with defence counsel. When faced with the *fait accompli* that defence counsel was not available from late-June until early-October, the prosecutor attempted to set a court date as of October, 2006. As the prosecutor said in arguments, "Neither parties were available to proceed before October, '06." The respondent, the prosecution, relies heavily on the lack of judicial resources to explain why not much effort would have been invested in trying to get a court date before October, '06.

[34] I do not agree, as the applicant submits, that the period of 25 June 2006 to early October, 2006 can be included in the intake requirements of this case. As stated in paragraph 40 of *Morin*:

> Neither side, however, can rely on their own delay to support their respective positions.

[35] I consider that this time period falls within the actions of the accused. Once defence counsel had decided to take parental leave, to attend the course and that he needed two weeks in the office to reach "cruising speed," it is obvious that a court cannot be scheduled during that time period unless the prosecution strongly objects to this and makes representations to the Court Martial Administrator to set a date. In this case, the prosecutor did not do this. Article 16.27 of the QR&O provides for parental leave. This type of leave is not compulsory. QR&O article 16.27 states that:

> An officer or non-commissioned member is entitled to parental leave, on request ...

[36] This article provides that the CF member shall be granted parental leave if he or she fulfills the necessary conditions. This leave is not a requirement of the service. It is a benefit granted to members, if they choose to request it. In this case, defence counsel chose to take parental leave. This time period cannot be included in the inherent time for a case. Also, I do not consider the one week course and his two weeks to reach "cruising speed" at the office, to fall within the inherent time requirements for this case. This was, in the words of the defence counsel, a simple case.

[37] I do not agree with the respondent that the time period of 6 February to end-June, 2006 should fall within the inherent time requirements for this case. I see no evidence in the documents presented to me, or in the testimonies, indicating that Colonel Carter, the Chief Military Judge until 10 May 2006, was ill. What I do understand from exhibits M2-4, M2-5 and M2-6 is that the complement of judges—by this, I mean 100 percent—would be four judges. I make this deduction by reading paragraph five of the document entitled, Court Martial Scheduling Policy, which is a

policy on the Chief Military Judge website, being the second document of exhibit M2-4, and by my reading of the two other exhibits. I conclude from reading these three exhibits that judicial capacity had been reduced to 75 percent, therefore to three judges, and even 50 percent, therefore two judges, in recent months. Recent months would be the previous months to 31 August 2006, which is the date of exhibit M2-4. I have no evidence before me that provides me with the exact period of time the Office of the Chief Military Judge was reduced to three judges. Paragraph four of exhibit M2-4 does indicate that:

> ... an unprecedented backlog of cases has been building since late fall 2005.

[38] This paragraph also indicates the cause of this backlog:

> ... is due to the unavailability of counsel and military judges.

[39] It is clear from exhibits M2-5 and M2-6, and the CMA correspondence of 06 February 2006, that only two of three military judges were available to sit in the early months of 2006, and that one military judge, with the exception of a couple of weeks, was already sitting until the end of May, 2006.

[40] Section 165.21 of the *National Defence Act* provides that the Governor in Council may appoint officers who are barristers or advocates of at least ten years' standing at the bar of a province to be military judges. I have been provided no evidence to explain why a fourth judge had not been appointed during the period of time when there were only three judges. Colonel Carter was released from the Canadian Forces on 1 May 2006, and I refer to exhibit M2-6. Two judges were appointed during the summer of 2006; more precisely, in early June. I can state that since I was one of these two judges. These appointments brought the number of military judges to four.

[41] Had a fourth judge been appointed when the office was composed of only three military judges, the backlog referred to in exhibit M2-4 would probably have been less. Therefore, the lack of judicial resources during the period of 06 February to late-June, 2006 would have been otherwise. I conclude that the period of 06 February to late-June, 2006 falls within the limits on institutional resources.

[42] The prosecutor and defence counsel corresponded with the Deputy Court Martial Administrator in mid-July, 2006 to discuss possible trial dates. At that time, the month of October was identified. On 3 October 2006, the Deputy Court Martial Administrator indicated there was judicial availability for the week of 19 December 2006. Both counsel agreed to this date. I find that a portion of the period of 3 October to 19 December 2006 should fall within the inherent time requirements because defence counsel had indicated his unavailability for a trial date until early-October. As

contemplated by the Supreme Court of Canada in *Morin*, we do not live in a Utopian world and there are certain reasonable limits to judicial resources. Therefore, I would attribute six weeks' of that time period to limits to institutional resources, and five weeks' to the inherent time requirements.

[43] Thus, I conclude that the inherent time requirements for this specific case is approximately five months.

ACTIONS OF THE ACCUSED

[44] As I mentioned earlier, I disagreed with the applicant that the period of 25 June to early-October, 2006 should fall within the inherent time requirements. I find this period of time should fall within the actions of the accused. As stated in paragraph 44 of *Morin*, this is not putting the blame on the accused, but simply that:

> ... certain actions by the accused will be taken into account in determining what length of delay is reasonable.

[45] In this case, although it is a counsel of the applicant that was not available for trial and not the accused, the results are the same. Therefore, I consider that approximately three months are "... actions taken by the accused which may have caused delay." This quote is taken from *Morin*.

ACTIONS OF THE CROWN

[46] The applicant suggests there were no actions by the Crown that added to the delay. I see no evidence that would suggest otherwise.

[47] Limits on institutional resources. As mentioned previously, I conclude that the period of 6 February to late-June, 2006, and that six weeks' of the period of 3 October to 19 December 2006, fall within the limits on institutional resources. As stated at paragraph 48 of *Morin*:

> While account must be taken of the fact that the State does not have unlimited funds and other government programs compete for the available resources, this consideration cannot be used to render section 11(b) meaningless. The Court cannot simply exceed to the government's allocation of resources and tailor the period of permissible delay accordingly. The weight to be given to resource limitations must be assessed in light of the fact that the government has a constitutional obligation to commit sufficient resources to prevent unreasonable delay which distinguishes this obligation from many others that compete for funds with the administration of justice.

[48] As mentioned previously, the failure to maintain a full complement of judges has contributed to a backlog of cases and judicial unavailability during the period of 06 February to late-June, 2006. Although I have not been provided with any evidence that would explain why there were only three judges, and then two judges for certain period of time, or why two judges were not appointed before June, 2006, the documentary evidence does indicate that this lack of judicial resources contributed to the delay in this case. Therefore, delay attributable to limits on institutional resources is approximately seven months.

OTHER REASONS FOR THE DELAY

[49] Neither the applicant, nor the respondent, has argued there were other reasons for the delay. I also do not gather from the evidence any other reasons for the delay. Before discussing the prejudice to the accused, I will set out, again, my conclusions pertaining to the different causes for the delay in this specific case. They are: Total length of the delay, approximately 15 months; waiver of time periods by the accused, none; reasons for the delay, inherent time requirements, approximately five months, actions by the accused, approximately three months, actions by the Crown, none, limits on institutional resources, approximately seven months, and other reasons for the delay, none.

[50] Therefore, I determine that the delay attributable to the Crown, in excess of what should be considered as reasonable in this specific case, is approximately seven months.

PREJUDICE TO THE ACCUSED

[51] The applicant submits that he suffered greater stress and anxiety because the charges were laid by his supervisor and that he had to work in the same unit of nine individuals for almost 11 months and, during which, he had still to defer to the same supervisor who could still give him orders. The applicant also submits the proceedings affected negatively his marital relationship to the point of the couple came close to separating.

[52] According to the testimony, Master Corporal McRae worked on a daily basis in a section of Americans, which was headed by an American. His relationship to his Canadian supervisor, Warrant Officer Watters, was on matters of Canadian administration and discipline. I have not been provided with any evidence that would demonstrate that he would have suffered greater stress and anxiety than any other member of any other unit in the Canadian Forces whose charges were laid by his superiors. To the contrary, Master Corporal McRae did not work directly for Warrant Officer Watters on a daily basis, but worked for Chief Herrington, an American, and he spent the majority of his time at work amongst the American personnel.

[53] Master Corporal McRae also testified that he put a lot of extra effort in his work after the charges were laid because he felt "he could not afford to make any mistake," and he testified that "he was always on his guard." Master Corporal McRae also testified that because of the extra effort he put in his work, his marriage suffered and then they nearly split up. The charges that were laid were not related to his work; they had to do with purely Canadian matters. Master Corporal McRae chose to devote more energy to his work and, as he said, his marriage suffered because of this. Although I can see an indirect link to the charges based on his reaction, I cannot find that the marital problems he experienced were the direct result of the laying of these charges.

[54] Although the applicant submits the evidence shows that the assignment of legal counsel soon after the applicant elected court martial on 28 September, '05 would have helped him to manage the stress caused by the legal proceedings, I am aware of no evidence presented by the applicant to support this assertion.

[55] The applicant also submits that he made some efforts to find out when the proceedings would be sorted out so he could clear his name in a trial, since his reputation was at stake. There was no evidence to demonstrate that his reputation suffered as a result of these disciplinary proceedings. No witness testified to that effect, including Master Corporal McRae.

[56] The applicant also submitted that his right to a fair trial was infringed. As I mentioned during the applicant's closing address, no evidence was presented to support this claim.

CONCLUSION

[57] Having found a delay of approximately seven months as deemed unreasonable in the present case, I do not find that prejudice to the accused can be inferred from this delay. This delay cannot be qualified as "prolonged" and does not, in itself, justify the remedy requested by the applicant.

[58] I do not find the applicant has provided this court with evidence to demonstrate that these proceedings caused stress or damage to his reputation as a result of overlong exposure to the "vexations and vicissitudes of a pending criminal accusations," to use the words adopted by Lamer J. in *Mills*, as mentioned at paragraph 63 of *Morin*. Also, there has been no evidence to demonstrate that the delay has prejudiced the accused in his ability to make full answer and defence.

[59] In *R. v. Carosella* [1997] 1 S.C.R. 80, at paragraph 52, Sopinka J., writing for the majority, states:

> A judicial stay of proceedings has been recognized as being an extraordinary remedy that should only be granted in the "clearest of cases." In her reasons in *O'Connor*, L'Heureux-Dubé J. stated (at para. 82) that:
>
> > It must always be remembered that a stay of proceedings is only appropriate "in the clearest of cases," where the prejudice to the accused's right to make full answer and defence cannot be remedied or where irreparable prejudice would be caused to the integrity of the judicial system if the prosecution were continued.

[60] In light of the length of the unreasonable delay, approximately seven months, and that I find the accused has not suffered substantial prejudice because of this delay, namely that the accused's right to make full answer and defence has not been infringed and that there is no evidence that irreparable prejudice would be caused to the integrity of the military judicial system if the prosecution was continued, I find that this is not a "clearest of cases" where a judicial stay of proceedings should be imposed as a remedy.

[61] For these reasons, the court denies the application made under paragraph 112.05(5)(e) for a stay of proceedings pursuant to paragraph 24(1) of the *Charter of Rights and Freedoms*.

[62] These proceedings under sub-paragraph 112.05(5)(e) of the Queen's Regulations and Orders are terminated.

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

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