Citation: *R. v. Sergeant A.P.S. Quinn,* 2007 CM 3017

Docket: 200704

STANDING COURT MARTIAL
CANADA
ONTARIO
LCOL GEORGE TAYLOR DENNISON III ARMOURY, TORONTO

Date: 7 September 2007

PRESIDING: LIEUTENANT-COLONEL L -V. D'AUTEUIL, M.J.

HER MAJESTY THE QUEEN
v.
SERGEANT A.P.S. QUINN
(Accused)

DECISION RELATING TO AN APPLICATION UNDER PARAGRAPH 112.05(5)(e) OF THE QUEEN'S REGULATIONS AND ORDERS FOR THE CANADIAN FORCES IN RELATION TO A VIOLATION OF SECTIONS 7 AND 11(b) OF THE *CANADIAN CHARTER OF RIGHTS AND FREEDOMS*

---

[1] Sergeant Quinn, a Reserve Force member of the Royal Regiment of Canada, with 24 years of service with the Canadian Forces, is charged with two offences of assault with a weapon contrary to section 267 (a) of the *Criminal Code* of Canada, which is a service offence by reason of section 130 of the *National Defence Act* (the *NDA)*, with one offence for behaving in a disgraceful manner contrary to section 93 of the *National Defence Act*, and alternatively with one offence for ill-treating a person who by reason of rank was subordinate to him contrary to section 95 of the *National Defence Act*.

[2] At the opening of this trial by Standing Court Martial on 5 September 2007, prior to plea and after the oaths have been taken, Sergeant Quinn made an application, for which a notice was received by the office of the Court Martial Administrator on 30 August 2007, for a stay of proceedings under section 24(1) of the Canadian Charter of Rights and Freedoms (the *Charter*) alleging an infringement of his rights guaranteed by section 11(*b*) of the *Charter* to be tried within a reasonable time.

[3] Also the defence counsel raised the issue of an infringement of the right to security of the applicant guaranteed by section 7 of the *Charter* because of his relief from performance of military duty by his commanding officer and because he was denied a full answer and defence in reason of his inability to summon an eyewitness. The court allowed evidence and argument on that matter considering that the prosecutor had sufficient verbal notice of that issue.

[4] The preliminary motion is brought by way of an application made under Queen's Regulations and Orders (the QR&O), article 112.05(5)(e) as a question of law or mixed law and fact to be determined by this court.

[5] The evidence before this court martial is composed essentially of the following facts:

A. The testimonies heard in the order of their appearance before the court, the testimony of Sergeant Quinn, the applicant in this case, and Lieutenant-Colonel Perchal, the commanding officer of the accused.

B. Exhibit VD1-1, the notice of application.

C. Exhibit VD1-2, an agreed statement of facts.

D. Exhibit VD1-3, a letter from the commanding officer of the Royal Regiment of Canada dated 27 September 2005, addressed to Sergeant Quinn about his relief from military duty.

E. Exhibit VD1-4, a memorandum from the commanding officer of the Royal Regiment of Canada dated 22 June 2006, addressed to Sergeant Quinn as the commanding officer's response to his redress of grievance.

F. Exhibit VD1-5, Sergeant Quinn's Canadian Forces conduct sheet.

G. Exhibit VD1-6, Sergeant Quinn's Master Pay Record Report for the period from December 2002 to August 2007.

H. Exhibit VD1-7, Sergeant Quinn's Reserve Force unit attendance record for the fiscal year 2003/2004.

I. Exhibit VD1-8, Sergeant Quinn's Reserve Force unit attendance record for the fiscal year 2004/2005.

J. The judicial notice taken by the court of the facts and issues under Rule 15 of the Military Rules of Evidence.

[6] The incidents which constitute the basis for all charges allegedly occurred between the 20 and 28 August 2005 during the exercise STALWART GUARDIAN '05 at Canadian Forces Base Petawawa.

[7] After a unit investigation, Major Gidlow of the Royal Regiment of Canada reported the incidents on 13 September 2005 to the military police. The Canadian Forces National Investigation Services (CFNIS) began its investigation of the matter on 15 September 2005.

[8] Meanwhile, on 22 September 2005, in accordance with QR&O article 101.08, and further to the consultation of the CFNIS investigator and a legal officer, the commanding officer of the Royal Regiment of Canada relieved Sergeant Quinn from the performance of military duty. As established in the letter confirming this situation, Exhibit VD1-3, the commanding officer informed Sergeant Quinn that if there is any change leading to rescinding this decision he would be notified. He also gave him a point of contact at the unit which is the regimental sergeant major (the RSM), Chief Warrant Officer Lowry.

[9] On 16 November 2005 the CFNIS completed its investigation. However, it is only on 11 January 2006 that the pre-charge screening brief was delivered to the Regional Military Prosecutor's (RMP) office in order to get advice from a legal officer as required at QR&O article 107.03(1)(c) and paragraph (2), considering that the NIS investigator is an authority to lay charges pursuant to QR&O article 107.02 (c).

[10] On 23 March 2006 an NIS investigator laid seven charges against Sergeant Quinn.

[11] Around that time Sergeant Quinn made a request to his commanding officer to be represented for this matter by a military lawyer.

[12] On 27 March 2006 the commanding officer of the Royal Regiment of Canada sent the matter to the referral authority for disposal of the charges by court martial.

[13] Further to the application for disposal of charges he received from the commanding officer of the Royal Regiment of Canada, the referral authority, Commander Joint Task Force Central, forwarded, on 8 May 2006, the application to the office of the Director of Military Prosecutions (DMP).

[14] On 31 May 2006 Major Tamburro, RMP Central Region, was assigned and ordered to perform the post-charge screening of this matter.

[15] On 13 October 2006 the Director of Defence Counsel Services (DDCS) appointed Lieutenant-Commander McMunagle as Sergeant Quinn's defence counsel.

[16] The defence counsel requested the disclosure of the evidence on 19 October 2006 and the prosecutor proceeded with on 10 January 2007.

[17] The charges against Sergeant Quinn were preferred by DMP on 15 January 2007. Further to a constant exchange of emails from the month of January to the month of March 2007 between the prosecutor, the defence counsel, and the Deputy Court Martial Administrator, on the availability of both counsel and the military judiciary, a convening order for a Disciplinary Court Martial was signed by the Court Martial Administrator (the CMA) on 26 April 2007. On 6 July 2007, further to prosecution actions on demand of the defence counsel, the CMA signed a new convening order for a Standing Court Martial for the same trial date.

[18] Section 11(*b*) of the *Charter* reads as follows:

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

[19] As recognized by the Supreme Court of Canada in the decision of *R. v. Morin*, [1992] 1 S.C.R. 771, at paragraph 27, the purpose of section 11(*b*) of the *Charter* is to protect specific individual rights which are the rights to security, the right to liberty, and the right to a fair trial.

[20] At the same time the Supreme Court of Canada clearly mentioned in the same decision that these rights have to be assessed in the context, as a whole, of the existence of a social interest for:

> ... [E]nsuring that those who transgress the law are brought to trial and dealt with according to the law.

See paragraph 30 of the *Morin* decision. This social interest takes a unique sense when considering the purpose of the military justice system, which:

> ... has for a purpose to control and influence the behaviours and ensure maintenance of discipline with the ultimate objective to create favourable conditions for the success of the military mission.

This quote comes from *L'utilization de l'article 129 de la Loi sur la défence nationale dans la système de justice militaire canadien* by Major Jean-Bruno Clouthier at page 17 of his thesis.

[21] It is important to note that the accused has to prove on the balance of probabilities the breach of his right to be tried within a reasonable delay.

[22] Additionally, the legislator enacted in 1999 section 162 of the *NDA* in order to reiterate the fact that, in the military context, it is still a duty imposed to the actors within the military justice system to act expeditiously with charges "as the circumstances permit." Contrary to what was argued by the defence counsel, this section does not create any new obligation in addition to the one existing under section 11(*b*) of the *Charter*. As stated by Judge Décary at paragraph 14 of the Court Martial Appeal Court decision in *R. v. Captain Langlois*, (2001) CMAC 3:

> I do not feel that s. 162 is very helpful, as it only restates in its own way s.11(*b*) of the *Charter*. Section 11(*b*) takes priority, of course, and s. 162 clearly cannot be construed so as to limit the rights conferred on an accused by s. 11(*b*).

[23] What is the meaning of the term "reasonable time"? The Supreme Court of Canada has set out the analytical framework in *Morin*. There are four principal factors that the court must examine and consider to determine whether, in a particular case, the time taken to proceed to trial is unreasonable or not. They are:

A. The length of the delay from the time charges are laid until the conclusion of the trial;

B. Waiver of any periods of time;

C. The reasons for the delay; and

D. Prejudice to the accused.

[24] In its consideration of the reasons for delay the court must look at:

A. The inherent time requirements of the case;

B. The actions of the accused and of the prosecution;

C. Limits on institutional resources; and

D. Any other reasons for delay.

[25] As stated by Judge Lamont in *R. v. Corporal Wolfe*, 2005CM48 at paragraph 14 and 15:

> [14] These factors guide the court in its determination, but they are not applied in a mechanical way, nor should they be considered as immutable or inflexible, otherwise this provision of the *Charter* would simply become a judicially imposed statute of limitations upon prosecutions.
>
> [15] It is not simply the periods of delay that the court is concerned with. Rather, it is the effect of delay on the interests that section 11(*b*) is designed to protect. In assessing the effect of delay, it is important to remember that the ultimate question to be decided is the reasonableness of the overall delay between the time charges are laid and the conclusion of the trial.

[26] Having said that, this court will turn now to the analysis concerning this application.

[27] The first factor that has to be considered is the length of the delay. As stated in *Morin* at paragraph 35, in order to determine it this court must consider the period of time from the laying of charges in accordance with QR&O 107.015(2) to the end of the trial. As the evidence heard by this court established it, charges against Sergeant Quinn were laid on 23 March 2006. The end of this trial may be considered as the end of September 2007. Then, the length of the delay is 18 months and it is sufficient to raise an issue as to its reasonableness. In fact, this period of time does demonstrate that the charges were not dealt with in a prompt manner as it is required by the Canadian military justice system.

[28] Concerning the pre-charge delay, it may, in certain circumstances, have an influence on the overall determination as to whether the post-charge delay is unreasonable, but of itself, it is not counted in determining the length of delay. It was confirmed by the Supreme Court of Canada in *R. v. Finn* (1997), 112 C.C.C. (3d) 288, where the court agreed on that issue with the reasons of Mr Justice Marshall from the Newfoundland and Labrador Court of Appeal, and that was published at 106 C.C.C. (3d) 43. The Court Martial Appeal Court, in the decisions of *Perrier* and *Larocque,* has recognized this principle.

[29] In light of the totality of the evidence before the court, the court considers that the pre-charge delay should not be included in determining the length of the post-charge delay in this case. In the present case, the pre-charge delay, which is the delay between the end of the investigation in November 2005 and the time charges were laid on 23 March 2006, is four months. Although defence counsel tried to establish a parallel between this case and the case of *Perrier*, it is my decision that the circumstances of both cases are too different to establish a parallel. In the case of *Perrier* the military judge explained that in his calculation of 24 months he was taking

into account the 17 months from the end of the police investigation to the laying of charges, which he added the six months subsequent to the indictment. In addition, he stated that owing to Perrier's suspension from his military duties, a suspension that was very similar to an indictment in those specific circumstances according to him, the initial delay was to run from the date of the suspension.

[30] In the present case, the delay between the relief from performance of military duty and the laying of charges is six months. According to the military judge, the three periods together in *Perrier* constituted a breach of the rights under section 7 adding an ancillary conclusion about section 11(*b*) of the *Charter*. It is important to note that in *Perrier,* the accused, a member of the Reserve Force on Class B service, had confessed his liability at the very beginning of the investigation, was suspended from duty immediately after his confession, had to return his uniforms and made his clearance out on the base, had to report himself by phone during the first three months of his suspension to his superior each time he was leaving his home for more than two hours, and did not receive any military pay for the whole period of suspension. The facts of this case do not support the proposition that Sergeant Quinn's pre-charge situation is comparable, in any way, shape, or form, to the *Perrier* case. The pre-charge delay of four months in the present case has not exacerbated in any way the alleged prejudice of the applicant, contrary to what happened in *Perrier*. In fact, Sergeant Quinn, was able to communicate during the investigation process with his chief warrant officer at his unit and get in touch directly or indirectly with the CFNIS investigator in order to know how the investigation was progressing up to its conclusion. He was never arrested or placed under bail conditions.

[31] The court does not consider, as well, that the pre-charge delay should be counted in assessing the section 11(*b*) analysis in light of the CMAC decision in *R. v. Larocque*. In the case of *Larocque* the time elapsed between the end of the investigation and the laying of the charges was 13 months which is totally different in the present case. As stated in the agreed statement of facts, the delay between the end of the investigation in the present case is four months. There again, this case must be distinguished for the purposes of determining if the pre-charge delay had an influence on the overall determination as to whether post-charge delay is unreasonable.

[32] The second factor that must be considered by this court is the waiver of any period of time by the accused. The court does not consider any period that was waived by the applicant during the post-charge delay of 18 months. As stated at paragraph 38 in *Morin*, the waiver:

> ... must be clear and unequivocal ...

Which is not the case here for any period of time, including the acceptance by the defence counsel on 26 March 2007 of a trial date for 5 September 2007. It must be kept in mind that the actions or inactions of the accused or his counsel can amount to a

waiver or be attributable to the applicant when examining the reasons for delay or ultimately be assessed in the context of the prejudice to the accused. The court considers that such conduct deserves to be discussed later under the next factor concerning the reasons for the delay and more specifically under the topic "actions of the accused." The court believes that this conduct does not constitute any kind of waiver made by the accused.

[33] The end result is that the court has to consider the full period of 18 months for the purpose of the analysis.

[34] The third factor for the analysis is the reason for the delay. As stated earlier, it consists of five specific reasons that this court has to consider. It is important to say that some delay is inevitable when processing a charge within any justice system including the military justice system. It is just normal that it takes some time for making a case ready to proceed. It is why it is important to make a deep analysis of the reasons that cause the delay to be able to reach a conclusion about its reasonableness.

[35] There are peculiar inherent time requirements for the military justice system when a charge has to be processed in order for an accused to be tried by a court martial. In the military justice system, the statutory and regulatory framework sets up a number of checks and balances that are primarily designed to protect the integrity of the system.

[36] As the facts put in evidence demonstrated, the CFNIS investigator and the chain of command had to comply with some regulation requirements as soon as a charge was laid against a member of the Canadian Forces. The commanding officer must decide if he causes or not proceeds with the charge. To make his decision, he needs a legal opinion before that. The referral authority, once he receives the application for disposal of the charge from the commanding officer, shall forward it to the Director of Military Prosecutions with his recommendations. Then some time is necessary for the prosecution to make a decision about the preferral of the charges by meeting witnesses and analysing documents. Disclosure, trial preparation, and availability of the defence counsel and the prosecutor have also to be considered before a case is declared ready to be heard at a court martial. The complexity of a case has also to be considered.

[37] I would adopt the view of the Chief Military Judge in his decision in the court martial of *Corporal Gibbons* that the inherent time requirement for such a case should be in the realm of four to six months, a period that may slightly increase for Reserve units.

[38] In the present case, the actions of the prosecution clearly contributed to the delay. More specifically, the period of time elapsed between the moment the

prosecutor was assigned to the case on 31 May 2006 up to the preferral of the charges on 15 January 2007, was left without any satisfactory explanation by the prosecutor. The fact that two witnesses were interviewed by the CFNIS investigators during that period of time, does not allow this court to infer that the prosecutor was unable to proceed with his post-charge screening.

[39] However, as raised by the prosecutor, even though Sergeant Quinn requested to his commanding officer to be represented by a military lawyer in March 2007, it is not before October 2007 that the Director of Defence Counsel Services appointed a defence counsel to him. There is absolutely no evidence before the court that would reasonably explain why Sergeant Quinn was not contacted by anyone from the Directorate of Defence Counsel Services despite his initial request made in March 2007. It is unacceptable, without a reasonable explanation that is not presented in the case, that a person who was chosen to be represented by counsel under the special legal aid regime provided in Chapter 101 of the Queen's Regulations and Orders for the Canadian Forces, was left without any possibility to be represented for a period of seven months. This situation certainly mitigates and clearly diminishes the impact of the delay attributed to the prosecution. While the prosecutor was assigned to the case, how it could have been possible for the prosecution to disclose the evidence and discuss any matter related to the case, including a trial date, if there was no defence counsel to talk with for a period of five months?

[40] Finally, it is important to say that considering the nature and the seriousness of the charges, this case is considered not overly complex.

[41] From the time Sergeant Quinn was charged to the time of this trial, some actions were taken by the accused that contributed to the delay. The delay between 26 March and September 2007 as a result of the direct conduct of the applicant's counsel entering into an agreement as to the date of trial, stopped the running of the clock against the breach of the applicant's constitutional rights to be tried within a reasonable period of time as exposed by the Chief Military Judge in the court martial of *Corporal Gibbons*.

[42] Concerning the inaction of the accused, the court will discuss this matter during the analysis of the four factors of the prejudice to the accused.

[43] On the issue of limits on institutional resources in this case, the court is satisfied that the resources were sufficient. There is no evidence that it could have played any role in contributing to the delay. It is clear from the evidence introduced before this court that it did not exist limits on the judicial resources from the time of the preferral of the charges on 15 January 2007 up to the time this court was convened on 26 April 2007. In fact, judicial resources were not limited as it is demonstrated by the exchange of various emails during that period of time. The fact that there was no

judicial availability for specific periods of time as suggested by counsel, that some sort of backlog existed and had an effect for giving priority to older cases for a trial date, in combination with the fact that a two-week period for the present case was considered for setting a trial date is not abnormal in the circumstances and does not demonstrate a lack of judicial resources as argued by the defence counsel.

[44] The court does not see any other reasons for the delay. Therefore, the overall delay is 8 to 13 months, depending if the period where a defence counsel was not appointed while the prosecution was preferring the file, is included or not. In the circumstances of this case, such delay does not give rise to an irrebuttable presumption of prejudice even if it is at the higher end of what can be considered reasonable. The evidence before the court does not establish on a balance of probabilities that the applicant suffered prejudice as a result of the delay or flowing from the delay. Then, the court will turn now to the prejudice caused to the accused.

[45] The evidence introduced by the applicant does not demonstrate a prejudice caused to him other than the ordinary stress and anxiety that is part and parcel of having to face very serious criminal and service offence charges. The court does recognize that the decision of the commanding officer of the Royal Regiment of Canada did impact on the applicant. Sergeant Quinn testified that he was unable to be employed in the Canadian Forces because of that decision. He was unable to consider a transfer in the Regular Force, find any Class B or C service, or volunteer for any mission outside the country. It is important to note, that other than being mentioned by the applicant in his testimony, there was no evidence of any real loss of opportunity. For the court it appears that it was some applicant's wishes, but there was no demonstration of a concrete possibility that it could have happened.

[46] The court has to say that in the context of a condemnation by a court martial for a similar offences for which he was reduced in rank seven years ago, the psychological impact is self-explained and does not appear abnormal or excessive in the circumstances. It would be normal for the applicant that he had some concerns about what would be the effect on him and his career in the military if he was found guilty.

[47] Sergeant Quinn testified that the jail perspective and the humiliation and the loss of self-esteem lead him to consume more alcohol, was a factor among others to his divorce, and resulted in a lack of motivation to exercise, and that he had sleep difficulties. However, as his testimony and his redress of grievance do demonstrate, it is not the perspective to face to be tried by court martial, but the fact that he was relieved from the performance of military duty that caused him many concerns. The response of the commanding officer to his redress of grievance, Exhibit VD1-4, was made in the perspective of the humiliation and embarrassment he claimed from being banished of any military and social events at his unit as it appears from paragraph 7 and 8 of the document. The court is of the view that the length of the delay had no impact, nor

exacerbated the consequences coming from the fact that the applicant was charged with the four offences before this court.

[48] Additionally, the commanding officer testified before this court and clearly stated that no matter what would be the finding of this court martial, it was clear for him that Sergeant Quinn will never be employed again at his unit. He confirmed to the court that he based his decision on what he learned over the last two years on Sergeant Quinn and that he did not wait for this court martial to dispose of the charges to make his mind. It does prove, as the prosecutor tried to tell the court, that even though this court martial would have proceeded earlier, the prejudice claimed by the applicant would have continued to exist and had nothing to do with the charges before this court.

[49] Concerning the financial loss. It is clear for the court that in order to compensate the loss of money coming from his relief from performance of military duty, Sergeant Quinn started to work on a full-time basis in other jobs. Then, as demonstrated by the documents introduced and the testimony of Sergeant Quinn, the end result is that his revenue was about the same, as it was conceded by his defence counsel in his final address on this application, before and after the 20 September 2005 date of his relief. There is no prejudice caused by a financial loss because the applicant failed to demonstrate on a balance of probabilities that it was the case.

[50] Additionally, the actions of the accused and his counsel do also indicate an absence of prejudice. In *R. v. R.C.* (2001), 158 C.C.C. (3d) 119, the Newfoundland Court of Appeal mentioned, at paragraph 31, in a case involving the issue of reasonable delay:

> If, in fact, the negative effects were serious or exacerbated by the length of delay, it would be expected that the Respondent would have taken some steps, such as complaining about the delay or asking for earlier dates. (See R. v. Marstar Trading International Inc. v. St. Amour (1999) 138 C.C.C. (3d) 87 (Ont C.A.), at paragraph 2). The fact that he took no action, which is certainly his right, leads to the reasonable inference that he was not particularly concerned or prejudiced by the delay. We note that the respondent was neither incarcerated nor subject to restrictive bail conditions.

[51] In *Morin*, the Supreme Court of Canada reached the same conclusion in assessing the prejudice to the accused when, at paragraph 78, it says:

> ... While the accused was not <u>required</u> to do anything to expedite her trial, her inaction can be taken into account in assessing prejudice. I conclude for this reason that the accused was content with the pace with which things were proceeding and that therefore there was little or no prejudice occasioned by the delay.

[52] The Director of Defence Counsel Services appointed a legal officer to the accused seven months after he was charged. As mentioned by Judge Lamont in *R. v. ex-Corporal Chisholm*, 2006 CM 07, at paragraph 34:

> ... If his counsel was aware of the prejudice occasioned to the applicant by reason of delay, he or she would be aware of the legal significance of that prejudice and could reasonably be expected to press the authorities on behalf of the applicant for an early trial date. In such circumstances, in the absence of any expression of concern about delays during the pre-trial stage, the court might well find that prejudice had not been established because the defence has chosen to acquiesce in the delay.

[53] There is no evidence of any expression or concern from the applicant to which he decided to press the authorities to get an early trial date. Sergeant Quinn testified that he made inquiries with his RSM at the unit once a month as to the progress of the disciplinary proceedings against him. Such an inquiry is not indicative of someone who wants to assert his right to a speedy trial, but is more consistent with someone who is fairly content with the pace with which things were proceeding. To the contrary, there is evidence that the defence counsel had no problem to accept, on 26 March 2007, the 5 September 2007 as the first trial date. Never in his correspondence he mentioned the fact that an earlier trial date had to be considered because of the applicant's situation.

[54] The Ontario Court of Appeal in *R. v. Bennett,* 64 C.C.C. (3d) 384, affirmed by the Supreme Court of Canada at [1992] 2 S.C.R. 168, says at page 458:

> I have great difficulty in concluding that an individual charged with an offence has been denied a constitutional right to be tried within a reasonable time where there is no evidence that the individual wanted to be tried at a date earlier than that set for trial. Such a conclusion is based on the premise that every person charged with an offence is anxious to be tried promptly and with expedition. This includes the assumption, in those cases where the accused and counsel have agreed to a trial at the first available date, that the accused desires to be tried earlier.

[55] Then, this court concludes that prejudice of which the applicant complains is attributable exclusively to the fact that he was relieved from performance of military duty and not to excessive delay in disposing of the charges.

[56] In assessing if the right of the applicant has been denied, the court must make a judicial determination balancing the interests which the rights that section 11(*b*) of the *Charter* aims to protect against the factors that caused the delay. Keeping in mind that more serious is the offence the more imperative it is that the accused be brought to court martial.

[57] It is clear that considering the seriousness of the charges, it is crucial for the military community and the Canadian society that Sergeant Quinn be brought to court martial. On the other hand, it has not been proven that his security or the fairness of the trial of the accused, his liberty not being at stake, was affected in the context of a breach of section 11(*b*) of the *Charter*. In the absence of any prejudice, and considering that the delay to proceed with this court martial is not unreasonable in the circumstances, especially in light of the reasonable explanation provided to the court and the context of this case, this court concludes that the applicant has not proven, on a balance of probabilities, an infringement of his right to be tried within a reasonable time.

[58] The application made by the applicant under section 11(*b*) of the *Charter* is accordingly dismissed.

[59] With respect to the second portion of this application in which defence counsel argued that Sergeant Quinn's right to life, liberty, and security under section 7 of the *Charter* has been violated and that a stay of proceedings should be granted as a remedy, this court is not satisfied that it is supported by the evidence. As stated earlier, the facts of this case can be distinguished of those in *Larocque*. Moreover, it must be kept in mind that a majority in *Larocque* was not satisfied, despite the facts, that the accused's rights under section 7 had been violated.

[60] This court has already distinguished this case with *R. v. Perrier*, where the accused had been suspended from duties from the very beginning of the investigation, had suffered financial loss, and has been stigmatized because of the actions taken by his unit. As expressed previously, other than being relieved from performance of military duty, Sergeant Quinn has never been arrested, nor was he put in custody, and he was never imposed any restriction on his liberty. He never suffered any financial loss, despite the fact that he was not employed in the military.

[61] In the criminal context, state interference with bodily integrity and serious state-imposed psychological stress constitutes a breach of an individual's security of the person. In this context, security of the person has been allowed to protect both the physical and psychological integrity of the individual. And not all state interference with an individual's psychological integrity will engage section 7. Where the psychological integrity of a person is at issue, security of the person is restricted to serious state-imposed psychological stress.

[62] First, the psychological harm must be state imposed, meaning that the harm must result from the actions of the state, and second, the psychological prejudice must be serious. In order for security of the person to be triggered in this case the impugned state action must have had a serious and profound effect on the respondent's psychological integrity. The court must infer from the defence submission that the

evidence, according to the defence, would demonstrate a grave and profound impact on the applicant's physical and emotional health, as well as a grave and profound impact on his professional career as a soldier in the Canadian Forces, although he was not very clear on that aspect.

[63] In applying these principles, or the principles set out by the Supreme Court of Canada in *Blencoe v. British Columbia (Human Rights Commission*), [2000] 2 S.C.R. 307, and in light of the Court Martial Appeal Court decision in *Langlois*, this court is not satisfied that Sergeant Quinn's right to security under section 7 has been violated. That is not to say that the anxiety and the stress that he has endured until now is not real, they are certainly related to the reality of being relieved from the performance of military duty, and ultimately being accused. The evidence before this court is not sufficient to establish that the impugned actions of the state had a serious and profound effect on Sergeant Quinn's psychological integrity with respect to his personal and professional life within the ambit of section 7 of the *Charter*. It has not been demonstrated on a balance of probabilities that the decision of the commanding officer of the Royal Regiment of Canada to relieve Sergeant Quinn from performance of military duty had a grave and profound impact on his physical and emotional health. It had some impact, but not as it is requested to succeed on this issue.

[64] Finally, the defence counsel raised that Sergeant Quinn was prejudiced in his ability to make full answer and defence because he was unable to track down and subpoena a specific eyewitness. It would have been interesting to know, first, if this witness would have been in a position to provide any material evidence and on what charge. There is no evidence whatsoever about the kind of evidence this witness would have brought before the court and to which charge or charges it would have been related. How the court could have made a determination on the ability of Sergeant Quinn to make full answer and defence if the court has no evidence to assess the impact of such a situation on the outcome and the fairness of the trial? The only evidence provided on this matter, through the testimony of Sergeant Quinn, is that this witness is an eyewitness of an incident, but the court does not know which one, that the applicant's last contact with him was in early 2007, that the witness is facing charges for the same incident, but the court does not know what specific incident, and that the applicant was recently unable to contact him. Without any evidence adduced by the applicant on this specific matter, it is pure speculation for this court to conclude that the witness would have been available if the trial would have proceeded at an earlier date. The unavailability of a witness is one thing, the impact of such a situation on the ability of the applicant to make full answer and defence is another one that still needs to be demonstrated.

[65] Therefore, the court concludes that Sergeant Quinn's right under section 7 have not been violated, and for these reasons this portion of the defence application, as it relates to section 7 of the *Charter*, is also dismissed.

Lieutenant-Colonel L.-V. d'Auteuil, MJ

Counsel:

Major A. Tamburro, Regional Military Prosecutions Central
Counsel for Her Majesty The Queen
Lieutenant-Commander J.A. McMunagle, Directorate of Defence Counsel Services
Counsel for Sergeant Quinn.