

Federal Court



Cour fédérale

Ottawa, March 3, 2020 – The Honourable Justice Luc Martineau of the Federal Court has delivered a judgment today in docket T-1151-19:

IN THE MATTER OF DIRECTOR OF MILITARY PROSECUTIONS v DEPUTY CHIEF MILITARY JUDGE et al

Summary: Colonel Mario Dutil, Chief Military Judge, has been called to a Standing Court Martial. He has to defend himself against charges of fraud and false statement in an official document, as well as conduct prejudicial to good order and discipline because he allegedly had a personal relationship with a court reporter who was under his command.

The Deputy Chief Military Judge, Lieutenant-Colonel Louis-Vincent d’Auteuil, in his capacity as a judge to whom was delegated the power to assign under section 165.25 of the *National Defence Act*, initially assigned himself to preside at Colonel Dutil’s court martial. At the opening of the trial, Colonel Dutil asked him to recuse himself, and he did so on June 17, 2019 (*R v Dutil*, 2019 CM 3003). In addition, that same day, the Deputy Chief Military Judge concluded that none of the other three military judges in office could hear the case and that he could not assign anyone without harming the proper administration of justice [the non-assignment decision], hence the present application for judicial review.

The Director of Military Prosecutions asked the Federal Court to issue a writ of *mandamus* compelling the Deputy Chief Military Judge to assign one of the three military judges in office, regardless of whether there are recusal reasons or insufficient language skills for each of them. In the alternative, the Director of Military Prosecutions asked that the Federal Court set aside the non-assignment decision for being unreasonable.

The application for judicial review was dismissed. The Deputy Chief Military Judge’s decision not to assign one of the three available military judges to preside at Colonel Dutil’s court martial is reasonable. Moreover, the applicant did not satisfy the conditions for obtaining a writ of *mandamus*. In any event, in exercising its judicial discretion, the Federal Court denied all the remedies sought by the Director of Military Prosecutions in order to ensure the rule of law and prevent a flagrant injustice and irreparable harm from being done to the accused.

A copy of the decision can be obtained via the Web site of the Federal Court:
<https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/462323/index.do>