

**Docket: CMAC-422**

**CORAM: HUGESSEN  
MARCEAU  
DURAND, J.J.A.**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**Appellant**

**- and -**

**LIEUTENANT-COLONEL R. VANIER**

**Respondent**

Hearing held in Ottawa, Ontario, Wednesday, February 17, 1999.

JUDGMENT rendered in Ottawa, Ontario, Wednesday, February 17, 1999.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**HUGESSEN J.A.**

**CORAM: HUGESSEN  
MARCEAU  
DURAND, J.J.A.**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**Appellant**

**- and -**

**LIEUTENANT-COLONEL RENO VANIER**

**Respondent**

**REASONS FOR JUDGMENT OF THE COURT**  
**(Rendered at the hearing in Ottawa, Ontario,**  
**Wednesday, February 17, 1999)**

**HUGESSEN J.A.**

[1] The accused was judged by a General Court Martial and convicted of seven charges worded as

follows:

**FIRST CHARGE:**  
**Section 130 NDA**

**AN ACT PUNISHABLE UNDER SECTION 130 OF THE  
NATIONAL DEFENCE ACT, THAT IS TO SAY, BEING  
AN OFFICIAL OF THE GOVERNMENT OF CANADA**

DID ACCEPT A BENEFIT FROM A PERSON HAVING DEALINGS WITH THE GOVERNMENT OF CANADA, CONTRARY TO SECTION 121(1)(C) OF THE CRIMINAL CODE OF CANADA

Particulars: IN THAT HE, between 10 July 1996 and 1 September 1996, at or near Port-au-Prince Haiti, being an official of the government of Canada did, for his benefit and without the consent in writing of the head of the branch of that government that employs him, accept a benefit in the form of airline travel for himself, his wife Nina Vanier and his daughter Natasha Vanier, valued at approximately \$2,000.00, from Mr. Richard Aoun, President of Militour International Inc., a person having dealings with the government of Canada.

SECOND CHARGE:  
Section 130 NDA

AN ACT PUNISHABLE UNDER SECTION 130 OF THE NATIONAL DEFENCE ACT, THAT IS TO SAY, FRAUDULENT CONCEALMENT, CONTRARY TO SECTION 341 OF THE CRIMINAL CODE OF CANADA

Particulars: IN THAT HE, on or about 9 July 1996, at or near Port-au-Prince, Haiti, did for a fraudulent purpose obtain airline tickets from Militour International Inc., to wit American Airlines tickets number 6881127206 and 6881127207 in favour of his wife Nina Vanier and his daughter Natasha Vanier in the amount of \$1,347.00 respectively.

THIRD CHARGE:  
Section 130 NDA

AN ACT PUNISHABLE UNDER SECTION 130 OF THE NATIONAL DEFENCE ACT, THAT IS TO SAY, FRAUD, CONTRARY TO SECTION 380(1)(B) OF THE CRIMINAL CODE OF CANADA

Particulars: IN THAT HE, on or about 16 September 1996, at or near Port-au-Prince, Haiti, did by deceit, falsehood or other fraudulent means defraud Her Majesty in Right of Canada, as

represented by the Department of National Defence, of the sum of \$2,694.00 by substantiating a General Allowance Claim (form CF52) for Family Reunion Travel with American Airlines tickets which were not paid for and which were never intended to be used.

FOURTH CHARGE:  
Section 130 NDA

AN ACT PUNISHABLE UNDER SECTION 130 OF THE NATIONAL DEFENCE ACT, THAT IS TO SAY, FRAUDULENT CONCEALMENT, CONTRARY TO SECTION 341 OF THE CRIMINAL CODE OF CANADA

Particulars: IN THAT HE, on or about 15 November 1996, at or near Port-au-Prince, Haiti, did for a fraudulent purpose conceal not having paid for the air travel he was claiming for his wife Nina Vanier and daughter Natasha Vanier under the Family Reunion Travel entitlement by providing the endorsed copy of the cheque number 129, dated 28 August 1996, in the amount of \$2,694.00 to Maj Miville Deschenes of the office of the Director Special Examination and Inquiries.

FIFTH CHARGE:  
Section 130 NDA

AN ACT PUNISHABLE UNDER SECTION 130 OF THE NATIONAL DEFENCE ACT, THAT IS TO SAY, FRAUDULENT CONCEALMENT, CONTRARY TO SECTION 341 OF THE CRIMINAL CODE OF CANADA

Particulars: IN THAT HE, on or about 23 September 1996, at or near Port-au-Prince, Haiti, did for a fraudulent purpose obtain an invoice from Militour International Inc. to wit invoice number 002002 dated 28 August 1996 for travel arrangements in the amount of \$4,575.49.

SIXTH CHARGE:  
Section 130 NDA

AN ACT PUNISHABLE UNDER SECTION 130 OF THE NATIONAL DEFENCE ACT, THAT IS TO SAY,

FRAUDULENT CONCEALMENT, CONTRARY TO  
SECTION 341 OF THE CRIMINAL CODE OF CANADA

Particulars: IN THAT HE, on or about 2 October 1996, at or near Port-au-Prince, Haiti, did for a fraudulent purpose obtain an invoice from Militour International Inc. to wit invoice number 001532 dated 2 October 1996 for travel arrangements in the amount of \$2,694.00

...

EIGHTH CHARGE:  
Section 90 NDA

IN THAT HE, between 09 June 1997 and 20 June 1997, without authority absented himself from National Defence Headquarters, Ottawa, Ontario.

[2] The verdict on count number 3 was annotated as follows:

...except that he did not defraud of the sum of two thousand six hundred and ninety dollars but of a lesser amount equivalent to his FRT entitlement as described in DCBA 6-6161 211900Z May 96 (Exhibit 14).

[3] The accused was sentenced by the Court Martial to a reduction in rank to lieutenant- colonel and fined \$10,000.

[4] The Crown is requesting leave to appeal this sentence and, if leave is granted, appeals it.

[5] We are all of the opinion that this appeal should fail.

[6] First, the prosecution has failed to persuade us that the learned Judge-Advocate erred in law in any way whatsoever in his instructions to the members of the Court on the question of the sentence. On the contrary, the Judge-Advocate carefully summarized the submissions by both parties and listed all of the factors that the Court had to take into consideration. In particular, he mentioned the fact that the accused held a senior rank in the Canadian Forces and that his position was one of responsibility and trust. He even stated that, in his opinion, the circumstances of the case warranted a sentence of a deterrent nature and he cited in this regard the words of the prosecuting attorney, who was requesting a sentence of imprisonment. In the circumstances, it cannot be said that the members of the Court were unaware of the fact that they might accede to the prosecution request and pronounce a jail sentence.

[7] Second, nothing in the circumstances of this case or in the nature of the crimes of which the accused has been convicted necessitates, as a question of law, a minimum sentence of imprisonment. It is all very well for the prosecution counsel to draw attention to this Court's judgment in *Seward*,<sup>1</sup> but there is substantial latitude between the circumstances of that case and those of the case at bar. Let us note particularly that in *Seward* a man had died, while no such thing happened in this case. Furthermore, it is clear by the very words of the annotated verdict that the members of the Court were of the opinion that the accused had defrauded Her Majesty of no more than an amount he was legitimately entitled to claim.

---

<sup>1</sup> *R. v. Seward* (1996), 36 C.R.R. (2d) 294.

[8] Finally, it seems to us that the members of the General Court Martial, who were all officers of senior rank in the Canadian Armed Forces, were particularly well placed to assess both the severity of the sentence they were pronouncing and the impact that this sentence might have on the maintenance of good order and discipline within the forces. They could also assess, as they were required to do, the direct and indirect impact not only of the sentence they were imposing but also of the one the prosecution was asking them to impose. We are unable to say that they erred in law.

[9] Accordingly, leave to appeal will be granted, but the appeal itself will be dismissed.

James K. Hugessen

---

J.A.

Certified true translation

Bernard Olivier

**COURT MARTIAL APPEAL COURT OF CANADA**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**FILE NO:** CMAC-422

**STYLE:** Her Majesty the Queen v.  
Lieutenant-Colonel R. Vanier

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** February 17, 1999

**REASONS FOR JUDGMENT OF THE COURT:** (Hugessen, Marceau, Durand, JJ.A.)

**RENDERED AT THE HEARING BY:** Hugessen, J.A.

**APPEARANCES:**

Lt-Colonel Mario Dutil	for the appellant
Major Louis MacKay	
Major R.W. Callan	for the respondent
Lt-Colonel Denis Couture	

**SOLICITORS OF RECORD:**

Office of the Judge Advocate General	for the appellant
Department of National Defence	
Ottawa, Ontario	
Director of Law	for the respondent
National Defence Headquarters	
Ottawa, Ontario	