

**Date: 20081202**

**Docket: CMAC-504**

**CORAM: BLANCHARD C.J.  
DAWSON J.A.  
HANSEN J.A.**

**BETWEEN:**

**EX-CPL BEEK, D.D.**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

**JUDGMENT**

[1] UPON the Appellant, Ex-Cpl. Beek, having been charged on February 28, 2005, pursuant to section 130 of the *National Defence Act* (the NDA), with nine counts of drug trafficking contrary to section 5(1) of the *Controlled Drugs and Substances Act*, to wit:

**First Charge**

In that he, between 1 May 2003 and 24 June 2003, at or near Edmonton, province of Alberta, did traffic in a substance included in Schedule III to wit: N-methyl-3, 4 methylenedioxyamphetamine.

**Second Charge**

In that he, on or about 15 June 2004, at or near Edmonton, province of Alberta, did traffic in a substance included in Schedule III to wit: N-methyl-3, 4 methylenedioxyamphetamine.

**Third Charge**

In that he, on or about 15 June 2004, at or near Edmonton, province of Alberta, did traffic a substance included in Schedule 1 to wit: Cocaine.

**Fourth Charge**

In that he, on or about 17 June 2004, at or near Edmonton, province of Alberta, did traffic in a substance included in Schedule III to wit: N-methyl-3, 4 methylenedioxyamphetamine.

**Fifth Charge**

In that he, on or about 17 June 2004, at or near Edmonton, province of Alberta, did traffic in a substance included in Schedule 1 to wit: Cocaine.

**Sixth Charge**

In that he, on or about 18 June 2004, at or near Edmonton, province of Alberta, did traffic in a substance included in Schedule III to wit: N-methyl-3, 4 methylenedioxyamphetamine

**Seventh Charge**

In that he, on or about 18 June 2004, at or near Edmonton, province of Alberta, did traffic in a substance included in Schedule III to wit: Methamphetamine.

**Eight Charge**

In that he, between 28 July 2004 and 28 September 2004, at or near Edmonton, province of Alberta, did traffic in a substance included in Schedule III to wit: N-methyl-3, 4 methylenedioxyamphetamine.

**Ninth Charge**

In that he, between 30 September 2003 and 28 September 2004, at or near Edmonton, province of Alberta, did traffic in a substance included in Schedule 1 to wit: Cocaine.

[2] UPON the Director of Military Prosecutions preferring the said charges and choosing a Standing Court Martial to try the Appellant;

[3] UPON the Court Martial Administrator issuing an order convening a Standing Court Martial On July 4, 2005;

[4] UPON counsel for the Appellant, at the start of his trial, filing an application pursuant to sections 7 and 11(*d*) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.) 1982, c. 11, (the *Charter*) seeking a declaration that sections 165.14 and 165.19 of the NDA and article 111.02 of the *Queen's Regulations & Orders* are of no force and effect and for an order quashing the convening order of the military court, or, in the alternative, to stay the proceedings against the Appellant;

[5] Upon the application being heard and dismissed on September 7, 2006 by the Military Judge charged with the conduct of the trial;

[6] UPON the Appellant being convicted at the conclusion of his trial and sentenced on July 26, 2007;

[7] UPON the Appellant appealing his conviction to this Court on August 10, 2007 raising among other issues the *Charter* validity/constitutionality of section 165.14 and subsection 165.19(1) of the NDA;

[8] UPON the validity/constitutionality of section 165.14 and subsection 165.19(1) of the NDA having been raised in two other appeals before this Court, namely, cases involving Officer-Cadet Trépanier and MCpl. McRae;

[9] UPON the Trépanier appeal proceeding first and by agreement between the parties and the order of the Chief Justice, the Appellant was granted intervener status in the Trépanier appeal and agreed to be bound by the outcome of the Court's judgment in that case in respect to the constitutional questions raised challenging the validity of section 165.14 and subsection 165.19(1) of the NDA;

[10] UPON the Court issuing its judgment in *R. V. Trépanier; Ex-Cpl. Beek*, (Trépanier) on April 24, 2008, wherein it allowed the appeal in part and declared section 165.14, subsection 165.19(1) of the NDA and article 111.02(1) of the QR&Os violate section 7 and the right to a fair trial guaranteed by paragraph 11(d) of the *Charter* and are of no force and effect;

[11] UPON the release of the Court's judgment in Trépanier, the perfection of the Appellant's appeal was adjourned from time to time until the Director of Military Prosecutions determined her position with respect to the result in Trépanier;

[12] UPON the Director of Military Prosecutions, on behalf of the Crown, filing its application for leave to appeal to the Supreme Court of Canada in Trépanier on May 30, 2008;

[13] UPON the Minister of National Defence, on June 6, 2008, having introduced in the House of Commons Bill C-60 to amend the NDA by providing the following changes regarding the selection of mode of trial by an accused:

- selection of type of court martial will be governed by operation of law, with an enhanced ability for an accused person to make a choice as to the mode of trial in specified circumstances;

- simplification of the court martial structure by reducing the types of court martial from four to two;
- requirement for a unanimous decision for certain key court martial panel decisions.

[14] UPON Bill C-60 being approved by the House of Commons and receiving Royal Assent on June 18, 2008, to come into force on July 28, 2008;

[15] UPON the Supreme Court of Canada dismissing the Crown's application for leave to appeal in *R. v. Trépanier; Ex-Cpl. Beek* SCC 32672 on September 25, 2008;

[16] UPON disposing of the appeal in *Trépanier*, this Court made reference to the Appellant's appeal, which was, and still remains before this Court for final disposition. At paras. 139-142, the Court stated the following:

[139] We have heard representations from the intervener about general and specific remedies. We understand that our decision will be binding on the parties and the intervener with respect to the constitutional issue.

[140] However, we are not the panel assigned to render judgment in the intervener's case. Therefore, for the benefit of the parties in that case since we heard their arguments on the remedies, we would like to indicate how we believe the appeal should be disposed of after giving them, if needed or appropriate, an opportunity to be heard. We leave it to the chief Justice to finalize the process. Needless to say that we express ourselves in terms of a recommendation which is not binding on the members of the Court who will render judgment in that instance.

[141] We believe that a recommendation which best reconciles the interests of justice, the accused and the prosecution as well as respects and promotes the charter is to give the accused a right to choose his trier of facts. Therefore, we would quash the conviction, the sentence and the convening order issued in file 200532. We would order a new trial and give Ex-Corporal Beek the right to an

election as to the choice of the trier of fact before whom that new trial will be held.

[142] Copy of the judgment and the reasons in this case will be placed in file Beeck v. The Queen, CMAAC-504 in support of the judgment to be rendered in that case.

[17] UPON discussions between the Director of Military Prosecutions and the Appellant and further to the above-cited recommendations made by the Court in Trépanier regarding the disposition of the within appeal, it was agreed between the parties that:

1. Ex-Capl. Beek's appeal should be allowed and his conviction and sentence quashed.
2. A new trial on all charges should be directed that will take place in accordance with the NDA as amended and in force at the date of the Order of the Court, allowing the appeal.

[18] UPON being satisfied that the above cited recommendation of the Court in Trépanier is the appropriate disposition of the within appeal;

[19] UPON the Respondent not objecting to the individual remedy suggested by this Court in Trépanier being applied by the panel assigned to render judgment in Ex-Cpl. Beek's appeal and this without formal appearance by the parties.

[20] **AND UPON** the within judgment issuing on the basis of the written record.

**THIS COURT ORDERS AND ADJUDGES that**

1. Ex-Cpl. Beek's appeal is allowed and his conviction and sentence is quashed.
2. A new trial on all charges is directed and will take place in accordance with the *National Defence Act* as amended and in force as of the date of this judgment allowing the appeal.

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"Edmond P. Blanchard"

C.J.