



COURT MARTIAL

Citation: *R. v. Dondaneau*, 2023 CM 2009

Date: 20230309

Docket: 202227

Standing Court Martial

Canadian Forces Base Esquimalt
Victoria, British Columbia, Canada

Between:

His Majesty the King

- and -

Master Corporal S.L. Dondaneau, Offender

Before: Commander S.M. Sukstorf, M.J.

NOTE: Personal data identifiers have been redacted in accordance with the Canadian Judicial Council's " <i>Use of Personal Information in Judgments and Recommended Protocol</i> ".

REASONS FOR FINDING

(Orally)

Introduction

[1] The charges before the Court arise from allegations that Master Corporal Dondaneau fraudulently received post living differential (PLD) financial assistance and other expenses to which she was not entitled. Charges one and five are alternative charges. The first charge alleges an offence punishable under section 130 of the *National Defence Act (NDA)*, that is to say, fraud of a value exceeding \$5,000 contrary to section 380 of the *Criminal Code*. Alternatively, the fifth charge alleges a general contravention under paragraph 117(f) of the *NDA* for an act of a fraudulent nature not particularly specified in sections 73 to 128 of the *NDA*.

[2] Upon completion of the prosecution's case, the prosecution advised the Court that in his view the elements of the second charge had not been made out and after discussion with defence, he sought leave of the Court to have that charge withdrawn which was granted.

[3] The third and fourth charges allege offences contrary to paragraph 125(a) of the *NDA* for willfully making a false entry in a document signed by Master Corporal Dondaneau that was required for official purposes. The sixth charge alleged an offence contrary to section 129 of the *NDA* for conduct to the prejudice of good order and discipline.

[4] The charges read as follows:

“FIRST CHARGE
(Alternate to the fifth
charge)

AN OFFENCE PUNISHABLE UNDER
SECTION 130 OF THE NATIONAL
DEFENCE ACT, THAT IS TO SAY,
FRAUD CONTRARY TO SECTION 380
OF THE CRIMINAL CODE.

Section 130
National Defence Act

Particulars: In that she, between 30 July 2013 and 9 October 2020, at or near Canadian Forces Base Esquimalt, British Columbia, by deceit, falsehood or other fraudulent means did defraud the Government of Canada of funds of a value exceeding \$5000 by claiming financial benefits and allowances to which she was not entitled.

THIRD CHARGE

WILLFULLY MADE A FALSE ENTRY IN
A DOCUMENT SIGNED BY HER THAT
WAS REQUIRED FOR OFFICIAL
PURPOSES

Section 125(a)
National Defence Act

Particulars: In that she, between 30 July 2013 and 9 October 2020, at or near Canadian Forces Base Esquimalt, British Columbia, submitted documentation in order to receive Commuting Assistance, knowing the documentation was false.

FOURTH CHARGE

WILFULLY MADE A FALSE ENTRY IN
A DOCUMENT SIGNED BY HER THAT
WAS REQUIRED FOR OFFICIAL
PURPOSES

Section 125(a)
National Defence Act

Particulars: In that she, between 30 July 2013 and 9 October 2020, at or near Canadian Forces Base Esquimalt, British Columbia, submitted documentation in order to receive travel expenses, knowing the documentation was false.

FIFTH CHARGE
(Alternative to the first charge)

AN ACT OF A FRAUDULENT NATURE NOT PARTICULARLY SPECIFIED IN SECTIONS 73 TO 128 OF THE NATIONAL DEFENCE ACT

Section 117(f)
National Defence Act

Particulars: In that she, between 30 July 2013 and 9 October 2020, at or near CFB Esquimalt, British Columbia with intent to defraud, claimed financial benefits and allowances to which she was not entitled.

SIXTH CHARGE

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND DISCIPLINE

Section 129
National Defence Act

Particulars: In that she, between 30 July 2013 and 9 October 2020, at or near Canadian Forces Base Esquimalt, British Columbia, did not inform her commanding officer that she had changed her address, as required by article 26.02 of the Queen's Regulations and Orders for the Canadian Forces."

[5] In reaching my decision, I reviewed and summarized the facts emerging from the evidence and made findings on the credibility of the witnesses. I instructed myself on the applicable law and applied the law to the facts, conducting my analysis before I came to a determination on each of the charges.

Evidence

[6] The following evidence was adduced at the court martial:

- (a) in court testimony of four prosecution witnesses:
 - i. Mr Johnathon Brisbane-Babin;
 - ii. Ms Alana Power;
 - iii. Mr Peter Perfect; and

iv. Captain S. Karnes

- (b) Exhibit 1 – Convening order;
- (c) Exhibit 2 – Charge sheet;
- (d) Exhibit 3 – 59-page document with “ICBC documents”;
- (e) Exhibit 4 – Document entitled “PLD request form”;
- (f) Exhibit 5 – Document entitled “PLD request form”;
- (g) Exhibit 6 – Document entitled “CFB Esquimalt map”;
- (h) Exhibit 7 – Document entitled “Pay and commuting allowance”;
- (i) Exhibit 8 – Document entitled “Pay and commuting allowance”;
- (j) Exhibit 9 – Binder entitled “Commuting Assistance forms”;
- (k) Exhibit 10 – Binder entitled “Travel Claim forms”;
- (l) Exhibit 11 – Document entitled “MARPAORD 7200-1 Local Move Area”;
- (m) Exhibit 12 – Document entitled “2-223 Base Standing Order”;
- (n) Exhibit 13 – Document entitled “BSO 5320-0 Geographical boundaries”;
- (o) Exhibit 14 – Bundle of five Google maps with locations marked;
- (p) Exhibit 15 – Document entitled “Chapter 205 Allowances for Officers and NCMs”;
- (q) Exhibit 16 – Document entitled “CF Temporary Duty Travel Instructions”; and
- (r) Pursuant to subsection 15(2) of the *Military Rules of Evidence* (MRE), the Court also took judicial notice of:
 - i. *NDA*, section 35;
 - ii. *Queen’s Regulations and Orders for the Canadian Forces* (QR&O) article 26.02;

- iii. Compensation and Benefit Instructions (CBI) 1;
- iv. CBI 205;
- v. CBI 208;
- vi. CBI 209;
- vii. Maritime Pacific (MARPAK) Orders;
- viii. Canadian Forces Base (CFB) Esquimalt Orders – Geographical Boundaries;
- ix. National Joint Council Commuting Assistance Directive; and
- x. the Court took judicial notice of the facts and matters covered by section 15 of the *MRE*.

Facts

[7] The charges before the Court relate primarily to Master Corporal Dondaneau’s entitlement to collect PLD allowance. I explained the purpose of the PLD allowance in *R. v. Beemer*, 2019 CM 2029, at paragraphs 8 and 9:

[8] The purpose of PLD, as described at CBI 205.45(3) is to reduce the adverse financial impact on military members and their families when posted to a PLD area. A PLD area is a location in Canada within the boundaries of a place of duty where the cost of living exceeds that of the “standard city”, being Ottawa/Gatineau. The PLD rates represent the monthly differential between the cost of living at the standard city and the cost of living at established PLD areas, grossed-up by the applicable marginal tax rate.

[9] The policy and administrative process for applying for and being approved for PLD are set out in CBI 205.45. CBI 205.45(19) establishes that members whose principal residence is located in a PLD area, and who request the PLD allowance, must complete the PLD request form and submit it to their unit records support for approval and processing. In approving each request, unit records support authorities will confirm that the conditions of the CBI instruction are satisfied and enter approved requests into the pay system.

[8] The evidence suggests that Master Corporal Dondaneau appropriately applied to receive PLD in December 2010 while posted to 443 Maritime Helicopter (MH) Squadron, Sidney, BC when she resided at XXXX, Victoria, BC. The PLD allowance would have continued to be paid to her unless she amended her records to reflect that she had moved from that address to a different address where she was no longer entitled to claim the PLD allowance. On the form that she completed, she certified that: “the information given on this form is correct and complete. I understand that I must submit a new request for PLD if there is a change in my address or situation regarding joint ownership or lease of my principal residence.” The next PLD change on record was not

made until 16 October 2020 when Master Corporal Dondaneau certified that she now lived on XXXX in Langford, BC.

[9] Between these two dates in 2010 and 2020, there is no record of any other changes to her PLD. In reviewing the originally signed 2010 PLD form, I noted that there is no reference to CBI 205.45 at any place on the form. However, I note that the new form she signed in 2020 has an amended certification box that requires members to have read CBI 205.45 and verify that their principal residence is located within a PLD area. The original 2010 PLD form that she signed only refers to QR&O 205.45 and the definition of “principal residence” within QR&O 205.45 was repealed in 2001 and was effectively of no force and effect when she signed the form. However, a definition of “principal residence” is now provided within CBI 205.45.

[10] The prosecution suggested that at some point after she was entitled to claim PLD, she moved to XXXX in Nanaimo, BC which is in an area just outside of the PLD zone for CFB Esquimalt. There is no specific evidence before the Court as to exactly when she moved. However, the effective date that she changed her address on her driver’s license was 30 July 2013. It was also noteworthy that the address on her driver’s license was changed to XXXX, Nanaimo, BC.

[11] There is evidence, set out at Exhibit 4, that Master Corporal Dondaneau notified 443 MH Squadron that she had moved, and she provided her new address as XXXX, Duncan, BC effective 10 October 2013. This Duncan address is where the father of her former common law partner resides. The evidence suggests that Master Corporal Dondaneau vacated her residence in Victoria, BC sometime between 30 July 2013 and 10 October 2013.

[12] The testimony of her former father-in-law, Mr Peter Perfect, confirmed that although Master Corporal Dondaneau had keys and free access to the suite at his home, she did not live there and did not keep her belongings there. He confirmed that Master Corporal Dondaneau resided with his son and his son’s daughters in Nanaimo. He did indicate that Master Corporal Dondaneau stayed in the suite on some weekends.

[13] I reviewed the claims submitted by Master Corporal Dondaneau seeking reimbursement for her commute back and forth to work against her Insurance Corporation British Columbia (ICBC) records and found that there is no doubt that based on the evidence, she relied upon two different addresses for the two different purposes.

[14] From the whole of the evidence, I find that although Master Corporal Dondaneau did not reside in Duncan, she relied upon Mr Perfect’s Duncan, BC address when completing her travel claims and submitting requests for Commuting Assistance Allowance (CAA) in the CAF. She was consistent in declaring the Duncan address within all her military correspondence while residing further away in Nanaimo, BC. The Duncan address was located within the geographical boundaries of CFB Esquimalt while the Nanaimo address was not.

[15] However, the evidence also confirmed that with respect to her personal matters, such as her interactions with ICBC for obtaining car insurance, selling her vehicles, reporting accidents or renewing her license, Master Corporal Dondaneau relied almost exclusively upon her address in Nanaimo.

[16] The testimonial evidence before the Court was that members who reside within the geographical boundaries of CFB Esquimalt are entitled to collect all the benefits and allowances to which a member might be entitled. However, if a member resides outside of the geographical boundaries, they are not entitled to collect any benefits nor allowances. The testimonial evidence of Ms Alana Power revealed that Master Corporal Dondaneau was aware of this limitation and therefore relied upon the Duncan address for all her military correspondence. Based on the testimony of Captain Karnes, there appeared to be hard and fast rules that were consistently applied, notwithstanding the fact that the written policies did provide mechanisms to assess situations that fell outside of the norm. There was no evidence that Master Corporal Dondaneau ever sought an exception to live outside of the geographical boundaries of CFB Esquimalt.

[17] My review of the actual documentary evidence and written policies that existed in 2013 reveals a lack of clear written guidance including definitions to facilitate the administration of some of the allowances. Further, I found a great deal of inconsistencies in the application of the PLD policies that were difficult to reconcile and will be explained below.

Presumption of innocence and reasonable doubt

[18] Two rules flow from the presumption of innocence. One is that the prosecution bears the burden of proving guilt; the other is that guilt must be proven beyond a reasonable doubt. These two rules are linked to the presumption of innocence to ensure that no innocent person is convicted.

[19] Master Corporal Dondaneau entered these proceedings presumed to be innocent. That presumption of innocence remains throughout the case until such time as the prosecution has on the evidence put before the Court, satisfied me beyond a reasonable doubt that she is guilty on each of the charges.

[20] So, what does the expression “beyond a reasonable doubt” mean? The term “beyond a reasonable doubt” is anchored in our history and traditions of justice. It is so entrenched in our criminal law that some think it needs no explanation, but its meaning bears repeating (see *R. v. Lifchus*, [1997] 3 S.C.R. 320 at paragraph 39):

A reasonable doubt is not an imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived from the evidence or absence of evidence.

[21] In essence, this means that even if the Court believes that Master Corporal Dondaneau is probably guilty or likely guilty, that would not be sufficient. If the

prosecution fails to satisfy the Court of her guilt beyond a reasonable doubt, the Court must give her the benefit of the doubt and acquit her.

[22] On the other hand, it is virtually impossible to prove anything to an absolute certainty and the prosecution is not required to do so. Such a standard of proof is impossibly high. Therefore, in order to find Master Corporal Dondaneau guilty of the charges before the Court, the onus is on the prosecution to prove something less than an absolute certainty, but something more than probable guilt for the charges set out in the charge sheet. (see *R. v. Starr*, 2000 SCC 40, paragraph 242).

The law

[23] Flowing from the above facts, Master Corporal Dondaneau was charged with the following offences which are described below.

Section 380 of the Criminal Code: fraud of a value exceeding \$5,000

[24] For the Court to find Master Corporal Dondaneau guilty of the offence of fraud, the prosecution must prove each of the following essential elements beyond a reasonable doubt that:

- (a) Master Corporal Dondaneau deprived the Government of Canada of something of value (or, specify);
- (b) Master Corporal Dondaneau's deceit, falsehood or other fraudulent means caused the deprivation;
- (c) Master Corporal Dondaneau intended to defraud the government; and
- (d) the value of the money obtained by fraud exceeded \$5,000.

Offence contrary to paragraph 117(f) of the NDA

[25] The fifth charge before the Court alleges a violation of paragraph 117(f) of the *NDA*. Paragraph 117(f) deals with any act of a fraudulent nature. The wording of this section is purposefully broad and encompasses virtually all acts of a fraudulent nature contemplated within the *Criminal Code*. The offence entails two essential elements; namely, dishonesty and deprivation (see *R. v. Olan et al.*, [1978] 2 S.C.R. 1175, per Dickson J., at page 1182; and *R. v. Th roux*, [1993] 2 S.C.R. 5, per McLachlin J., at page 15).

[26] In outlining the essential elements of a fraud offence, the Court Martial Appeal Court (CMAC) case of *R. v. Arsenault*, 2014 CMAC 8, at paragraph 29 relied upon an analysis done by McLachlin J., as she then was, who, in the case of *Th roux*, summarized the essential elements of a section 380 fraud offence in the *Criminal Code* where she noted that:

[T]he actus reus of the offence of fraud will be established by proof of:

1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.

Correspondingly, the *mens rea* of fraud is established by proof of:

1. subjective knowledge of the prohibited act; and
2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

Offence contrary to paragraph 125(a) of the NDA

[27] In addition to the elements of the offence dealing with the identity of the offender, as well as the date and place where the alleged offence was committed, the prosecution must prove beyond a reasonable doubt that:

- (a) Master Corporal Dondaneau, made a false entry, in a document required for official purposes;
- (b) Master Corporal Dondaneau made that entry wilfully; and
- (c) Master Corporal Dondaneau, had knowledge that the entry was false.

Offence contrary to section 129 of the NDA

[28] The sixth charge before the Court alleges a violation of section 129 of the *NDA* for conduct to the prejudice of good order and discipline. Aside from proof of identity, time and place, the following elements left to be proven beyond a reasonable doubt for the charge are:

- (a) the conduct alleged in the particulars of the charge;
- (b) that the conduct is prejudicial to the good order and discipline; and
- (c) that the accused had the wrongful intent.

Analysis

[29] Having instructed myself on the presumption of innocence, reasonable doubt, the onus on the prosecution to prove their case, the required standard of proof and the essential elements of the offences, the Court now turns to address the legal principles and the charges.

[30] Many factors influence the Court's assessment of the credibility of the testimony of a witness. For example, a Court will assess a witness's opportunity to observe events, as well as a witness's reasons to remember. Was there something specific that helped the witness remember the details of the event that he or she described? Were the events noteworthy, unusual and striking or relatively unimportant and, therefore, understandably more difficult to recollect? There are other factors that come into play as well.

[31] A Court may accept or reject, some, none or all the evidence of any witness who testifies in the proceedings.

[32] In short, after hearing all the witnesses testifying before the Court, I found them all credible.

[33] I found Mr Perfect to be a credible and reliable witness. He was placed in a very difficult position having been asked to testify against his former daughter-in-law, which the evidence suggested that he still loves like a daughter.

[34] I also found Ms Power to be credible. She is the formation harassment adviser and she testified regarding her interactions with Master Corporal Dondaneau that unfolded during a break when she was teaching a course. Although she did not recall all the specifics, and she got some of the dates wrong, I do accept that it was during a conversation she had with Master Corporal Dondaneau that she discovered that Master Corporal Dondaneau was claiming PLD using a different address than where she lived.

[35] I also found Captain Karnes to be a credible witness. I noted that Captain Karnes' explanations regarding the processing of claims and entitlements were shaped primarily by her personal experiences. She is an experienced logistics officer. When she testified, she provided very practical advice and guidance in a straightforward manner, explaining how claims and entitlements are processed. She limited her responses to those matters she could testify to and when she made an error, she clarified it. She was never argumentative but was clear that she was testifying with respect to her own knowledge and experiences. My only concern with respect to Captain Karnes' testimony is that she was not at 443 MH Squadron in 2013 when Master Corporal Dondaneau moved to Nanaimo. She only arrived at 443 MH Squadron as a logistics officer in March 2020. The Court was provided no insight into the administration of financial benefits in 443 MH Squadron in 2013, nor the management of PLD allowances, but more particularly, there was no evidence to assist the court as to how requests to live outside of the geographical boundaries were handled.

[36] The prosecution asked the Court to rely upon the value of the alleged fraud found in the claims for CAA, travel claims as well as the amount of money Master Corporal Dondaneau received from PLD to which she was not entitled. Consequently, I proceeded by carefully reviewing and assessing each of the allowances and travel expenses individually with respect to the charges before the Court.

Post living differential allowance

[37] The first charge that Master Corporal Dondaneau is alleged to have committed is that by deceit, falsehood or other fraudulent means, she did defraud the Government of Canada of funds of a value exceeding \$5,000 by claiming financial benefits and allowances to which she was not entitled.

[38] The prosecution argued that the PLD claimed amounted to a significant amount of money claimed to the detriment of the Crown and he further argued that Master Corporal Dondaneau was not entitled to collect any amount of PLD or CAA.

[39] At the beginning of the prosecution's case, I expressed concern with the quality of the evidence being admitted which was originally a simple hand annotated map being introduced through Captain Karnes, as the witness who testified as to how they apply the PLD allowances to regular force members living within the geographical boundaries of CFB Esquimalt. Captain Karnes testified that regular force members living inside the zone on the map are entitled to PLD allowance and anyone living outside of it is entitled to nothing. There were no policy guidelines nor specific base instructions that were entered in as evidence that clearly defined for members, specifically where the PLD allowances applied and how the allowance worked. Rather the evidence suggested that those personnel administering benefits relied almost exclusively upon a practice where they compared the member's home address to the delineations on the map. It was an all or nothing assessment.

[40] I explained to counsel that based on my prior military experience being posted around the country and as the presiding military judge in *Beemer*, I expected to receive a clear base policy and guidelines that explained PLD entitlement and clearly outlining what happens if one resides or later moves outside of the delineated areas. Eventually, the prosecution tendered a copy of the MARPACORD 7200-1 that establishes the CFB Esquimalt local move area that was issued on 10 January 2014. MARPACORD 7200-1 sets out the approved boundaries for CFB Esquimalt and Maintenance Detachment Aldergrove. However, I note that MARPACORD 7200-1 does not refer to any PLD entitlements and I note that the PLD entitlement for members posted to either of the two locations listed therein would be different.

[41] I mentioned in court that often members would have personal circumstances for residing outside the geographical boundaries and that the boundaries are not necessarily specific to PLD only as they are very often developed for other operational reasons. Captain Karnes indicated that it was an all or nothing benefit and if Master Corporal Dondaneau was residing in Nanaimo, then she would not be entitled to receive any benefit or allowance.

[42] When the MARPACORD 7200-1 was produced, it clarified that personnel who wish to live outside of the boundary applicable to them may request approval from their commanding officer (CO) through their chain of command. COs are to refer to

references prior to rendering their decision. If approved, a copy of the CO's written authority to live outside of the geographical boundary is to be placed on the member's personnel file.

[43] In considering requests for members to reside outside of the geographical boundary, COs are advised to consult Canadian Forces Administrative Orders (CFAO) 209-28 paragraph 3 and CFB Esquimalt Base Standing Orders (BSO) 2-223.

[44] CFAO 209-28(3) reads as follows:

Paragraph 2 defines a place of duty. The CO shall promulgate in detail those boundaries of the surrounding geographical area that would normally constitute that place of duty for members under the CO's command, and ensure that all members are aware of such boundaries. One copy of such order and any amendments thereto shall be forwarded through normal channels to NDHQ/DCBA (Director Compensation Benefits Administration) who will issue a complete listing of such geographical boundaries of all units in Canada to all commands on an annual basis. In detailing the boundaries, there should be realistic limits to permit members to live where they choose, in due consideration of their duties, provided they can commute to and from their place of work on a daily basis without undue hardship, or without affecting the performance of their duties. In determining this latitude, it must be realized that once a member moves at public expense to a residence within the place of duty, as defined by the member's CO, the member is denied further entitlement for a move within that place of duty except for a move into, out of, or between married quarters authorized under QR&O.

[45] The above guidance set out in the CFAO confirms that geographical boundaries are established by local commanders based on their operational needs and their impact on their member's lives. There is no requirement for economic assessments to determine cost of living in the various areas nor is there any requirement for commanders to consider these factors in establishing the geographical boundaries.

[46] BSO 2-223 sets out the Place of Duty – Definition and therein defines the boundaries of CFB Esquimalt, Nanaimo Military Camp and NRS Aldergrove that became effective on 1 April 2000. After a close review of all the documents provided, I am unable to conclude that the drafting of the boundaries and the guidance provided was for anything more than assisting members who were moving into the area on posting. The policy sets understandable limits on where one can move and the benefits that are attached to their decisions. However, most notably, there is no reference to PLD which is a specific allowance authorized under subsection 35(2) of the *NDA* as determined and regulated by the Treasury Board. It is also notable that BSO 2-223 provides boundaries for three different locations within it, which most noticeably includes Nanaimo.

[47] The regulations regarding PLD allowance are set out at CBI 205.45. CBI 205.45 was entered on consent by counsel, and it was supported by an email from a Major Wright who confirmed that it was the CBI that was in effect in 2013.

[48] I examined paragraph 205.45(1) (Definitions) which clarifies what definitions apply to the application of the PLD.

[49] CBI 208.80 defines “place of duty” as follows:

means the place at which an officer or non-commissioned member usually performs their normal military duties and includes any place in the surrounding geographical area that is determined to be part thereof by the Chief of the Defence Staff or such other officer as the Chief of the Defence Staff may designate.

[50] The relevant paragraph regarding entitlements reads as follows:

205.45(4) (Entitlement – Regular Force) Subject to paragraphs (7) to (19), a member of the Regular Force whose principal residence is located within a PLDA is entitled to the PLD rate for that location established in the Table to this instruction for that area.

[51] The table to CBI 205.45 sets out the amount of allowance (that clearly indicates that the rates were established in 2008), that members who are entitled to the PLD may collect. It lists that regular force members in Victoria/Esquimalt are entitled to an allowance of \$816.00 per month while those in Nanaimo would be entitled to \$75.00 per month. CBI 205.45 does not specify what boundaries apply to the Victoria/Esquimalt allowance, but I found it interesting that it lists the benefit as belonging to Victoria/Esquimalt. Victoria and Esquimalt are cities themselves. Of course, many military units reside in the city of Victoria, but no members are posted to Victoria as a unit.

[52] CBI 205.45 defines the post living differential area (PLDA) as “a location in Canada within the boundaries of a place of duty where the cost of living exceeds that of the Standard City cost of living,” being Ottawa/Gatineau. [Emphasis added.] It is notable that when one reviews the PLD allowances for those members within the geographical boundaries of Toronto, there are five different PLD zones that establish different entitlements. They are based on the cost of living within the various zones. So, members posted to the same unit but who reside at different addresses, might fall within any one of the PLD zones despite being within the same geographical area. In *Beemer*, the Court was provided with specific instructions, notices and briefings that members received to ensure that they were aware of what PLD allowance applied in the various zones and their responsibilities that needed to be followed if they moved addresses.

[53] Further, when I reviewed the annex of PLD allowances set out in CBI 205.45, I noted that there is only one geographical area defined for Cambridge, ON, Kitchener, ON and Guelph, ON, yet likewise, there are three different PLD rates that are payable based on where members reside: Guelph (\$167); Kitchener (\$62); Cambridge (\$71). Unlike the instruction for Toronto, there is no map published that links the various areas to the cost of living nor are there any specifics provided as to where the various boundaries lie.

What exactly were the boundaries of Master Corporal Dondaneau’s place of duty?

[54] Pragmatically, the place of duty is established by local commanders in accordance with CBI 208.80(3) and CFAO 209-28(3). The collection of CAF places of

duty is published by the Director General Compensation and Benefits (DCBA) as they are received from local authorities. However, it specifies that the descriptions published are to be used as a guide only, which begs the question as to their applicability and enforcement.

[55] Subsection 1 of CFAO 209-28(2) states that the definition of “place of duty”:

means the place at which a member usually performs normal military duties, and includes any place in the surrounding geographical area that is determined to be part thereof by the Chief of the Defence Staff (CDS) or such other officer as the CDS may designate (see paragraph 3).

[56] Exhibit 11, which is the MARPACORD 7200-1 for CFB Esquimalt Local Move Area states that “the purpose of this order is to promulgate the boundaries of the geographical area that normally constitute a place of duty for Maritime Forces Pacific (MARPAAC) and CFB Esquimalt integral and lodger units.” The MARPACORD is issued pursuant to the authority of the Commander MARPAC.

[57] The MARPACORD 7200-1 appears to have been issued on 10 January 2014. It applies to those members of the CAF and employees of the Department of National Defence (DND) who serve or are employed in integral units of the MARPAC. Since it applies to all CAF and civilian employees, it is arguably not an order intended to apply exclusively to PLD. It is interesting to note that the order states that it is not directly enforceable on members serving in lodger units as those units are only encouraged to adopt the provisions of the order.

[58] 443 MH Squadron is embodied in the regular force and allocated to 12 Wing Shearwater, NS. Its role is to conduct air operations in support of MARPAC. A lodger unit is an autonomous unit of one command that is normally lodged in a host unit of a different command. Although there is no specific evidence on the status of 443 MH Squadron, based on the nature of the evidence and testimony, I can infer that since 443 MH Squadron receives its support from CFB Esquimalt, but reports directly to 12 Wing Shearwater, NS, it is a lodger unit. The squadron is led by its own CO.

[59] There is no evidence before the Court that the CO of 443 MH Squadron adopted the provisions of the MARPACORD 7200-1 regarding the CFB Esquimalt Local Move Area and there is no evidence before the Court that any of the prior commanding officers of 443 MH Squadron ever issued an order that delineates the place of duty for his personnel. Captain Karnes was asked whether the CO had issued his own order and she confirmed that he had not and that to the best of her knowledge she was not aware of any such orders being issued for her unit. It was her evidence that 443 MH Squadron enforces the place of duty map as promulgated in the BSO and MARPACORD. However, as I explained earlier, Captain Karnes was not posted to 443 MH Squadron until March 2020.

[60] Interestingly, I note that the BSO 5320-0 which establishes geographical boundaries and sets out the place of duty policy was updated in April 2022. It now

supersedes BSO 2-223, Place of Duty, Definitions AL 09/04 thereby cancelling it and clarifies that the order applies inclusive of lodger units and all properties for which the base commander is responsible. In other words, contrary to MARPACORD 7200-1, the current MARPACORD now clearly applies to lodger units which would include regular force members who are serving at 443 MH Squadron providing much greater clarity to the application of the policy.

[61] It is unclear when that change regarding the MARPACORD's applicability to lodger units took effect and I have no evidence before me where I can even draw any inferences. In any event, the purpose of the order is to promulgate the boundaries of the geographical area that normally constitute a place of duty for MARPAC and CFB Esquimalt integral and lodger units and it defines place of duty.

[62] BSO 5320-0 outlines the required procedures should a member wish to live outside the geographical boundaries stipulated in the reference (Geographical Boundaries: Place of Duty). The policy now requires that a member must submit a request in writing to the CO or branch head stating the reasons why they wish to live outside of the geographical boundaries. If the CO or branch head does support the request, the member is to report to the base orderly room/integrated relocation program (BOR/IRP) for a brief on the financial implication of their request and it will not be approved until IRP/DCBA explanation of financial implication is provided to the member. Given the engagement of IRP, it is fair to conclude that the boundaries are relied upon heavily to provide guidance to members who are being posted into the areas.

[63] In short, there is no clear evidence of a specific local policy that existed at the time that Master Corporal Dondaneau moved with her son to Nanaimo and those references that have been entered into evidence are almost incomprehensible in their application to PLD in 2013. There is a MARPACORD 7200-1, but there is no evidence that it was adopted by the CO of 443 MH squadron.

[64] Another critical issue to be determined is whether Master Corporal Dondaneau would have been entitled to any PLD for living within a PLDA, even if it was not within the geographical boundary for Esquimalt. CBI 205.45 clearly establishes a PLD rate for Nanaimo as well as Victoria.

[65] Captain Karnes also confirmed that in her experience, she has never received a request from anyone seeking to reside outside of the geographical boundaries which suggests that basically all members posted to 443 MH Squadron qualified to receive PLD. However, upon review of CBI 205.45(8), I note that contrary to the evidence provided by Captain Karnes in court, the current CBI 205.45(8) specifically provides for exceptions when a member chooses to live outside of the geographical area where they are posted. In fact, the only impediment that exists within the CBI is when a member establishes a residence at an isolated post as defined by CBI 205.40 or the monthly PLD rate for the area is \$50.00 or less. CBI 205.45(8) reads as follows:

205.45(8) (PLD at other than the place of duty) For the purposes of this instruction;

- (a) when a PLD rate exists at the location of the principal residence, the member is entitled to the lower of the PLD rate for that PLDA, or the PLD rate established in the Table to this instruction for the PLDA for the member's place of duty when the member:

...

- ii is not posted, but chooses, and is authorized, to move at their own expense to another location where they establish a principal residence, or

...

[66] I note that the facts here are that Master Corporal Dondaneau moved at her own expense to Nanaimo. There is no evidence that she was authorized to do so, but there is also no evidence that she was not authorized either. Practically, I note that she was a young corporal and based on the evidence, the advice being given to members was that there was no entitlement to PLD outside of the geographical boundaries. With that approach, there is no room for a member to seek approval. However, contrary to the general policy advice being provided, the PLD policy specifically provides for situations such as hers to be accommodated.

[67] To compound the confusion in this case is the fact that as defence argued in his closing submissions, the geographical boundaries set out in the most recent BSO 5320-0 includes four different areas being CFB Esquimalt, Nanaimo Military Camp, NRS Aldergrove and CFMETR Nanoose Bay. In the case of Esquimalt and Nanaimo, their boundaries overlap, drawing into question why a member living in the exact same house located in the Patricia Bay area, just outside of 443 MH Squadron, would be entitled to vastly different PLD allowances based on where they are posted. This raises into question how the exact same address can produce entitlements to different PLD allowances if the purpose of the PLD allowance is to equalize situations where the cost of living in one area exceeds that of the standard city cost of living.

[68] The fact that the geographical boundaries overlap confirms that geographical boundaries set by local commanders and COs are based on operational factors other than an economic assessment linked to the cost of living, so it is questionable why these boundaries are even being relied upon for PLD allowances at all.

[69] In any event, the PLD allowance is determined based on where the member was posted rather than where they reside, but there is some discretion in the policy for members who request to live outside of the geographical boundaries set by the local commanders.

[70] Referring to the guidance provided in CFAO 209-28(3) to commanding officers, "In detailing the boundaries, there should be realistic limits to permit members to live where they choose, in due consideration of their duties, provided they can commute to and from their place of work on a daily basis without undue hardship, or without affecting the performance of their duties."

Commuting Assistance Allowance (CAA)

[71] CBI 209.28 establishes when members serving in some units or worksites may be authorized to receive CAA. The evidence before the Court was that members posted to 443 MH Squadron are entitled to receive commuting assistance to help defray excessive costs incurred in their daily travel to and from their regularly assigned workplace.

[72] In filling out her claims for CAA, Master Corporal Dondaneau acknowledged that she is a member entitled to claim CAA in Canada. She signed each of the claims as having commuted from her residence, which she falsely declared to be in Duncan, BC and the worksite on the days she was required to report for duty and so reported.

[73] On the facts before the Court, commuting assistance for 443 MH Squadron members is authorized in the form of a kilometric allowance.

[74] The allowance is calculated based on a one-way trip between the member's worksite and the member's residence that is necessary and made by the member in daily travel to or from work. The assistance is determined by a formula as follows:

$$\text{“}[(A - 16 - P) \times B \text{”}$$

where

A is the direct road distance between the member's worksite and their residence, or the centre of the suitable residential community, whichever is closer to the worksite;

B is the kilometric rate for the location of the worksite as set out in “Appendix A — Lower Kilometric Rates” of the *National Joint Council Commuting Assistance Directive*, as amended from time to time; and

P is the distance the member travels as a passenger with another person who is reimbursed at public expense for travelling that distance.”

[75] There is no evidence before the Court that Master Corporal Dondaneau claimed trips from her home to work and return to which she did not take. Rather, it is the position of the prosecution that because she resided outside of the geographical boundary of CFB Esquimalt that she was not entitled to claim any CAA and therefore her actions amount to fraud.

[76] The evidence reveals that she claimed the maximum number of kilometres permitted for travel which was less than the kilometres she claimed from Duncan, and less than the kilometres she travelled from Nanaimo where she resided. Either way, the amount she claimed was within the allowable amount to be claimed and not in excess of the actual distance she travelled.

[77] I then proceeded to examine her eligibility to receive the CAA. I found it noteworthy that the definitions of place of duty and permanent workplace set out within

the general definitions in CBI 1.26 are broader than the definitions referred to in the current CBI 205.45. Further, the CBI clarifies that unless otherwise specified, these are the definitions to be applied with respect to benefits and allowances administered under the CBI. In the definitions, it defines place of duty as follows:

1.26 - Definitions - Place of Duty and Permanent Workplace

1.26(1) (Place of Duty) In the CBI, unless otherwise provided, place of duty means the circular area within a 100 kilometre radius of a member's permanent workplace.

[78] Unlike the provisions for PLD allowance in CBI 205.45 which rely upon a specific definition of place of duty to be applied to that section, there is no similar exception or definition set out within CBI 209 that applies to CAA. This leads me to find that CBI 1.26(1) is the definition that is to be applied.

[79] A circular area within a 100-kilometre radius is measured by how the crow flies. The definition of a member's permanent workplace that is applicable to the facts before the Court is set out at immediately thereafter at CBI 1.26(2)(c). It reads:

1.26(2) (Permanent Workplace — Regular Force) In the CBI, unless otherwise provided, permanent workplace means, in relation to a member of the Regular Force:

...

(c) in any other case, the specific, permanent, physical location associated with the member's position and where the member ordinarily performs their duties.

[80] CBI 209.28 defines worksite which is the applicable term used within it. It reads:

“Worksite – means the actual building or other place to which an officer or non-commissioned member regularly reports for duty.”

[81] The prosecution argued that Master Corporal Dondaneau was residing at XXXX in Nanaimo, BC and worked at 443 MH Squadron in Patricia Bay BC. If one was to do an estimate based on the circular area within a 100-kilometre radius of her permanent workplace, the Nanaimo address she allegedly occupied would have fallen within the 100-kilometre radius fitting the definition of place of duty that is applicable for the CBIs. In her travel to work each day, she would have travelled along the same highway passing by the Duncan address.

[82] There is no documentary evidence before the Court of any legal impediment to her claiming CAA provided that the amount claimed falls within the kilometre limitation set out in the policy, and she qualified as commuting to an approved worksite being 443 MH Squadron. I am mindful of Captain Karnes' testimony that a member is not entitled to any allowances if they reside outside of the geographical boundaries, however, I have not been provided with any official independent documentary evidence or policy to support this practice.

[83] In fact, when I examined the CBIs carefully, I found that the CBIs are clear that members living outside of the geographical boundaries might not be entitled to the special commuting allowance, but I note that this is a very different allowance than the CAA. Aside from Captain Karnes' assertion, there is no evidence before me that automatically disqualifies her from collecting CAA strictly because she was living outside of the geographical boundaries.

[84] Consequently, I find that the amount of mileage claimed was within the authorized limits and was well below the actual mileage she travelled. There is no evidence before me to suggest that she claimed for any mileage that she did not travel. Consequently, I find that Master Corporal Dondaneau did not deprive the Government of Canada of something of value, being money with respect to her actions regarding CAA.

[85] However, I did note that in filling out each of her claims for CAA, she entered her residence to be XXXX, Duncan, BC which was false and not the place where she resided which the Court found to be in Nanaimo, BC.

Travel claims

[86] The prosecution filed twelve travel claims related to Master Corporal Dondaneau's travel for work. They range from the 7th of July 2015 until 9 September 2019.

[87] Once again, the prosecution was clear that they were not suggesting that Master Corporal Dondaneau did not travel and incur the expenses claimed, but rather, his concern was nested in the distance that she travelled with her privately owned motor vehicle (POMV) from her home to the airport where she departed or returned. I reviewed all the claims, and I did find that there is a consistent reference to the XXXX address in Duncan, BC, rather than the address where the Court found she resided in Nanaimo, BC.

[88] After some discussion and the Court questioning how her travel from Duncan to the Victoria airport could be classified as fraudulent when she travelled more kilometers than which she claimed, but on the exact same route, the prosecution drew the Court's attention to claims 4, 9 and 11. On claims 4, 9 and 11, the member claimed for POMV travel between the Duncan address and the Nanaimo Airport, and these claims were allegedly for greater mileage than that which she actually travelled and would have been entitled.

[89] Upon a review of claim 4, I found that it involved her return from an operational mission, where she was disembarked as aircrew in Halifax, NS after a military deployment with His Majesty's Canadian Ship (HMCS) *Charlottetown* on Operation REASSURANCE. It is not clear how long she had been gone, but I do note that she returned to Halifax, NS on the 12th of January 2017, which based on the Canadian Joint Operations Command redeployment leave calculation, she had been

away in theatre for 201 days which meant six months away from her family, which included the Christmas holiday period.

[90] In his closing submissions, the prosecution expressed concern that Master Corporal Dondaneau had asked to change her flight home after it was originally booked back to Victoria, BC. Firstly, at the time, the records show that she was a corporal. Also, it was Master Warrant Officer Windsor, who was with her at sea sailing on HMCS *Charlottetown* that sent the email back to 443 MH Squadron asking for Corporal Dondaneau's flight to be booked into Nanaimo vice Victoria as she had plans, which I speculate likely involved a reunion with her family in a homecoming. The total cost difference was \$46.74. Considering her long deployment away from her family, missing the holidays, Master Warrant Officer Windsor's request was exactly what any supervisor or senior leader would and should do.

[91] I note that on her claim, she did indicate that she returned to Duncan from Nanaimo and in doing so, she was paid high mileage in the amount of \$37.42. Grandparents always play a pivotal role when members deploy. There is no evidence before the Court that she did not return to a family reunion party at her father in law's home in Duncan on that day. This is the type of activity that I have no doubt that Mr Perfect would remember. During Mr Perfect's testimony, the prosecution could have inquired regarding that claim which would have been notable for him, but he did not.

[92] With respect to claim 4, where Master Corporal Dondaneau returned from a lengthy deployment on HMCS *Charlottetown*, I am unable to conclude that Master Corporal Dondaneau defrauded the government, but I do note that she did write the word (home) beside the address she declared that she returned to in Duncan.

[93] Claim 9 relates to her attendance on a training course in Shearwater, NS, from 05 August until 02 November 2018. I note that Master Corporal Dondaneau claimed she was a passenger going to the Nanaimo airport, but I also note that there is an amount of \$39.75 paid for local mileage in Nanaimo which I presume is for a return trip and I also note that there is a Google map that outlines the distance travelled from the Seine address in Duncan to the Nanaimo airport.

[94] Claim 11 relates to Master Corporal Dondaneau's attendance at the Canadian Women in Aviation Conference in Ottawa. I note that she has claimed a return POMV trip of \$39.75 for the morning she departed on 19 June 2019 as well as \$39.75 when she was picked up in Nanaimo on the 23rd of June 2019.

Third and fourth charges (contrary to paragraph 125(a) of the NDA)

[95] With respect to the third and fourth charges, there is no dispute regarding the identity, the date and place where the alleged offences were committed, and therefore the prosecution was required to prove beyond a reasonable doubt that:

- (a) Master Corporal Dondaneau made a false entry, in the relevant documents for official purposes (to receive CAA and travel expenses);
- (b) Master Corporal Dondaneau made that entry wilfully; and
- (c) Master Corporal Dondaneau, had the knowledge that the entry was false.

[96] After reviewing all the claims and CAA presented as evidence, I find that Master Corporal Dondaneau relied upon a false address and knowingly entered it on both her claims for CAA as well as in her travel claims seeking reimbursement. The evidence confirms that she knew that she did not reside at the address in Duncan, yet she still relied upon it in submitting her claims.

[97] Consequently, I have no problem concluding that the prosecution has met the elements of the offences set out in both the third and fourth charges.

First and fifth charge (alternates)

[98] In assessing the first and fifth charges, the Court needed to examine whether the elements of the offences had been established. Although both charges relate to fraud, the first charge was laid under section 380 of the *Criminal Code*, while the fifth charge was laid under paragraph 117(f) of the *NDA*. The major distinguishing feature between the first and fifth charge is that the first charge relies upon fraud of a value exceeding \$5,000 by claiming financial benefits and allowances to which she was not entitled.

[99] As outlined above, for the prosecution to prove the first charge, it must provide sufficient evidence to convince the Court beyond a reasonable doubt that:

- (a) Master Corporal Dondaneau deprived the Government of Canada of something of value;
- (b) Master Corporal Dondaneau's deceit, falsehood or other fraudulent means caused the deprivation;
- (c) Master Corporal Dondaneau intended to defraud the Government of Canada; and
- (d) that the value of the money obtained by fraud exceeded \$5,000.

[100] As outlined above, I found Master Corporal Dondaneau guilty of the third charge for submitting documentation to receive CAA, knowing that the address of her residence was false. However, based on the circumstance of the claim, I find that the prosecution has not proven a deprivation that flowed directly from this false entry.

[101] Similarly, I found Master Corporal Dondaneau guilty of the fourth charge for wilfully and knowingly making a false entry of her home address into the

documentation she submitted for travel expenses. In reviewing all the claims, I identified a deprivation to the Government of Canada in the amount of \$119.25 for PMOV for travel to and from the Nanaimo airport and the Seine address in Duncan, BC.

[102] The largest financial portion of the alleged fraud relates to the PLD that Master Corporal Dondaneau received for approximately seven years while she was living in Nanaimo.

[103] Based on a review of the evidence before the Court, when she first relocated to Nanaimo, the evidence suggests that geographical boundaries established in MARPACORD 7200-1 were not enforceable on 443 MH Squadron, unless 443 MH Squadron adopted the provisions of the order. 443 MH Squadron was a lodger unit and there is no record of the CO of 443 MH Squadron setting out geographical boundaries specific to the members of 443 MH Squadron.

[104] Based on the nature of the spontaneous conversation that Master Corporal Dondaneau had with Ms Powers, I was left wondering why Master Corporal Dondaneau so easily shared this information. It was also noteworthy that Captain Karnes testified that members from her unit volunteered to help Master Corporal Dondaneau move back to Langford from the Nanaimo address. The evidence suggests that Master Corporal Dondaneau was not keeping her living circumstances a secret. Although I do not want to speculate on the actual approach adopted by the unit in the enforcement of their boundaries, it is very possible that at that time, they took a more liberal approach to enforcing the geographical boundaries and knew Master Corporal Dondaneau was in fact living in Nanaimo.

[105] The greatest concern that I have with respect to the wording of the particulars is that she is alleged to have, by deceit, falsehood or other fraudulent means defrauded the Government of Canada of funds of a value exceeding \$5,000 by claiming “financial benefits” and “allowances” to which she was not entitled. As I explained above, based on the evidence, I cannot conclude that she was not entitled to any PLD and I have also determined that there is not sufficient evidence before me where I can conclude that she was not entitled to claim CAA. In fact, based on the review of the CBI, arguably she would have been entitled to collect both. So, if she was in fact entitled to collect some amount of PLD, as she resided in a PLDA, then what we have is an overpayment of PLD entitlement. I am not able to do the extensive monetary calculations to determine the amount she was overpaid.

[106] She might not have been entitled to the full amount that was paid to her, but based on the evidence before the Court, I find too much ambiguity in the application of the policy in 2013, causing me to have sufficient doubt regarding what she was entitled to.

[107] I am conscious of my findings in *Beemer* where I found the member’s similar omission in changing his address amounted to fraud. However, in that case, the

accounting section had conducted a complete audit of exactly what the member had been overpaid and he had or was still repaying the money. Further, in that case, there were specific policies, personal briefings the member attended and the PLD policies were very clear and consistently applied. Unlike this case, in *Beemer*, the member did not reside in a PLDA, but there had been discussion that if he had, as it often happens in the Toronto area, they would have adjusted the PLD accordingly and affected the financial recoveries for the overpayment.

[108] In *Beemer*, the Court was not asked to calculate the exact amount of the overpayment in what is otherwise some form of independent audit. The Court is not qualified to do so as that role falls exclusively to the financial personnel. Further, in *Beemer*, the member had been overpaid well over \$5,000, but the charges before the Court were that of a *NDA* paragraph 117(f) which does not require an exact financial assessment of the total amount of the fraud.

[109] CAF members are personally accountable for their own pay, benefits and allowances, and they are required to repay overpayments when they are discovered. Based on the representations of the prosecution concerning restitution orders, this clearly has not been done. The recovery of overpayments paid to members is a unit responsibility. Financial officers have a duty to conduct their own audits and initiate any recoveries as soon as an overpayment is discovered.

[110] The evidence before the Court is that 443 MH Squadron have not taken any steps to assess and recover overpayments to Master Corporal Dondaneau. It is not clear why, but it could be because the unit recognizes that the geographical boundaries that existed at the time in CFB Esquimalt were not binding on them. Alternatively, it could also be because the PLD policy that existed in 2013 at 443 MH Squadron was simply not as clear as it should have been.

[111] I believe Master Corporal Dondaneau is likely guilty, but that is not sufficient for me to find her guilty of such a serious criminal charge to the requisite standard of proof beyond reasonable doubt. However, a CAF member must not pay the price for the ambiguities in the policies that exist to help them, and a member should not be found guilty of such a serious criminal charge unless the Court can be convinced beyond a reasonable doubt of all the elements of the offence.

[112] As evidenced in the testimony of Captain Karnes, even the subject matter experts had different understandings as to what the PLD policies provide for. I was comforted by Captain Karnes' assurances that when situations are ambiguous, she forwards a specific query to DCBA to canvass the member's benefits. However, she was not at 443 MH Squadron at the pivotal time, and it is not clear what the policy interpretations were at that exact time.

[113] In summary, with respect to the first charge, I have sufficient doubt regarding her entitlements and the proper administration of the PLD allowance that was in effect in 2013 when the member made the choices she did. I am not qualified to conduct a

forensic audit on what amounts she may or may not have been entitled to. Consequently, I also have sufficient doubt that the prosecution has proven fraud in an amount that exceeds \$5,000. Consequently, I proceeded to review the alternate charge.

Fifth charge

[114] With respect to the fifth charge, the critical issues for this court martial to decide are:

Actus reus

- (a) is the Court convinced beyond a reasonable doubt that the particularized conduct or *actus reus* has been proven as described?
 - i. Was there a change in circumstances to Master Corporal Dondaneau's principal residence?
 - ii. Did Master Corporal Dondaneau have a duty to report the change of address?
 - iii. Did she report the change in the address of her principal residence as required?
 - iv. Was there deprivation caused by either not reporting the change or deceitfully providing a wrongful address?

Mens rea

- (a) Did the accused have subjective knowledge of the prohibited act?
- (b) Did the accused know that if she used the false address that she would receive travel or other benefits, or allowances to which she was not entitled?

[115] It is noteworthy that in all the military administration and claims Master Corporal Dondaneau submitted for travel allowances and benefits, she was consistent in using the Duncan, BC address. I have already found her guilty of falsely using this address in documentation required for official purposes.

[116] After reviewing the temporary duty claims, there are three claims where Master Corporal Dondaneau did rely upon this address to claim travel benefits to which she was not entitled when she claimed her return travel back and forth to the Nanaimo airport from Duncan. In reviewing the evidence against the above questions, I find:

- (a) there was a change in circumstances to Master Corporal Dondaneau's principal residence;

- (b) Master Corporal Dondaneau had a duty to report her change of address;
- (c) she falsely reported the change in the address to be one that fell within the geographical boundaries; and
- (d) there was a financial deprivation caused by her relying upon the false address as evidenced in the travel claims examined above.

Mens rea

- (a) Master Corporal Dondaneau had subjective knowledge of the prohibited act. Based on the consistency upon which she used the Duncan address, I find that she knew exactly what she was doing; and
- (b) she knew that if she used the false address that she would receive travel or other benefits, or allowances to which she was not entitled.

[117] After a review of all the evidence, I am satisfied that the prosecution has proven all the necessary elements of the fifth charge.

Sixth charge

[118] With respect to the sixth charge, the first step is to determine if the particularized conduct has been proven beyond a reasonable doubt; namely “in that between 30 July 2013 and 9 October 2020, at or near Canadian Forces Base Esquimalt, British Columbia, Master Corporal Dondaneau did not inform her commanding officer that she had changed her address as required by article 26.02 of the *Queen’s Regulations and Orders for the Canadian Forces*.”

[119] Based on the evidence before the Court, I have no problem concluding that the identity, date and location of the alleged offences have been proven beyond a reasonable doubt by the prosecution.

[120] QR&O article 26.02 states that members are required to:

notify their commanding officer in writing of changes in their family status and of the occurrence of other domestic events that might affect the member's pension, annuity, pay, allowances, benefits or expenses and the commanding officer shall report to National Defence Headquarters any circumstances that might bring the member's eligibility into doubt.

[121] QR&O article 26.02 sets out a broad duty to report all changes that a member has that will influence a member's pension, annuity, pay, allowances, benefits or expenses to the CO.

[122] Based on the evidence before the Court, Master Corporal Dondaneau did advise her unit of a change of address effective October 2013. However, the address she provided was false and cannot be considered to have fulfilled her obligation accordingly.

[123] Consequently, based on all the evidence before me, I find that the prosecution has proven the sixth charge to a standard of proof beyond a reasonable doubt.

FOR THESE REASONS, THE COURT:

[124] **FINDS** Master Corporal Dondaneau guilty of the third, fourth, fifth and sixth charges on the charge sheet.

[125] **STAYS** the first charge.

Counsel:

The Director of Military Prosecutions as represented by Major D. Moffat and Captain B. Greaves

Major E. Carrier, Defence Counsel Services, Counsel for Master Corporal S.L. Dondaneau