



## COURT MARTIAL

**Citation:** *R. v. Cruz*, 2010 CM 2019

**Date:** 20101207

**Docket:** 201045

Standing Court Martial

Asticou Centre  
Gatineau, Québec, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Private D.J. Cruz, Accused**

**Before:** Commander P. J. Lamont, M.J.

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### **DECISION OF PLEA IN BAR OF TRIAL APPLICATION FOR LACK OF MILITARY NEXUS**

(Orally)

[1] This is a plea in bar of trial raised by the accused, Private Cruz, through counsel under Queen's Regulations and Orders, article 112.24 paragraph (1)(a), submitting that the court is without jurisdiction to try charges contained in the charge sheet, Exhibit 2. In the course of argument, counsel for the accused specified that the jurisdictional point is raised with respect to the third and fourth charges in the charge sheet. The plea in bar of trial is disallowed.

[2] Private Cruz is charged in a charge sheet listing five charges of offences contrary to the *National Defence Act* as follows: Two charges of wilfully making a false entry in a document required for official purposes contrary to section 125(a); two charges of fraud contrary to section 130 of the *National Defence Act* and section 380(1) of the *Criminal Code*; and one charge of obstructing justice contrary to section 130 of the *National Defence Act* and section 139(2) of the *Criminal Code*.

[3] At the opening of his trial by Standing Court Martial and prior to plea, he applied by written notice of application raising a plea in bar of trial under Queen's Regulations and Orders, article 112.05(5)(b), submitting that the court is without jurisdiction to hear the charges for lack of a military nexus. It is argued that a lack of military nexus amounts to a violation of the right of the applicant to a fair trial guaranteed by sections 7 and 11(d) and (f) of the *Canadian Charter of Rights and Freedoms*.

[4] At the conclusion of the argument I denied the plea in bar and undertook to give reasons for so doing. These are those reasons.

As I stated in the Standing Court Martial of *Sergeant Faught*:

A Standing Court Martial is an inferior court, and its jurisdiction is derived from statute, the *National Defence Act*. Its jurisdiction is not presumed, and when it is challenged, as in this case, the court must be satisfied that it does indeed have jurisdiction over the accused and over the charge before it.

[5] In the course of argument, counsel for the applicant conceded that the court had jurisdiction with respect to the two charges of wilfully making a false statement in a document required for official purposes and the charge of obstructing justice, and pressed the point of lack of military nexus only with respect to the two charges of fraud. Those charges, charges number three and four, particularize that the applicant defrauded the Crown by claiming separation expenses to which he was not entitled over two separate time periods between May of 2007 and June of 2008.

[6] On the evidence I heard in the course of this application, it is apparent that on the trial the prosecution will attempt to prove that the applicant applied for benefits as a member of the Canadian Forces, to which he claimed entitlement only as a member of the Canadian Forces, by the making of military documents that were processed by other military members for the payment of public money allotted for military purposes, and that his entitlement depended in some way upon his marital status and his place of residence during the relevant time.

[7] Whatever may be left of the doctrine of military nexus since the decision of the Court Martial Appeal Court in *Reddick*, I find it unnecessary to decide in this case. Applying the standard, reiterated most recently by the Court Martial Appeal Court in *Trepanier* at paragraph 25, I find that each of the two charges of fraud in the present case is:

... "so connected with the service in its nature, and in the circumstance of its commission, that it would tend to affect the general standard of discipline and efficiency of the service"...

[8] In my view, it is simply not to the point that neither the applicant's former spouse nor his former mother-in-law have been prosecuted for any offence they may have committed in the course of assisting the applicant to obtain the benefits. The fact that

civil authorities may not have decided to prosecute individuals over whom military authorities have no jurisdiction does not affect the jurisdiction of this court over the accused, who was at the material time, a member of the Regular Force.

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**Counsel:**

Captain E. Carrier, Canadian Military Prosecution Service  
Counsel for Her Majesty the Queen

Major J.A.E. Charland, Directorate Defence Counsel Services  
Counsel for Private D.J. Cruz