



## COURT MARTIAL

**Citation:** *R v Vilca Cevallos*, 2011 CM 1010

**Date:** 20110929

**Docket:** 201141

Standing Court Martial

Canadian Forces Base Esquimalt  
Victoria, British Columbia, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Private C.A. Vilca Cevallos, Offender**

**Before:** Colonel M. Dutil, C.M.J.

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### REASONS FOR SENTENCE

(Orally)

[1] Private Vilca Cevallos pleaded guilty to a charge under s. 125 of the *National Defence Act* for wilfully having made a false statement in a document made by him that was required for official purposes. The circumstances surrounding the commission of the offence reveal that Private Vilca Cevallos was at the time a member of the Regular Force posted to Canadian Forces Base Esquimalt Detachment Matsqui in Aldergrove, British Columbia. Throughout that period he owned a condominium located in Burnaby, British Columbia and he had purchased that residence in February 2006.

[2] Private Vilca Cevallos enrolled in the Canadian Forces on 21 February 2008, and as a result a Post Living Differential allowance was activated on his payroll effective 10 March 2008 at a rate of \$1,083 per month based on the fact that he claimed the residence previously mentioned as his principal residence. On 24 November 2009 Private Vilca Cevallos cancelled the Post Living Differential on the residence effective 29 September 2009 because he was posted to Aldergrove, British Columbia. He applied to receive the Post Living Differential allowance at his new residence in Aldergrove.

[3] In support of his application for Post Living Differential, which was submitted in November 2009, Private Vilca Cevallos submitted a memo dated 23 November 2009 in which he confirmed that the residence was his primary residence between February 2006 and 28 September 2009. He further stated that the residence was not rented out at all for the period of 9 March 2007 to 28 September 2009.

[4] In December 2009 suspicion arose that Private Vilca Cevallos had been receiving rental income for the residence which would have made him ineligible to receive the Post Living Differential allowance. An investigation was launched.

[5] Investigators learned that two university students rented the residence from Private Vilca Cevallos. They entered in a Residential Lease Agreement with him and moved into the residence on 10 March 2008. The students moved out of the residence on 10 December 2009 when Private Vilca Cevallos advised them that he would be moving back into the residence. They paid Private Vilca Cevallos rent for the residence in the amount of \$1,150 per month throughout the period of 10 March 2008 to 10 December 2009.

[6] Private Vilca Cevallos received that Post Living Differential allowance for which he was not entitled in the amount of \$16,963.22. He initially made a cash deposit to repay a portion of the funds. Since that time he has been making regular deductions on his pay. As of 30 September 2011 he owed \$6,576.46. He has requested an increase in the rate of repayment and it is expected that the full amount will be repaid by February 2012.

[7] Private Vilca-Cevallos has now rented his apartment and resides into his parents' home with his wife that now lives in Canada as a full-time student. The rent received for his apartment strictly covers the expenses. He intends to live with his parents until the complete restitution of the money improperly received. His wife has moved with him in August 2009 from Peru.

[8] The court must now impose a sentence that is appropriate, fair, and just. Counsel for the prosecution and defence have made a joint submission on sentence. Initially they recommended that Private Vilca Cevallos be sentenced to a reprimand and a fine in the amount of \$500 payable in five monthly instalments of \$100. Counsel relied mostly on *R v ex-Leading Seaman McLennan* (2004) CM 49, delivered on 6 September 2004, and they highlighted that moral blameworthiness and objective seriousness was of a lesser degree in the case at bar. The court requested counsel to re-evaluate their joint submission. After analysis they submitted that a fine of \$750 would be adequate to ensure general deterrence and maintain discipline. Although the court is not bound by this joint submission, it is generally accepted that a joint submission ought to be rejected only if it is contrary to the public interest and the sentence would bring the administration of justice into disrepute. The court considers that a proper and fit sentence must promote the need for general and specific deterrence, denunciation of the conduct, and rehabilitation.

[9] In imposing a sentence under the Code of Service Discipline a court martial shall guide itself with the appropriate sentencing purposes, principles, and objectives, including those enunciated in ss. 718.1 and 718.2 of the *Criminal Code*. The fundamental purpose of sentencing at court martial is to contribute to respect of the law and the maintenance of military discipline by imposing punishments that meet one or more of the following objectives: the protection of the public; the denunciation of the unlawful conduct; the deterrent effect of the punishment on the offender and others; and the reformation and rehabilitation of the offender.

[10] The sentence must also take into consideration the following principles: the sentence must be commensurate with the gravity of the offence; the previous character of the offender and his/her degree of responsibility; the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. A court must also respect the principle that an offender should not be deprived of liberty if less restrictive punishments may be appropriate in the circumstances. Finally, the sentence will be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or to the offender. However, the court must act with restraint in determining sentence in imposing such punishment that should be the minimum necessary intervention to maintain discipline.

[11] The aggravating factors in this case are:

- a. The offence under s. 125 of the *National Defence Act* is punishable of a maximum period of imprisonment of three years. It is a relatively serious offence; and
- b. The fact that the false statement was made to avoid the consequence of an important overpayment for which he was not entitled. This statement was intentional and deliberately deceitful.

[12] However, the mitigating factors include:

- a. The plea of guilty to the charge at the earliest opportunity;
- b. The absence of previous disciplinary or prior criminal record;
- c. The relative inexperience of Private Vilca Cevallos and the personal and financial difficulties that were present at the time of the offence, including significant expenses that were necessary to support his wife while she was in Peru as well as the expenses required to complete the immigration process;
- d. The genuine efforts made by Private Vilca Cevallos to reimburse the Crown for the overpayment received, which should be completed within the next six months;

- e. The financial situation of Private Vilca Cevallos and of his wife. He is currently the only financial provider for his family; and
- f. Finally, the affirmation by the prosecutor who informed the court that Private Vilca Cevallos is a very strong performer, reliable, and dedicated, as informed by his commanding officer.

[13] I have considered the joint submission and it fits within the range of sentences imposed in similar matters and is not so off the mark that its adoption by this court martial would be contrary to the public interest or bring the administration of justice into disrepute. It is sufficient, in my opinion, to meet the objectives of denunciation, general deterrence, and specific deterrence, as well as rehabilitation. It must be emphasized that this case possesses significant compassionate characteristics that helps distinguish it from others dealing with similar offences. Its precedential value is limited.

**FOR THESE REASONS, THE COURT:**

[14] **FINDS** you, Private Vilca Cevallos, guilty of the first charge under s. 125 of the *National Defence Act*.

[15] **SENTENCES** you to a fine in the amount of \$750 payable in eight monthly installments commencing 15 October 2011 at a rate of \$100 per month for seven months and a last and final payment of \$50 payable on 15 May 2012.

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**Counsel:**

Lieutenant-Commander S.C. Leonard, Canadian Military Prosecution Services  
Counsel for Her Majesty the Queen

Major D. Berntsen, Directorate of Defence Counsel Services  
Counsel for Private C.A. Vilca Cevallos