

**SUPREME COURT OF CANADA**

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| **Citation:** R. *v.* Gagnon, 2018 SCC 41, [2018] 3 S.C.R. 3 | **Appeal heard:** October 16, 2018  **Judgment rendered:** October 16, 2018  **Docket:** 37972 |

Between:

**Warrant Officer J.G.A. Gagnon**

Appellant

and

Her Majesty The Queen

Respondent

- and -

**Women’s Legal Education and Action Fund Inc.**

Intervener

**Official English Translation**

**Coram:** Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ.

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| **Reasons for Judgment:**  (paras. 1 to 4) | Wagner C.J. (Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ. concurring) |

R. *v.* Gagnon, 2018 SCC 41, [2018] 3 S.C.R. 3

Warrant Officer J.G.A. Gagnon Appellant

v.

Her Majesty The Queen Respondent

and

Women’s Legal Education and Action Fund Inc. Intervener

**Indexed as:** R. ***v.*** Gagnon

2018 SCC 41

File No.: 37972.

2018: October 16.

Present: Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ.

on appeal from the court martial appeal court of canada

*Criminal law — Sexual assault — Defences — Honest but mistaken belief in consent — Chief Military Judge putting defence of honest but mistaken belief in consent to court martial panel — Accused acquitted of sexual assault — Appeal Court finding that defence could not be put to panel before limitations set out in Criminal Code were considered — Setting aside of acquittal and order for new trial affirmed — Criminal Code, R.S.C. 1985, c. C‑46, s. 273.2(b).*

**Cases Cited**

**Referred to:** *R. v. George*, 2017 SCC 38, [2017] 1 S.C.R. 1021.

**Statutes and Regulations Cited**

*Criminal Code*, R.S.C. 1985, c. C-46, s. 273.2.

APPEAL from a judgment of the Court Martial Appeal Court of Canada (Bell C.J. and Bennett and Trudel JJ.A.), 2018 CMAC 1, [2018] C.M.A.J. No. 1 (QL), 2018 CarswellNat 234 (WL Can.), setting aside the acquittal of the accused and ordering a new trial. Appeal dismissed.

Mark Létourneau, Jean-Bruno Cloutier and Francesca Ferguson, for the appellant.

Dominic G. J. Martin, Bruce W. MacGregor and Anthony T. Farris, for the respondent.

Kelly McMillan and Shaun O’Brien, for the intervener.

English version of the judgment of the Court delivered orally by

[1] The Chief Justice — We are all of the opinion that the appeal should be dismissed, substantially for the reasons of the majority of the Court Martial Appeal Court of Canada.

[2] However, with respect, on the record before us, we are of the opinion that there was no evidence from which a trier of fact could find that the appellant had taken reasonable steps to ascertain that the complainant was consenting.

[3] In so concluding, we are also of the view that the principles enunciated in *R. v. George*, 2017 SCC 38, [2017] 1 S.C.R. 1021, are of no assistance in applying s. 273.2 of the *Criminal Code*, R.S.C. 1985, c. C-46.

[4] It follows that the defence of honest but mistaken belief should not have been put to the panel.

*Judgment accordingly.*

Solicitor for the appellant: Defence Counsel Services, Gatineau.

Solicitor for the respondent: Canadian Military Prosecution Service, Ottawa.

Solicitor for the intervener: Women’s Legal Education and Action Fund Inc., Toronto.