**COURT MARTIAL**

**Citation:** *R. v. Boire,* 2015 CM 4010

**Date:** 20150529
**Docket:** 201517

Standing Court Martial

Canadian Forces Base Borden
Borden, Ontario, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Master Seaman R.J. Boire, Offender**

**Before:** Commander J.B.M. Pelletier, M.J.

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## REASONS FOR SENTENCE

(Orally)

### Introduction

[1] Master Seaman Boire, having accepted and recorded your plea of guilty in respect of the two charges on the charge sheet, the court now finds you guilty of those charges under section 130 of the *National Defence Act* (*NDA*) for fraud, contrary to section 380(1) of the *Criminal Code,* for having, on two occasions, claimed separation expense benefits without entitlement.

### Matters considered

[2] It is now my duty as the military judge presiding at this Standing Court Martial to determine the sentence. In so doing, I have considered the principles of sentencing that apply in the ordinary courts of criminal jurisdiction in Canada and at courts martial. I have as well considered the facts relevant to this case as disclosed in the statement of circumstances and the material submitted during the course of the sentencing hearing. I

have also considered the submissions of counsel, both for the prosecution and for the defence.

**Purpose of the military justice system**

[3] The military justice system constitutes the ultimate mean to enforce discipline in the Canadian Armed Forces, and a fundamental element of the military activity. The purpose of this system is the promotion of good conduct by allowing the proper sanction of misconduct. It is through discipline that an armed force ensures that its members will accomplish successful missions in a trusting and reliable manner. In doing so, it also ensures that the public interest in promoting respect for the laws of Canada is served by punishment of persons subject to the Code of Service Discipline.

**Objectives of sentencing**

[4] The fundamental purpose of sentencing in a court martial is to ensure respect for the law and maintenance of discipline by imposing sanctions that have one or more of the following objectives:

(a) to protect the public, which includes the Canadian Armed Forces;

(b) to denounce unlawful conduct;

(c) to deter the offender and other persons from committing the same offences;

(d) to separate offenders from society where necessary; and

(e) to rehabilitate and reform offenders.

**Principles applicable to sentences**

[5] When imposing sentences, a sentencing judge must also take into consideration the following principles:

(a) a sentence must be proportionate to the gravity of the offence;

(b) a sentence must be proportionate to the responsibility and previous character of the offender;

(c) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

(d) an offender should not be deprived of liberty, if applicable in the circumstances, if less restrictive sanctions may be appropriate; and

(e) all sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[6] That being said, the punishment imposed by any tribunal, military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances. For a court martial, this means imposing a sentence composed of the minimum punishment or combination of punishments necessary to maintain discipline as moderation is the bedrock principle of the modern theory of sentencing in Canada.

[7] The Queen's Regulations and Orders for the Canadian Forces (QR&O) require that the judge imposing a sentence at a court martial considers any indirect consequence of the finding or the sentence, and "impose a sentence commensurate to the gravity of the offence and the previous character of the offender". Any sentence imposed must be adapted to the individual offender and the offence he or she committed. As well, the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. This is not a result of slavish adherence to precedent, but because it appeals to our common sense of justice that like cases should be treated in similar ways.

**The offender**

[8] Before the court is a 45-year-old cook posted to Canadian Forces Base (CFB) Borden. He first joined the Regular Force in October 1990. Following basic and occupational training, he was posted to CFB Borden where he served for just over three years before releasing in November 1994. He re-enrolled in 1997 and served as cook with the Navy for two and a half years before releasing once again in 1999. He re-joined in 2009 and has served since, first, with a Combat Engineer Regiment in CFB Petawawa, then, for two years, at CFB Esquimalt, before a posting to CFB Borden where he has served since June 2013.

[9] The defence produced personnel evaluation reports, personnel development reviews and some course reports covering, specifically, the period between 2010 and 2014. These documents portray Master Seaman Boire as an excellent cook whose work ethic is beyond reproach and who contributes to the success of the kitchen staff to the benefit of the morale and welfare of members of the Canadian Forces who can enjoy his cooking. He was promoted to his current rank in 2013 after receiving two immediate promotion recommendations in precedent personnel evaluation reports. By all indications, Master Seaman Boire has continued to perform well, even after the events leading to the charges were brought to light by investigations starting in July 2013.

**The offences**

[10] In arriving at evaluating what would be a fair and appropriate sentence, the court has considered the objective seriousness of the two offences of fraud committed here, as illustrated by the maximum punishment that the Court could impose. Offences under

section 130 of the *NDA* for fraud over $5,000 contrary to section 380(1) of the *Criminal Code* are punishable by imprisonment for fourteen years or to less punishment.

[11] The circumstances of the offences were brought before the Court by means of a short statement of circumstances produced as Exhibit 7, read by the prosecutor and accepted as conclusive evidence by Master Seaman Boire. Those circumstances are as follows:

(a) The events relating to the first charge occurred throughout the course of Master Seaman Boire's posting to CFB Petawawa, Ontario, commencing in September 2009, where he had been posted on "Imposed Restrictions" on the understanding that he had a dependant. On 15 September 2009, he submitted a first claim for separation expense benefits and received public funds after having certified and declared that he had a dependant, knowing that this was not true.

(b) Master Seaman Boire similarly obtained separation expense benefits by submitting claims for every month of his posting to CFB Petawawa, obtaining benefits of an approximate monthly value of $2,500 through twenty claims, all containing the certification and declaration that he had a dependant, when it was not true. The total paid by the Crown and received by Master Seaman Boire in relation to separation expense benefits related to his posting to Petawawa from 15 September 2009 to 17 March 2011 is $43,262.01.

(c) Master Seaman Boire was posted from Petawawa to Esquimalt. The events relating to the second charge, occurred in the course of Master Seaman Boire's subsequent posting to CFB Borden, commencing with two claims for separation expense benefits submitted on 12 June 2013, by virtue of which he received public funds after having certified and declared on both claims that he had a dependant, knowing that this was not true.

(d) Master Seaman Boire similarly obtained separation expense benefits by submitting one other claim on 4 July 2013, before the support personnel at CFB Borden conducted an initial administrative investigation on the eligibility of Master Seaman Boire to receive separation expense benefits, as a result of which separation expense payments were ceased. The total paid by the Crown and received by Master Seaman Boire in relation to separation expense benefits related to his posting to Borden is $5,250.

(e) Master Seaman Boire is reimbursing the Crown from his pay at a rate of $250 per month. He still has approximately $40,836 to pay back to the Crown.

[12] The circumstances of the offences demonstrate to the court a pattern of dishonesty occurring over two different periods corresponding to two postings to CFB Petawawa and CFB Borden respectively, separated by two years. The offender has made false certifications and declarations regarding his dependant on twenty claims during the period of his posting to Petawawa and on three occasions during the period of his posting to Borden. He has received, fraudulently, the total sum of $48,512.01.

**Aggravating factors**

[13] The Court acknowledges the representations of the prosecutor to the effect that a serious crime has been committed by Master Seaman Boire on two occasions. The offences diverted funds allocated by the Crown to national defence purposes to the private purse of Master Seaman Boire and, in that sense, it is not a victimless crime. The amount of the fraud is far from being insignificant. Even if Master Seaman Boire was facing only two charges, he had to make false certifications and declarations on twenty-three occasions in the course of obtaining separation expense funds fraudulently. In other words, he failed to avail himself of many opportunities to realize that what he was doing was wrong and to come clean. No explanations were provided for this behaviour and it is difficult to understand how such a steady performer and productive member of the Canadian Armed Forces would defraud that same institution for such a considerable period of time.

**Mitigating factors**

[14] The court has also considered the following mitigating factors, as mentioned in submissions by counsel and demonstrated by the evidence presented in mitigation, especially by defence counsel:

(a) First and foremost, Master Seaman Boire's guilty plea which the court considers as a genuine sign of remorse and an indication that he is taking full responsibility for what he has done. This admission of responsibility occurred in a very formal and public forum of this court martial, in the presence of members of his current unit and chain of command, where Master Seaman Boire appeared in uniform despite Medical Employment Limitations which do not require him to be wearing a uniform.

(b) Master Seaman Boire's record of service with the Canadian Forces. By all indications, he has been considered very positively by his superiors and was no doubt a strong asset for the Canadian Armed Forces, as evidenced by the evaluation reports produced as an exhibit before this Court. Despite these incidents, it appears that the performance of Master Seaman Boire continued to be of a high standard, until medical issues impaired his ability to make a full contribution, a matter on which I will expend on further later. Incidentally, I do not accept the prosecution's submission to the effect that subsection 380.1(2) of the *Criminal Code* precludes considering the work performance of Master Seaman Boire as

a mitigating factor: the good work performance of Master Seaman Boire did not contribute nor was it used in any way in the commission of the offence.

(c) The fact that Master Seaman Boire has commenced a process to reimburse the Crown for the sums defrauded, even if the monthly payments are very small.

(d) The absence of record. Indeed, although a conduct sheet was entered as an exhibit, it includes an unrelated minor infraction which should have been expunged from the conduct sheet. It does not impact on the treatment of Master Seaman Boire as a first-time offender in relation to the particular behaviour subject of the charges he pleaded guilty to.

(e) The age and potential of Master Seaman Boire to make a positive contribution to Canadian society in the future.

**Objectives of sentencing to be emphasized in this case**

[15] I came to the conclusion that in the particular circumstances of this case the focus in sentencing should be placed on the objectives of denunciation and general deterrence. Indeed, as recognized by Clayton Ruby in his seminal text on Sentencing 8th ed. at pp. 1021-1022 :

> "In a modern state where massive amounts of public funds are distributed, a wide variety of citizens may succumb to the temptation to misrepresent their qualifications in order to receive benefits to which they are not entitled. . . . The general deterrence of other like-minded persons continues as a basic theme in sentencing in this area."

[16] In addition, the CMAC in *St-Jean v. R.* (CMAC 429 of 8 February 2000) had this to say at para 22 (by Letourneau J.A.) about the objectives to be emphasized in cases of fraud by members of the Canadian Forces in relation to their employment:

> After a review of the sentence imposed, the principles applicable and the jurisprudence of this Court, I cannot say that the sentencing President erred or acted unreasonably when he asserted the need to emphasize deterrence. In a large and complex public organization such as the Canadian Forces which possesses a very substantial budget, manages an enormous quantity of material and Crown assets and operates a multiplicity of diversified programs, the management must inevitably rely upon the assistance and integrity of its employees. No control system, however efficient it may be, can be a valid substitute for the integrity of the staff in which the management puts its faith and confidence. A breach of that faith by way of fraud is often very difficult to detect and costly to investigate. It undermines public respect for the institution and results in losses of public funds. Military offenders convicted of fraud, and other military personnel who might be tempted to imitate them, should know that they expose themselves to a sanction that will unequivocally denounce their behaviour and their abuse of the faith and confidence vested in them by their employer as well as the public and that will discourage them from embarking upon this kind of conduct.

> Deterrence in such cases does not necessarily entail imprisonment, but it does not *per se* rule out that possibility even for a first offender.

[17] In addition, I also believe that the objective of rehabilitation remains present in this case, as any sentence I impose should not have extensive detrimental effects on the efforts the offender will have to make to reintegrate as a productive member of society. Yet, this objective is in the background, not at the forefront.

**The appropriate sentence**

[18] The prosecution and defence in determining the appropriate sentence have agreed that imposing a punishment of imprisonment is required and adequate in a case such as this one. I agree with their assessment. Even if the Court Martial Appeal Court in the previously quoted case of *St-Jean* intervened to set aside a sentence of four months imprisonment and substitute instead a reduction in rank from Sergeant to Corporal, a severe reprimand and a fine of $8,000 dollars, that decision was rendered when there was a significant trend in appeal court jurisprudence to treat economic crimes with minimum resort to incarceration, including imprisonment. Since then, section 380 of the *Criminal Code* was amended in 2004 to increase the maximum punishment for the offence of fraud over $5,000 from ten to fourteen years. The principle of general deterrence, which must be emphasized in fraud cases, is even more important today than it was at the time of *St-Jean*.

[19] As for the duration of the punishment of imprisonment, both counsel jointly suggested that the imprisonment be for a period of sixty days. Considering the nature of the offences, the applicable sentencing principles, including sentences imposed on similar offenders for similar offences committed in similar circumstances by military and civilian tribunals, as well as the aggravating and mitigating factors mentioned above, I conclude that imprisonment for a period of sixty days would appear to be an appropriate and minimum necessary punishment in this case.

[20] In reaching this conclusion, I am aware of the indirect consequence of such a sentence. The conviction of Master Seaman Boire and the imposition of the punishment of imprisonment will not only appear on the offender's conduct sheet but also will carry out a consequence that is often overlooked, which is that Master Seaman Boire will now have a criminal record.

**The requirements to be met for suspension of a punishment**

[21] Both counsels are of the view that the punishment of imprisonment for a period of sixty days that they propose should be suspended by the Court. Indeed, section 215 of the *NDA* provides that:

> Where an offender has been sentenced to imprisonment or detention, the carrying into effect of the punishment may be suspended by the service tribunal that imposed the punishment.

[22] It is clear from this provision that the issue of suspension of a sentence of incarceration does not arise unless and until the sentencing judge has determined that the offender is to be sentenced to imprisonment or detention, after having applied the proper sentencing principles appropriate in the circumstances of the offence and the offender.

[23] How should military judges determine whether a sentence should be suspended? In the absence of legislated criteria for suspension, military judges sentencing offenders at courts martial have developed over time, as illustrated in cases such as *R. v. Paradis*, 2010 CM 3025 paragraphs 74 to 89 and *R. v. Masserey*, 2012 CM 3004 paragraphs 21 to 32, two requirements which must be met:

(a) The offender must demonstrate, on the balance of probabilities, that his or her particular circumstances justify a suspension of the punishment of imprisonment or detention;

(b) If the offender has met this burden, the court must consider whether a suspension of the punishment of imprisonment or detention would undermine the public trust in the military justice system, in the circumstances of the offences and the offender including, but not limited to, the particular circumstances justifying a suspension.

**Do the offender's circumstances justify suspending the imprisonment?**

[24] In this case, Master Seaman Boire submits that his current medical condition, which is not related to the commission of the offences, would justify suspending the sentence of imprisonment. In support, a very fulsome letter from Master Seaman Boire's treating physician entered as Exhibit 11 tells a compelling story. Dr McNally informs the court of the general medical condition of Master Seaman Boire at paragraph 2 of her letter as follows:

> "MS Boire is currently being treated for Posttraumatic Stress Disorder; Adjustment Disorder with features of Depression and Anxiety; HIV positive; Asthma; Adverse effects of the work place. Symptoms are considered active at this time, and MS Boire is taking medication which causes moderated side effects. Further complicating his medical circumstance includes his psychosocial and work place situations which have been an ongoing source of significant psychological stress."

[25] As far as the impact that serving a sentence of imprisonment could have in the situation of Master Seaman Boire, Dr McNally explains at paragraph 9 of her letter:

> "In view of these findings, incarceration at a detention facility is considered to be counter therapeutic, and there is a high risk that this would have a negative effect on his well-being and mental health. His mental health symptoms are considered active and, to date, are not in

> remission. He requires very close medical follow up through his established Mental Health & Primary Care teams, and he is assessed approximately twice weekly for stability and adjustment of his medical management plan. In particular, this type of an environment would place him at high risk for exacerbation of symptoms of Posttraumatic Stress Disorder. He is unable to be confined with profound emotional reaction, and the hypervigilance associated with this condition have resulted in his never having his back to the door and to ensure that he has a quick exit. Even in his home, he is unable to have the internal doors closed as this provokes a strong reaction of fear and panic."

[26] I find that those are, indeed, exceptional circumstances, not dissimilar from the case of *R. v. Paradis*, 2015 CM 1002 where the Chief Military Judge accepted the submission of counsel to suspend the carrying into effect of a period of detention for health reasons. Consequently, I find that Master Seaman Boire has demonstrated, on the balance of probabilities, that his particular circumstances justify a suspension of the sentence of imprisonment.

**The public trust in the military justice system, in the circumstances**

[27] Turning now to the second requirement, the court must consider whether a suspension of the punishment of imprisonment would undermine the public trust in the military justice system, in the circumstances of the offences and the offender, including the particular circumstances justifying a suspension. I find that the particular circumstances relating to the health of Master Seaman Boire, justifying the suspension of the punishment of imprisonment in this case, are of such a nature to be readily understood as compelling for a reasonably informed observer. Yet, those particular circumstances are not the only factors relevant to the determination of whether the suspension would undermine the public trust in the military justice system.

[28] Indeed, the same observer would also know that an offender who has admitted to fraud against his employer, the Crown, in the course of two postings over a period of a few years obtaining close to $50,000 in benefits will walk out of his court martial without any real consequences, with the exception of the potential for the punishment of imprisonment to be put into execution in the sixty days following its imposition. This is an outcome relating to the offence that I cannot ignore. It could cause me to refuse to suspend the sentence of imprisonment. Yet, doing that in light of the health of the accused is inconceivable for me. I believe that the suspension of the imprisonment would leave an inadequate punishment imposed on the offender, considering the crimes he admitted having committed. The cause of my concern is the sentence proposed, composed of only one punishment. Refusing to suspend would be akin to penalizing Master Seaman Boire for something entirely outside of his control. I conclude that the problem is with the sentence proposed, not with the suspension of the punishment of imprisonment.

**The joint submission of counsel and its effect**

[29] Both counsels in this case have jointly proposed that the sentence be constituted solely by the punishment of imprisonment for a period of sixty days. They also both recommended that the imprisonment be suspended. Although this court is not bound by this joint recommendation, it has been determined by the Court Martial Appeal Court in *Taylor v. R.*, 2008 CMAC 1 at paragraph 21 that the sentencing judge at a court martial cannot depart from a joint submission unless there are cogent reasons for doing so. Cogent reasons mean where the sentence is unfit, unreasonable, would bring the administration of justice into disrepute or be contrary to the public interest. The sentencing judge is also under an obligation to inform counsel during the sentencing hearing if the court is considering departing from the proposed sentence in order to allow counsel to make submissions justifying the proposal.

[30] In this case, I have provided such an opportunity to counsel, specifically requesting their views on whether the consequence of a suspension of imprisonment in this case, where it is the only punishment suggested to form the sentence, would allow the sentence to meet the objectives of denunciation and deterrence which need to be emphasized in cases of fraud, such as this one. The concerns the court has can also be phrased in the language of a requirement to justify departing from the joint submission in the following question: is the fact that the offender walks out of court without a tangible punishment for his crimes by virtue of the suspension of the punishment of imprisonment likely to render the sentence unfit, unreasonable, contrary to the public interest or likely to bring the administration of justice into disrepute?

[31] After a break, both counsel decided to stick to their initial position and avoided suggesting any other punishment which could be combined with imprisonment to have a real impact on the offender upon leaving the court room with the suspended sentence of imprisonment. They did not try to establish that their joint submission, which includes suspension of the punishment of imprisonment, is within a range of appropriate sentences. They did not produce or discuss any case law, choosing to rely instead on the book of authorities provided by the prosecutor which contains two cases: *R. v. Salera,* 2013 CM 3028 and *R. v. Master Corporal C. Poirier,* 2007 CM 1023. These cases did not involve separation expense frauds, nor did they involve suspension of punishment of imprisonment. They both concerned offenders who used their position of clerks with access to financial documents or programmes to gain personal benefits. These cases are useless for the question counsel were asked to assist the court with.

[32] In light of this incapacity of counsel to be helpful, the court engaged in some research of its own. I found a number of cases which are relevant for the type of fraud at play in the circumstances of the offences here. One such case is *R. v. Arsenault*, 2013 CM 4007, currently under deliberation at the Supreme Court. It involves separation expense fraud for an amount of $34,043. The sentence imposed at court martial was a combination of detention and reduction in rank to the rank of sergeant where the military judge stated at paragraph 11 that "This combination of punishment achieves the objectives of deterrence and denunciation."

[33] Four other fraud cases reveal that the combination of imprisonment with another punishment has been deemed by military judges to be required to reach the objectives of denunciation and deterrence at play here. In *R. v. Sergeant Martinook*, 2011 CM 2001, the chief clerk of a reserve regiment wrote, signed and cashed, to his benefit, fifteen cheques drawn on the unit's non-public funds account for a total fraud of $17,945. He was sentenced to imprisonment for twenty-one days and reduction in rank to corporal. A similar fraud was committed by Corporal Roche (2008 CM 1001) who defrauded the base funds at CFB Kingston of $8,700 and was sentenced to imprisonment for fourteen days and a fine of $2,000. In *R. v. Lieutenant C.L. Matthews*, 2001 CM 06, the offender was charged for making a false statement in a document to state that she had a dependant, in order to obtain separation expense benefits. The sentence imposed was imprisonment for a period of sixty days, a severe reprimand and a fine in the amount of $5,000. The case of *R. v. Sub-Lieutenant M.D. Lechmann*, 2000 CM 08 is also relevant in that the offender in this case of complex fraud was sentenced to imprisonment for a period of sixty days and a fine of $5,000. In the last three cases, the period of imprisonment was suspended. Yet, I note that the offenders still had other punishments remaining and did not walk out of their courts martial without effective punishments.

[34] I found other cases where a combination of imprisonment with other punishments continued to provide a meaningful real impact once the decision was made to suspend the execution of the period of imprisonment. See, for instance, *R. v. Corporal J.J. Baril*, 2002 CM 21; *R. v. Lieutenant F. Verreault*, 2000 CM 18; and *R. v. Corporal J. Busch*, 2003 CM 01.

[35] Counsels did not point to one case in which a sentence was composed of only a suspended punishment of imprisonment for offences of fraud. In its research, the court found none, although it did find exactly five cases where the sentence was composed of only a suspended punishment of imprisonment, typically for military offences committed by offenders who were, at the time of sentencing, released or just about to be released from the Canadian Armed Forces. Even if the court's research may not have been the most complete given the limitations in means and time, I am left to conclude on the basis of the information I have that what counsel are jointly asking the court to approve in this case may well be a first for a fraud case in the military justice system.

**The joint submission is unreasonable, unfit and is likely to bring the administration of justice into disrepute**

[36] I conclude from this research that the joint submission of counsels, for a sole punishment of imprisonment, suspended, is unreasonable as it does not sit within any range of sentences imposed previously for offences of fraud; is unfit as it fails to provide for the objectives of denunciation and deterrence; and is likely to bring the administration of justice into disrepute, by the fact that it is unprecedented and does not allow for a substantive punishment of the offender at the end of the court martial, an aspect of the sentence that would be apparent to any informed observer.

**Imposing the proper punishment**

[37] Having concluded that I should not be imposing the punishment jointly proposed by counsels, it is now my task to impose the appropriate punishment. As stated previously, the sentence of imprisonment proposed by counsel and its duration were appropriate, the problem was the suspension of that punishment without an adequate effective punishment remaining. This can be resolved by imposing an additional adequate punishment from the list found at section 139 of the *NDA*.

[38] In their additional submissions, both counsel alluded to the fact that these other punishments were inadequate as the offender will soon be released medically from the Canadian Armed Forces and in the interim is serving out of uniform with the Joint Personal Support Unit here in Borden where he can maximize his opportunities to get medical care and prepare to life in civilian streets. I agree with counsel that this situation and the imposition of the sentence of imprisonment, even suspended, would make the imposition of sentences such as reduction in rank, forfeiture of seniority, severe reprimand and reprimand, largely inadequate. However, contrary to the representations of counsel, Master Seaman Boire is not necessarily going to be leaving the service in the short term. Indeed, even if in her letter at Exhibit 11, Dr McNally reveals that Master Seaman Boire's medical file has been forwarded for consideration for assignment of a permanent medical category which will likely result in a medical release, it remains that the timing for the assignment of the permanent medical category is unknown. What is known, however, is that a member who is medically unfit can be retained up to three years, subject to employment limitations as per Defence Administrative Orders and Directives (DAOD) 5023-1. It is, therefore, too early to conclude that the service of Master Seaman Boire with the Canadian Armed Forces is coming to an end soon.

[39] That reality makes a sentence of dismissal and reduction in rank available. However, I find that a sentence of dismissal would be too heavy-handed, especially that Master Seaman Boire may have up to three years of service left and is in no condition to go looking for work at this point in his life. The sentence of reduction in rank would have significant financial consequences without providing significant deterrence as Master Seaman Boire is under medical limitations not to wear a uniform, as evidenced at Exhibit 12.

[40] The one sentence which remains available is a fine. There have been no representations made to the court concerning the capacity of Master Seaman Boire to pay. Yet, with a monthly basic pay of $5,116 as it appears on the pay statement at Exhibit 5, a capacity to pay can be assumed, even while taking into consideration the fact that Master Seaman Boire is already paying $250 per month to reimburse the sums owed to the Crown as a result of the fraud.

[41] Keeping in mind the fact that any sentence imposed must be the minimum required to maintain discipline and the objective of rehabilitation which requires that the sentence that I impose not have extensive detrimental effects on the efforts the offender will have to make to reintegrate as a productive member of society, I believe that a fine

corresponding to roughly five per cent of the sums defrauded would, in the very special circumstances of this case, suffice, in combination with the punishment of imprisonment, to meet the objectives of denunciation and deterrence required. The fine will, therefore, be set at the sum of $2,400 which should not be taken as meaning that such a minimal amount would be appropriate in every case. The circumstances in which Master Seaman Boire finds himself in this case are truly exceptional.

[42] Master Seaman Boire, the circumstances of the charges you pleaded guilty to reveal an extremely disappointing behaviour incompatible with the services you have provided to the Canadian Armed Forces in the past. You have been a good sailor and a good cook, despite the fact that you have had to face exceptional hardship in the service at times. It is clear to me that you are currently facing significant personal challenges which truly constitute exceptional circumstances without which you would have been called upon to serve a sentence of imprisonment. I believe you recognize the wrong you have done. You have endeavoured to repay the sums defrauded and will carry that financial burden for a long time, in addition to the fine that I had to impose on you today. Yet, there are obviously people prepared to help you, as evidenced by the presence of your doctor in court here, yesterday and today. I trust that you will be able to move on with your life within and outside of the service without reoffending.

**FOR THESE REASONS, THE COURT:**

[43] **SENTENCES** you to imprisonment for a period of sixty days and a fine of $2,400 payable at the rate of $200 per month starting no later than 1 July 2015. Should you be released from the Canadian Armed Forces before the full payment of the fine, any outstanding sum will be payable at the date of your release.

[44] **SUSPENDS** the carrying into effect of the punishment of imprisonment.

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**Counsel:**

The Director of Military Prosecutions as represented by Major J.E. Carrier.

Major S.L. Collins, Defence Counsel Services, Counsel for Master Seaman R.J. Boire.