



COURT MARTIAL

Citation: *R. v. Downer*, 2016 CM 4006

Date: 20160413

Docket: 201513

Standing Court Martial

8 Wing Trenton
Belleville, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Master Corporal M.A. Downer, Offender

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

REASONS FOR SENTENCE

(Orally)

The charges

[1] Master Corporal Downer has been found guilty of three charges under the Code of Service Discipline in relation to false statements he made on 16 August 2013, in attempting to finalize a claim for Leave Travel Assistance (LTA) for which he obtained an advance of \$600 from public funds. Master Corporal Downer was found guilty of one charge under section 117(f) of the *National Defence Act (NDA)* for an act of a fraudulent nature in attempting to obtain payment of LTA and of two charges under section 125(a) of the *NDA* for wilfully making two false statements in a statutory declaration signed by him, submitted to obtain the finalization of his claim.

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 also considered the facts relevant to this case, heard during the trial and the evidence presented at the sentencing hearing. Indeed, Major Dumulon-Perreault, the offender's commanding officer, testified for the prosecution and Dr. Marjorie Hogan was called by the defence. Both entered a number of exhibits. Finally, I have carefully considered the submissions of counsel.

Purpose of the military justice system

[3] The military justice system constitutes the ultimate means 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 a military organization ensures that its members will accomplish successful missions in a trusting and reliable manner.

OBJECTIVES AND PRINCIPLES 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.

[5] When deciding what sentence would be appropriate, a sentencing judge must also take into consideration a number of 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 either to the offence or the offender.

[6] That being said, the punishment imposed by any tribunal 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 that is necessary to maintain discipline.

[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 of the sentence; and impose a sentence commensurate with the gravity of the offence and the previous character of the offender." The 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.

THE OFFENCES AND THE OFFENDER

The offences

- [8] The circumstances of the offences are as follows:
- (a) On 19 April 2013, while posted to Ottawa, Master Corporal Downer received a \$600 advance on a LTA claim raised on the basis of a leave pass authorized on 3 April 2013 which indicated that he would be on leave for 12 days between 29 June and 10 July 2013 and would be travelling to L'Anse au Loup, Newfoundland and Labrador (NL). As provided at Chapter 209 of the Compensation and Benefits Instructions for the Canadian Armed Forces, LTA can be obtained by a member of the Canadian Armed Forces who travels to see his next of kin.
 - (b) That leave authorized for 29 June to 10 July 2013 was cancelled at the request of Master Corporal Downer prior to being posted from Ottawa to Trenton, Ontario, some time before 29 June 2013.
 - (c) After reporting for duty in Trenton, Master Corporal Downer took special leave (relocation) from 17 to 23 July 2013. The court found, on the basis of the evidence before it, that on that occasion, Master Corporal Downer did not travel to L'Anse au Loup, NL.
 - (d) On 13 August 2013, Master Corporal Downer was informed by staff at the 8 Wing Orderly Room that he had an outstanding advance of \$600 and was required to finalize his LTA claim to avoid recovery of that sum from his pay.

- (e) On 16 August 2013, Master Corporal Downer requested the assistance of Sergeant Parsons to finalize his claim; however, as he did not have in his possession either a leave pass stamped by an official at the destination location nor receipts indicating he had travelled to NL, the claim could not be finalized. Master Corporal Downer stated that he did attend L'Anse au Loup, NL, but subsequently lost all documentation related to the trip when a friend cleaned up his truck after he had gotten back home. Given that information, Sergeant Parsons proposed to Master Corporal Downer to make a statutory declaration outlining these facts in the hope that it be accepted as sufficient proof to obtain finalization of his claim. She set out to complete a statutory declaration form on the basis of what Master Corporal Downer was dictating to her. Once the document was completed and Master Corporal Downer was satisfied with it, the declaration was solemnly made before a commissioned officer.
- (f) Following the making of the statutory declaration, the claim and the associated statutory declaration were forwarded to the 8 Wing Orderly Room for approval of the payment of the claim. Yet, the payment was not approved and the claim never finalized. Sometime after 25 September 2013, the \$600 advance was recovered from Master Corporal Downer's pay.

The offender

[9] Master Corporal Downer is a 35-year-old member of the military police, originally from NL, who first joined the Canadian Armed Forces in October 1999 in the infantry. He left the Canadian Armed Forces in October 2002. After obtaining a diploma in law enforcement in 2004, he rejoined as a military policeman in March 2006. After initial military police training, he was posted to Gander, NL in November 2006. He completed the Aircraft Security Officer course in October 2007 and deployed to Joint Task Force Afghanistan for six months in December 2007. He completed his Qualification Level 5 in November 2008 and was posted to Ottawa in 2010. He was posted to Trenton in 2013 where he is still serving. He is in a common law relationship and has a son, born in July 2015; he also has a step-son as a dependant.

[10] Major Dumulon-Perreault, Master Corporal Downer's commanding officer, testified on sentencing for the prosecution. He provided information, based on his personal knowledge and involvement with the offender and based on material obtained from the offender's personal file. Master Corporal Downer's career, before the events subject of the charges before the court, can be characterized as entirely successful despite three incidents which warranted counselling and a recorded warning in 2008, 2009 and 2010. I consider these to be minor in nature and take from the testimony heard at trial, that the offender's performance and conduct was satisfactory. He was successful in two important career courses, including demanding training as Aircraft Security Officer, and what can be qualified as a very successful deployment to Joint Task Force

Afghanistan. Master Corporal Downer was awarded a Chief of Defence Staff commendation for standing guard of a disabled aircraft in a hostile environment.

[11] Since the commission of the offences here, however, Master Corporal Downer's career has taken an abrupt turn for the worse. Although what happened from that point is not taken into consideration as aggravating for the purpose of sentencing, it is important to illustrate the situation in which the offender finds himself at the time of sentencing, a situation which very much influenced the prosecution's submissions on sentence. Major Dumulon-Perreault mentioned that in April 2014, Master Corporal Downer was arrested by the Ontario Provincial Police (OPP) in possession of marijuana. As a result of admitting drug use, he was placed on counselling and probation. In the course of this period of probation, he was control-tested for drug use in December 2014 and the result was positive for marijuana. In February 2015, Master Corporal Downer was convicted of three counts of absence without leave at summary trial and sentenced to a fine and 10 days confinement to barracks. While serving that sentence, he was summoned to the office of a superior on 24 February 2015 in relation to career actions initiated against him. Master Corporal Downer smelled of marijuana. As a result, testing for cause was ordered and resulted in another positive test.

[12] Following this latest incident, Major Dumulon-Perreault recommended the release of Master Corporal Downer under item 5(f) of article 15.01 of the QR&O at the end of February 2015; however, the competent authorities from the Director of Military Careers Administration in Ottawa have decided not to effect release. The commanding officer testified that he was told that the decision to effect the release was pending the results of this court martial. When asked by the court, Major Dumulon-Perreault could not explain this outcome, as the charges before this court pertained to acts of a fraudulent nature committed in August 2013 and have nothing to do with subsequent involvement with drugs in 2014-2015. The prosecutor was also unable to explain to the court the logic behind the decision to suspend the administrative release in relation to drug incidents pending the result of entirely unrelated disciplinary proceedings, especially given that Master Corporal Downer like many others before him could have been tried by this court following his release; this is exactly what is foreseen by subsection 60(3) of the *NDA*.

[13] This is not to say that the Director of Military Careers Administration or its personnel do not have valid reasons to delay an eventual release of Master Corporal Downer. It is simply that the evidence before me is to the effect that the rationale for the decision is not understood by the commanding officer of the accused and cannot be explained by the prosecutor and, frankly, cannot be understood by studying the applicable orders and instructions I took into judicial notice under Rule 15 of the Military Rules of Evidence. That should be a concern and I invite the prosecution to address this issue should it present again in the future.

[14] Another administrative review that appears to him to be on hold, according to Major Dumulon-Perreault, relates to the military police credentials of Master Corporal Downer. Those were revoked temporarily around April 2014, potentially as a result of

the arrest by the OPP but this has not been determined precisely. In any event, there will be another credential review process that will be undertaken following this trial, which involves consideration of whether Master Corporal Downer's military police credentials should be permanently revoked by the Canadian Forces Provost Marshal.

[15] In addition, there is a medical issue which currently significantly affects the employment of Master Corporal Downer. Following arrest by the OPP in April 2014, Master Corporal Downer has sought treatment for post-traumatic stress disorder (PTSD) and was formally diagnosed with the condition in May 2014. He was assigned very restrictive Medical Employment Limitations on 9 September 2015 which place him at high risk of not complying with universality of service requirements, a situation which requires an administrative review, this time by another authority within the Director of Military Careers Administration in Ottawa. From the information provided to the court, it is impossible to know when a permanent assessment will be made and when an ensuing release could be ordered. However, it seems clear that Master Corporal Downer cannot be gainfully employed with the limitations assigned to him and the only outcome foreseen at this point in time is a release in the short to medium term. I understand there are no plans to employ Master Corporal Downer as a member of the military police in the foreseeable future, given pending decisions by authorities at the Director of Military Careers Administration in Ottawa as to his release from the Canadian Armed Forces either by reasons of misconduct or by virtue of being in breach of universality of service requirements for medical reasons due to PTSD.

[16] Dr Marjorie Hogan, PhD is a clinical psychologist practicing in Belleville, near Canadian Forces Base Trenton. She has been engaged in a therapeutic relationship with Master Corporal Downer since March 2015, following a referral from Canadian Armed Forces authorities. She testified for the defence to provide some background information on the mental condition suffered by Master Corporal Downer and the symptoms he experiences. The origin of that condition appears to be a deployment to Afghanistan in 2007-2008. She said the first important step in treatment is the development of a rapport with the patient, a rapport she said has developed well with Master Corporal Downer despite initial hesitations on his part. She said Master Corporal Downer told her he is using marijuana to calm down and fall asleep on evenings, allowing him to limit symptoms of hyperarousal, flashbacks and to limit intrusive thoughts. She was told by Master Corporal Downer that the marijuana was prescribed by a doctor but she did not verify the origin of such prescription. The medical documentation authored by Dr Elliott, a psychiatrist from Canadian Forces Health Services Centre Trenton, is to the effect that Master Corporal Downer is self-medicating with marijuana. Both her and Dr Hogan expressed the view that Master Corporal Downer's condition can be treated and that he can recover from it, although Dr Hogan is of the view that recovery cannot be effected in a military environment. She also discussed the negative impact a sentence of incarceration could have on the treatment of Master Corporal Downer.

POSITION OF PARTIES ON THE SENTENCE

Prosecution

[17] In terms of the determination of an appropriate sentence, the prosecution stressed the objectives of denunciation and deterrence, asking this court to impose a sentence constituted of the punishments of dismissal from the Canadian Armed Forces and reduction in rank.

Defence

[18] In response to submissions by the prosecution, the defence suggests that in addition to the objectives of deterrence and denunciation, an important sentencing objective to be met in this case is rehabilitation. Relying on the principle of parity of sentence, the defence suggests the objectives can be met by imposing a sentence composed of a reprimand and a fine of \$800 as sentences in that range were imposed for similar offences. In addition and by an abundance of caution, defence counsel submitted that a sentence of detention was not warranted and if it was, exceptional circumstances would warrant the suspension of that period of detention.

ANALYSIS

Objective gravity of the offences

[19] In arriving at evaluating what would be a fair and appropriate sentence, the court has considered the objective seriousness of the offences as illustrated by the maximum punishments that the court could impose. The commission of an act of a fraudulent nature under section 117(f) of the *NDA* is punishable by imprisonment for less than two years or to less punishment. The two offences of wilfully making a false statement in a document signed and required for official purposes under section 125(a) of the *NDA* are punishable by imprisonment for three years or less punishment. Only one sentence can be imposed for all offences at a court martial.

Aggravating factors

[20] For the purpose of sentencing, I consider that even if I found the offender guilty of three charges, this case is really about one occurrence of a fraudulent conduct on 16 August 2013, when the offender attempted to obtain payment of a benefit to which he was not entitled. As found by the Court Martial Appeal Court in *R. v. St-Jean*, CMAC 429 of 8 February 2000, this is a serious offence. Justice Letourneau had this to say at paragraph 22 about fraud carried out by members of the Canadian Armed Forces in relation to their employment:

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 behavior 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.

[21] The offences constitute an attempt to divert funds allocated by the Crown for National Defence purposes to the private purse of Master Corporal Downer and, in that sense, this is not a victimless crime. Both parties agree that the fact that Master Corporal Downer was a member of the military police at the time he committed the offences is aggravating. This is recognized in the case law submitted by the prosecution, most notably the case of *R. v. Master Corporal R.P. Joseph*, 2008 CM 4008. Also, it is clear that a person of his military occupation, age and experience should have known better before acting the way he did. That said, the prosecution has not proven beyond a reasonable doubt, as it is its burden to do for any aggravating factor, that the offender used his status as military policeman to facilitate the commission of the offence. The prosecution also failed to prove beyond a reasonable doubt the presence of premeditation: although the evidence reveals that Master Corporal Downer came to see Sergeant Parsons for assistance in finalizing his claim, I have not been convinced to the required standard that there was any planning in making false statements, and in the reduction of those statements to writing in a statutory declaration.

Mitigating factors

[22] The court has considered the following factors to be mitigating:

- (a) This is a case involving one transaction of false statements reduced to a written statutory declaration, not repeated false statements over a long period of time as in other instances of benefit fraud. The amount involved is approximately \$800, not a significant sum. The court is dealing with an attempted fraud; no actual loss of funds has been incurred.
- (b) The time that has elapsed since the commission of the offence in August 2013, a period of almost three years, which impacts on the objective of general deterrence that the sentence aims to achieve.
- (c) The fact that Master Corporal Downer must be considered a first-time offender. Even if he has a conduct sheet, it contains one conviction for three charges of absence without authority in January 2015, therefore, committed after the offences for which he is being sanctioned today.
- (d) The fact that Master Corporal Downer has served the Canadian Armed Forces honorably with increased responsibilities and significant accomplishments until his troubles began with his arrest by the OPP in April 2014. Besides doing well on difficult courses, he has performed

admirably in difficult conditions in a theatre of conflict, obtaining recognition for his exceptional service in the form of a Chief of Defence Staff commendation.

- (e) Finally, at 35 years of age, Master Corporal Downer retains significant potential to contribute to Canadian society in the future, especially given the positive prognostics for recovery from the mental condition he is currently suffering from.

The impact of the mental condition of the offender

[23] The psychological injuries which many military personnel suffer when they return from deployment, most notably from Afghanistan, is a serious issue for the Canadian Armed Forces and, indeed, for Canadian society in general. I believe it is entirely proper on sentencing to determine and discuss the impact of the psychological condition of an offender. Yet, with the exception of issues which render an accused not criminally responsible for actions committed, a diagnosis of psychological injuries does not absolve an accused of responsibility for the actions committed.

[24] The court shares the compassion expressed by defence counsel for the offender's condition which seems to result from his deployment to Afghanistan. Yet, the approach taken by the defence, in not listing this factor as mitigating per se, but, rather as a factor to be considered in the determination of the unusual impact some specific punishments may have on Master Corporal Downer, appears to me as the correct one. Indeed, there is in this case no evidence demonstrating that Master Corporal Downer's psychological state played a role in the commission of the offences. The evidence that was presented to me is to the effect that some punishments could be particularly detrimental to Master Corporal Downer by virtue of his mental illness; specifically, a sentence of incarceration which would deprive him of the assistance of his therapist and, almost certainly, exacerbate his symptoms of PTSD. This evidence may not, in and of itself, have the effect of preventing the imposition of a custodial sentence that would otherwise be required. However, consideration of the mental illness of the offender could lead the court to suspend the carrying into effect of such a punishment if it is deemed to be among the "particular circumstances justifying a suspension of the punishment of imprisonment or detention" and if it is a factor allowing to conclude that such a suspension would not undermine the public trust in the military justice system. See *R. v. Boire*, 2015 CM 4010 at paragraph 23 to 28 and *R. v. Caicedo*, 2015 CM 4020 at paragraphs 34 to 42 to that effect.

Objectives of sentencing to be emphasized in this case

[25] Given the nature of the offences, 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 edition at pages 1021 to 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.

In terms of denunciation, I refer once again to the previously-quoted words of Justice Letourneau in *R. v. St-Jean*, CMAC 429.

[26] That being said, I also believe and agree with the defence that rehabilitation is important in this case. 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, especially considering the mental health challenges this particular offender is facing. There is no indication in this case that the behavior of the offender is part of a pattern of deceptive or fraudulent acts of a repeated nature and, therefore, no reason to subordinate rehabilitation to the other objectives at play in this case.

The sentence proposed by the prosecution

[27] As mentioned previously, the prosecution recommends a sentence of dismissal and reduction in rank. This is an unusual request for a number of reasons, as acknowledged during submissions. First, the two punishments proposed surround the punishment of detention in the scale of punishments of section 139 of the *NDA*. When asked about why detention was not considered an appropriate punishment, the prosecution mentioned that the purpose of that punishment is corrective in nature and appropriate for offenders which continue to serve, not the case of Master Corporal Downer, who is expected to be released. This begs the question as to the effectiveness of the proposed punishments of both dismissal of a person who is about to be compulsorily released and reduction in rank.

[28] The reduction I could impose would be to the rank of private, given that Master Corporal Downer is effectively a corporal appointed to master corporal. Yet, such a punishment would only be partly effective; I am told the reduction to private would cause the offender to be instantly promoted to corporal as this is the minimum rank a member of the military police, such as Master Corporal Downer, can hold and, as stated previously, his future as a member of the military police still remains to be determined. Furthermore, the evidence is to the effect that Master Corporal Downer does not currently serve in uniform and, therefore, the reduction would lose effectiveness. Confronted with these concerns, the prosecution justified its position by stating that the proposed combination of the punishments of dismissal would ensure that, globally, the sentence is effective. Yet, I am concerned that the imposition of dismissal would be annulling any effect of the reduction in rank. With respect, the prosecution's submission appears circular and even contradictory to me.

[29] The source of the problem in relation to the prosecution's submission is the fact that it relies heavily on the imminent release of the offender from the Canadian Armed Forces either by virtue of his medical condition or as a result of disciplinary issues;

namely, a combination of his conviction in this trial and of his prohibited use of drugs while on counselling and probation in December 2014 and, again, in February 2015.

[30] On the medical front, the evidence reveals that Military Employment Limitations placing Master Corporal Downer at high risk of not complying with universality of service were imposed in September 2015, with a medical review to be performed subsequently. It is not clear whether a permanent medical category has yet been assigned and no information was provided as to the timing of that determination. 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 5023-1. It is, therefore, too early to conclude that Master Corporal Downer is about to be released medically.

[31] On the disciplinary front, it is clear from the evidence that neither the commanding officer nor the prosecutor know the rationale for the decision of the Director of Military Careers Administration not to release Master Corporal Downer for drug use shortly after the recommendation was stated in February 2015, apparently to wait for the resolution of this matter before me, which all parties agree is entirely unrelated. The parties were unable to define what the "final resolution" of this matter means exactly. Therefore, it would appear that on the disciplinary front also the moment when a compulsory release may be effected is not known. As a consequence, I conclude the submission of the prosecution is based on an inadequate premise and I will, therefore, perform the analysis independently of an imminent release.

[32] The prosecution has not provided me with any jurisprudence suggesting a range of sentences that would be pertinent to this case, taking into consideration the specific aggravating and mitigating factors identified earlier. The prosecution's position is that all kind of sentences have been imposed for fraud in the past, from reprimand and fine at the lower end to imprisonment at the upper end. Yet, circumstances of appropriate cases are important and can shed light on trends in sentencing.

[33] Based on limited cursory research I have done in the past, I found that on occasions when custodial sentences have been imposed by courts martial for fraud, both the amount of the fraud and the repetitive or sophisticated nature of the scheme pursued by offenders was of much greater severity than what took place in this case. See, for instance, the case of *R. v. Sergeant Martinook*, 2011 CM 2001, where 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 21 days and reduction in rank to corporal. A similar fraud was committed in the case of *R. v. Master Corporal K.M. Roche*, 2008 CM 1001, who defrauded the base funds at Canadian Forces Base Kingston of \$8,700 and was sentenced to imprisonment for 14 days and a fine of \$2,000, although the punishment of imprisonment was suspended.

[34] As for the punishment of dismissal, no cases were submitted to me to indicate such a punishment has been imposed for fraud in the past. Not unlike my conclusions at

paragraph 39 of *R. v. Boire*, 2015 CM 4010, for a much more severe fraud, I find the imposition of dismissal to be too severe, as it stands higher in the scale of punishments than the custodial punishment of detention and has significant and sudden consequences on the livelihood of the offender. I doubt it would have been requested if there was no expectation that Master Corporal Downer would be released. Concerning the punishment of reduction in rank, also suggested by the prosecution, it is very severe for what I found to be the gravity of the offence and the character of the offender in this case. In addition, the perspective of that punishment not being seen as effective, given the automatic promotion of the offender to corporal on the basis of his status as member of the military police, convinces me that it would not adequately serve the objectives of denunciation and general deterrence to impose that punishment in this case.

The sentence proposed by the defence

[35] As a consequence of my conclusion on the submissions of the prosecution, I now wish to address the proposal for a sentence of a reprimand and a fine of \$800, which was very aptly supported by reference to no less than eight previous cases by defence counsel. I have read all of those cases and I agree that collectively they show that a reprimand and a fine is within the range of adequate punishments for a fraudulent act of the type that we have here. However, I note that in seven of these cases, the offender had pleaded guilty. In relation to six of these eight cases, including the case where there had been a finding of guilt, the sentence ultimately imposed was the result of a joint submission of counsel. Sentences resulting from joint submissions are not sentences that would have been imposed by the military judge. The decision the judge made in all of these cases of joint submission is simply that the sentence proposed was not unfit, not contrary to public interest and not likely to bring the administration of justice into disrepute; it means nothing else and is, therefore, of a very limited precedential value, but I will deal below with the two other cases where the sentence was contested.

Determination of the appropriate sentence

[36] It is an important principle that the court should impose the least severe punishment that will maintain discipline. For the reasons expressed earlier, the punishments of dismissal and reduction in rank have been rejected. I do not believe that a punishment of detention is required in this case; such custodial sentences are imposed as a last resort, and the mitigating factors at play here, especially the fact that the offences involve one transaction of false statements not repeated and engaging a modest sum of \$800 by a first-time offender, would make this punishment excessive in my view, therefore, the issue of suspension does not present itself.

[37] Having eliminated the most severe punishments proposed, expressly or implicitly, by the prosecution's submissions, I will now analyse the less severe sentence proposed by defence and ask myself if that combination of punishments would be sufficient to meet the objectives of sentencing I identified above; namely, the

denunciation, the deterrence and the rehabilitation of the offender. I will then proceed up the scale of punishments at section 139, if I need to.

[38] Is the punishment of a reprimand combined with a fine of \$800, proposed by the defence, sufficient to meet these objectives of sentencing in this case? It was deemed sufficient in the two cases submitted to me, in which the issue of sentence was contested; namely, *R. v. Joseph* 2008 CM 4008 and *R. v. Taylor*, 2007 CM 4012. The case of Master Corporal Joseph was mentioned by both counsel as it concerns a military police member who had made a false statement in a police report. A reprimand and a fine of \$1,200 were imposed after a guilty plea to one charge under section 125(a) of the *NDA* for stating that an interview was logged into evidence when it was not the case. The military judge's remarks on sentencing were to the effect that the offence was not committed to gain any advantage or to help someone to commit an illegal act and that it occurred at a time when the offender was going through personal difficulties. I find that the offence in *R. v. Joseph* was less severe than in this case and that the guilty plea recorded by the offender in that case as well as the evidence of immediate collaboration with authorities played a significant factor in mitigating the sentence.

[39] As for Captain (Retired) Taylor, he pleaded guilty to one charge under section 117(f) of the *NDA* for submitting a letter allegedly from a provincial agency suggesting he was no longer required to pay spousal support. He was sentenced to a reprimand and a fine of \$1,000, a reduction of \$500 over what he would have otherwise been ordered to pay as a result of unexplainable delay in bringing the matter to trial which had been the subject of debate in sentencing. While the facts in *Taylor* are similar to the facts at issue here, it remains that Taylor pleaded guilty and collaborated with authorities early on, two mitigating factors that are not present in this case. Also, Taylor was not a member of the military police, an aggravating factor that is present here.

[40] I believe the sentence proposed by defence is not sufficiently severe to meet the objectives of denunciation and deterrence which I have identified as important here. The sanction of an offence involving fraudulent activity by a member of the military police for personal gain following a full trial must be sanctioned, in my opinion, by a minimum of a severe reprimand. In addition, the amount of the fine proposed appears to be set on the amount of the attempted fraud. That amount is, in my view, too low to effect the objectives of sentencing in this case and should be increased to \$1,500. No information was provided to the court as to the financial means of the offender, but given the pay statement which I have before me as exhibit 18 and a payment schedule that is in line with what was suggested by defence in relation to the initial fine proposed, I am confident the sentence I am about to impose will not have a detrimental effect on the rehabilitation of the offender.

[41] Master Corporal Downer, the circumstances of the three charges I have found you guilty of reveal a behaviour that is clearly unacceptable on the part of anyone in the Canadian Armed Forces, let alone a member of the military police. You should realize that by now; however, the very bad judgement you displayed and the illegal acts you committed date from 2013. With the end of these court martial proceedings, you may

choose to place this behind you and engage on the road to rehabilitation. Most importantly, you are engaged on the road to recovery from a serious mental health condition. I admire your accomplishments as a member of the Canadian Armed Forces in the past. Yet, your future appears to be as a civilian member of our society where I hope you can build on the skills you have acquired in the military to engage in becoming a healthier and better person who has learned and will not reoffend.

FOR THESE REASONS, THE COURT:

[42] **SENTENCES** you to a severe reprimand and a fine of \$1,500, payable in 10 monthly installments of \$150, commencing no later than 1 June 2016. In the event that you are released from the Canadian Armed Forces for any reason before the fine is paid in full, then any outstanding unpaid balance will be due the day prior to your release.

Counsel:

The Director of Military Prosecutions as represented by Major J.S.P. Doucet and Major A.J. Van der Linde

Major D. Hodson and Lieutenant(N) T.N. Ticky, Defence Counsel Services,
Counsel for Master Corporal Drummond