



COURT MARTIAL

Citation: *R v Maillet*, 2013 CM 3034

Date: 20131203

Docket: 201313

Standing Court Martial

2nd Canadian Division Support Base Valcartier
Courcelette, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Master Corporal M. Maillet, Offender

Before: Lieutenant-Colonel L.-V. d'Auteuil, M.J.

(OFFICIAL ENGLISH TRANSLATION)

REASONS FOR SENTENCE

(Orally)

[1] Master Corporal Maillet, the Court Martial, having accepted and entered your guilty plea on the first, third, fourth and sixth counts, the Court now finds you guilty on these four counts. Considering that the second and fifth counts are alternative charges, the Court orders a stay of proceedings on those two counts.

[2] Furthermore, in accordance with section 194 of the *National Defence Act*, the Court agrees to take into account for this sentence, upon the offender's request, four offences that he is recognized as having committed, namely: two offences punishable under section 130 of the *National Defence Act*, namely, having committed fraud contrary to subsection 380(1) of the *Criminal Code* between 11 November 2005 and 12 February 2007, at Canadian Forces Base Trenton, and between 12 February 2007 and 31 May 2010, at Valcartier Garrison, concerning a living differential claim for a total of \$19,777.80 for both cases, as well as two other offences under paragraph 125(a) of the

National Defence Act, namely, having wilfully made a false statement in a document signed by him and required for official purposes concerning the same two periods and at the same two places previously mentioned.

[3] As the military judge presiding at this Standing Court Martial, it now falls to me to pass sentence.

[4] In the particular context of an armed force, the military justice system constitutes the ultimate means of enforcing discipline, which is a fundamental element of military activity in the Canadian Forces. The purpose of this system is to prevent misconduct or, in more positive terms, to promote good conduct. It is through discipline that an armed force ensures that its members will perform their missions successfully, confidently and reliably. The military justice system also ensures that public order is maintained, and that those who are subject to the Code of Service Discipline are punished in the same way as any other person living in Canada.

[5] The Supreme Court of Canada recognized in *R v Généreux*, [1992] 1 SCR 259, that “[t]o maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently”. It also noted that, in the particular context of military justice, “[t]o maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently”. However, the law does not allow a military court to impose a sentence that would be beyond what is required in the circumstances of a case. In other words, any sentence imposed by a court, whether civilian or military, must be adapted to the individual offender and constitute the minimum necessary intervention, since moderation is the bedrock principle of the modern theory of sentencing in Canada.

[6] In the case before us, counsel for Her Majesty suggested that the Court sentence the offender to detention for a period of 90 days and a reduction in rank to private. Counsel for the defence, on the other hand, recommended that the Court sentence his client to imprisonment for a period of 60 days.

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

- a. to protect the public, which includes the Canadian 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 the offender.

[8] When imposing sentences, a military court may also take into consideration the following principles:

- a. the sentence must be proportionate to the gravity of the offence;
- b. the sentence must be proportionate to the degree of responsibility and previous character of the offender;
- c. the sentence must be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- d. before depriving an offender of his or her freedom, the Court must consider whether less restrictive sanctions are appropriate in the circumstances. In short, the Court should impose a sentence of imprisonment or detention only as a last resort;
- e. lastly, all sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[9] The Court is of the opinion that sentencing in this case should focus on the objectives of, first, general and specific deterrence and, second, denunciation of unlawful conduct. It is important to remember that the principle of general deterrence means that the sentence imposed should deter not only the offender from re-offending, but also others in similar situations from engaging in the same prohibited conduct.

[10] Corporal Maillet enrolled in the Canadian Forces in October 2004, and his common-law spouse status was recognized immediately. However, he separated from his spouse in November 2005, and he did not notify the military authorities. He continued to claim separation expense benefits every month even though he clearly was not entitled to, owing to the change in his status. He had also declared an address in Montréal while he was in Trenton and Valcartier, whereas in October 2005, he had purchased a house in the Québec City area and never lived there. A clerk discovered this scam in June 2010 during a simple administrative verification. However, at the time, Master Corporal Maillet wanted to put an end to this scheme, recognizing that it was inappropriate, but he came around too late, as the whole matter had been referred for investigation.

[11] Master Corporal Maillet explained that he continued claiming the benefits in question because of his heavy drinking and his compulsive gambling on slot machines. However, in 2010, he decided to pull himself together by bringing his alcohol and gambling dependencies under control. He stopped gambling completely but had a few relapses with his drinking. He did not seek any therapy, and he succeeded in overcoming these obstacles thanks to the support of his current spouse. He now considers himself to be in recovery.

[12] Given the size of the Canadian Forces as an organization, it relies in large part on the integrity and honesty of its members to ensure the sound management of the funds entrusted to it from the public purse when it comes to managing the individual allowances of its members. When a fraud within the meaning of the *Criminal Code* is committed, it is important to note, as many other Canadian courts have, including the Court Martial, that this is a serious crime that calls for a particularly severe approach because of the very nature of this crime and its impact. Members who have volunteered to serve our society, such as Forces members, cannot attempt in any way to obtain a strictly personal benefit to which they are clearly not entitled. In so doing, they betray the trust placed in them by all Canadians and those who lead them. This is what Justice Létourneau addressed in a more general manner in *R v St-Jean*, CMAC 429 at paragraph 22.

[13] In arriving at what it considers to be a fair and appropriate sentence, the Court has therefore considered the aggravating factors and the mitigating factors presented by the facts of this case.

[14] The Court finds the following to be aggravating factors:

- a. The objective seriousness of the offences. You have been found guilty of a service offence under section 380 of the *Criminal Code of Canada*, which is punishable by a term of imprisonment not exceeding 14 years, or less punishment, and of an offence under paragraph 125(a) of the *National Defence Act*, which provides for a sentence of imprisonment for a term not exceeding three years.
- b. Regarding the subjective seriousness, I have gleaned four aspects from the evidence presented to me:
 - i. The nature and scope of the fraud. This is a scam involving a simple strategy. Essentially, everything depended on what you reported to the clerk, including the official forms for claiming the benefit. There was nothing complicated that involved many little things to achieve the result. It was very simple. You filled out the form, made a statement and signed the form. In this sense, this is why I characterize this fraud as being relatively simple in nature, in terms of the strategy. There is the magnitude of the fraud, which involved approximately \$67,000 and went on for quite a long time, more than four years, and, without increasing the seriousness, it is important to consider that if I add to it the four offences which you have been found to have committed, we are talking here about an amount of approximately \$87,000. This is quite an extensive fraud in terms of the time and the amount and constitutes an aggravating factor in the circumstances;

- ii. The degree of premeditation. My conclusion on this aspect is that it is high and repeated. Claiming on a monthly basis, that is, every month, an amount of money over such a long period indicates that you knew exactly what you were doing and that you could have put a stop to it at any time, but you did it again each time, and in that case, the degree of premeditation is high. It was a plan, a scheme that you thought about. It is not something you did without giving much or any thought to it where you were told to just sign here and you will get the money. You knew what you were getting and planned it in a way, and it became more and more obvious as time passed, and the repetitive aspect shows a high degree of premeditation because you did it probably, you did this probably fifty times for just one form. So there was more than one form, and you repeated it very often. And the fact that you did it again each time, and you knew very well what you were stating in each of these forms, makes the degree of premeditation very high, but this is a factor that I must consider to be an aggravating one in the circumstances;
- iii. The authority aspect and the relationship of trust. In the circumstances, you were not in a position of authority since it was a personal claim; you were not responsible for taking on the management, the disbursement of money in your unit. You were not entrusted with a position of that nature. However, as I have already said, it all depended on you and on your integrity and honesty that you were supposed to demonstrate in filling out a form each month. It was you who provided the information. As I said, given the size of the organization, to a certain point, it can be expected that you can be trusted regarding the information provided. And in this regard, the relationship of trust was broken, and this is an aggravating factor in the circumstances;
- iv. The personal benefits, which is the fourth and final aggravating factor that I note. If I understand your testimony correctly, the money that you obtained was used to pay your personal debts because you used your wages or the money that you received from other sources to meet your personal need to drink and gamble. Whether you spent it on this or that, it was to make up for a personal problem that you had, and you benefited from it personally. And this, too, is a factor that I must consider to be an aggravating one in the circumstances.

[15] Now, for the mitigating factors:

- a. The first factor that I must note is your guilty plea. In pleading guilty to four offences, you are clearly testifying to your remorse, your sincerity in

your intention to continue being a reliable and positive asset to both the Canadian Forces and Canadian society. You have clearly expressed this before the Court, as well as during your testimony, and at the first opportunity, that is, when you got your lawyer in April 2013, you also expressed this. And this, this constitutes a mitigating factor that I take into account.

- b. Your work performance. Your potential and your performance, established by the evidence through the performance appraisals and letters testifying to your character at work show that you are a real asset to the Canadian Forces. Since resolving your issue, you have continued to perform well at work, and I do not think that this is the problem; on the contrary, you can see that in the people around you, people clearly appreciate, on the one hand, your way of getting things done in your career, but also probably your leadership and supervising style. And in this sense, I find that you are not a problem in a strictly disciplinary sense. Nobody came before me and told me that you had problems following orders, had problems being on time or did not set an example for your peers or your subordinates; on the contrary, I think it is rather the case that you do set an example, to the point that the chain of command has never given you any problems or has never seen any problem in supporting you in your career path.
- c. There is also age. At 37, you have a wealth of knowledge and experience that you will have to use better on a personal level. I think that you have already come a long way to a certain extent, but it is not over; indeed, it is far from over. The personal problem that you have lived through, and that you are still living through, will require better attention on your part, particularly at times when things go poorly, and you will have to have other resources besides your spouse to get you through that if you want to keep having a normal work situation and a normal life situation. In my opinion, the fact that you have had this experience and this knowledge today should allow you not to end up once again before a court martial in a military setting; that should be a lesson, and all this, for me, is at the very least a mitigating factor.
- d. There is also the fact that you had to face this court martial. The Court Martial is public and therefore accessible to people who are interested in knowing what is going on in this case. It is a part of military justice. The fact that this court martial is public also ensures that everything that happens in court is above board, and that the individuals involved, the judge and counsel alike, conduct the proceedings fairly for you. It is clear to me that appearing before a court martial may to a certain extent have a deterrent effect on you and not just on you but on any other person who could be tempted to behave as you did.

- e. There is also your behaviour after you committed the offence. You testified that after being confronted by your spouse, you probably realized all the problems you caused, the wrong you did and the inappropriate manner in which you reacted, and you took the initiative to go to a clerk to put a stop to all that and realized it was already too late. This is an element that I am taking into account, but there is also the fact that you made arrangements, a clear plan, to pay back all the money you received and then used for personal purposes. You have a plan that is clear; you also intend to put the proceeds from the sale of your assets towards paying back the money sooner, and here I am talking about the house, to make this a priority for paying back your debt.
- f. I must also consider the fact that you have no criminal record or entries in a conduct sheet indicating the commission of offences of the same or a similar nature.
- g. Finally, it must not be forgotten that upon your conviction, you will have a criminal record. This will be noted in your conduct sheet accordingly. It is true that this will have a certain impact on your career in the Canadian Forces, and that having a criminal record will also have a certain impact on your personal life, and this consequence cannot be overlooked by the Court. That makes it one of the mitigating factors that I must consider.

[16] Now, incarceration is a sentence of last resort, as was established by the decisions of our Appeal Court and of the Supreme Court of Canada. As the Chief Military Judge, Justice Dutil, noted in *R v Roche*, 2008 CM 1001, at paragraph 15, when the fraud is significant or when it is committed against an employer, whether it took place over longer or shorter periods, a sentence of incarceration is usually imposed.

[17] Consequently, considering the nature of the offences, the circumstances in which they were committed, the applicable sentencing principles, including sentences imposed by military courts on similar offenders for similar offences committed in similar circumstances, and the aggravating factors and the mitigating factors mentioned previously, I conclude that there is no other sanction or combination of sanctions other than incarceration that would appear to be the appropriate and the necessary minimum punishment in this case. On this issue, the court notes the agreement of both parties, who made, at least on this point, a joint submission to the Court.

[18] As for the type of incarceration, the Court is of the opinion that this situation is one where imprisonment should be imposed. This is in line with the criminal nature of fraud and the general attitude of Canadian courts towards the commission of this offence.

[19] It is also important to emphasize that the Court is of the opinion that when the acts as charged go beyond the scope of discipline and are criminal in the true sense, the military judge who passes sentence must examine the offences not only in light of the

values and skills of members of the Canadian Forces, but also from the perspective of the exercise of concurrent criminal jurisdiction.

[20] In light of the magnitude and duration of this fraud, only imprisonment can meet the objective of general deterrence in the circumstances.

[21] Detention is a punishment that is designed to denounce but also to specifically rehabilitate a Canadian Forces member by restoring military values and principles in the member so that he or she understands and applies the idea of obedience in a structured military framework. It appears that in the present case, Master Corporal Maillet does not require such a penalty to be imposed on him because he has shown in his work that he is able to apply these values and principles since putting an end to the fraud, as evidenced by the written reports and testimony regarding his work performance. In fact, the Court finds that imprisonment, rather than detention, is much more in keeping with the objectives that the Court has chosen to apply, namely, general deterrence and denunciation.

[22] So what would be the appropriate length for this sentence? The Court is of the opinion that in the circumstances of this case, a sentence of three to six months' imprisonment would take into account the principles and objectives applicable to determining this sentence, including the objectives of deterrence and denunciation, as well as the aggravating factors and the mitigating factors. I therefore conclude that a sentence of imprisonment for a period of 90 days would be appropriate and just in the circumstances.

[23] The prosecution suggested that the Court also reduce Master Corporal Maillet in rank to private. As I explained in *Moriarity*, 2012 CM 3022, at paragraphs 36 to 40, reduction in rank is a purely military sentence that reflects the loss of trust in the offending member who had a leadership position or function when the offence was committed. The case law on fraud in our courts appears to confirm this tendency. However, I am far from thinking that this sentence should be restricted solely to such cases.

[24] In the present case, I find, rather, that adding a reduction in rank to the sentence of imprisonment would contribute nothing more to what is necessary as the minimum sentence to be imposed in the circumstances. It is true that in acting as he did, Master Corporal Maillet betrayed the trust of the Canadian Forces in that he was supposed to accurately report his personal situation entitling him to access to certain individual benefits. However, at no time did he abuse his rank or his appointment or position for any sort of gain whatsoever.

[25] Essentially, it all comes back to his inability at the time to deal with and acknowledge his dependency on alcohol and gambling, which he succeeded in doing with the help of his spouse and which allowed him to gain a more enlightened view of his personal situation and way of doing things and to finally stop committing the offences. In

these circumstances, I have trouble seeing how a reduction in rank would be proportional to the gravity of the offence and to the previous character of the offender.

[26] A fair and just punishment should recognize the gravity of the offence and the responsibility of the offender in the context of the particular case. In the view of the Court, imprisonment for a term of 90 days is the minimum, appropriate sentence and is one that fits the offences.

[27] That said, Master Corporal Maillet, I would like to stress the fact that, in my view, your personal life is still in a fragile state. The Court has no tools to force you to seek professional help. I am not casting doubt on your success and your determination, but in order to remain in the Canadian Forces and not fall back into what you experienced, you must seek professional help. There comes a time when you must acknowledge that you cannot always be able to succeed at certain things and that you simply need some outside help. And acknowledging that you need help apart from family help or self-help is not a weakness; on the contrary, it is a strength, and you will have to do that. It may be that this could be done directly in detention, as some resources do exist. You will understand that I am ordering you to be sent to the centre at the Établissement de détention de Québec, where they have resources, and when you return to the base, if you are still a member of the Canadian Forces, I strongly advise you for your own good and the good of your spouse, you family, as well as for the good of those whom you will perhaps have the privilege of supervising as a master corporal, to seek professional help from time to time and to establish a plan so that if, for whatever reason, because life is not something you can control, something serious tempts you to fall back into the situation that you went through, that caused you all those problems, well, at least you will have a plan. You will have a way of avoiding that, and I am convinced that you will succeed, but you will have to, on your own, because no one else in this room can do it, on your own, take a first step towards outside help. This is not a weakness, but a strength, since it takes a lot of courage to do it, and you have had courage and will have to have it again to do that. You will think that you are cured, and I am not certain that this is a word that applies in the circumstances. I am far from specialist, but having seen many such cases in this Court, “cured” is a big word. You have succeeded in controlling, but we are all human beings and in some unforeseen way can lose control. This is why you need a plan, and that takes people you can go to for help. In that sense, I strongly encourage you to do so, as quickly as possible.

FOR THESE REASONS, THE COURT:

[28] **FINDS** Master Corporal Maillet guilty on the first and fourth counts regarding an offence punishable under section 130 of the *National Defence Act* for fraud contrary to subsection 380(1) of the *Criminal Code* and on the third and sixth counts for having wilfully made a false statement in a document signed by him and required for official purposes contrary to paragraph 125(a) of the *National Defence Act*.

[29] **ORDERS** a stay of proceedings on the second and fifth counts.

[30] **SENTENCES** Master Corporal Maillet to imprisonment for a term of 90 days.

Counsel:

Major G. Roy and Captain F. Sénéchal, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Lieutenant-Commander P. Desbiens, Defence Counsel Services
Counsel for Master Corporal Maillet