



COURT MARTIAL

Citation: *R. v. Soudri*, 2015 CM 3007

Date: 20150507

Docket: 201502

Standing Court Martial

Canadian Forces Base Bagotville
Bagotville, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Second Lieutenant N. Soudri, Accused

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

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR FINDING

(Rendered orally)

[1] Second Lieutenant Soudri is facing two service offences to be tried by this Standing Court Martial, that is, an act of a fraudulent nature for fraudulently being away from work on seven occasions, contrary to paragraph 117(f) of the *National Defence Act* (NDA), and an offence punishable under section 130 of the NDA for uttering forged documents by using medical visit certificates on nine occasions as if they were genuine, knowing that they were forged.

[2] Essentially, the prosecution alleges that Second Lieutenant Soudri was absent from his workplace to accompany his spouse to her medical appointments, and that he justified his absence by means of forged certificates of absence. Those offences purportedly took place between 28 January and 25 July 2013, in or near Canadian Forces Base (CFB) Bagotville, Alouette, Province of Québec.

THE EVIDENCE

[3] The prosecution called eight witnesses: Captain Patoine-Bédard, Major Gauvin, Sylvie Gagnon, Corporal Jetté, the lead investigator in the file, Monique Couture, Danielle Duchesne, Sarah Pedneault and Cathy Fleury.

[4] Furthermore, as part of its case, the prosecution also introduced the following documents:

- (a) Exhibit 3, a binder containing fifteen certificates of absence concerning Nabil Soudri;
- (b) Exhibit 4, a copy of a visit certificate from the Chicoutimi Centre de santé et de services sociaux (CSSS) concerning Suzie Fillion, signed by Sylvie Gagnon and dated 20 December 2013;
- (c) Exhibit 5, a copy of a visit certificate from the Chicoutimi CSSS concerning Nabil Soudri, signed by Sylvie Gagnon and dated 20 December 2013;
- (d) Exhibit 7, a copy of a statement of military leave from Captain Canuel for the period from 1 April 2012 to 31 March 2013;
- (e) Exhibit 8, a certified true copy of the member personnel record resume concerning Second Lieutenant Soudri updated to 29 April 2015.

[5] Both parties agreed on certain facts, excusing a witness from appearing in court and allowing the prosecution to present that evidence. The defence's admissions are as follows:

- (a) Second Lieutenant Soudri worked in the 439 Combat Support Squadron operations section, CFB Bagotville, from December 2012 to September 2013;
- (b) Corporal Dubé worked in the 439 Combat Support Squadron Operations Section during the period when Second Lieutenant Soudri also worked there;
- (c) During that period, Second Lieutenant Soudri was absent for medical appointments;
- (d) Corporal Dubé received some medical visit certificates justifying Second Lieutenant Soudri's absences when the section officers were not present;
- (e) Corporal Dubé has no memory of the dates on which those certificates were given to him, how many of them there were or their nature;

- (f) Corporal Dubé then gave those certificates to Captain Patoine-Bédard, without altering them.

[6] Finally, the Court has taken judicial notice of the facts and matters under section 15 of the *Military Rules of Evidence*.

THE FACTS

[7] Second Lieutenant Soudri decided that he would not present a defence.

[8] Second Lieutenant Soudri enrolled in the Canadian Forces, Regular Force, as a pilot on 6 August 2007. He completed his basic military officer qualification training in 2008 and took various types of training related to his job as a pilot from 2009 to 2012. As part of his on-job training, he worked in the 439 Combat Support Squadron Operations Section, CFB Bagotville, from December 2012 to September 2013.

[9] The 439 Squadron's primary mission is to support flight operations at 3 Wing Bagotville. It also provides utility support to the Base and is responsible for search and rescue.

[10] The Operations Section Officer was Captain Canuel and his deputy was Captain Patoine-Bédard. There was also Corporal Dubé. Two officers were doing their on-job training there, that is, Second Lieutenant Hamel-Gagnon and Second Lieutenant Soudri. Starting in February 2013, Captain Patoine-Bédard became the Operations Section Officer, given that Captain Canuel was on parental leave. Captain Canuel returned to the section in April and permanently left the section in July 2013. Captain Taillefer joined the section as Deputy Operations Officer. Until July 2013, Lieutenant-Colonel Savard was the Commanding Officer of 439 Squadron and he was replaced by Major Gauvin, who still holds the position.

[11] Suzie Fillion is Second Lieutenant Soudri's common-law partner. They have two children together. Their first child was born in September 2013 and their second child was born in August 2014. The evidence shows that between January and September 2013, Second Lieutenant Soudri was absent from work for various medical appointments, including his spouse's pregnancy-related appointments when she was pregnant with their first child.

[12] Second Lieutenant Soudri had several significant projects to carry out in the Operations Section as part of his on-job training such as updating the list of hospitals, the list of fuel cache sites or repainting the Squadron's emblem. He worked in the Operations Section from 0800 to 1600.

[13] To take leave, it was mandatory for Second Lieutenant Soudri to obtain permission from a supervisor, as was the case for the other second lieutenant. Starting in April 2013, to better control the comings and goings of the two officers doing on-job training, a signature book was created for each second lieutenant to indicate his entries to and exits from the section to enable supervisors to locate them. Then, a whiteboard indicating the comings and goings of all members of the section was put up.

[14] Second Lieutenant Soudri would inform his supervisor the same week as, and sometimes, the same day as, the appointments that he had accompany his spouse to. The supervisor did not extensively question Second Lieutenant Soudri because he trusted him and wanted to give him freedom to manage his personal life. Furthermore, Second Lieutenant Soudri was not inclined to provide a lot of details. The supervisor knew that Second Lieutenant Soudri would be absent and the reason for his absence, so there was no need to obtain more information.

[15] On one occasion, on 4 July 2013, Second Lieutenant Soudri was absent, but he did not give prior notification to his supervisors. He justified his absence the next day, 5 July, when he returned to the operations section, and he provided a document justifying his absence (Exhibit 3, Tab 13).

[16] To confirm that the reason for his absences was to accompany his spouse to the CSSS Chicoutimi ambulatory women's health service, Second Lieutenant Soudri gave his superiors a note of presence signed by a CSSS Chicoutimi representative. The notes were given by Second Lieutenant Soudri to Corporal Dubé, Captain Canuel and Captain Patoine-Bédard. Captain Patoine-Bédard ultimately received and kept all of the notes from Second Lieutenant Soudri in a notebook to keep track and maintain good control of that type of documentation.

[17] The CSSS Chicoutimi women's health clinic issues written certificates of presence in the form of a note at the request of people who have an appointment and persons who accompany those who have an appointment to demonstrate to employers or other organizations that they did show up.

[18] It is a document that is filled out and signed by one of the two administrative officers at CSSS Chicoutimi women's health clinic reception, Monique Couture and Sylvie Tremblay, or by the person who replaces them during their breaks or at lunch. No copy is kept by the Chicoutimi CSSS.

[19] Danielle Duchesne is someone who replaced the two administrative officers from time to time and she testified that she would sign and write her function on such notes, that she would give them to people who requested them, leaving it to those persons to add the names and visit dates themselves.

[20] Two of the notes signed by her were given by Second Lieutenant Soudri to his supervisor for his wife's apparent appointments on 28 January and 7 February 2013 (Exhibit 3, Tabs 4 and 5).

[21] Second Lieutenant Soudri also submitted four notes signed by Francine Pedneault for two different appointments at the CSSS Chicoutimi women's health clinic on 14 February 2013, and two different appointments on 21 February 2013 (Exhibit 3, Tabs 6 to 9). He also presented a note signed by Sonia Dufour for two appointments on 21 March 2013 (Exhibit 3, Tab 12).

[22] According to the CSSS Chicoutimi human resources department head, Sarah Pedneault, Francine Pedneault and Sonia Dufour had never been employees, neither

temporary nor permanent, of the Chicoutimi CSSS. Furthermore, Monique Couture, an administrative officer who works at the CSSS Chicoutimi women's health clinic's reception does not know anyone by those names who has worked there.

[23] Second Lieutenant Soudri purportedly presented a note signed by Monique Blanchette for an appointment at the CSSS Chicoutimi women's health clinic on 4 July 2013. Again according to the CSSS Chicoutimi human resources department head, the organization has an employee named Monic Blanchette, whose first name is spelled differently than the first name on the note. Also, that person is a special education technician and therefore does not work at the CSSS Chicoutimi women's health clinic's reception, which was also confirmed by Monique Couture.

[24] Finally, Second Lieutenant Soudri allegedly submitted a note signed by Monique Couture for an appointment on 14 March 2013 (Exhibit 3, Tab 11). Ms. Couture testified that the signature on that note is not hers and that she does not recognize the writing on the note, including that used to write the word [TRANSLATION] "receptionist". She used two other notes that were presented to her (Exhibit 3, Tabs 3 and 15), and from which she recognized her signature and writing, to explain the differences that she noticed in respect of the note for the appointment on 14 March 2013.

[25] The CSSS Chicoutimi medical records administrator, Sylvie Gagnon, checked in Second Lieutenant Soudri's file and his spouse's file, contacted the fertility clinic's administrative officer, the CSSS Chicoutimi women's health clinic manager and the nutritionist, and checked in the computer system regarding laboratory testing, to be able to identify, as requested by the military police investigator, the dates between the months of January and September 2013 on which Second Lieutenant Soudri and his spouse had appointments at the CSSS Chicoutimi women's health clinic, according to Exhibits 4 and 5. The dates of those appointments are as follows: 14, 21 and 25 January 2013; 1 and 26 February 2013; 3 and 17 May 2013; 27 June 2013; 16, 26 and 30 July 2013; 19 and 30 August 2013; and 4, 11 and 13 September 2013. Second Lieutenant Soudri's spouse was also allegedly hospitalized from 16 to 18 September 2013, which was when their first child was born.

[26] The CSSS Chicoutimi women's health clinic nursing unit head, Cathy Fleury, told the Court that to access care, patients must make an appointment with a professional. Often, follow-up is conducted and administrative officers at reception call patients to set up appointments. Appointments are noted in the appointment module and each patient's presence is entered there. The information goes to the archives. The responsibility of providing notes of presence belongs to the administrative officers at reception. As explained by Monique Couture, when a person shows up for an appointment or for a meeting with a professional, the patient is immediately entered into the computer system. Ms. Fleury specified that entering it is necessary because it provides essential information to the doctor who takes notes in the file.

[27] In July 2013, Captain Patoine-Bédard had some doubt about the genuineness of some of the notes submitted by Second Lieutenant Soudri and he discussed this with his

Commanding Officer, Major Gauvin. Captain Patoine-Bédard then gave all of the justification notes that had been received by Second Lieutenant Soudri to Major Gauvin.

[28] Major Gauvin communicated with the military police so that an investigation could be initiated into the authenticity of the notes submitted by Second Lieutenant Soudri to justify his absences from the workplace. Major Gauvin gave all of the justification notes that he had obtained from Captain Patoine-Bédard to the military police investigator, Sergeant Marseille.

[29] The charges before this Court were made formal on 28 January 2015 by the Director of Military Prosecutions and a trial date before a Standing Court Martial was scheduled for 4 May 2015 to proceed with the hearing of the matter.

THE LAW

[30] Before the Court provides its legal analysis, it is appropriate to deal with the issue of the presumption of innocence; the burden and the standard of proof beyond a reasonable doubt, a standard that is inextricably intertwined with the principle fundamental to all criminal trials; the issue of credibility and the reliability of testimony; the concept of proof and the essential elements concerning each of the charges that Second Lieutenant Soudri is facing. These principles, of course, are well known to counsel, but other people in this courtroom may well be less familiar with them.

[31] The presumption of innocence is the first and most important principle of law applicable to all cases dealt with under the *Code of Service Discipline* and the *Criminal Code*. At the opening of his trial, Second Lieutenant Soudri was presumed innocent and this presumption only ceases to apply if the prosecution presents evidence that satisfies the Court of his guilt beyond a reasonable doubt.

[32] Two rules flow from the presumption of innocence. One is that the prosecution bears the burden of proving guilt. The other is that guilt must be proven beyond a reasonable doubt. These rules are linked with the presumption of innocence with a view to ensuring that no innocent person is convicted.

[33] The burden of proof rests with the prosecution and never shifts. There is no burden on Second Lieutenant Soudri to prove that he is innocent. He does not have to prove anything.

[34] What does the expression “beyond a reasonable doubt” mean? A reasonable doubt is not an imaginary or frivolous doubt. It is not based on sympathy for or prejudice against anyone involved in the proceedings. Rather, it is based on reason and common sense. It arises logically from the evidence or from an absence of evidence.

[35] It is virtually impossible to prove anything to an absolute certainty, and the prosecution is not required to do so. Such a standard would be impossibly high. However, the standard of proof beyond a reasonable doubt falls much closer to absolute

certainty than to probable guilt. The Court must not find Second Lieutenant Soudri guilty unless it is sure he is guilty. Even if the Court believes that Second Lieutenant Soudri is probably guilty or likely guilty, that is not sufficient. In those circumstances, the Court must give the benefit of the doubt to Second Lieutenant Soudri and find him not guilty because the prosecution has failed to satisfy the Court of his guilt beyond a reasonable doubt.

[36] The important point for the Court is that the requirement of proof beyond a reasonable doubt applies to each of those essential elements of an offence. It does not apply to individual items of evidence. The Court must decide, looking at the evidence as a whole, whether the prosecution has proved Second Lieutenant Soudri's guilt beyond a reasonable doubt.

[37] Reasonable doubt applies to the issue of credibility. On any given point, the Court may believe a witness, disbelieve a witness, or not be able to decide. The Court need not fully believe or disbelieve one witness or a group of witnesses. If this Court has a reasonable doubt about Second Lieutenant Soudri's guilt arising from the credibility of the witnesses, then it must find him not guilty.

[38] If the evidence, the absence of evidence, the reliability or the credibility of one or more witnesses leaves the Court with a reasonable doubt as to Second Lieutenant Soudri's guilt in respect of a charge, the Court must find him not guilty of that count.

[39] The Court must consider only the evidence presented in the courtroom. That consists of testimony and exhibits. That may also include admissions, like in this case, because counsel for both parties agreed on certain facts.

[40] The evidence includes what each witness says in response to questions asked. The questions, however, are not evidence, unless the witness agrees that what is asked is correct. Only the answers are evidence.

[41] Now, what can be said about the different essential elements for each of the charges to be proven by the prosecution?

[42] Second Lieutenant Soudri is first charged with having committed an act of a fraudulent nature not particularly specified in sections 73 to 128 of the *NDA* contrary to paragraph 117(f) of the *NDA*, which reads as follows:

117. Every person who

. . .

(f) commits any act of a fraudulent nature not particularly specified in sections 73 to 128,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

[43] The prosecution had to therefore prove the following essential elements beyond a reasonable doubt: the identity of Second Lieutenant Soudri as the offender, the date and the place of the offence as alleged in the charge sheet.

[44] The prosecution also had to prove the following additional elements:

- (a) that Second Lieutenant Soudri committed an act of a fraudulent nature, which includes proving:
 - i. that Second Lieutenant Soudri defrauded or deprived a third party of rights or property.
 - ii. the use, by Second Lieutenant Soudri, of deceit, falsehood or other fraudulent means as the cause of the fraud or deprivation.
- (b) Second Lieutenant Soudri's intent to commit an act of a fraudulent nature.

[45] About the essential element of the accused defrauding or depriving somebody of something, it must be said that any property, money, valuable security or service is "something of value" for the purposes of this question. "Property" includes real property, land and personal property, goods and things, including the right to recover or receive money or goods or things. "Money" has its usual meaning and includes currency and coins. Deprivation includes, but does not require that the Canadian Forces suffers actual economic loss. It is enough that the Canadian Forces were induced to act to their detriment by the accused's conduct. The Canadian Forces' economic or financial interests must be at risk, but they do not have to lose any money or anything of value as a result of the accused's conduct.

[46] Concerning the essential element which requires that the accused used deceit, falsehood or other fraudulent means that caused a deprivation, it is essential to say that in order to prove this element, the prosecution must satisfy the Court beyond a reasonable doubt that it was by using deceit, falsehood or other fraudulent means that Second Lieutenant Soudri defrauded or deprived the Canadian Forces. All three means do not have to be proven; any one is enough. Deceit is an untrue statement made by a person who knows that it is untrue or has reason to believe that it is untrue, but makes it, despite that risk, to induce another person to act on it, as if it were true to that other person's detriment. Falsehood is a deliberate lie. "Other fraudulent means" is a term that covers more ground than either "deceit" or "falsehood". It includes any other means, which are not deceit and falsehood, properly regarded as dishonest according to the standards of reasonable people.

[47] Finally, about the intent to commit an act of a fraudulent nature, it relates to Second Lieutenant Soudri's state of mind at the time he deprived the Canadian Forces by deceit, falsehood or other fraudulent means. To prove this essential element, the prosecution must satisfy the Court beyond a reasonable doubt that he meant to say and/or do those things that amount to deceit, falsehood or other fraudulent means, and

knew that saying and/or doing them could put at risk the economic or financial interests of the Canadian Forces.

[48] To determine the accused's state of mind, what he knew or what he meant to do, the Court should consider what he did or did not do, how he did or did not do it, and what he said or did not say. The Court must look at Second Lieutenant Soudri's words and conduct before, at the time, and after he used deceit, falsehood or other fraudulent means to defraud or deprive the Canadian Forces. All these things and the circumstances in which they happened may shed light on the accused's state of mind at the time.

[49] Second Lieutenant Soudri is also charged with uttering forged documents, contrary to section 368 of the *Criminal Code*. That section reads as follows:

368. (1) Everyone commits an offence who, knowing or believing that a document is forged,

(a) uses, deals with or acts on it as if it were genuine;

(b) causes or attempts to cause any person to use, deal with or act on it as if it were genuine;

(c) transfers, sells or offers to sell it or makes it available, to any person, knowing that or being reckless as to whether an offence will be committed under paragraph (a) or (b); or

(d) possesses it with intent to commit an offence under any of paragraphs (a) to (c).

(1.1) Everyone who commits an offence under subsection (1)

(a) is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years; or

(b) is guilty of an offence punishable on summary conviction.

(2) For the purposes of proceedings under this section, the place where a document was forged is not material.

[50] In addition, regarding the identity of Second Lieutenant Soudri as the offender, the date and place as alleged in the particulars of the offence, the prosecution had to prove beyond a reasonable doubt the following additional essential elements:

(a) a document was forged;

(b) Second Lieutenant Soudri knew that the document was forged;

(c) Second Lieutenant Soudri used the forged document;

(d) Second Lieutenant Soudri presented the document as genuine.

[51] A forged document is a false document made by a person who knows it is false and who intends that it be dealt with as if it were genuine to the detriment of another person or organization. It does not matter where or by whom the document was forged.

[52] The demonstration that Second Lieutenant Soudri knew that the document was forged is related to the accused's intent, particularly the fact that he knew that the document was forged when he used it. One way of proving this essential element is to show that he actually knew or was aware that the document was forged when he used it. He does not have to know the legal definition of a "forged document" but must know the circumstances that make such document forged.

[53] Another way of proving this essential element, that is, Second Lieutenant Soudri's knowledge that the document was forged, is to show that he was aware of the need to inquire into the nature of the document but that he deliberately failed to do so because he did not wish to know the truth about the matter.

[54] The essential element concerning the fact that Second Lieutenant Soudri used the forged document involves the fact that the accused himself used the document or caused or attempted to cause another person to use it. It is not necessary that the other person actually used the document as a result of the efforts of the accused. It suffices that the accused attempted to achieve this.

[55] Finally, representing something as being genuine means describing it as being genuine, the real thing or what it seems to be, or claiming that it is so, rather than as what it actually is and as it is known to the accused. This essential element relates to the intent of the accused to mislead a person or organization to whom or which the document is presented as being genuine.

POSITION OF THE PARTIES

[56] The prosecution is of the opinion that Second Lieutenant Soudri used nine notes for the seven different days on which he apparently accompanied his spouse to the CSSS Chicoutimi women's health clinic to justify his absences from the 439 Combat Support Squadron Operations Section between the end of January and the start of July 2013, while he knew that the documents submitted in no way reflected reality because those appointments did not take place, thus committing the two offences alleged on the charge sheet.

[57] Defence counsel stated that the evidence presented by the prosecution is not sufficient to allow the Court to find beyond a reasonable doubt that Second Lieutenant Soudri knew that the documents in question were forged and that he personally used them. Also, he submitted to the Court that the fraudulent nature of his client's alleged acts was not demonstrated by the prosecution having regard to the required burden of proof because the evidence that was submitted to the Court does not clearly and specifically show what constituted the deprivation to the Canadian Forces as a result of Second Lieutenant Soudri's absences.

ANALYSIS

Second count

[58] The Court begins its analysis with the second count, that is, the uttering of forged documents by Second Lieutenant Soudri. The charge involves nine notes that were apparently submitted by the accused to justify his absences for the purpose of accompanying his spouse to the CSSS Chicoutimi women's health clinic on the following dates: 28 January 2013 (Exhibit 3, Tab 4), 7 February 2013 (Exhibit 3, Tab 5), 14 February 2013 (Exhibit 3, Tabs 6 and 7), 21 February 2013 (Exhibit 3, Tabs 8 and 9), 14 March 2013 (Exhibit 3, Tab 11), 21 March 2013 (Exhibit 3, Tab 12), and 4 July 2012 (Exhibit 3, Tab 13).

[59] Regarding the identity of the accused as the offender, the evidence has clearly established that it was indeed Second Lieutenant Soudri who gave his supervisors, Captain Patoine-Bédard and Captain Canuel, the notes to confirm the reason for his seven authorized absences on the dates indicated on the documents. The testimony of Captain Patoine-Bédard on that point seems unequivocal to the Court. It is true that the evidence also shows that it is possible that some of the documents were obtained through Corporal Dubé, also a member of the section, but that is no reflection on the Captain's testimony on that point, considering that the process was clear and that to one extent or another, the totality of the evidence shows that it was indeed Second Lieutenant Soudri who submitted the documents. Furthermore, having been the supervisor of and having worked alongside the accused for a period of nine months on a daily basis for work, it is clear that Captain Patoine-Bédard was able to identify the accused as being the offender.

[60] Concerning the period during which the notes were submitted, Captain Patoine-Bédard testified that he received them the same day as or a few days after the accused's authorized absences, which corresponds to the period alleged in the particulars of the charge.

[61] Finally, regarding the place of the offence, once again, Captain Patoine-Bédard's testimony is entirely convincing. He explained that Second Lieutenant Soudri submitted the notes on the premises of his service, that is, Canadian Forces Base Bagotville. The evidence concerning Captain Canuel and Corporal Dubé, who also received such documents, is to the same effect.

[62] Captain Patoine-Bédard testified in a calm, direct and concise manner. He had a good recollection of the events that took place in 2013 concerning the accused. It was clear to the Court that he was not biased in the matter.

[63] Concerning the identity, the date and the place with respect to the commission of the offence, the Court is of the opinion that considering the totality of the evidence, the prosecution has discharged its burden of proof and has proved, beyond a reasonable doubt, those three essential elements of the offence of uttering forged documents.

[64] Relying on that same evidence, the Court is of the opinion that the prosecution has demonstrated, beyond a reasonable doubt, that it was indeed the accused who used those nine documents.

[65] Now, were those nine documents forged? The evidence shows that for the dates on each of the nine documents, Second Lieutenant Soudri and his spouse had no appointments at the CSSS Chicoutimi women's health clinic. It has been shown that the clinic's appointment registration system is rigorous and that an exhaustive search was done by the CSSS Chicoutimi authorities to ensure that nothing had been missed. It is possible that an error was made because the system is not immune from human error. However, it would be hard to believe that an error could have occurred on nine occasions with respect to the same people.

[66] The notes dated 28 January and 7 February 2013 were signed by Danielle Duchesne. She testified that the signature was hers and that she had also written the title indicated, but that she did not write the other things written, that is, the date and the patient's name. That state of facts is a reflection of her testimony that it had been her practice to issue notes signed by her, and on which she would write her title, to any client who requested one without checking anything else. She trusted people at their word and allowed them to write the name of the client and the date of the appointment, considering that people could come to obtain a note several days after their appointment. Considering that the date written on those two notes did not match an appointment for Second Lieutenant Soudri or for his spouse at the CSSS Chicoutimi women's health clinic, the Court finds that the prosecution demonstrated beyond a reasonable doubt, in view of all the evidence, that those documents were forged.

[67] Concerning the two notes dated for the two appointments on 14 February 2013, and the two notes dated for the appointments on 21 February 2013, it appears that the signature on each of the notes is that of Francine Pedneault. However, it appears from the evidence that there was never an employee by that name who worked at the Chicoutimi CSSS and who could thus validate notes at the CSSS Chicoutimi women's health clinic. Moreover, considering that the date written on those four notes did not match an appointment for Second Lieutenant Soudri or for his spouse at the CSSS Chicoutimi women's health clinic, the Court finds that the prosecution has demonstrated beyond a reasonable doubt, in view of all the evidence, that those documents were also forged.

[68] Regarding the notes dated 21 March 2013, the evidence also demonstrated that the signatory, Sonia Dufour, was not someone employed by the Chicoutimi CSSS and that the date written does not match an appointment for Second Lieutenant Soudri or for his spouse at the CSSS Chicoutimi women's health clinic. The same finding is required with respect to that note and those dated 14 and 21 February 2013.

[69] The Court finds that the prosecution has demonstrated beyond a reasonable doubt, in view of all the evidence, that the note dated 4 July 2013, is a forged document because the evidence demonstrated that the signatory of that note was never a receptionist or a person who worked at the CSSS Chicoutimi women's health clinic

reception. Considering, also, that the date written on that note does not match an appointment for Second Lieutenant Soudri or his spouse at the CSSS Chicoutimi women's health clinic, the Court can only come to this conclusion.

[70] Finally, for the note dated 14 March, the testimony of Monique Couture is determinative on this point. She clearly told the Court that, without a doubt, the signature and title had not been written by her. She even used two similar documents, by way of comparison, from which she recognized her signature and writing. Furthermore, the date written on that note still does not match an appointment for Second Lieutenant Soudri or for his spouse at the CSSS Chicoutimi women's health clinic; the Court finds that the prosecution has demonstrated beyond a reasonable doubt, in view of all the evidence, that that document was forged.

[71] Did Second Lieutenant Soudri know that those nine documents were forged? There is no direct evidence to show that that was the case. Consequently, the prosecution asked the Court to make an inference from the evidence already presented before it.

[72] The evidence is that Second Lieutenant Soudri is the only person who obtained and submitted those notes. In fact, in addition to the forged documents, the prosecution introduced in evidence notes that matched appointments that Second Lieutenant Soudri had accompanied his spouse to and that were submitted to the supervisor. The notes were made immediately on a client's request and had the purpose of certifying that the person whose name was on it had shown up for the appointment. Therefore, that entails a personal endeavour, which means that, in the circumstances described, the Court finds beyond a reasonable doubt that the accused was aware of the content of the note that was used to legitimize and confirm the reason for the authorization that he received to leave to accompany his spouse to an appointment at the CSSS Chicoutimi women's health clinic. Because those documents do not match an appointment he or his spouse had according to the CSSS Chicoutimi women's health clinic files, he could not have gone to that place to accompany her and he thus personally knew that the documents in question did not reflect reality, and were thereby forged. As stated by the prosecutor counsel, there can be no other conclusion except that the accused was aware that the documents were forged. The Court finds that the prosecution discharged its burden of proof, in light of all the circumstances, concerning the essential elements of the charge.

[73] Lastly, the evidence shows that Second Lieutenant Soudri presented those documents as being genuine, that is, as being official and original documents from the CSSS Chicoutimi to demonstrate that he had indeed showed up at the appointments in question with his spouse.

[74] As a result, in view of all the evidence, the Court finds that the prosecution demonstrated beyond a reasonable doubt all of the essential elements of that charge and thus finds the accused guilty of using nine forged documents.

First count

[75] Now, with respect to the first charge, as stated in the analysis of the second charge, the Court considers that regarding the essential elements related to the identity, the date and the place regarding the commission of the offence, the prosecution met its burden of proof and demonstrated, beyond a reasonable doubt, those three essential elements of the offence of committing an act of a fraudulent nature.

[76] Did the accused commit an act of a fraudulent nature? As part of our analysis of the second charge, the evidence has clearly shown that Second Lieutenant Soudri used deceit by falsely declaring to his superior that he had to be absent to accompany his spouse to an appointment at the CSSS Chicoutimi women's health clinic, and then by presenting a document that he knew to be false and that demonstrated that he had done such a thing, while that was not the case. That evidence is therefore conclusive regarding the prosecution's demonstration that the accused used deceit.

[77] That deceit apparently had the effect of, according to the prosecution's case, depriving the Canadian Forces, and more particularly the 439 Squadron operations section, of the performance of work that the accused should have normally been providing and for which he was being paid. There was thus an alleged economic loss for the Canadian Forces because it was apparently paying someone who was purportedly not providing the service expected of him in return.

[78] The Court is of the opinion that that aspect was not demonstrated by the prosecution beyond a reasonable doubt. In fact, the mode of functioning of the 439 Squadron operations section operated far more on the good faith of its members. The evidence shows that there were some comings and goings that resulted in members of that section not all being in the same place at the same time. The supervisors were pilots and flew from time to time. The on-job training officers had different projects and different tasks. Nothing in the evidence indicated that certain projects or certain tasks could not be accomplished because of the accused's absences. Did he complete his projects at home, or by working late? The evidence is silent on that point. In fact, there is no conclusive, very specific or detailed evidence on the exact nature of the loss and on the impact of the deprivation on the Canadian Forces unit as a result of the accused's absence on those seven occasions where he used deceit.

[79] In the circumstances, with respect to all of the evidence presented by the prosecution, the Court finds that the prosecution did not meet its burden of proving beyond a reasonable doubt that Second Lieutenant Soudri committed an act of a fraudulent nature by being absent from work as he did.

[80] Furthermore, the prosecution's case does not clearly show that the accused knew the consequences of putting at risk, through his absences, the economic interests of the Canadian Forces on the basis of what the 439 Squadron operations section had to accomplish. Given the nature of the relatively minor and clerical tasks that he was assigned as part of his on-job training, it seems hard to believe that the accused would have thought that he was such an essential component of the operations of the unit that his performance and delivery of work was putting the interests of the unit at risk in the accomplishment of its mission by committing an act of a fraudulent nature. In that

respect, the evidence does little to satisfy the Court on that essential element of the charge.

[81] Consequently, considering all of the evidence, the Court comes to the conclusion that the prosecution has not demonstrated all of the essential elements of that charge beyond a reasonable doubt and thus finds the accused not guilty of committing an act of a fraudulent nature.

FOR THESE REASONS, THE COURT

[82] **FINDS** Second Lieutenant Soudri not guilty of the first charge on the charge sheet; and

[83] **FINDS** Second Lieutenant Soudri guilty of the second charge on the charge sheet.

Counsel:

The Director of Military Prosecutions, as represented by Major P. Doucet,
Major B. Tremblay and Lieutenant (Navy) V. Pagé

Lieutenant-Commander P.D. Desbiens, Directorate of Defence Counsel Services,
Counsel for Second Lieutenant N. Soudri