



## COURT MARTIAL

**Citation:** *R. v. Buckley*, 2016 CM 1001

**Date:** 20160201

**Docket:** 201555

Standing Court Martial

Asticou Centre  
Gatineau, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Master Warrant Officer D.R. Buckley, Offender**

**Before:** Colonel M. Dutil, C.M.J.

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### **REASONS FOR SENTENCE**

(Orally)

[1] Master Warrant Officer Buckley has admitted her guilt to two counts under section 125 of the *National Defence Act* for offences in relation to documents. A person convicted of this offence is liable to imprisonment for a term not exceeding three years or to less punishment. The charges read as follows:

First Charge	WITH INTENT TO DECEIVE, ALTERED A
NDA s.125(c)	DOCUMENT MADE FOR A DEPARTMENTAL
	PURPOSE

Particulars: In that she, between 11 June 2013 and 3 October 2014, at or near Comox, British Columbia, with intent to deceive, altered a document made for a departmental purpose, to wit a Form DND 279, entitled "Force Program".

Second Charge WILLFULLY MADE A FALSE ENTRY IN A  
s.125(a) NDA DOCUMENT MADE BY HER THAT WAS  
REQUIRED FOR OFFICIAL PURPOSES

Particulars: In that she, on or about 8 September 2014, at or near Canadian Forces Base Comox, British Columbia, made an entry into the Human Resources Management System indicating that she passed her Force Program evaluation, knowing said entry was false.

[2] For clarity, the court reproduces the statement of circumstances filed during the sentencing that states:

1. Master Warrant Officer (MWO) Buckley enrolled in the Canadian Armed Forces (CAF) on 3 July 1986. She enrolled in the trade of Finance Clerk, which amalgamated with the Resource Management Support (RMS) Clerk trade in 1997. MWO Buckley completed all her trade Qualification Level courses up to Q6A, which she completed in 2004. She was posted to Canadian Forces Base (CFB) Comox in July of 2011, and was promoted to her current rank on 9 August 2010. From August 2013 to October of 2014 MWO Buckley was the 19 Wing Superintendent Clerk.

2. CFB Comox is the operational base of 19 Wing Comox. 19 Wing Comox comprises two operational squadrons, which fly CP-140 Aurora Long Range Patrol Aircraft, CC-115 Buffalo Search and Rescue Aircraft, and CH-149 Cormorant Helicopters. These aircraft conduct surveillance over the Pacific Ocean, carry out search and rescue operations on the British Columbia Coast and into the Pacific Ocean, and support other foreign and domestic missions. CFB Comox is also home to 19 Air Maintenance Squadron, the Canadian Forces School of Search and Rescue, and the base for Regional Air Cadet Operations. The 19 Wing Superintendent Clerk is Superintendent to all Wing RMS Clerks at all units at 19 Wing Comox and CFB Comox. In 2013 and 2014 there were 35 to 37 RMS clerks working in those positions. The Superintendent Clerk is also the non-commissioned member Personnel Evaluation Report Monitor, provides subject matter expertise to Wing Senior Personnel, is the RMS Clerk MOC advisor and Training Coordinator for all RMS Clerks, and provides direct supervision to 19 Wing Central Registry staff.

3. On 11 September 2014, the 19 Wing Fitness Coordinator, Ms Vee Dion, received an email from MWO Buckley recommending some amendments to the records kept by Ms Dion of 19 Wing CAF members' FORCE test results. Most of the changes MWO Buckley recommended

concerned the proper unit of members, or the expected date that a member would book his or her next fitness test; however, in the same email, MWO Buckley also asked Ms Dion to note in her records that she, MWO Buckley, had passed the FORCE test on 8 September 2014. Ms Dion knew MWO Buckley personally, and did not recall seeing her at the gym on the morning of the 8 September test. Ms Dion checked the Human Resources Management System (HRMS), and saw that there was an entry stating that MWO Buckley had passed the FORCE test on 8 September, but that it had been entered in a way that was not consistent with the manner in which test results were normally entered. Ms Dion was certain that she had not made the entry herself. Ms Dion therefore looked for the paper record (Form DND 279) of MWO Buckley's FORCE test result for 8 September 2014. No record was found, and MWO Buckley was unable to produce a copy. Ms Dion therefore spoke with the Personnel Support Program Manager, Ms Bobbi Howard-Muir, about the inconsistency.

4. Ms Howard-Muir then contacted MWO Buckley, who advised her, by email dated 18 September 2014, that she was still unable to find a copy of her DND 279 for the 8 September 2014 test, and stated that she would redo the test in November. MWO Buckley was unable to do the test before November as she was scheduled for duty in October at Canadian Forces Station Alert, backfilling for a member on leave. Following that temporary duty, she was to have been deployed to CFS Alert in 2015.

5. As no DND 279 had been found to support the HRMS entry showing MWO Buckley as having passed the FORCE test on 8 September 2014, Ms Howard-Muir contacted MWO Buckley's chain of command via Chief Warrant Officer (CWO) Rowley, the Admin Branch Chief. MWO Buckley had previously confirmed to CWO Rowley, by email dated 16 September 2014, that she "did [her] FORCE and all was sent to everyone that needs copies."

6. The DND 279 is a form relied upon for a variety of official purposes. A separate form is prepared for each Canadian Armed Forces member when that member takes their fitness test. The form records the service particulars of the member, a brief health appraisal, an exercise prescription, and the results of the fitness test. It is used to record that the member has met the requirements of DAOD 5023-1 Minimum Operational Standards Related to Universality of Service, DAOD 5023-2 Physical Fitness Program, and CANFORGEN 038/13 Launch of New CAF Fitness Evaluation. In accordance with these regulations and orders, all regular force CAF members were, unless exempted for a reason specified in DAOD 5023-2, to have completed either the CF EXPRES or Fitness for Operational Requirements of CAF Employment

(FORCE) minimum physical fitness standard evaluation during annual assessment periods in 2013 and 2014. Information taken from the DND 279 is included on annual Personnel Evaluation Reports (PERs), which are used by selection boards. There are normally five copies of a DND 279: copy 1 is sent to Canadian Forces Morale and Welfare Services/Director of Fitness; copy 2 is signed by the member's Commanding Officer and placed on the member's medical file by the Base Surgeon; copy 3 is also signed by the member's CO and placed on the member's personnel file; copy 4 is retained by the local Personnel Support Program Fitness Section; copy 5 is given to the member. Nonetheless, no copy of the DND 279 recording MWO Buckley completing a fitness test on 8 September 2014 could be found on MWO Buckley's personnel file or elsewhere. As the inconsistency could not be resolved, the Canadian Forces National Investigation Service (CFNIS) was notified and started an investigation.

7. MWO Buckley was interviewed under caution by Sergeant (Sgt) Groenveld of the CFNIS on 4 November 2014. She stated that on 8 September 2014 she had made the HRMS entry that recorded her as having passed the FORCE test that same day, and that she had done so using the HRMS password of a co-worker, Ms Eby. Review of MWO Buckley's personnel file did not find any DND 279 physical fitness evaluation reports for 2014. Investigation established that MWO Buckley had not been present at the FORCE test on 8 September 2014 at CFB COMOX, and that there was no record of her completing the FORCE or EXPRES test at any time in 2014 at Canadian Forces Base Comox or Canadian Forces Base Esquimalt. When she made the HRMS entry on 8 September 2014 indicating that she had passed her FORCE Program evaluation in fulfillment of the requirements of DAOD 5023-2, she knew that the entry was false. She was also aware that the entry would be relied upon when her next PER was written, and therefore by any selection board when considering her for promotion. She was also aware that the entry would be relied upon by the departure assistance group (DAG) when they checked her readiness for deployment to CFS Alert.

8. The CFNIS investigation found that the most recent DND 279 in MWO Buckley's personnel file was a FORCE test result dated 27 September 2013; however, examination of that DND 279 revealed numerous anomalies which suggested that the form had been altered to show MWO Buckley's name and other identifying information on what was originally the DND 279 for another CAF member. MWO Buckley admitted under caution to Sgt Groenveld that the alterations were in her handwriting. Investigation revealed the form to be the DND 279 relating to a FORCE test completed at CFB Comox on 12 June 2013 by Corporal Michael Veilleux, a Mission Support Flight Operator at 19 Wing. The

name on the form and other identifying information, as well as the date of the test, had been altered by MWO Buckley at some point between 12 June 2013 and 3 October 2014. She then caused the altered DND 279 to be placed on her personnel file, knowing that it would be used as though it were genuine. As a result, MWO Buckley's performance evaluation report (PER) for the year 2013-14 shows her fitness test result as "passed."

9. Charges were laid against MWO Buckley on 21 April 2015 under section 125 of the *National Defence Act*. The case was referred for court martial by the Commander of 19 Wing. No election was given as the matter was not considered to be suitable for a hearing at summary trial. The referral authority, Commander 1 Canadian Air Division, referred the case to the Director of Military Prosecutions. The two charges that appear on the charge sheet were preferred by Lieutenant-Commander S. Torani, an officer authorized in accordance with section 165.15 of the *National Defence Act*, on 5 August 2015.

[3] On these facts, the prosecution recommends a sentence of reduction in rank to the rank of warrant officer, where counsel for the defence recommends that a sentence of a severe reprimand and a fine of \$3000 would be justified in the circumstances. Seeking a sentence that would promote general deterrence, denunciation and rehabilitation, counsel for the prosecution submits that this case is not about the fitness test, or two fitness tests, and the related alteration of a document for official purposes and the action of willfully making a false entry in a document in relation to the failure of passing a fitness test. It submits that this case is rather about a serious breach of trust, abuse or loss, by a highly senior non-commissioned member who has used her rank and authority as the Superintendent Clerk of 19 Wing, as well as her own knowledge and experience, to abuse the trust of her chain of command for her personal benefit, including financial.

[4] The prosecution called five witnesses during the sentencing hearing, namely Colonel T.P. Dunne, Wing Commander, 19 Wing Comox; Major B.J. Zimmerman, the Wing Personal Administration Officer; Chief Warrant Officer J.E. Rowley, the former Wing Administration Branch Chief Warrant Officer; Chief Warrant Officer J.C.J. Parent, 19 Wing Comox, Wing Chief Warrant Officer; and, Warrant Officer T.L.S. Graham, 19 AMS Comox Chief Clerk.

[5] Colonel Dunne testified that he arrived in Comox in 2014. He stated that the offender was, as the Superintendent Clerk in the Wing Administration Branch, the subject matter expert on administration and human resources issues and that she would provide him with advice on occasion. He stated that he had trust in the offender in her capacity as Superintendent Clerk. Colonel Dunne indicated that the offender's selection for a posting to Alert as the Senior Warrant Officer reflected well on his organization. Once informed of the allegations against the offender, Colonel Dunne removed her from the deployment and of her position as he had lost all faith in the offender and her

ability to be entrusted, permanently. In his view, Master Warrant Officer Buckley had violated the system she was there to protect.

[6] Major Zimmerman was the direct supervisor of Master Warrant Officer Buckley at the time. He highlighted the strong qualities of the offender and stated that he was shocked when he learned about the allegations against Master Warrant Officer Buckley. He added that it was a Wing decision to remove her from her position and employ her in another capacity on the base, where she performed well. Major Zimmerman affirmed that he would not hire her again as the Superintendent Clerk but that the offender's pleas of guilty go a long way in rebuilding the trust he had in Master Warrant Officer Buckley. Major Zimmerman testified also that he noticed no direct impact on discipline as a result of the incidents.

[7] Chief Warrant Officer Rowley testified that he was not the direct supervisor of the offender but that he was advising her in her career progression within the Royal Canadian Air Force. He understood her role as the Superintendent Clerk to oversee the HRMS and be the guardian of the system. Chief Warrant Officer Rowley stated that the offender filled an important position within the Wing and was looked upon as a role model for all clerks. In addition, she could be called to act in his capacity if absent at times. He stated that he would not have recommended her for deployment or promotion if she had not met the standards set for the fitness tests. Chief Warrant Officer Rowley recommended to his chain of command to remove Master Warrant Officer Buckley from her position because she was being investigated by the police, although he knew little about the allegations. He had concerns about morale within the Administration Wing. He no longer has trust in the offender as a Master Warrant Officer and expressed his strong disappointment. None of these witnesses have had discussions with the offender with regard to the offences since she was removed from her position as the Superintendent Clerk.

[8] Finally, Warrant Officer Graham testified as to the impact on her and her family with regard to filling in behind Master Warrant Officer Buckley, especially in the context where her serving husband was also selected to replace Master Warrant Officer Buckley in Alert on deployment.

[9] The court also heard the testimonies of Master Warrant Officer Buckley, Captain(N) R.B.I. Hopkins, J8, Canadian Joint Operations Command, and Chief Warrant Officer T. Beers, Resource Management Support Clerk/Court Reporter Career Manager. Chief Warrant Officer Beers testified that he has known the offender since 1986. He stated as the offender's career manager he was made aware that Master Warrant Officer Buckley was under investigation and that she was no longer employed in her capacity as the Superintendent Clerk at 19 Wing Comox. After confirmation with her chain of command that she had no employment restrictions to be employed in a finance position, he posted her out of Comox and moved Master Warrant Buckley to the position of Finance Master Warrant Officer within the J8 Cell at the Canadian Joint Operations Command in July 2015. In addition to her responsibilities as the Finance Master Warrant Officer, she is also the Branch Sergeant-Major and she provides advice

in this position of leadership to the commander in matters of discipline, morale and welfare for the unit with regard to the non-commissioned members.

[10] Captain(N) Hopkins interacts daily with the offender. He spoke highly of Master Warrant Officer Buckley since her arrival within the J8 Cell. He praised her work ethic, dedication and reliability and he added that she was a guiding figure for her staff. Captain(N) Hopkins observed that Master Warrant Buckley suffered from stress in the last five months as she was awaiting the proceedings before the court, but it had no adverse effect on her performance and relationship with the staff. Aware of the charges before the court and her admission of guilt, Captain(N) Hopkins believes that Master Warrant Officer Buckley made a mistake that should not have been made, but emphasized that it was a mistake. He testified that she is an excellent master warrant officer and valuable member the Canadian Forces and the Canadian Joint Operations Command. Captain(N) Hopkins affirmed that he would still give her access to the Human Resources Management System despite her admission of guilt to the charges.

[11] Master Warrant Officer Buckley testified as to the difficulties she experienced in Comox during her last posting, which she had hoped would be her dream posting because she would be reunited with her family for the first time in her military career. As a single person, she never had to balance her career and her family life. Once in Comox, she could be present for her elderly parents and share that responsibility with her siblings. She explained that during her first year in Comox, she was very busy as people were stressed and multitasked. In her second year, she was the Wing Logistics Senior Warrant Officer and she was also the Acting Wing Superintendent Clerk. According to her testimony, she did not react well to the important workload and her new role in supporting her parents. She stated that she let herself go and had gained over 50 pounds during her first two years in Comox and that this was her fault. She readily admitted that she lied to herself, to her chain of command, to her supervisors and anybody that it would affect in making the false entry in the HRMS and altering the form stating that she had passed the physical fitness. Master Warrant Officer Buckley wished that it had never happened and regrets that she did not ask for help at the time. She stated that she was burned out and had hit rock bottom. Master Warrant Officer Buckley testified that she was out of shape and knew that she was due to complete the physical fitness test and would not succeed. Therefore, she panicked and chose the easy way out.

[12] She stated that she did not commit the offences for promotion purposes. In her mind, it was just to getting it done and over with. Questioned as to the circumstances surrounding the false entry in the HRMS, she stated that after returning from leave in August, she was told that she had been selected to go Alert. Thrilled with the opportunity and looking at this deployment to regain her life back and put a stop to the cycle where she had to take care of her parents and be overworked, she looked forward to being away from home and her normal duties. She knew that she had to DAG quickly. Master Warrant Officer Buckley testified that her goal in going to Alert was to gain her life back and get in shape. She described the stress and anxiety that she has suffered in the last 16 months and has learned that she has to take care of herself if she

wants to be able to help others. She stated that her actions were not acceptable and she wants to be the best person she can be for her family and friends, her chain of command and subordinates. She understands the position of her previous chain of command in Comox, but she affirmed that she has learned from her mistakes and she believes she still can make a difference. Finally, she explained that as the Superintendent Clerk in 19 Wing, she was not the guardian of the HRMS, but had used her knowledge to access it.

[13] It is also important to highlight the overwhelming documentary evidence filed at the sentencing hearing in support of the character and past performance of Master Warrant Officer Buckley since 2002. She has been constantly rated as an outstanding performer and leader with the highest marks in every area, including reliability and ethics and values. Her potential has consistently been rated as outstanding. She is a recognized dedicated leader. The recent letters filed on her behalf from persons who worked with her in Comox and were made aware of the charges against her are equally impressive. She is described as a truly respected and dedicated professional who takes great pride in wearing the uniform and who exemplifies the “service before self” expression.

[14] The fundamental purpose of sentencing at courts martial is to contribute to the respect of the law and the maintenance of military discipline by imposing punishments that meet one or more of the following objectives:

- (a) the protection of the public, including the Canadian Forces;
- (b) the denunciation of the unlawful conduct;
- (c) the deterrent effect of the punishment, not only on the offender, but also on others who might be tempted to commit such offences; and
- (d) the reformation and rehabilitation of the offender.

[15] The sentence must also take into consideration the following principles:

- (a) it must be commensurate with the gravity of the offence, the previous character of the offender and his or her degree of responsibility;
- (b) the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; and
- (c) the court must also respect the principle that an offender should not be deprived of liberty if less restrictive punishments may be appropriate in the circumstances; however, the court must act with restraint in determining its sentence and imposing such punishment or punishments that constitute the minimum necessary intervention to maintain discipline.



[16] In this case, the predominant objectives of sentencing are general deterrence, denunciation and rehabilitation.

[17] The aggravating factors in this case are the following:

- (a) The objective seriousness of the offences: section 125 of the *National Defence Act* provides that a person convicted of this offence is liable to imprisonment for a term not exceeding three years. This is a serious offence.
- (b) The rank, knowledge and experience of the offender: Master Warrant Officer Buckley was of an influential rank with the requisite experience and knowledge to know that her behaviour in altering a document and making a false entry, in the circumstances, was not what was expected from a person in her position.
- (c) The breach of trust and the position of trust of Master Warrant Officer Buckley: As the Superintendent Clerk of 19 Wing, a key leadership position, she breached that trust by altering a document made for a departmental purpose, and in lying to Chief Warrant Officer Rowley, in saying that she had completed her fitness test in September of 2014. She abused that trust by making a false entry in the HRMS system and by attempting to have the fitness coordinator modify records in her favour. Her actions resulted in a loss of trust by her superiors and subordinates.
- (d) The degree of planning and deliberation involved in the commission of the offences.

[18] The mitigating circumstances are the following:

- (a) The plea of guilty that was entered at the earliest opportunity and the acceptance of responsibility emanating from Master Warrant Officer Buckley's testimony. The court is satisfied that she is truly and genuinely remorseful for her actions.
- (b) The exceptional record of service of the offender: Master Warrant Officer Buckley has had an outstanding career in the Canadian Forces since her enrolment in 1986 and she received several honors and awards throughout her career. She has constantly proven that she was a true and dedicated professional in all aspects of her military career. The commission of the offences cannot be separated from or evacuate the context in which they occurred. Master Warrant Officer Buckley was physically and mentally exhausted at the time and she did not cope well with the situation. The court is satisfied that her actions are not reflective of her demonstrated qualities and values throughout her career. The testimony of Captain(N) Hopkins reflects what should be a sound and

balanced approach to this case, as opposed to an inflexible and rigid position that leaves no room for understanding and redemption.

- (c) The absence of any disciplinary or criminal record.
- (d) The continued performance of Master Warrant Officer Buckley since the commission of the offences: Once the investigation was commenced, the offender was removed from her position and deprived of her responsibilities as the Superintendent Clerk in Comox. She also lost her opportunity to be deployed in Alert. She was employed on base in positions that were not commensurate to her rank and experience and she continued to perform extremely well. Upon being posted in summer 2015 in Ottawa within the Canadian Joint Support Operations Command in a position of leadership, she has gained the confidence and trust of her new chain of command through her strong performance and personal skills.

[19] In their submissions, both parties provided the court with a myriad of cases in support of their position or to distinguish them. The prosecution relied heavily on *Reid and Sinclair v. Her Majesty the Queen*, 2010 CMAC 4, 20 April 2010, as well as the recent decision of the Supreme Court of Canada in *R. v. Lacasse*, 2015 SCC 64, 17 December 2015, to submit that a sentence of reduction in rank to the rank of warrant officer is the minimal sentence to promote discipline in the circumstances, despite the recent jurisprudence for similar offences that constantly involved the punishments of severe reprimand, reprimand and fines (namely, *R. v. Miller*, 2012 CM 2014; *R. v. Lewis*, 2012 CM 2006; *R. v. Collins*, 2012 CM 4017; *R. v. Scott*, 2012 CM 2013; *R. v. Biron*, 2010 CM 4009). The prosecution also argues that the breach of trust is an aggravating factor under section 718.2(a)(iii) of the *Criminal Code*.

[20] The court recognized that the offender abused the trust and confidence vested in her rank and her position that she occupied at the time of the offences; however, section 718.2(a)(iii) of the *Criminal Code* applies only in relation to a victim, which is not the case here. The chain of command of 19 Wing Comox or Warrant Officer Graham are not “victims” in relation to the offences. There is no evidence that harm was done or loss suffered by a person in this case, such as cases of fraud or theft from an employer. In addition, the court does not accept the rationale advanced by the prosecution to support their recommendation on the basis of *Reid and Sinclair* as well as *R. v. Lacasse*. The nature of the database involved in *Reid and Sinclair* was highly classified and shared with our allies. In addition, the motive behind the commission of the offence was malicious.

[21] As to the use of *R. v. Lacasse* to justify a sentence beyond those imposed for similar cases in recent years, the court is not satisfied that the recent decision of the Supreme Court of Canada is helpful to justify such departure. *Lacasse* was decided in the context of extremely serious offences such as impaired driving causing either bodily harm or death, where courts from various parts of the country have held that the

objectives of deterrence and denunciation must be emphasized in order to convey society's condemnation. The Supreme Court had identified four issues in *Lacasse*. The first issue dealt with the standard for intervention on an appeal from a sentence, where the second dealt with the correctness of the trial judge to consider the frequency of impaired driving in the region where the offence was committed as a relevant sentencing factor. Wagner J, for the majority, stated at paragraph 58:

[58] There will always be situations that call for a sentence outside a particular range: although ensuring parity in sentencing is in itself a desirable objective, the fact that each crime is committed in unique circumstances by an offender with a unique profile cannot be disregarded. The determination of a just and appropriate sentence is a highly individualized exercise that goes beyond a purely mathematical calculation. It involves a variety of factors that are difficult to define with precision. This is why it may happen that a sentence that, on its face, falls outside a particular range, and that may never have been imposed in the past for a similar crime, is not demonstrably unfit. Once again, everything depends on the gravity of the offence, the offender's degree of responsibility and the specific circumstances of each case. LeBel J. commented as follows on this subject:

A judge can order a sentence outside that range as long as it is in accordance with the principles and objectives of sentencing. Thus, a sentence falling outside the regular range of appropriate sentences is not necessarily unfit. Regard must be had to all the circumstances of the offence and the offender, and to the needs of the community in which the offence occurred. (*Nasogaluak*, at para. 44)

[22] In the circumstances of this case, including those of the offender, the court is not satisfied that Master Warrant Officer Buckley ought to be punished to reduction in rank to promote the operational effectiveness of the Canadian Forces and to contribute to the respect for the law and the maintenance of discipline and maintaining trust in the Canadian Forces and its members. As in previous recent cases, general deterrence, denunciation and rehabilitation can be achieved through the punishments of a severe reprimand and a significant fine, without being unfit.

**FOR THESE REASONS, THE COURT:**

[23] **FINDS** you guilty of the first and second charges under section 125 of the *National Defence Act*.

[24] **SENTENCES** you to a severe reprimand and a fine in the amount of \$3,000 payable in three equal monthly installments of \$1,000 commencing on 15 February 2016.

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**Counsel:**

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

Major B. Tremblay, Defence Counsel Services, Counsel for Master Warrant Officer  
D.R. Buckley