



COURT MARTIAL

Citation: *R. v. Korolyk*, 2016 CM 1015

Date: 20160914

Docket: 201627

General Court Martial

Canadian Forces Base Esquimalt
Victoria, British Columbia, Canada

Between:

Her Majesty the Queen

- and -

Leading Seaman K.N. Korolyk, Offender

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

NOTE: Personal data identifiers have been redacted in accordance with the Canadian Judicial Council's "*Use of Personal Information in Judgments and Recommended Protocol*".

REASONS FOR SENTENCE

(Orally)

[1] Leading Seaman Korolyk has admitted her guilt to two charges under section 129 of the *National Defence Act* for acts to the prejudice of good order and discipline. They read as follows:

FIRST CHARGE

AN ACT TO THE PREJUDICE OF GOOD
ORDER AND DISCIPLINE

s.129 *NDA*

Particulars: In that she, on or about 9 April 2014, at or near CFB ESQUIMALT, Esquimalt, British Columbia, did knowingly

sign the name of CAF member, XXXXX AB Kevin Colson, on a form in the name of that CAF member requesting that the Bank of Canada note a change of address for Canada Savings Bonds Payroll Savings Plan number XXXXX, with intent that it be acted on as genuine

SECOND CHARGE AN ACT TO THE PREJUDICE OF GOOD ORDER AND DISCIPLINE

s.129 NDA Particulars: In that she, on or about 6 May 2014, on board HMCS ALGONQUIN cause a document, namely, a form which suggested it was signed by XXXXX AB Kevin Colson, to be sent via the ship's fax machine, requesting in the name of AB Colson that the Bank of Canada note a change of address for Canada Savings Bonds Payroll Savings Plan number XXXXX, knowing that the said form was not actually signed by XXXXX AB Kevin Colson.

[2] The facts surrounding the commission of the offences are described in the Statement of Circumstances. In a nutshell, it reveals that Leading Seaman Korolyk was posted to Canadian Forces Base Esquimalt, as a clerk, on 2 May 2011. She was posted to HMCS *Protecteur* on 14 January 2013. From 4 April 2014 until 16 June 2014, she was posted to HMCS *Algonquin*. She was in a common-law relationship with Able Seaman Colson which commenced in 2009. Within that relationship, it was agreed that both their pay cheques would be deposited into a joint account and Leading Seaman Korolyk would manage household finances. This arrangement was made, in part, due to the fact that Able Seaman Colson was struggling with medical issues. On 3 January 2014, Able Seaman Colson and Leading Seaman Korolyk moved from their address at the time to 429 Thetis Crescent in Victoria. In April 2014, she asked her common-law spouse to move out of their residence. He moved out and stayed in Bernay's Block for approximately one month. After his time in Bernay's Block, he sometimes stayed at 429 Thetis Crescent and sometimes stayed on a friend's couch until October of 2014, when he moved to his own separate residence. Notwithstanding the separation, he did not change his mailing address before October 2014. Both pay continued to be deposited into the joint account and Leading Seaman Korolyk continued to manage household finances at 429 Thetis Crescent. On 9 April 2014, she signed a change-of-address form in the name of Able Seaman Colson, requesting that the Bank of Canada note a change of address for Canada Savings Bonds (CSB) Payroll Savings Plan number XXXXX, a plan contributed solely via deductions from Able Seaman Colson's pay. That change-of-address form changed the address for the CSB plan from the couple's former address to 429 Thetis Crescent. She did not indicate on the change-of-address form to the Bank

of Canada that she was signing on behalf of Able Seaman Colson. On 6 May 2014, while onboard HMCS *Algonquin*, she sent the change-of-address form for CSB plan XXXXX, or caused it to be sent, from a fax machine in HMCS *Algonquin*'s ship's office to the Bank of Canada. She signed a Post Living Differential (PLD) request/authorization on 9 May 2014, indicating that she was no longer living at a principal residence jointly occupied with another service member who was entitled to PLD, as Able Seaman Colson did not share his residence with her at that time. She was released from the Canadian Armed Forces (CAF) on 28 June 2016 for medical reasons.

[3] During the sentencing hearing, the prosecution called two witnesses to establish that the actions of the offender had an operational impact on other clerks onboard HMCS *Protecteur*. When she was affected to other duties within the fleet and her return to ship a few months later because her access to the Human Resource Management System (HRMS) and pay systems were withdrawn as an Resource Management Support (RMS) clerk for reasons linked to CSB, it is unknown what were the factual basis and the reasons used by the chain of command to make the decision to remove her access to these systems and the Court is not in a position to speculate how much weight was given to the facts before the Court in making that decision.

[4] The parties agreed on certain facts as well. She is currently 30 years old and now resides in Halifax with her husband and a four-year-old child. Leading Seaman Korolyk was posted to and onboard HMCS *Protecteur* at the time of the fire onboard that ship. She has the following medical conditions: associated disorder, anxiety and depression. She suffers from panic attacks, lack of sleep, lack of interest, and difficulty going out of her home. These conditions did not exist prior to her enrolment in the CAF. Veterans Affairs Canada has made a decision, after reviewing all material, that the medical conditions were attributable to experiences while serving in the CAF. These experiences, which affect Leading Seaman Korolyk's medical conditions, are not limited to involvement with the fire onboard HMCS *Protecteur*. Her current income is from long term disability in the net of tax amount of \$2,900 per month. Her long-term goal is to obtain administrative employment in a setting that is compatible with the attributes of her medical conditions. She is taking an administrative assistant course through distance education at Algonquin College. The offender and her husband maintain separate finances and her share of the monthly joint expenses is \$1,100. She has regular personal expenses in the amount of \$1,625 per month.

[5] The fundamental purpose of sentencing at court 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. to denounce the unlawful conduct;
- b. to deter the offender, but also others who might be tempted to commit such offences;
- c. to separate offenders from society, where necessary;

- d. to provide reparations for harm done to the victims or to the community;
- e. to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community; and
- f. the reformation and rehabilitation of the offender.

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

- a. the sentence must be commensurate with the gravity of the offence, the previous character of the offender and his/her degree of responsibility;
- b. it should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- c. a 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. In other words, punishments in the form of incarceration should be used as a last resort; and
- d. the sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or to the offender. However, the court must act with restraint in determining sentence in imposing such punishment that should be the minimum necessary intervention to maintain discipline.

[7] This case is not about a clerk using her knowledge, experience and special access to financial systems to commit fraudulent acts or theft while entrusted. This is the case of a common-law spouse who signed a change-of-address form in the name of her own spouse, requesting that the Bank of Canada note a change of address for a specific CSB Payroll Savings Plan, solely contributed to via deductions from her spouse's pay who is also employed by the same employer. Then, she sent it, or caused it to be sent, from her employer's fax machine, namely the HMCS *Algonquin* ship's office, to the Bank of Canada. Whether there is more to the story is simply irrelevant. The Court is bound by the charges before it and the evidence in support of them. Nevertheless, the behaviour must be denounced and the fact that Leading Seaman Korolyk had to go through the justice process for that behaviour should send a clear message to others that you shall not alter a document, in any material part, with intent that it be acted as being genuine, even if it is simply to note a change of address. The prosecution asked the court to sentence the offender to a severe reprimand and a fine of \$2,000. The charges and the facts in support of them do not warrant such a severe combination of punishments. On the other hand, the defence suggestion is considered too lenient in the circumstances.

[8] The specific aggravating and mitigating circumstances of this case, beyond the elements that are generally related to the gravity of the offence and the moral blameworthiness of the offender, are limited. The evidence indicates that the decision to revoke her privileges to access the HRMS and pay systems was made for other reasons than the fax sent to the Bank of Canada. In other words, if there was more to the story, the court was not so informed. The blameworthy state of mind of the offender lies in the fact that she sent a form in her spouse's name to the Bank of Canada, knowing he had not signed the form. There is no evidence of deprivation and any other wrongdoing, only a note to change an address.

[9] The court considers the following elements to be mitigating factors in the circumstances:

- a. the plea of guilty of Leading Seaman Korolyk. She has pleaded guilty at the earliest opportunity. Her admission of guilt indicates that she accepts responsibility for her actions;
- b. the absence of any prior criminal or disciplinary record; and
- c. her medical condition as well as her family and financial situation.

FOR THESE REASONS, THE COURT:

[10] **FINDS** you guilty of both charges under section 129 of the *National Defence Act* for acts to the prejudice of good order and discipline.

[11] **SENTENCES** you to a fine in the amount of 250 dollars.

Counsel:

Major E.J. Cottrill and Commander S.M. Archer for the Director of Military Prosecutions

Lieutenant-Colonel D.R. Berntsen, Defence Counsel Services, Counsel for Leading Seaman K.N. Korolyk