



COURT MARTIAL

Citation: *R. v. Kroetsch*, 2017 CM 2011

Date: 20171117

Docket: 201729

Standing Court Martial

3rd Canadian Division Support Base
Edmonton, Alberta, Canada

Between:

Her Majesty the Queen

- and -

Corporal J.S. Kroetsch, Offender

Before: Commander S.M. Sukstorf, M.J.

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

REASONS FOR SENTENCE

(Orally)

Overview

[1] Corporal Kroetsch pleaded guilty to two charges. The first charge laid under section 114 of the *National Defence Act (NDA)*, for stealing reads as follows:

Particulars: In that he, on or about 19 May 2016, at or near 3rd Canadian Division Support Base Edmonton, Alberta, stole a Capital One MasterCard numbered 5160 XXXX XXXX 3525, the property of Graham Baker.

and the second charge laid under section 117(f) of the *NDA*, for an act of a fraudulent nature not particularly specified in sections 73 to 128 of the *NDA* reads as follows:

Particulars: In that he, on or about 19 May 2016 at or near Edmonton, Alberta, with intent to defraud, did use Capital One MasterCard credit card numbered 5160 XXXX XXXX 3525, without authority, for personal purchases totaling approximately \$765.90.

[2] It is now incumbent upon this Court to determine a sentence.

Matters considered

[3] In determining sentence, the Court considered the circumstances surrounding the commission of the offences as revealed by the Statement of Circumstances filed by the prosecutor, the circumstances of Corporal Kroetsch as set out in the Agreed Statement of Facts, the documentary evidence provided to the Court as well as the testimonies of the following witnesses:

- (a) Ms K.D. Story, civilian;
- (b) Ms P.S. Harris, civilian;
- (c) Mr G.J.J. Baker, civilian;
- (d) Warrant Officer J.P.A. Doucet;
- (e) Master Corporal R. Woodward;
- (f) Sergeant S.O.T. Coutu; and
- (g) Corporal J.S. Kroetsch.

[4] This Court examined the evidence in light of the applicable principles and objectives of sentencing, including those set out in sections 718, 718.1, 718.2 of the *Criminal Code*, as far as they are compatible with the sentencing regime provided under the *NDA*. Similarly, the elements of due process set out in the *Criminal Code*, were incorporated, as far as they are compatible with the procedural regime prescribed within the *NDA*. The Court also considered the representations made by counsel and the direct and indirect consequences that the finding and the sentence will have on Corporal Kroetsch. The punishment to be imposed by the Court should constitute the minimum necessary intervention that is adequate in the particular circumstances to maintain discipline and meet the interests of military justice.

The facts

Circumstances of the offences

[5] At all relevant times, Corporal Kroetsch was a member of the Canadian Armed Forces, Regular Force. He was posted to 1 Service Battalion, 3rd Canadian Division Support Base Edmonton Alberta, as a cook. He was employed at the Edmonton Garrison Combined Mess (EGCM).

[6] On 19 May 2016, Mr Graham Baker, a civilian employee at the EGCM arrived for his shift. He placed his personal items inside a locker, which was left unlocked. This had been Mr Baker's practice for the previous five years at the EGCM.

[7] During the day of 19 May 2016, the staff were called to a meeting where they were warned about thefts that had occurred in the locker room. Upon returning to his locker, Mr Baker found that \$25 in cash was missing from his wallet. He noted that his Capital One Platinum MasterCard, numbered 5160 XXXX XXXX 3525 was also missing. He returned home that evening to see if his card had been left at home, but could not find it. After speaking with his wife, he accessed his account online and found that a number of purchases had been made with his card that day. The card was subsequently cancelled and the transactions disputed.

[8] Mr Baker's wife, Kara, was the primary account holder. Mr Baker was the authorized user on the account. On 20 May 2016, Mr Baker made a complaint to the military police about the theft and use of his credit card. On 20 May 2016, following an investigation by the military police, Corporal Kroetsch was arrested. Corporal Kroetsch admitted stealing and using Mr Baker's credit card.

[9] Corporal Kroetsch used the credit card to make purchases at the following vendors on or about 19 May 2016:

- (a) 7-Eleven in the amount of \$96.43;
- (b) Doody Doo (also spelled "Dooby Doo") in the amount of \$14.70;
- (c) Alberta Cycle Motorsports in the amount of \$208.12;
- (d) Shell in the amount of \$43.25;
- (e) Black Sheep Gifts in the amount of \$40.51;
- (f) 505-LD 153rd Avenue in the amount of \$81.62; and
- (g) PetSmart in the amount of \$281.27.

[10] The total amount of fraudulent purchases was \$765.90. Some charges were reversed by Capital One to the vendors. The total financial loss to Capital One was \$276.51.

Similar offences admitted

[11] Pursuant to section 194 of the *NDA*, counsel requested the Court consider the following incidents of uncharged conduct, outlined in the Statement of Circumstances, as they were similar in character and formed part of the chain of circumstances related to the charged offences.

- (a) On 18 May 2016, Ms Kathleen Story, a civilian employee at the EGCM, hung her jacket up on a hanger just outside of the female locker room. During her shift, she went to her jacket pocket and discovered that \$40 she had in her change purse was gone and all that remained was one quarter and two nickels. Ms Story told her co-worker, Paula Harris, about the theft.
- (b) On the same day, at the end of her shift, Ms Paula Harris realized her cigarettes were missing from her jacket pocket and that \$4 in coins that she had for the work 50/50 draw had also been stolen.
- (c) The next day, 19 May 2016, Ms Story was telling two co-workers about the theft of her \$40 and accessed her change purse to show her co-workers that all that remained was one quarter and two nickels, only to find that the quarter and two nickels had subsequently been stolen. As a result, Ms Story brought the thefts to the attention of her civilian supervisor, Mrs Rasmussen.
- (d) On his own initiative, shortly after Corporal Kroetsch returned from addictions treatment in British Columbia, Corporal Kroetsch approached both Ms Story and Ms Harris separately. He confessed that he had stolen both the money from Ms Story's change purse in her jacket pocket as well as the cigarettes and coins from Ms Harris' jacket pockets. He apologized to both Ms Story and Ms Harris and both of them told the court that they accepted Corporal Kroetsch's apology.

[12] On 20 May 2016, upon being arrested for fraud and theft, Corporal Kroetsch cooperated fully with the military police. During his first interview with the military police, he confessed to all the offences, as described above, and answered all questions to the best of his knowledge.

Circumstances of the offender

[13] Corporal Kroetsch is 35 years old and has a high school education. In August 2011, he joined the CAF as a cook. He has served in the Canadian Armed Forces (CAF) for over six years. After completion of his basic training and cook's training, he was posted to Edmonton, Alberta, where he has remained for over five years. Financially, after a pay allotment for his mortgage, he has a net pay of \$2,780.74 per month to live on. He has three children, twin daughters, eight years old, as well as a

nine-year-old son. He is divorced and pays both alimony and child support in the amount of \$1,172 per month to his ex-wife, leaving him \$1,608.74 per month for all his other expenses, including extraordinary expenses that he pays for his children's activities.

[14] On 10 August 2014, Corporal Kroetsch injured his shoulder in a motorbike accident. He experienced constant and significant pain, and was treated with an intensive physiotherapy routine for the next seven months. He was prescribed pain medication, including codeine, an opiate. On 15 October 2014, Corporal Kroetsch was referred to an orthopedic surgeon.

[15] On 30 April 2015 (over 6 months later), Corporal Kroetsch was finally examined by Dr J. Bury, orthopedic surgeon. The surgeon diagnosed Corporal Kroetsch's shoulder as having a "very significant labral tear, basically circumferential". This means that his labrum was torn three quarters of the way around the shoulder socket.

[16] On 25 June 2015, Corporal Kroetsch was referred to the base addiction counsellor following a hospitalization for an overdose of alcohol and prescription medication. Corporal Kroetsch reported that he had developed a dependency to his pain medication and that, as his medication use increased to manage the pain of his injured shoulder, so did his alcohol use. At that time, Corporal Kroetsch reported drinking in excess of ten drinks per day more than four days per week. He reported that he was only able to sleep two to three hours per night and that he experienced memory lapse during times of heavy drinking or excessive use of medication.

[17] On 16 September 2015, after a lengthy wait, Corporal Kroetsch's shoulder was successfully repaired by arthroscopic surgery. His arm was immobile for six weeks and he required further physiotherapy to regain full use.

[18] On 2 October 2015, during a follow-up appointment, the attending doctor smelled an odour of alcohol from Corporal Kroetsch. Corporal Kroetsch denied having been drinking. He continued to be prescribed pain medication, including codeine.

[19] On 17 May 2016, Corporal Kroetsch referred himself to the base addiction counsellor regarding his alcohol abuse. Corporal Kroetsch reported being on a path of self-destruction and feared being an alcoholic. He reported not being able to stop drinking, drinking daily, consuming more than 15 drinks per day. He requested immediate admission into a treatment programme, being unable to stop on his own. Corporal Kroetsch was identified as having signs of both alcohol abuse and depression.

[20] On 26 May 2016, Corporal Kroetsch again referred himself to the base addiction counsellor regarding his alcohol abuse. Corporal Kroetsch reported drinking to the point of losing consciousness four days earlier. He reported feeling that he was going crazy, having experienced visual and auditory hallucinations of shadows calling out his name.

[21] On 27 May 2016, Corporal Kroetsch was assessed by the base addiction counsellor. Corporal Kroetsch reported being unable to stop drinking and constantly thinking about drinking alcohol. He reported drinking up to a dozen beers or more a day and drinking before work, at lunch time and after work. At this interview, Corporal Kroetsch was identified by staff as being pale, thin, shaking and as sounding desperate.

[22] On 1 June 2016, Corporal Kroetsch was admitted to Cedars at Cobble Hill, British Columbia, for a residential substance abuse treatment program. He was diagnosed with alcohol dependence and depression likely related to alcohol use. While at Cedars, Corporal Kroetsch progressed along treatment norms and his condition improved.

[23] On 20 July 2016, when Corporal Kroetsch was discharged from Cedars, his prognosis for recovery was deemed good, provided he complied with his continuing care plan. Cedars' medical staff noted that Corporal Kroetsch could not safely use mood-altering medication and strongly recommended extreme caution in prescribing him tranquilizers, sedative hypnotics, some anti-depressants and all opioid analgesics. Following his discharge from Cedars, Corporal Kroetsch consistently attended aftercare through the base addictions counsellor.

[24] In March 2017, Canadian Forces medical staff noted that Corporal Kroetsch's progress was generally quite positive and suggestive of appropriate contrition and sobriety. It was noted that this progress was particularly impressive given Corporal Kroetsch's ongoing psychological issues and continuing custody battle with his ex-wife. It was further noted that while his alcohol misuse appeared to be well managed, Corporal Kroetsch still had a high need for continuing follow-ups with the base addictions counsellor.

Testimony of Corporal Kroetsch

[25] During his sentencing hearing, Corporal Kroetsch testified on his own behalf. He described for the Court, the excruciating pain he endured from his shoulder injury. He couldn't sleep, move, dress or shower without the pain. He was originally prescribed physiotherapy, which he attended two to three times a week, but his injury wasn't diagnosed properly until he was seen by the orthopedic surgeon. He didn't sleep in his bed for months as he tried to sleep in a recliner chair managing only a few hours of sleep per night. The pain felt like a hot ice pick being inserted into his shoulder 24 hours a day. Prior to the accident that led to his injury, he said he was an active guy, loved baseball and spending time with his children. After the injury, he wasn't able to hold his children or pick them up and he couldn't do the things they wanted to do.

[26] Over time, the fact that he was not able to do anything weighed on him. With the intolerable pain, he had become miserable, angry, hurt, sad, depressed and felt that he had everything stripped away. His family offered help and sympathy, but he didn't want to talk about it. He wasn't answering their calls. His mom became concerned and called him non-stop, which only made him angry.

[27] He went to the medical infirmary room (MIR) and they prescribed him pain killers and told him to ice the shoulder. The medications helped him for a while and then he realized that mixing the medications with alcohol intensified the effect and he felt better for a while, but eventually the pain increased. He started with Naproxen, Tylenol 3s then 4s, among other medications. The Tylenol 3s and 4s contain the active ingredient of codeine. Initially, he would take the medication as prescribed; however, he eventually found ways to intensify the effect, such as crushing the pills and straining them through a coffee filter or mixing them with alcohol.

[28] He told the Court that on 25 June 2015, after an intervention from friends and family, he was hospitalized for an overdose. Although referred to the base alcohol counsellor, Corporal Kroetsch actually met with a general counsellor. Corporal Kroetsch indicated that he did not press the issue with the counsellor as he didn't know what he wanted at the time. He wanted someone to assure him he was okay, but also was afraid of losing his access to alcohol.

[29] Eventually, the doctors stopped prescribing him pain medication, but he had stockpiled pills by consuming less when he crushed the pills and strained them through the coffee filter to double their effect.

[30] At work, he slowly started to become sluggish and forgetful. He did the bare minimum to get by and to get through his eight-hour shift. He would show up for work just on time and then started to arrive slightly late to avoid putting in any extra effort. All he could think of was getting through his work shift so he could return home and drink again.

[31] His mood started to change and he isolated himself. He lashed out at people and was self-loathing. He realized that he was slowly killing himself, but he couldn't stop. He didn't want to live anymore and wanted to die. It was affecting his judgement and his only thought was focussed on how he could drink more. He slowly lost his ability to think rationally. He admitted that sometimes he would drink so much that he hoped he just wouldn't wake up. He thought of killing himself either by alcohol or by his own hand.

[32] At first, he said that he wasn't drinking too much alcohol, and beer was his alcohol of choice, but if he didn't have beer, he would drink whatever was available. In the beginning, he would drink four, five, six or eight beers in one evening. Near the end, it was not unusual for him to drink ten-plus beers in one sitting, which he admitted is not normal.

[33] In hindsight, he recognizes that he was suffering from a substance abuse disorder. If he wasn't drinking, he was depressed, but after a while even the drinking couldn't make him happy. He just couldn't get to the right balance. He admitted that eventually he couldn't feel drunk anymore as he had become immune to the effects of alcohol; his body in a constant state of anesthetization or insensitivity. Finding his next

drink consumed his every thought. He wasn't eating and beer provided his sole calories. His weight dropped to about 132 pounds before treatment and his hair was falling out. His relationships were gone. He would slide down the stairs at home because he couldn't walk. He admitted that he was a "corpse going through the motions of life." He was a recluse, shaking, sick and afraid to go out in public. He would close the curtains and ignore everything.

[34] He told the Court that his finances were so bad that he had to decide whether to put gas in his truck or to drink. He often poured good milk and juice out of their containers so he could recycle the containers to get the refunds for enough money to buy more alcohol. In a tearful confession, he admitted that he had chosen alcohol over his kids. Because of the money he was spending on his addiction and drinking, he couldn't afford the gas to go and get them. When questioned by the prosecution, he did confirm that despite the depth of his worst circumstances, and to his credit, he always paid his child support and alimony as it was set up as an automatic deduction.

[35] On 17 May 2016, a few days prior to the offences, he was personally struggling and referred himself to the base addiction counsellor. Before he went to visit the counsellor, he didn't have any alcohol left at home and the liquor store didn't open until 10 a.m. He found an empty can of beer that had a bit in it, but was mixed with cigarette butts. He was so desperate, he took the contents of that can and strained it through the coffee filter and, essentially, drank garbage. He said he was contemplating suicide and wanted help; he needed somewhere to deal with his problems. He inquired about in-patient programmes, but it went nowhere. He was told to make an appointment and he just couldn't follow up.

[36] On the day of the offences, 19 May 2016, he couldn't say specifically what he consumed, but the night before, he had been drinking all evening as usual. He was definitely inebriated and, at that stage, had no rational thought anymore. All that consumed him was how to get the next bit of alcohol and how to pay for it. On that day, he didn't plan on stealing anything. He stated that he didn't target Mr Baker as they were actually good friends and Corporal Kroetsch respected him. He was more than an acquaintance. He admitted that Mr Baker was a great man, with a beautiful family, who he not only confided in, but he spoke to at length about his challenges.

[37] He admitted the shame he feels with respect to his previous conduct. Who he was at that time is not who he is. Regrettably, he had to go through a dark time to find out how good his life could be. He expressed a great deal of regret related to the painful moments of his past and for bringing witnesses back to relive the events. With respect to the thefts and use of Mr Baker's credit card, he told the Court that he hates himself for what he did.

[38] He hasn't had anything to drink since May 23rd, 2016. On that day, he looked in the mirror and couldn't believe what he was looking at. Just prior to that, his parents had broken into his house thinking that he was dead. When he next went into the base addictions office, he was referred the next day to the Base Addictions Counsellor. She

immediately got him registered for Cedars at Cobble Hill, a rehabilitation centre and arranged to have him start a program within days.

[39] He told the Court that since completing the rehabilitation programme, his life has changed and that he loves his job and the challenges it presents to him. He is consistently early for work and thinks of others before himself. His relationships have significantly improved. He speaks with his kids every evening at 7 p.m. and spends quality time with them. Everything is better and he is no longer fearful of being noticed and loves to go out and make plans.

[40] In response to queries as to whether he is cured from his substance abuse, he told the Court that he doesn't want to find out. He has gained so much in his life in the last year, he doesn't want to test it. He has been down that road. It is the first drink that will lead him down a slippery slope. Currently, his life is positive, he has reconnected with his family and children. He attends Alcoholic Anonymous meetings five times per week.

Impact on the victim and military unit

[41] In determining the sentence, the court martial heard *viva voce* testimony from the three individual victims of the thefts: Mr Baker, Ms Story and Ms Harris, where they described the harm done and loss suffered by them, arising from the commission of the offences or uncharged conduct. The Court also heard testimony from three supervisors who could speak to the impact that the offences had within the military unit itself. The individual victims could all speak to both the emotional harm and economic loss they suffered as well as describe the overall impact that the offences had on each of them.

Ms Story

[42] Ms Story stated she has known Corporal Kroetsch since he was posted to the EGCM kitchen, in Aug 2012 and that she considered the two of them to be close. She told the court, that the day that she realized that the \$40 in her pocket had been stolen she felt violated, as the trust they relied upon in their workplace was lost. Before the theft, she stated she always felt secure leaving her jacket out or her locker unlocked. After the theft, they were all very careful to ensure that they secured everything. She stated that when she noticed that the person had returned to take the 35 cents left in her change purse, she realized that the person was desperate.

[43] She made a complaint to her civilian supervisor who addressed it at a higher level. Later that day, there was a staff meeting to advise everyone that there had been a series of thefts. She stated that Corporal Kroetsch was at the meeting. She advised the Court that after Corporal Kroetsch returned from his rehabilitation, he apologized to her and took responsibility for his actions. He asked to be forgiven, which she agreed to, but she said that it wouldn't be the forgiving that would be the problem, but rather the forgetting, as he would need to regain her trust.

[44] She also told the Court that before the theft, Corporal Kroetsch had been in rough shape, he had lost weight, looked groggy, intoxicated and she believes that the theft was a final cry for help. She said that it wasn't the Corporal Kroetsch she knew in the right frame of mind, but he was too far gone to see the problem.

[45] She stated that once he went to rehabilitation, he was willing to face the consequences. He offered to repay the money, but she told him that it wasn't required as it meant more to her that he apologized.

[46] She commented specifically on the huge change in Corporal Kroetsch since he returned from his rehabilitation. Prior to the incident, his personality had changed and he was there, but he wasn't. It was clear that he was fighting his own demons. She had indicated that on one evening, before the theft, he had called her house seeking help, which was provided; her husband spoke with Corporal Kroetsch's parents and emergency medical services were called.

[47] She told the Court that now Corporal Kroetsch is the fun-loving, caring person that they originally became friends with and that, personality-wise, he is back. He clearly knows right from wrong and now won't even take Tylenol for a headache. She indicated that their relationship is back to where it was before, but better.

Ms Harris

[48] Ms Harris stated that she has also known Corporal Kroetsch since he was posted to Edmonton. When she discovered that her change and cigarettes had been stolen, she felt violated and hurt. They all worked together and she considered them a small family. She also told the Court that after his rehabilitation, Corporal Kroetsch apologized to her and that he seemed very genuine. He never paid her back, but she didn't expect it as the apology was enough. She feels that he has been rehabilitated and is a good person.

Mr Baker

[49] Mr Baker testified that when he discovered that his credit card and some cash had been stolen, he was irate. He took action that evening to verify if there had been any charges to the card and discovered there had been. He contacted the credit card company. He said he was anxious as to how it would unfold and whether or not he would be personally responsible for the charges while they investigated. In the end, it was investigated quickly and he wasn't out of pocket any of the money. They cancelled his card and sent him a new one.

[50] He stated that when the staff at the kitchen learned of the thefts, morale sank. People were concerned. Later the next day, after the military police investigated, they learned that the thefts were perpetuated by Corporal Kroetsch. Shortly thereafter, the military police arrested Corporal Kroetsch and took him in for questioning.

[51] Mr. Baker stated that Corporal Kroetsch tearfully apologized to him at the first opportunity and offered to pay it all back. Mr. Baker further advised the Court that since Corporal Kroetsch's return from rehabilitation, he has made a "complete 180" in terms of his engagement at work. He is now reformed and a better person. He is no longer distracted and shows no signs of alcohol abuse. He pulls his weight and is a good team member. Mr Baker stated that both he and Corporal Kroetsch have as good a relationship now as they did before the theft.

Master Corporal Woodward

[52] As the person in charge of the kitchen, Master Corporal Woodward worked closely with Corporal Kroetsch over a number of years. With respect to all the supervisors, he told the Court that he would have had the most interaction with Corporal Kroetsch on a day-to-day basis. At the time, Master Corporal Woodward was also a Corporal. He advised that, in his experience, when the military cooks were injured they were assigned to various kitchen duties and were often forgotten about and didn't always get the attention they needed. He had also experienced an injury and needed surgery.

[53] He stated that he had been aware that Corporal Kroetsch had been coping with an injury and had been taking prescription medication over a period of time. He stated that it was apparent that addiction was occurring as he had observed him taking pills within a short period of time, sometimes forgetting that he had already taken his pills.

[54] He stated that, in early 2016, he noticed that Corporal Kroetsch was intoxicated at work. The staff working on Corporal Kroetsch's shift felt concerned for his safety and called the authorities, the military police, who drove him home.

[55] He stated that on another occasion, he smelled alcohol on Corporal Kroetsch and that when he questioned Corporal Kroetsch about it, Corporal Kroetsch told him that he had been drinking the night before. He stated that, over time, the physical signs were clear. He was unsteady, wobbling and lost the colour in his face. His eyes were sunken.

[56] He told the Court that he had personally been away on sick leave, for surgery, from early March 2016, and didn't return to the workplace until approximately the 5th or 6th of May, 2016, about two weeks before the incidents before the Court. He stated that upon his return, he often noticed that Corporal Kroetsch was staggering or was incoherent. He described how, on one occasion, Corporal Kroetsch arrived at work late wearing his running shoes with his uniform. When Corporal Kroetsch was told to put on his boots, he tripped on the way to put them on.

[57] One day in the spring of 2016, Corporal Kroetsch looked "out of it" and Master Corporal Woodward made him go to the MIR. Corporal Kroetsch did go and he brought his medication with him. Corporal Kroetsch later told him that the problem had been the mixture of his drugs making him appear intoxicated.

[58] Although Corporal Kroetsch's drinking didn't really affect his performance, it affected his mood. He stated that Corporal Kroetsch would do his work, but he was always on the edge and would verbally lash out. He responded aggressively to criticism and was a negative person to be around and that some staff didn't want to work next to him. He stated that prior to the incidents, Corporal Kroetsch's uniform hung off him and he looked like a rag.

[59] He told the Court that he advised two master corporals within the Service Battalion where Corporal Kroetsch reported, about what he was seeing, but they didn't seem to do anything. He confessed that due to the cross-reporting relationships and his inexperience, he wasn't sure how to approach the problem. He stated that he didn't tell anyone else in the kitchen as he assumed they were all aware. He stated that they worked mostly with corporals, privates and civilians. Master Corporal Woodward stated that he felt the chain of command did little to help Corporal Kroetsch with his substance abuse problem. Master Corporal Woodward stated that after he personally returned from his own sick leave a few weeks before the theft, Corporal Kroetsch was at his worst as he was continuously late and his performance was the bare minimum. Corporal Kroetsch was often incoherent, would stagger and couldn't function.

[60] He told the Court that since the rehabilitation, Corporal Kroetsch has been great. He does everything that needs to be done and more without being told or asked. He is no longer late. He shows initiative and offers to do extra work. He stated that to best of his knowledge, Corporal Kroetsch has been clean of both alcohol and drugs. He stated that he looks healthy, has regained weight and is mentally happier. He said that he seems like a different, more positive person with a good approach. He has a good outlook on life and wants to get back to where he should be and improve himself. He stated that overall he is a great person to work with.

Objectives and principles of sentencing

[61] The fundamental purpose of sentencing in a court martial is to ensure respect for the law and the maintenance of discipline, and, from a more general perspective, the maintenance of a just, peaceful and safe society. Moderation is a core principle of sentencing in Canada and does not allow a military court to impose a sentence beyond that required in the circumstances of the case.

[62] *Queen's Regulations and Orders for the Canadian Forces* (QR&O) require a military judge imposing a sentence at a court martial to consider "any indirect consequence of the finding or of the sentence, and impose a sentence commensurate with the gravity of the offence and the previous character of the offender." The sentence imposed must be adapted to the individual offender and the offence he committed. In other words, in this case, any sentence imposed by the court must be adapted specifically to Corporal Kroetsch and constitute the minimum necessary intervention.

[63] When imposing sanctions, the Court shall consider one or more of the following objectives:

- (a) to protect the public, which includes the Canadian Armed Forces;
- (b) to denounce unlawful conduct;
- (c) to deter the offender and other persons from committing the same offence or offences;
- (d) to separate offenders from society where necessary; and
- (e) to rehabilitate and reform offenders.

[64] When imposing sentence, a military court must consider the following principles:

- (a) the sentence must be proportionate to the gravity of the offence;
- (b) the sentence must be proportionate to the responsibility and previous character of the offender;
- (c) the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; in short, the court should impose a sentence of imprisonment or detention only as a last resort as established by the Court Martial Appeal Court and the Supreme Court of Canada decisions; and
- (e) lastly, any sentence to be imposed by the court should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[65] In the Court's view, based on the facts of this case, sentencing should focus on the objectives of denunciation and general deterrence. The Court highlights that the principle of general deterrence means that the sentence should deter not only Corporal Kroetsch from reoffending, but also to deter any other CAF members who might be tempted to commit similar or comparable offences. However, these objectives should not trump the objective of rehabilitation.

Positions of Counsel

[66] Before determining sentence, the Court provided both the prosecution and the defence the opportunity to provide submissions relevant to the sentence to be imposed. Both counsel provided extensive representations regarding the mitigating and aggravating factors to be considered.

Prosecution

[67] Prosecution proposed that the Court impose a sentence of a severe reprimand and a fine of \$1500. He acknowledged Corporal Kroetsch's excellent progress in his rehabilitation and the high level of support he received from all witnesses, three of whom were the victims. He relied upon a number of precedents in making his submission. He further argued that the sentencing objectives of denunciation and general deterrence were paramount. The Court agrees with this assessment, but it would be remiss not to highlight that these objectives must be weighed in such a manner that the sentence does not impair the objective of rehabilitation.

Defence

[68] Defence relied upon significant case law supporting a list of mitigating factors, discussed below, advocating for a minimum fine of \$200. Defence counsel also provided evidence that Corporal Kroetsch was successful in completing the remedial measures of counselling and probation placed upon him by his unit.

[69] The evidence before the Court is that Corporal Kroetsch now has a meaningful and promising career ahead of him within the CAF. Although the Court was not provided any verifiable medical evidence to rely upon, as the matters are still being considered, Corporal Kroetsch did tell the Court, he is being considered for a permanent medical category, most likely, flowing from his alcohol dependence and depression.

[70] Consistent with the prosecution's submissions, defence submitted that the Court must be careful that the principles of denunciation and deterrence do not detract the the rehabilitative progress of Corporal Kroetsch.

Reasons

Gravity of the offences

[71] The principle of proportionality lies at the heart of sentencing and a sentence imposed must be relative to the gravity of the offence. As Dutil C.M.J. succinctly described in the case of *R. v. Daigle*, 2017 CM 1003 at paragraph 12, "[t]he law requires the presiding judge to consider the gravity of the offence". He further noted that the "gravity of the offence is not an aggravating circumstance related to the offence. It is a principle of sentencing on its own."

[72] In the military environment, serving CAF members as well as Department of National Defence employees work and often live in very close quarters and work spaces. This closeness demands the utmost of trust and respect of every individual on a number of levels, including mutual trust in safeguarding each other's property. In short, Corporal Kroetsch violated this trust. When this relationship of trust is broken, then discipline is compromised and unit cohesion and morale are damaged. In the case of *R.*

v. *Gunner D. Doucet*, 2003 CM 17, at paragraph 12, Dutil M.J., as he then was, distinguished the seriousness of stealing from comrades or colleagues from other types of theft:

[12] However, cases such as this one, that is where a serviceperson steals the property of a brother in arms like a roommate, are always very serious. They attack one of the Canadian Forces' pillars. Stealing the property of a fellow soldier erodes the necessary trust required between them. This has been recognized as well by the Supreme Court of Canada, in the case of *Généreux* which can be found at [1992] 1 S.C.R., [sic] 259. Theft from a comrade detracts from the essential esprit de corps, mutual respect and trust in comrades and the exigencies of the barrack room life style. In these cases, general deterrence is crucial.

[73] At paragraph 18 of *Doucet*, Dutil M.J. stated that these "are offences of great disciplinary importance because they are closely linked to the core values of the Canadian Forces."

[74] On the facts of this case, a conviction for an offence under section 114 of the *NDA* is serious and punishable up to imprisonment for a term not exceeding seven years.

[75] Similarly, although a section 117(f) offence is considered less serious than a section 114 offence in terms of punishment, offenders are still liable to imprisonment for less than two years or to less punishment.

[76] Given the gravity of these two offences, a fit sentence must be proportional to the seriousness of these offences while emphasizing the principles of general deterrence and denunciation.

Responsibility and previous character of the offender

[77] Based on the testimony of the witnesses, including that of Corporal Kroetsch, the thefts occurred when Corporal Kroetsch was arguably at the lowest point in his life. Ms Story, in her testimony, said she knew that Corporal Kroetsch was desperate because he returned the next day for the remaining 35 cents left in her change purse. Defence argued that the theft and use of the credit card was prompted by Corporal Kroetsch's desperation to feed his addiction; however, prosecution highlighted that from the seven purchases that were made with the credit card, it is not evident that any of the purchases were actually for alcohol. Upon cross-examination by the prosecution on this point, Corporal Kroetsch confessed that he doesn't remember what any of the purchases were for. The Court recognizes that although Corporal Kroetsch may not have used the credit card to obtain alcohol, his mental and physical health at that time had deteriorated to such a desperate level, it may never be possible to determine what specifically was purchased.

[78] Upon completion of the final submissions of counsel, I asked Corporal Kroetsch if he had anything to say before I closed the Court to determine sentence. Corporal Kroetsch advised the Court that for two years he had been living through a personal hell

as he battled his addiction. He wants others who may be suffering with similar issues to know that there is help available. To the people that he hurt, he expressed sincere and noticeable remorse for his actions. I think that anyone in the Court who heard him testify was impressed by his level of genuine remorse, contriteness and humility.

[79] Suffering from a serious drug and alcohol addiction cannot mitigate the sentence itself, but it does diminish Corporal Kroetsch's degree of responsibility as his counsel vigorously argued. (Relying upon *R. v. Corporal S.L. Rose*, 2008 CM 1022).

Parity

[80] Under the principles of sentencing, the law requires that the sentence imposed be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[81] In making his recommendation on sentence, the prosecution relied upon a significant number of precedents which the Court reviewed. They include *R. v. Whaley*, 2017 CM 2001; *R. v. Daigle*, 2017 CM 1003; *Corporal S.L. Rose*, 2008 CM 1022; *R. v. Lévesque*, 2014 CM 3012; *R. v. Leading Seaman G.A. Anderson*, 2008 CM 1005; *R. v. Coulombe*, 2013 CM 3001; *R. v. Ex-Corporal R.J. Kelly*, 2003 CM 10; *R. v. Gunner D. Doucet*, CM 17; *R. v. Leading Seaman M. Wilkinson*, 2005CM29; *R. v. Meadus*, 2009 CM 1016; *R. v. Deslauriers*, 2013 CM 3007; *R. v. Corporal K.M. Parsons*, 2002CM57; *R. v. Master Corporal J.M. Bolter*, 2009 CM 2007; *R. v. Westcott*, 2015 CM 4016; *R. v. Ruttan*, 2014 CM 1023; *R. v. Sorbie*, 2015 CM 3010; *R. v. Bérubé*, 2012 CM 1011; *R. v. O'Toole*, 2012 CM 1010).

[82] Defence counsel relied primarily upon the case of *Ruttan* (also referred to by the prosecution) in addition to the case of *R. v. Massicotte*, 2012 CM 4011, in making his recommendation.

[83] After a careful review of the cases most similar to the facts before the Court, the Court focused on the following four cases:

- (a) *Massicotte* - *Massicotte* involved a case of stealing from another CAF member. Although Perron M.J. imposed both a reprimand and a fine of \$200, he specifically stated that he would have imposed a stricter sentence had it not been for the highly questionable actions of a sergeant and the long pre-charge delay of 30 months. The length of the pre-charge delay in that case was considered particularly mitigating as at para 11 of *Massicotte*, M.J. Perron says that *Massicotte* "would have chosen a summary trial if he had had the choice." This case does provide some guidance in terms of the imposition of both a reprimand and a fine.
- (b) *Ruttan* - Both prosecution and defence referred the Court to the case of *Ruttan*, decided by Dutil C.M.J. in 2014. In that case, Bombardier Ruttan pleaded guilty to offences contrary to section 114 and section 117(f) of

the *NDA* for stealing \$600 from the St-Jean Charity Fund as well as making fraudulent monthly claims for reimbursement of parking fee of \$100 over six months. In that case, the Court sentenced Bombardier Ruttan to a reprimand and a fine in the amount of \$600 payable in 12 equal and consecutive instalments of \$50, beginning on 15 January 2015.

- (c) *Meadus* - In *Meadus*, also decided by Dutil C.M.J., Private Meadus pled guilty to section 114 of the *NDA* for forging a cheque. Private Meadus had just returned from Edgewood Centre for treatment related to an addiction to prescription drugs. Private Meadus was offered a place to stay with a friend who was eight months' pregnant while her husband was deployed. Private Meadus stole a personal cheque from her friend and forged it for \$300. In that case, the evidence presented to the Court in mitigation was limited. Although there was some evidence of mental health issues, there was no evidence before the Court linking her mental health to the motive of the theft. Private Meadus was releasing from the CAF; however, this was a neutral factor in sentencing. In that case, the Court sentenced Private Meadus to a reprimand and a fine in the amount of \$1000.
- (d) *Bérubé* – In *Bérubé*, Dutil C.M.J. accepted a joint submission of a reprimand and a \$500 fine. In that case, Corporal Bérubé pleaded guilty to stealing four tires from a personal vehicle of another Forces member who had parked his vehicle on CAF property while he was away on exercise. Corporal Bérubé then sold these tires. He told the military police that it had been a “spur of the moment” decision because he was suffering serious financial problems. The tires and rims were located and returned. Corporal Bérubé was considered a first offender and there was an inexplicable two-year delay between the charge and the court martial.

Detention as last resort

[84] Under the principles of sentencing, an offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances. In short, the Court must impose a sentence of imprisonment or detention only as a last resort as established by the Court Martial Appeal Court and the Supreme Court of Canada.

[85] Stealing from colleagues in the workplace is perhaps one of the most serious betrayals of trust that could occur within a military environment and, historically, has been deserving of very harsh consequences. As Price M.J. stated in the 2003 case of *Kelly*, at paragraph 8, “[t]here was a time when theft of even a small item from a comrade attracted a sentence of incarceration.” The prosecution also provided significant precedents where the Court imposed incarceration for convictions of offences similar to those before the Court today. (*R. v. Whaley*, 2017 CM 2001; *R. v. Lévesque*, 2014 CM 3012; *R. v. Massicotte*, 2012 CM 4011; *R. v. Coulombe*, 2013 CM 3001; *R. v. Westcott*, 2015 CM 4016; *R. v. Master Corporal J.M. Bolter*, 2009 CM

2007; *R. v. Gunner D. Doucet*, 2003 CM 17; *R. v. Robertson*, 2002 CM 08 (referred to within *Doucet* at paragraph 16).

[86] Referring to the case of *R. v. Stein*, [1974] O.J. No. 93, 15 C.C.C. (2d) 376, defence counsel argued, that proper sentencing of first offenders requires that the sentencing judge exhaust all other possibilities before concluding that imprisonment is required. He distinguished the case before the Court as being particularly unique given the extensive rehabilitation that Corporal Kroetsch has made. I agree with defence counsel that, based on the parity discussed in the previous section as well as the personal rehabilitation made by Corporal Kroetsch, combined with his sincere remorse, neither incarceration nor detention are necessary to deter him from the repetition of his offences. (see *R. v. Pottie*, 26 N.S.R. (2d) 646, 40 A.P.R. 646, 4 C.R. (3d) S-24).

Mitigating and aggravating factors

[87] In the military justice system, as well as under section 718.2(a) of the *Criminal Code*, the principles of sentencing require that a sentence be increased or reduced to account for any aggravating or mitigating circumstances relating to the offence or the offender.

Mitigating factors

[88] Guilty plea. Corporal Kroetsch's guilty plea reflects both his genuine remorse for his conduct and his acceptance of responsibility for his misconduct. Not only did he plead guilty to the two charges under section 114 and 117(f) of the *NDA*, he admitted non-charged conduct that relates to two similar incidents occurring during the same time frame. He did not need to do this, but he told the Court in his testimony that he felt he needed to accept full responsibility for what he did to his colleagues within the work place. Although the non-charged conduct is considered aggravating, his guilty plea and willingness to accept personal responsibility for his conduct were provided significant weight in the consideration of sentence.

[89] Court martial. The fact that he had to publicly face this court martial proceeding had a deterrent effect not only on him, but also for other members of the military community who are aware of his case. Corporal Kroetsch took the stand during his sentencing hearing and provided humbling, gut wrenching and painfully honest disclosure of the depths of his despair at the peak of his addiction, in the months leading up to the incidents before the Court. The Court acknowledges that this was not easy, but it is hopeful that the proceedings alone have provided both necessary closure for all affected within the unit, including Corporal Kroetsch. Further, it is hopeful that the fact that Corporal Kroetsch publicly shared his story in open court provides necessary deterrence for anyone facing a similar situation. The Court acknowledges his courage and willingness to face the demons of addiction publicly and has treated this as a mitigating factor.

[90] Efforts to rehabilitate:

- (a) Immediately upon his arrest on 20 May 2016, Corporal Kroetsch cooperated fully with the military police and confessed to all of the thefts that make up both the charged and non-charged conduct discussed above. His arrest and his immediate cooperation in assuming responsibility for these incidents marked a turning point in his life. The Court has provided Corporal Kroetsch significant weight in mitigation for his level of cooperation with the military police, at an early stage.
- (b) The fact that Corporal Kroetsch voluntarily attended Cedars at Cobble Hill, British Columbia, for a residential substance abuse treatment programme was an important step. However, more importantly, by all accounts, almost 18 months since Corporal Kroetsch's last drink, he appears to be successfully battling his addiction. Make no mistake, living with an addiction is a lifelong sentence in itself and as Corporal Kroetsch humbly admitted, he really must take it one day at a time.
- (c) The evidence the Court heard from the three victims, as well as his supervisors confirmed and validated the progress made by Corporal Kroetsch. There was unanimous recognition that he is now a valued member of their team and has re-earned the trust of most of his colleagues.
- (d) Based on the evidence before the Court, Corporal Kroetsch has turned a corner. He is a new man and, as the Court stated in the case of *Lebovitch c. R.*, [1979] C.A. 462 [Quebec], given that the underlying cause of his criminality has been removed, he deserves the opportunity to continue along this healthy path to complete rehabilitation.

[91] Remorse. The sincere apologies that Corporal Kroetsch provided to the three individual victims are also strong mitigating factors. In their individual testimony before the Court, they all told the Court that they had accepted his genuine apologies, forgiven him and they are friends again. It was clear that Corporal Kroetsch has made concerted efforts to make amends to all the individuals he harmed by his conduct.

[92] Delay:

- (a) It is clear from case law (*R. v. Nasogaluak*, [2010] 1 S.C.R. 206; *R. v. Leaver*, [1996] O.J. No. 3931; *Carlini Brothers Body Shop Ltd. v. R.*, [1992] 10 O.R. (3d) 651; and *R. v. Panousis*, 2002 ABQB 1109, 2004 ABCA 211) that during sentencing, excessive delay which does not reach constitutional limits can be taken into consideration as a factor in mitigation of sentence. I am of the view that the time taken to get this matter to trial was too long, based on the complexity of the case. Arguably, delay provided an extended period of time for Corporal Kroetsch to mitigate his circumstances through his rehabilitation. In terms of timeline, on 20 May 2016, Corporal Kroetsch was arrested by

the military police and admitted his responsibility for the offences. On 24 May 2016, four days later, the military police laid an information. It is clear that this information is technically deficient and it is not clear what its purpose was or to whom it was directed. However, it is important to note that the official Record of Disciplinary Proceedings (RDP) within the military justice system was not completed and signed until 25 October 2016, five months after that date.

- (b) Upon hearing this evidence, the Court provided defence counsel sufficient latitude to make verbal submissions, without having earlier entered evidence, on the prejudicial impact the delay had on the member. Defence counsel referred to the fact that the member's attendance on his career QL5 course, projected for September 2016, was delayed and he has not yet been reconsidered for this course. Based on the evidence before the Court, it is very likely that Corporal Kroetsch's removal from this career course was based on the nature of the charges before the Court, linked directly to both his ongoing recovery and his required compliance with remedial measures. Without sufficient evidence to say otherwise, the Court is unable to draw a prejudicial inference. Nonetheless, the Court agrees that this length of delay is not recommended and noted it.

[93] First-time offender in terms of previous conduct. Relying upon Clayton Ruby in *Ruby, Clayton, Gerald Chan, Nader R. Hasan, and Annamaria Enenajor*. 2017. *Sentencing*, and the case of *R. c. Paquin*, [1989] A.Q. No. 457, defence counsel argued that the determination of what is a prior conviction for the purposes of sentencing is critical and that in order for the Court to consider the prior conduct, the offences being considered must have occurred after the earlier convictions. Defence counsel relied upon the case of *R. v. Skolnick*, [1982] 2 S.C.R. 47 at para 23, where Laskin C.J., reiterates that under the "Coke rule" expressed by Sir Edward Coke (*Institutes of the Laws of England*, 1628):

(2) The general rule is that before a more severe penalty can be imposed for a second or subsequent offence, the second or subsequent offence *must have been committed after the first or second conviction*, as the case may be, and the second or subsequent conviction must have been made after the first or second conviction, as the case may be.

[Emphasis added]

[94] Although the Court was provided with a conduct sheet related to offences committed by Corporal Kroetsch for which he was sentenced in the Edmonton Provincial Court, this Court provided these convictions no weight as he was not convicted of these offences until after the occurrence of the offences before this court martial. Corporal Kroetsch was, therefore, treated as a first offender in terms of sentencing by this court martial.

Aggravating factors

[95] Breach of trust of co-worker. Not only did he take the credit card of his close work colleague and friend, Mr Baker, he fraudulently represented himself to seven different merchants as being the lawful cardholder.

[96] Uncharged conduct. As discussed previously, although Corporal Kroetsch pleaded guilty to two offences, under consent, in the statement of circumstances presented to the Court, the Court considered the two incidents of stealing related to both Ms Story and Ms Harris.

Conclusion

[97] Both prosecution and defence counsel proposed that I consider imposing fines. The prosecution also recommended a severe reprimand in addition to the fine.

[98] Throughout all the court martial precedents relied upon by both the prosecution and defence, a fine is almost always imposed where an offence involves financial loss, whether it be by theft or other fraudulent means. As expressed to counsel during their submissions, before imposing a fine, the Court must be satisfied that the offender has the means to pay the fine. I reviewed Corporal Kroetsch's pay records and heard evidence of his personal financial responsibilities towards his children and his ex-wife. I looked for any sentencing option that could achieve a similar effect, but the military justice system has limited options for sentencing.

[99] As I stated in court during submissions, I am not convinced that a heavy fine in the amount suggested by the prosecution is the best sentence for the individual circumstances of Corporal Kroetsch. Conversely, defence argued that, based on the strong mitigating factors in this case, a \$200 fine is sufficient. He argued that Corporal Kroetsch is "deserving of compassion and leniency." Although this is true, given the gravity and seriousness of the charges before the Court, a small fine standing alone is not an appropriate sentence either.

[100] I also considered prosecution's recommendation of a severe reprimand. A severe reprimand is higher on the scale of punishments than a reprimand but both are intended to stand out as a blemish on the career record of an offender and neither are subject to automatic removal from the member's conduct sheet after one year.

[101] In Corporal Kroetsch's case, given the strong factors argued in mitigation, I believe that the imposition of a reprimand itself is sufficient to serve as a long-term reminder to him of the consequences of his addiction and the lifelong battle that he bears. The Court can impose a fit sentence reflective of the seriousness of the offence that does not impair the rehabilitation process by imposing a reprimand and a fine with flexibility in terms of payment.

[102] Corporal Kroetsch, before I pronounce sentence, I want to personally commend you on the Herculean efforts you made to turn your life around. As I stated earlier, you are aware that you have a lifelong sentence ahead of you in terms of overcoming your

addiction, but the courage you have displayed in making these first few steps, inspire us all with confidence. You are a strong man and we believe that if you can keep your addiction in check, you will enjoy a life time of rewarding opportunities both in your career and personal life.

[103] After hearing your final comments before sentencing, it is apparent that you have a great deal to offer and perhaps you can convert some of the pain you suffered into positive messaging to help others. You serve in a unique role as a cook and daily, in your job, you greet members as they walk through the food line. The excellence of the service you provide, the quality of the food you prepare, but more importantly your smile extended out to a member, who may be feeling alone and in need, will all have a direct impact on their morale. Every day, members go through the food line and behind every face, is a unique story. Some will have been kicked out of their homes, or they are serving away from their families, attending courses and exercises on temporary duty or serving on an imposed restriction and many may be battling their own demons. You are serving in a position where you can make a difference every day.

[104] I tried to find a way to sentence you to community service, but it isn't straightforward for courts martial. Although, I am restricted to the sentencing options open to courts martial under the Scale of Punishments, I invite you to reach out and look for your own opportunities. You will be able to make a difference in the lives of others, particularly those who are suffering as you did. You have family and friends who have stood steadfastly by you despite your worst conduct and the Court is empathetic in your journey.

FOR THESE REASONS, THE COURT:

[105] **FINDS** you guilty of the first charge of stealing under section 114 of the *NDA* and guilty of the second charge laid under section 117(f) of the *NDA* for acts of a fraudulent nature not particularly specified in sections 73 to 128 of the *NDA*.

[106] **SENTENCES** you to a reprimand and a \$600 fine, payable in 12 monthly instalments of \$50 per month beginning 1 February 2018. In the event you are released from the CAF for any reason before the fine is paid in full, then any outstanding unpaid balance will be due the day prior to your release.

Counsel:

The Director of Military Prosecutions as represented by Major R.J. Gauvin and Lt(N) H.J. Straarup

Major A. Gelinas-Proulx, Defence Counsel Services, Counsel for Corporal J.S. Kroetsch