



## COURT MARTIAL

**Citation:** *R. v. Bélanger*, 2018 CM 4022

**Date:** 20181217

**File:** 201852

Standing Court Martial

Royal Military College Kingston  
Kingston, Ontario, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Captain J.F.S. Bélanger, Offender**

**Before:** Commander J.B.M. Pelletier, M.J.

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[OFFICIAL ENGLISH TRANSLATION]

### **REASONS FOR SENTENCE**

(Orally)

#### **Introduction**

[1] Captain Bélanger, having accepted and recorded your guilty plea on the second and third counts in the charge sheet, the Court finds you guilty of those two charges under paragraph 117(f) of the *National Defence Act (NDA)* for an act of a fraudulent nature not particularly specified in sections 73 to 128 of the Act, and for knowingly making a false statement concerning a leave extension, contrary to section 91 of the *NDA*. The Court directs a stay of proceedings on the first count.

#### **A joint submission is presented to the Court**

[2] It is now my duty to impose the sentence. The prosecution and the defence presented a joint submission on sentence to the Court. Counsel recommend that this Court impose a sentence consisting of a fine of \$750.

[3] The military judge who is given a joint submission on sentence is severely limited when exercising his or her sentencing discretion. As any other trial judge, I may depart from a joint submission only if the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. That is the test promulgated by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43.

[4] The threshold for departing from a joint submission is undeniably high, taking into account the multiple public interest considerations that support the imposition of any jointly recommended sentence. In these cases, the prosecution agrees to recommend a sentence that the accused is prepared to accept, thereby minimizing the stress and costs of a trial. In addition, for those who are truly remorseful, a guilty plea offers the opportunity to begin making amends. The most important gain is the certainty that agreements leading to joint submissions provide, for the accused as well as for the prosecution.

[5] Yet, even if certainty of outcome is important for the parties, it is not the ultimate goal of the sentencing process. I must also keep in mind the disciplinary purpose of the Code of Service Discipline in performing my function. As recognized by the Supreme Court of Canada, the purpose of a service tribunal, is, among other things, to enable the Canadian Armed Forces (CAF) to deal with matters that pertain directly to maintaining the discipline, efficiency and morale of the military. The sentence is the culmination of the disciplinary process following a trial or a plea. It is the only opportunity for the Court to deal with the disciplinary requirements generated by the offender's conduct on a military establishment, in public, in the presence of members of the military community.

[6] Sentencing at a court martial, therefore, has a significant disciplinary function, which is not the case for the same exercise in a civilian court of criminal jurisdiction. Even when a joint submission is made to the court, the military judge must ensure, at a minimum, that the facts relating to the circumstances of the offender and the commission of the offence are not only taken into consideration, but are also adequately explained in the reasons for sentence to an extent that is not always necessary in other courts. These particular requirements of sentencing do not detract from the guidance provided by the Supreme Court of Canada on joint submissions, as per paragraph 54 of *Anthony-Cook*.

[7] New legislative provisions concerning sentencing by service tribunals came into force on 1 September 2018. Without repeating the content of all relevant sections, I wish to mention that the fundamental principle of sentencing found in section 203.2 of

the *NDA* provides that a military judge shall impose a sentence commensurate with the gravity of the offence and the degree of responsibility of the offender.

**Facts considered**

[8] At the hearing, the prosecutor read aloud a Statement of Circumstances in addition to filing the documents provided for in section 112.51 of the *Queen's Regulations and Orders for the Canadian Forces*.

[9] For its part, the defence counsel read and filed an Agreed Statement of Facts to inform the Court of Captain Bélanger's personal situation at the time and since the commission of the offences.

[10] In addition to the evidence, the Court also considered counsel's submissions, including references to similar precedents before courts martial. I am of the opinion that, in the context of a joint submission by counsel, these representations, together with the evidence, allow me to be sufficiently informed to consider and apply the objectives and principles of sentencing appropriate to the offence and the offender.

**The offences**

[11] The facts relating to the commission of the offences are revealed by the Statement of Circumstances read by the prosecutor and accepted as true by Captain Bélanger. The circumstances of the offences are as follows:

- (a) On 28 July 2017, Captain Bélanger told the sergeant-major of his unit that his father had had a heart attack earlier that day. He then met with his commanding officer to discuss the matter. He asked for four days of compassionate leave. The commanding officer recommended seven days of leave, taking into account the fact that Captain Bélanger's father was in Quebec City, and approved a leave request authorization for the period from 28 July to 8 August 2017.
- (b) On 2 August 2017, the commanding officer contacted Captain Bélanger by phone to inquire about his father's condition. During the discussion, she explained that it was possible for her to approve up to 14 days of leave.
- (c) Captain Bélanger told her that his father was doing better. He then asked for an additional four days of compassionate leave under the pretext that his father was going to undergo surgery. A second leave request

authorization was approved on 8 August 2017 by his acting commanding officer for the period from 8 August to 11 August 2017.

- (d) In September, Captain Bélanger went to Canadian Forces Base Borden for training. Because there were concerns about his behaviour, he was taken to the Canadian Forces Health Services Centre and was then admitted to hospital. A unit disciplinary investigation was then initiated, which revealed that Captain Bélanger's father had not had an operation or been hospitalized as Captain Bélanger had previously claimed in support of his compassionate leave request.

### **The offender**

[12] The Court takes into consideration that Captain Bélanger is a 37-year-old Land Logistics Officer. He joined the Canadian Forces in 2008 after completing a bachelor's degree in industrial relations at Université Laval. After his basic training, he was posted to Valcartier from December 2008 to summer 2014. He was deployed to Kabul, Afghanistan, for eight months in 2012–2013 and served with Joint Task Force X for three years in Kingston. He is single and has no criminal record or conduct sheet.

[13] Defence counsel produced an Agreed Statement of Facts to inform the Court of Captain Bélanger's personal circumstances. Since April 2018, he has been transferred to Joint Personnel Support Unit, Detachment Kingston, because of a medical condition that is calling into question his ability to fulfill the universality of service criteria. An administrative review must determine his future within the CAF. While considering the prospects of returning to civilian life, Captain Bélanger was offered a civilian job at a custom parts manufacturer in Kingston. His work with the company was greatly appreciated, particularly because Captain Bélanger was able to respond to varied and unexpected requests.

[14] At the time that the offences were committed, Captain Bélanger was going through a time of personal crisis and lied so that he would not have to report to work. He was seen by CAF health services in order to have his physical and psychological condition evaluated. Before those incidents, Captain Bélanger had a promising career. In his performance evaluation report in April 2017, he was recommended for an immediate promotion on account of his strong potential.

### **Aggravating factors**

[15] In the circumstances of this case, the Court considers as an aggravating factor the fact that Captain Bélanger repeatedly made misrepresentations. The facts of this case reveal a fraudulent intent concerning an important program aimed at improving the quality of life and well-being of CAF members by offering them the opportunity to obtain leave in order to rush to the bedside of a loved one who is seriously ill. By its very nature, the program is based on the trust that must exist between the approval authority and the CAF member who is making the leave request, taking into account the potential difficulty of verifying the validity of such a request. In lying, Captain Bélanger is jeopardizing the integrity of this important leave program, which is an important part of the CAF leave policy that is at the heart of military personnel management policies. The offender's behaviour constitutes a significant breach of trust.

**Mitigating factors**

[16] That being said, the Court also considered the following mitigating factors:

- (a) the offender's prompt guilty plea, which the Court considers to be an indication of his remorse and proof that he accepts responsibility for his actions;
- (b) the absence of any criminal or disciplinary record; and
- (c) the fact that Captain Bélanger has a life course that is not that of a criminal and has demonstrated abilities and skills in the past that reveal a strong potential for rehabilitation and an excellent ability to contribute positively to the CAF and Canadian society in the future.

**Objectives to be given priority in this case**

[17] I have come to the conclusion that, in the circumstances of this case, the imposition of the sentence should be directed at the objectives of denunciation and deterrence. Moreover, given the situation and the path taken by Captain Bélanger, sentencing must not compromise the offender's rehabilitation.

**Assessing the joint submission**

[18] To assess the acceptability of the joint submission, the Court has considered the objective seriousness of the offences that, as per sections 117(f) and 91 of the *NDA*, are punishable by a term of imprisonment of less than two years or by less punishment.

[19] The submissions of counsel included certain references to previous similar cases. These are useful in my assessment of the joint submission of counsel and the determination I must make as to its reasonableness. As mentioned above, I may depart from the joint submission for a \$750 fine only if I consider that this proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[20] As a military judge, the issue on which I have to make a determination is not whether or not I like the sentence in the joint submission or if I can come up with something better. In fact, the threshold for departing from this submission means that any other opinion I might have had on what constitutes an appropriate sentence is not sufficient to enable me to depart from the joint submission made to me.

[21] The Supreme Court of Canada has set such a high threshold for departing from joint submissions so that their undeniable benefits are not compromised. Counsel for the prosecution and the defence are well placed to arrive at a joint submission that reflects the interests of both the public and the accused. In principle, they are highly knowledgeable about the circumstances of the offender and the offence and the strengths and weaknesses of their respective positions. The military prosecutor is charged with representing the interests of the military authorities and the civilian community in order to ensure that justice is done. Defence counsel is required to act in the accused's best interest, including ensuring that the accused's plea is voluntary and informed. Counsel representing both parties are bound professionally and ethically not to mislead the Court. In short, they are entirely capable of arriving at resolutions that are fair and consistent with the public interest.

[22] To determine whether a joint submission would bring the administration of justice into disrepute or would be contrary to the public interest, I must ask whether it is so markedly out of line with the expectations of reasonable people aware of the circumstances of the case that they would view it as a breakdown in the proper functioning of the criminal justice system. Indeed, as any judge assessing a joint submission, I have to avoid rendering a decision that causes an informed and reasonable public, including CAF members, to lose confidence in the institution of the courts, including courts martial.

[23] I am of the opinion that a reasonable person aware of the circumstances of this case would expect that an offender admitting guilt on charges of making fraudulent misrepresentations and a false statement related to personal leave would be punished by a sentence that expresses disapproval for the deficiency reflected by the offences and

that has a direct personal impact on the offender. The imposition of a fine is consistent with those legitimate expectations.

[24] Considering the nature of the offences, the circumstances in which they were committed, the applicable sentencing principles and the aggravating and mitigating factors mentioned previously, I am unable to conclude that the sentence proposed jointly by counsel is unreasonable or would bring the administration of justice into disrepute. I will therefore agree to endorse it.

[25] Under section 145(2) of the *NDA*, the terms of payment of a fine are at the discretion of the service tribunal that imposes it. At the sentencing hearing, the prosecutor opposed the defence's request that the fine be paid in monthly instalments. Considering the monthly pay of a member at the offender's rank, the fact that he has no dependents and that there is no evidence that he is in a difficult financial situation, I am of the opinion that the prosecutor's position is not unreasonable. I am however going to allow time for the payment of the fine simply because the holiday period is starting and likely limits the opportunities to pay the fine.

[26] Captain Bélanger, the circumstances of the offences you pleaded guilty to reveal significant fault. Considering your plea and the time that has passed since the offences, I assume that you have had ample opportunity to reflect on your unacceptable behaviour in 2017. I hope you are determined to behave in a trustworthy manner in the future by meeting the standards of honesty and integrity that are expected of you.

**FOR THESE REASONS, THE COURT:**

[27] **SENTENCES** you to a fine in the amount of \$750, payable in a single instalment no later than 15 January 2019. If you are released from the CAF for any reason before you have paid the fine, the balance will be due on the day of your release.

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**Counsel:**

The Director of Military Prosecutions, as represented by Lieutenant(N) J. Besner

Major B.L.J. Tremblay, Defence Counsel Services, Counsel for Captain J.F.S Bélanger