



COURT MARTIAL

Citation: *R. v. Isabelle*, 2020 CM 2005

Date: 20200529

Docket: 202012

General Court Martial

Canadian Forces Base Esquimalt
Victoria, British Columbia, Canada

Between:

Her Majesty the Queen

- and -

Petty Officer 2nd Class J.J.M. Isabelle, Offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Petty Officer 2nd Class Isabelle pleaded guilty to two charges contrary to section 130 of the *National Defence Act (NDA)*. The first charge related to an offence contrary to subsection 366(1) of the *Criminal Code*, that is to say, forgery and the second charge related to an offence contrary to subsection 368(1) of the *Criminal Code*, that is to say, uttering a forged document.

[2] The offender was originally charged with 25 charges all related to specific incidents. At the start of the proceedings, the prosecution withdrew 23 of the charges and sought leave of the Court to amend the 1st and 13th charge, leaving only 2 charges on the charge sheet.

[3] In criminal law, it is possible to amend a count in an indictment at any stage in the proceedings provided the change relates only to a particular of the offence and there

is no substitution of the offence itself. In any event, any proposed amendment must not prejudice the accused's ability to make fair representations and to respond to the charges before the Court. Generally, when the particulars of a count are amended, the Court will adjourn to provide an accused sufficient opportunity to respond.

[4] The *NDA* provides a provision that enables the court to amend the particulars of a charge before it. Section 188 of the *NDA* reads as follows:

Amendment of Charges

188. (1) Where it appears to a court martial that there is a technical defect in a charge that does not affect the substance of the charge, the court martial, if of the opinion that the conduct of the accused person's defence will not be prejudiced by an amendment of the charge, shall make the order for the amendment of the charge that it considers necessary to meet the circumstances of the case.

Adjournment on amendment of charge

(2) Where a charge is amended by a court martial, the court martial shall, if the accused person so requests, adjourn its proceedings for any period that it considers necessary to enable the accused person to meet the charge so amended.

Minute of amendment

(3) Where a charge is amended by a court martial, a minute of the amendment shall be endorsed on the charge sheet.

R.S., 1985, c. N-5, s. 188; 1998, c. 35, s. 46

[5] On its face, section 188 does not expressly prohibit a court martial from amending a charge beyond merely technical errors. Rather, it addresses the circumstances requiring the court to manage any prejudice that might arise and recommends a curative adjournment where possible. Read in conjunction with section 179, this court found in the case of *R. v. Banting*, 2019 CM 2008, that a court martial has the jurisdiction to order particulars or otherwise amend charges as it is necessary and proper to do so and is consistent with the exercise of the court's jurisdiction.

[6] In this case, the amendment of the particulars is not being sought to the detriment of the accused. The facts agreed to in the Statement of Circumstances, which forms an essential part of the joint submission, outlines multiple incidents which were originally set out in 25 different charges. The prosecution sought to amend two of the charges to include all the incidents agreed to between the parties and set out in the Statement of Circumstances rather than leaving 25 different charges on the record.

[7] Since defence admitted no prejudice to the accused as a result of these changes and there was no change to the original charges themselves, the Court granted the prosecution's request.

[8] Having accepted and recorded the accused's pleas of guilty with respect to the remaining charges, the Court must now determine and pass sentence on the charges which read as follows:

“First Charge
Section 130 N.D.A. AN OFFENCE PUNISHABLE UNDER
SECTION 130 OF THE NATIONAL DEFENCE
ACT, THAT IS TO SAY, FORGERY,
CONTRARY TO SECTION 366(1) OF THE
CRIMINAL CODE

Particulars: In that he, between 21 August 2018 and 8 February 2019, at or near Victoria, British Columbia, did make false documents, to wit: a Canadian Forces Health Services Chit, knowing it to be false, with intent that they should in any way be used as genuine to the prejudice of Government of Canada.

Thirteenth Charge
Section 130 N.D.A. AN OFFENCE PUNISHABLE UNDER
SECTION 130 OF THE NATIONAL DEFENCE
ACT, THAT IS TO SAY, UTTERING FORGED
DOCUMENT, CONTRARY TO SECTION
368(1) OF THE CRIMINAL CODE

Particulars: In that he, between 1 November 2018 and 8 February 2019, at or near Victoria, British Columbia, knowing that documents were forged, to wit : a Canadian Forces Health Services Chits, did use them, deal with them or act upon them as if the documents were genuine.”

[9] The Statement of Circumstances filed in court reads as follows:

“STATEMENT OF CIRCUMSTANCES

1. Petty Officer 2nd Class (PO2) Isabelle is a member of Base Logistics (“BLOG”), Canadian Forces Base Esquimalt.
2. In early February 2019, CPO2 Liefhebber, Warehouse Supervisor at BLOG, notified CPO1 Smith, Supply NCO and Chief of BLOG, that a subordinate, PO2 Isabelle, had been on sick leave unusually often during the previous few months.

3. CPO2 Liefhebber reviewed the medical chits submitted by PO2 Isabelle between the months of September 2018 and February 2019 and discovered some irregularities, particularly:

- i. A medical chit dated 9 January, 2019 granting 2 days of leave but the granting authority was a Medical Technician Corporal (QL5), who does not have such authority;
- ii. A medical chit dated 26 January, 2019, which is a Saturday even though the Base Hospital is not open on weekends.

4. CPO2 Liefhebber then contacted Ms. Sherry Clarke at Canadian Forces Health Services Centre Pacific (“CF H Svcs C (P)”) to cross-reference the medical chits submitted by PO2 Isabelle at BLOG with those kept on file at CF H Svcs C (P). Ms. Clarke was able to confirm that only four of the 16 medical chits submitted by PO2 Isabelle had been issued by CF H Svcs C (P).

5. On 25 February, 2019, a military police investigation was commenced, and a production order was submitted to the provincial court of British Columbia for all medical chits issued to PO2 Isabelle between 18 September 2018 and 6 February 2019 by CF H Svcs C (P). These medical chits were obtained following the production order, reproduced, and are dated:

- iii. 18 Sep 18 for 1 day leave, signed by Cpl Scott Edney
- iv. 20 Sep 18 for 2 days leave, signed by Dr. Tung Siu
- v. 17 Oct 18 for 2 days leave, signed by Dr. Tung Siu
- vi. 5 Nov 18 for 1 day leave, signed by Dr. Andre Pickersgill.

6. The medical chits submitted by PO2 Isabelle to BLOG are:

- i. 18 Sep 18 for 1 day leave, signed by Cpl Scott Edney
- ii. 20 Sep 18 for 2 days leave, signed by Dr. Tung Siu
- iii. 17 Oct 18 for 2 days leave, signed by Dr. Tung Siu

- iv. 1 Nov 18 for 2 days leave, signed by Dr. Andre Pickersgill
- v. 5 Nov 18 for 1 day leave, signed by Dr. Andre Pickersgill
- vi. 20 Nov 18 for 1 day leave, signed by Cpl Scott Edney
- vii. 21 Nov 18 for 2 days leave, signed by Dr. Andre Pickersgill
- viii. 10 Dec 18 for 1 day leave, signed by Dr. Andre Pickersgill
- ix. 11 Dec 18 for 2 days leave, signed by Dr. Andre Pickersgill
- x. 7 Jan 19 for 2 days leave, signed by Dr. Andre Pickersgill
- xi. 9 Jan 19 for 2 days leave, signed by Cpl Scott Edney
- xii. 11 Jan 19 for 1 day leave, signed by Cpl Scott Edney
- xiii. 26 Jan 19 for 2 days leave, signed by Dr. Tung Siu
- xiv. 28 Jan 19 for 2 days leave, signed by Dr. Andre Pickersgill
- xv. 30 Jan 19 for 3 days leave, signed by Cpl Scott Edney
- xvi. 4 February 19 for 3 days leave, signed by Dr. Andre Pickersgill

7. Dr. Andre Pickersgill provided a statement where he mentioned that he did not provide a medical chit to PO2 Isabelle on 1 November 2018, 21 November 2018, 10 December 2019, 11 December 2019, 7 January 2019, 28 January 2019 and 4 February 2019.

8. Cpl Edney provided a statement where he stated that he was attending LUSAR training from 19 to 22 November 2018, on annual leave from 22 December 2018 to 10 January 2019 and was not working at CFHS C (P) IHt 1 on 20 November 2018, 9 January 2019, 11 January 2019 and 30 January 2019.

9. Dr. Tung Siu provided a statement where he mentioned that he did not work at CF H Svsc C (P) on 26 January 2019 so he could not have issued PO2 Isabelle a medical chit on that date.

10. PO2 Isabelle attended at MPU Esquimalt for a cautioned interview on 28 February 2019. He was advised of his right to a lawyer and the subject matter of the interview and investigation. PO2 Isabelle declined to speak with a lawyer at the beginning of the interview. During the interview, he stated to military police that he made his own medical chits by altering legitimate copies using the Paint application on his home computer.

11. During this interview, PO2 Isabelle also stated that he fabricated the medical chits because he has post-traumatic stress disorder (“PTSD”) related to an event that took place during the summer of 2018. He stated that he did not inform his superiors or medical staff of this condition for fear of losing his job.

12. PO2 Isabelle used the forged medical chits to justify his absence from work during those periods of time. He brought the forged medical chits to his immediate supervisor, Mr. Nsionu, when he was back to work after his absence.”

[10] The Agreed Statement of Fact filed in court reads as follows:

“AGREED STATEMENT OF FACT

1. PO2 Isabelle enrolled in the Canadian Forces as a reservist on 22 May 2003.

2. PO2 Isabelle completed a component Transfer to regular force on 27 Oct 2017.

3. PO2 Isabelle is currently 34 years old.

4. PO2 Isabelle has no conduct sheet and no civilian criminal record.

5. From the outset PO2 Isabelle was remorseful for his actions which led to these charges.

6. At the time of the conduct PO2 Isabelle was going through personal difficulty with his health, depression and substance abuse.

7. PO2 Isabelle had not sought treatment for his substance abuse and depression as he was trying to hide his condition.

8. When PO2 Isabelle's actions became known he acknowledged what he had done to his chain of command and to the military police.
9. Once his actions became known PO2 Isabelle sought assistance for his depression and substance abuse.
10. PO2 Isabelle recognizes that he should have sought help with his situation rather than trying to hide it.
11. PO2 Isabelle continues with mental health counselling at this time.
12. As of 8 May 2020, PO2 Isabelle has remained substance free for one year and now is working on the second year.
13. PO2 Isabelle has financial responsibilities with both family support payments and personal debt payments. He has maintained all payments and has not been in default on any financial obligation.
14. PO2 Isabelle has the support of his chain of command."

The joint submission

[11] In a joint submission, the prosecution and defence counsel recommend that I impose a sentence of a severe reprimand and a fine in the amount of \$3,000. In *R. v. Anthony-Cook*, 2016 SCC 43, the Supreme Court of Canada clarified that a trial judge must impose the sentence proposed in a joint submission, "unless the proposed sentence would bring the administration of justice into disrepute, or is otherwise not in the public interest". By entering into a plea bargain, the constitutional right to be presumed innocent is given up and this should never be done lightly. In fact, by virtue of the oath taken by all service members, this right is one we all stand to protect.

[12] Thus, in exchange for making a plea of guilty, the accused must be assured of a high level of certainty that the Court will accept the joint submission. The prosecution, who jointly proposed the sentence, will have been in contact with the chain of command and is aware of the needs of the military and the surrounding community and is responsible for representing those interests. The defence counsel acts exclusively in the accused's best interests, including ensuring that the accused's plea is a voluntary and informed choice, and unequivocally acknowledges the accused's guilt. As members of the legal profession and accountable to their respective law societies, the Court relies heavily on their professionalism, honesty and judgment, as well as their duty to the Court.

The evidence

[13] In this case, the prosecutor read the Statement of Circumstances and provided all those documents required under the *Queen's Regulations and Orders for the Canadian Forces*. The Statement of Circumstances was introduced on consent, to inform the Court of the context of the incidents that led to the charges before the Court. In addition, on consent, defence counsel submitted an Agreed Statement of Fact to inform the court of those matters and facts that are particular to the offender. Further, the Court benefitted from counsel's submissions to support their joint submission on sentence, where they highlighted relevant facts and considerations.

The offender

[14] Petty Officer 2nd Class Isabelle is 34 years old. He enrolled in the Canadian Armed Forces (CAF) on 22 May 2003 and has served approximately 17 years in the CAF in both the regular and reserve forces. He completed a component transfer to the regular force on 27 October 2017 and is in possession of both the Canadian Forces Decoration (CD) and the General Service Medal – Expedition (GSM-EXP). He has no conduct sheet or civilian criminal record. At the time of the conduct, Petty Officer 2nd Class Isabelle was going through a period of personal difficulty with his health, highlighted by depression and substance abuse and during the time period in question, he was attempting to hide his condition. Once his actions became known, he quickly acknowledged to both his chain of command and the military police what he had done and sought assistance to address both his depression and substance abuse. The Court notes he has remained substance free for more than one year.

[15] Despite his difficulties, Petty Officer 2nd Class Isabelle has maintained, without default, all his financial responsibilities which includes payments towards his family support and personal debt obligations.

Purpose, objectives and principles of sentencing

[16] The fundamental purpose of sentencing in a court martial is to promote the operational effectiveness of the CAF by contributing to the maintenance of discipline, efficiency and morale, and to contribute to respect for the law and maintenance of a just, peaceful and safe society. The fundamental purpose is achieved by imposing sanctions that have one or more objectives as set out at subsection 203.1(2) of the *NDA*. The prosecution has emphasized that in negotiations, he and defence counsel closely considered the objectives set out therein. On the facts of this case, both prosecution and defence submit the objectives they considered most important are general and specific deterrence as well as denunciation and rehabilitation. I agree with their assessment. In the offender's particular case however, rehabilitation is also of significant importance. The Court heard testimony from Chief Petty Officer 2nd Class Carty describing how the offender struggled during his transition from the reserve to the regular force. This type of struggle is not a new phenomenon. It is not unheard of particularly in technical trades that when a member transfers from the reserves to the regular force they will often experience training gaps or deficiencies because in most of the cases, they have not had

the advantage of the experience gained from serving full-time as their regular force counterparts do.

[17] In his testimony before the court, Chief Petty Officer 2nd Class Carty acknowledged that the offender is now contributing in a very effective way and has a very promising career in the CAF. For that reason, defence counsel submitted that rehabilitation becomes a very high priority for the Court. When members are considered suitable for continued service in the CAF, rehabilitation is instrumental to successfully reintegration back into meaningful service in such a manner that they can become even greater contributors as we move forward.

[18] Under section 203.3 of the *NDA*, in imposing a sentence, the Court shall increase or reduce a sentence to account for any aggravating and mitigating circumstances relevant to the offence or the offender. After hearing the submissions of counsel, the Court highlights the following aggravating factors:

- (a) Rank of the offender and his experience in the CAF. The integrity and the level of responsibility demanded from our senior military personnel are significant. As a senior non-commissioned member, Petty Officer 2nd Class Isabelle failed to meet the level expected of his rank and experience.
- (b) Frequency and numbers of incidents. The fabrication of medical chits occurred on multiple occasions. Each time, the offender created the fake medical chits, and submitted them to his supervisor, he had the opportunity to reflect. Fortunately, the offender had a prudent supervisor who noticed that something was wrong and intervened. This ultimately provided the catalyst for the offender to seek help;
- (c) Abuse of Trust – two levels. There are two levels to the abuse of trust that transpired. The first is with respect to the trust the medical system places in each of us as military members. When they hand us a medical chit or give us certain direction or a prescription, we are expected to follow what is given. By actually engineering his own medical chit, the offender betrayed the trust they placed in him. Secondly, he betrayed the trust of his chain of command. The supervisors of members, particularly those who supervise members of senior rank, will generally accept what their members tell them regarding their medical status. For example, most supervisors will not always require their subordinates to go to the Medical Inspection Room (MIR) to get a chit to prove that they are not feeling well on a particular day and cannot come into work. In the offender's case, the chain of command did not question him for a very long time.

- (d) Level of pre-meditation. The Court noted that he used a Paint program to prepare the medical chits, and carefully used different names of personnel who worked at the medical section;

[19] However, the Court notes there are several mitigating factors that must be highlighted:

- (a) Guilty plea. Petty Officer 2nd Class Isabelle's pleas of guilt for these offences, as described in the Statement of Circumstances, must be given their full weight. His guilty pleas have saved the Court, counsel and the unit supporting the Court considerable time.
- (b) Remorse. Petty Officer 2nd Class Isabelle displayed courage by stepping forward to publicly accept responsibility before his peers, supervisors and subordinates. When the Court provided him the opportunity to speak, he very eloquently apologized and it was evident that he regrets his past conduct.
- (c) First-time offender. Petty Officer 2nd Class Isabelle has no conduct sheet nor previous criminal record and this court martial is the first disciplinary hearing of any type for him.
- (d) Rehabilitation. Petty Officer 2nd Class Isabelle has made significant self-investment in his rehabilitation. The matters before the Court unfolded over a year and a half ago and in the intervening time, he did not stand still. He immediately sought professional help and by the time he came before the Court today, he has been free of any type of inducements, drugs and/or alcohol for over a year. He has demonstrated great effort and progress. In referring to the testimony of Chief Petty Officer 2nd Class Carty, which was extremely balanced and very helpful, it was clear that in addition to seeking personal assistance, Petty Officer 2nd Class Isabelle embraced a training plan designed specifically to provide him with targeted professional development. He rotated through various sections at work, learned what he needed and from Chief Petty Officer 2nd Class Carty's testimony, it appears that Petty Officer 2nd Class Isabelle has transformed himself into a role model. That takes a lot of character and the court applauds his efforts. Petty Officer 2nd Class Isabelle made some really bad choices, but when caught, he basically turned his life around, opened himself up welcoming help and invested in his own recovery. Chief Petty Officer 2nd Class Carty spoke very positively of the progress that Petty Officer 2nd Class Isabelle has made to date and how he has redeemed the confidence and trust of his chain of command.

Parity

[20] Pursuant to section 203.3 of the *NDA*, the law requires that the sentence imposed be similar to sentences imposed on similar offences. The prosecution provided me with four cases: *R. v. M.S.*, 2009 CM 3003; *R. v. ex-Ordinary Seaman N.K. Stewart*, 2007 CM 4018; *R. c. Chabot-Leroux*, 2017 CM 4015 and *R. v. Derival*, 2018 CM 4009.

[21] In short, based on the case law and the submissions made by counsel, it is clear that the sentence recommended in the joint submission is within an acceptable range for the type of punishment historically awarded for this type of offence.

[22] After considering counsel's submissions in their entirety and all the evidence before the Court, I must ask myself whether the proposed sentence would be viewed by the reasonable and informed CAF member as well as the public at large as a breakdown in the proper functioning of the military justice system. In other words, would the acceptance of the sentence cause the general public to lose confidence in the justice system?

Conclusion

[23] Although a fine in the amount of \$3,000 is indeed significant, based on the scale of punishments set out within the *NDA*, the imposition of a severe reprimand further reinforces the severity of the offences. A severe reprimand is intended to send a message to the larger community that the conduct is unacceptable and will be punished in a manner that leaves a stain on the offender's record for the foreseeable future.

[24] Petty Officer 2nd Class Isabelle, you have several choices as you move forward. You can't change how you reacted to the personal challenges that set the ground for the offences before the court, but you can change how you will deal with similar challenges in the future. Our true character is best defined by what we do after we have failed. For example, the humility you displayed in immediately accepting responsibility for the incidents before the court, combined with you seeking immediate personal help reinforces this. You will have to continue to draw on this same courage and determination to sustain the personal changes you have made. In his testimony, Chief Petty Officer 2nd Class Carty described you as a role model. He recounted how much you have progressed with your professional knowledge within your trade and he commented on the diligence you display in your duties. His observations suggest that you have made a significant investment in correcting your behaviour to ensure that this type of incident never happens again.

[25] In his testimony, Chief Petty Officer 2nd Class Carty also made reference to an epidemic of mental health problems that are evolving amongst many military members, which he feels that you are well placed to help. I would invite you to reach out to people in need, sharing what you have learned from your own personal experience. Very often, helping others is therapeutic in helping ourselves. Please give back, but be very mindful of your own known frailties. When one has an identified problem with addiction, it needs to be managed for the rest of one's life. It is something that you must never become complacent with.

[26] Considering all the factors, the circumstances of the offence, the consequence of the finding, the sentence and the gravity, I am satisfied that counsel have discharged their obligations in making their joint submission. The recommended sentence is in the public interest and does not bring the administration of justice into disrepute.

FOR THESE REASONS, THE COURT:

[27] **FINDS** Petty Officer 2nd Class Isabelle guilty of charges 1 and 13.

[28] **SENTENCES** the offender to a severe reprimand and a fine in the amount of \$3,000 payable in monthly instalments of \$300, beginning with the 15 June 2020 pay period.

Counsel:

The Director of Military Prosecutions as represented by Major M.D. Ferron

Lieutenant-Colonel D. Berntsen, Defence Counsel Services, Counsel for Petty Officer 2nd Class J.J.M. Isabelle