



COURT MARTIAL

Citation: *R. v. Tarso*, 2022 CM 5013

Date: 20220622

Docket: 202149

Standing Court Martial

Canadian Forces Base Gagetown
Oromocto, New Brunswick, Canada

Between:

Her Majesty the Queen

- and -

Master Warrant Officer C.H. Tarso, Offender

Before: Commander C.J. Deschênes, 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)

Introduction

[1] Master Warrant Officer Tarso admitted her guilt to two offences punishable under section 130 of the *National Defence Act (NDA)*, that is to say, fraud, contrary to section 380 of the *Criminal Code*, and breach of trust by public officer contrary to section 122 of the *Criminal Code*. Having accepted and recorded the guilty plea on these two charges, the Court must now determine and impose a fair and fit sentence, which requires that the punishment be proportional to the circumstances surrounding the commission of the offences, and takes into consideration the offender's situation. In order to assist the Court in determining the appropriate punishment, counsel are jointly recommending the imposition of a punishment of thirty days of imprisonment combined

with a dismissal from Her Majesty's service and a reduction in rank to sergeant. The prosecution also seeks, with the concurrence from the defence, the imposition of a forfeiture order and a prohibition order in relation to employment. The location of the incarceration is contested, with the prosecution recommending that Master Warrant Officer Tarso serves her thirty days' imprisonment in New Brunswick while the defence requested that it be served in Newfoundland.

Summary of circumstances

[2] The circumstances surrounding the commission of the offences contained in the Agreed Statement of Circumstances were read in court and the document was introduced as an exhibit. Master Warrant Officer Tarso admitted that the account of the events was true. The Agreed Statement of Circumstances reads as follows:

“AGREED STATEMENT OF CIRCUMSTANCES

1. At all material times, Master Warrant Officer (ret'd) Tarso was a member of the Canadian Armed Forces (CAF), Regular Force. On 1 July 2016, Master Warrant Officer Tarso (then Warrant Officer), a Supply Technician, was posted to 5th Canadian Division Support Base Gagetown, Detachment Charlottetown, in Charlottetown, Prince Edward Island (Charlottetown or “the unit”).

2. Master Warrant Officer Tarso was posted to Charlottetown as the Detachment Second-in-Command. Due to a vacancy of the Detachment Commander position, throughout her posting, Master Warrant Officer Tarso, the senior ranking member at Charlottetown, filled the role of Detachment Commander. On 26 June 2019, Warrant Officer Tarso was promoted to Master Warrant Officer. In July 2019, Master Warrant Officer Tarso was posted to Gatineau, Québec.

Circumstances related to Charge 1: Fraud

3. Throughout her tenure as Detachment Commander at Charlottetown, Master Warrant Officer Tarso held s. 32 and 34 delegations of authority under the *Financial Administration Act (FAA)*. On 29 April 2012, Master Warrant Officer Tarso successfully completed the Department of Defence (DND) Expenditure Management Course. In order to maintain *FAA* delegations, holders of the authorities are required to re-certify every three years. As required, Master Warrant Officer Tarso re-certified on 16 April 2015 and again on 21 February 2018. At all times, Master Warrant Officer Tarso was aware of the obligations accompanying her *FAA* designations.

4. Prior to being posted to Charlottetown, Master Warrant Officer Tarso completed the DND Payment Card Orientation course. That course

covered the laws, policies, and procedures that must be followed by cardholders. The governing laws, policies and procedures mandate:

- a. Appropriate financial authorities and approvals must be in place before completing a payment;
- b. A payment card must only be used for work purchases (no personal use); and
- c. Under no circumstances must a person with delegated authority under s. 34 of the *Financial Administration Act* certify their own purchases.

5. On 29 November 2017, Master Warrant Officer Tarso received a payment card, a MasterCard bearing number XXXX.

6. Master Warrant Officer Tarso's payment card was "assigned" and "chipped". This meant the card bore her name ("Cathy H Tarso"), she was the only person permitted to use the card, and each transaction required that the card be inserted into the vendor's electronic transaction device and card's unique personal identification number be entered [sic].

7. Between 1 December 2017 and 19 July 2019, Master Warrant Officer Tarso used her assigned payment card 99 times, at 15 different locations, to unlawfully purchase items for her personal use. The value of goods purchased for her personal use totalled \$36,414.62. Attached as Appendix A is a list of these fraudulent transactions.

8. In each case, Master Warrant Officer Tarso created and falsified DND 2227 Supply Documents related to those purchases. Master Warrant Officer Tarso falsified the documents by

- a. naming one of her subordinates as the originator of the request;
- b. falsifying the justification for the purchase under "Special Instructions"; and
- c. using her delegated authority under s. 32 of the *FAA* to certify that the purchase was authorised.

9. DND pays a consolidated invoice every month for all departmental transactions. Throughout the relevant period, monthly payments for Master Warrant Officer Tarso's purchases on her payment card were made by the Government of Canada. At no time did Master Warrant Officer Tarso make any attempt to reimburse the Receiver General (Government of Canada) for any of the items unlawfully purchased using her payment card.

10. Members of the unit suspected that Master Warrant Officer Tarso may have been engaged in possible fraudulent activity but, as she was the Detachment Commander, no official complaint was made against Master Warrant Officer Tarso until after she was posted out of the unit in July 2019.

11. Shortly after her departure, two boxes of DND 2227 documents that Master Warrant Officer Tarso had been keeping in her office were opened. As a result of what was found in those boxes, a complaint was initiated. The Post Purchase Verification Unit carried out a focused audit on two months of Master Warrant Officer Tarso's payment card purchases at particular vendors. As a result of that audit, the Forensic Accounting Management Group (FAMG), of Public Service and Procurement Canada, was brought in to conduct a full scale forensic audit in relation to Master Warrant Officer Tarso's payment card, related DND 2227 Supply Documents, and Master Warrant Officer Tarso's handling of other financial transactions.

12. On 3 November 2020, members of the Canadian Forces National Investigation Section (CFNIS) carried out search warrants at Master Warrant Officer Tarso's residence in North Bay, Ontario, and her personal storage locker [sic] on the base in North Bay. North Bay was Master Warrant Officer Tarso's second posting after Charlottetown. During the search of both the residence and storage locker, CFNIS investigators identified and seized items unlawfully purchased by Master Warrant Officer Tarso using her payment card. The seized items included:

- a. Motorcycle wheel balancing stand;
- b. Cross-training ball;
- c. 6-pack foam flooring;
- d. Pulley remover and installer set
- e. Ninja Airfryer;
- f. 13-piece cutlery set; and
- g. 12-ton hydraulic shop press.

13. During the search of both Master Warrant Officer Tarso's residence and her storage locker, investigators photographed, but did not seize, numerous items that matched the description of items unlawfully purchased with Master Warrant Officer Tarso's payment card, but which investigators could not definitively identify as the specific item purchased.

Circumstances related to Charge 3: Breach of Trust by a Public Officer

14. At all material times, Master Warrant Officer Tarso was an “official”, by virtue of her position and employment as a member of the CAF, and was acting in connection with the duties of her office.

15. The Department of National Defence and Canadian Forces Code of Values and Ethics (“Code of Values and Ethics”) outlines behaviours which are mandated by DAOD 7023-1. It stipulates that CAF members. CAF members are expected to steward the responsible use of resources by “effectively and efficiently using public money, property and resources managed by them”. An additional obligation is imposed on public servants who are also supervisors or managers, as these classes of office holders have a particular responsibility to exemplify the values of the public sector.

16. While holding office, Master Warrant Officer Tarso used or permitted the use of public resources for a personal purpose. In doing so, Master Warrant Officer Tarso breached the standard of responsibility and conduct demanded of her by the nature of her office.

17. On 20 occasions, Master Warrant Officer Tarso used Charlottetown’s Purolator account to have items delivered to friends and family members at their home or other non-DND locations. When Master Warrant Officer was challenged by the unit for her personal use of the Purolator account, Warrant Officer Tarso responded that she would reimburse the unit for personal deliveries, however, the FAMG audit confirmed that Master Warrant Officer Tarso did not reimburse the unit for these costs which totalled \$881.00.

18. Shortly after her arrival at Charlottetown, Master Warrant Officer Tarso surreptitiously obtained and provided two Charlottetown’s Confederation Bridge Passes to family members to facilitate personal travel off the island. Bridge Passes were purchased by Charlottetown for the unit’s weekly trips to 5 CDSB Gagetown or for other unit business-related travel that required members of the unit to cross Confederation Bridge. Master Warrant Officer Tarso knew the Bridge Passes were for the exclusive use of employees or members of the unit traveling on CAF business. Master Warrant Officer Tarso later provided the unit with two new Bridge Passes at her own expense.

19. Between December 2017 and July 2019, Master Warrant Officer Tarso facilitated the use of public funds on three occasions to purchase \$955.00 worth of goods or services from Centennial Auto-Sport & Tire. Centennial Auto-Sport & Tire deals exclusively with “recreational” vehicles (including snowmobiles and motorcycles). Charlottetown did not have, keep or use either a snowmobile or a motorcycle at any time while Master Warrant Officer Tarso was posted to the unit. Through the course

of the investigation, CFNIS investigators confirmed motorcycles and related parts and equipment among Master Warrant Officer Tarso family's personal belongings.”

Position of the parties

Prosecution

[3] The prosecution explained that the charge of fraud involved a significant value of over \$36,000 of public funds used for personal expenses, averaging one purchase per week over a period of about seventeen months with approximately \$2,000 each month spent for purchases that included automobile parts, electronics and fitness equipment. There were over one hundred deceitful transactions. The contentious receipts and DND forms were kept hidden by the offender in her office, which further serve to demonstrate a high level of premeditation involved to achieve the deception. Although no motive could be identified for the commission of the offences, the prosecution alleged that Master Warrant Officer Tarso was spending the funds to benefit herself as well as her spouse and her dependent son who are motorcycle enthusiasts with a strong interest in auto mechanics. The prosecution contended that the offender used public funds to augment her lifestyle. As for to the second charge, the prosecution contended that Master Warrant Officer Tarso used her public office for a dishonest purpose and only purchased new toll bridge passes for the unit in order to replace the ones she took after her breach of trust was uncovered.

[4] The prosecution suggested that denunciation and general deterrence are the main objectives that should be achieved with the offender's punishment. The duration of the impugned conduct, the number of times deceitful means were used, the significant financial loss to the Canadian Armed Forces (CAF), the premeditation involved and the abuse of authority by the offender when she held the highest rank and position within the unit, combined with the knowledge and skills of a trained supply technician are all factors that were considered when determining the recommendation for a just sentence. In mitigation, the prosecution considered the guilty plea and the fact that the offender has no conduct sheet, however the offender's mental health was not considered because there is no link between their existence and the commission of the offences.

[5] The prosecution recommended that the incarceration be served in New Brunswick since the offender's last unit, which is in charge of the transfer to a civilian prison following any committal resulting from these proceedings, is located in North Bay, Ontario. Incarceration in Newfoundland as recommended by defence counsel would cause significant cost and logistical issues to the offender's former unit.

[6] Lastly, the prosecution asked for a restitution order for the total amount owed of \$37,268.19, as well as the imposition of two *Criminal Code* orders: an order that the offender be prohibited from seeking, obtaining or continuing any employment or becoming a volunteer in any capacity that involves having authority over the real property, money or valuable security of another person for a period of five years

(section 380.2); and that the seven items seized by the CFNIS on 3 November 2020 from the offender's residence and storage space in North Bay, Ontario be forfeited to Her Majesty in right of Canada to be disposed of or otherwise dealt with in accordance with the law by the member of the Queen's Privy Council for Canada that is designated by the Governor in Council for the purpose of paragraph 490.1(1)(b) of the *Criminal Code*.

Defence

[7] The defence contended that the joint submission would achieve general deterrence, particularly since a reduction in rank is a cause for embarrassment. She explained that the offender is willing to reimburse the totality of the public funds defrauded but that a six-month period would be required for the reimbursement. An order could therefore be imposed for a full restitution by January 2023.

[8] The defence recommended that the offender be incarcerated in Newfoundland, her new province of residence where her family lives. The offender's counsellor, a certified therapist, is of the view that he could best support Master Warrant Officer Tarso for mental health follow-up if she was to be incarcerated in her province of residence. Defence also suggested that, in order to reduce the logistical and financial impact on her former unit resulting from an interprovincial transfer to Newfoundland from the place of these proceedings, Master Warrant Officer Tarso can make her own way to Newfoundland in order to turn herself into custody. An intermittent sentence would provide the desirable effect of allowing the incarceration to commence once the offender is in Newfoundland.

Evidence

[9] The Court examined the Agreed Statement of Circumstances with Appendix A, a document titled "R. v. Tarso - Details of Fraudulent Transactions", which was introduced as an exhibit. Appendix A indicates that the value of fraudulent purchases totaled \$36,414.62. Two binders containing documents divided by Tab numbers were also introduced with Appendix A: the first binder contains Tabs 1 to 51; and the second binder contains tabs 52 to 99. Each Tab contains a complete form DND 2227 with MasterCard purchase receipts of a card number ending in XXXX, as well as a Bank of Montreal statement of a Government of Canada Corporate MasterCard with the same card number. The Bank of Montreal account is under the name of Cathy Tarso. The documents contained in the 99 tabs show transactions dating from January 2018 to May 2019.

[10] The documentary evidence listed at article 111.17 of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O) provided by the prosecution in accordance with article 112.51 of the QR&O were also considered.

Victim impact statements

[11] The prosecution provided three victim impact statements (VIS) prepared by Master Warrant Officer Tarso's former subordinates whose names were used in the commission of the fraud. Donna Hume, a public servant with over twenty-two years of service, wrote that she felt anger, frustration and tears as she prepared her VIS. She explained that she became concerned about her own integrity being questioned when the Confederate Bridge passes went missing because she was one of three persons who had access to the locked cabinets where they were usually kept. Although she suspected there were some issues with public-funded postage being used for the offender's personal purpose, learning about the fraud was mind-blowing to her. She felt hurt, shocked and betrayed when she found out her name had been used in the deceit.

[12] Sarah Doyle wrote in her VIS that she felt betrayed by Master Warrant Officer Tarso's actions, particularly as the offender had occupied the position of detachment commander; the staff trusted Master Warrant Officer Tarso's judgement and believed she had always acted with integrity. Mrs Doyle felt embarrassed when she was made aware of the offender's deceitful actions.

[13] In his VIS, Master Corporal Faucher referred to trust issues that the offender's actions caused toward the chain of command, and the emotional and time cost required of him to participate in the investigation of her actions.

Impact statement

[14] The prosecution also read an impact statement prepared by Lieutenant-Colonel Walker, Commanding Officer of 5th Canadian Division Support Base Gaquetown. Lieutenant-Colonel Walker wrote that there were various facets to the impact on the unit. The investigation required time and effort from the units' members. It caused stress and cast doubt over some members' integrity because they were, or could have been, perceived as complicit in the scheme. There were also disruptions to the operations of the unit, creating additional and unnecessary use of resources. Lieutenant-Colonel Walker was also concerned with general deterrence and how an abuse of authority of this sort has the potential to create a dangerous precedent for the unit.

Defence's evidence

[15] The defence introduced as an exhibit an Agreed Statement of Facts which includes additional information pertaining to the offender's personal and professional situation.

Apology

[16] Master Warrant Officer Tarso offered an apology to the unit and to the Court, and explained that she took responsibility for her actions. She also stated that she had a gambling addiction and suffered from depression at the time of the commission of the offences.

The analysis

Sentencing principles of the military justice system

[17] When determining a sentence, the Court must be guided by the sentencing principles found in the *NDA*. Subsection 203.1(1) enunciates the fundamental purpose of sentencing, which is “to maintain the discipline, efficiency and morale of the Canadian Forces”.

[18] The fundamental purpose of sentencing is to be achieved by imposing just punishments that have one or more of the following objectives listed at subsection 203.1(2), such as to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct; to maintain public trust in the Canadian Forces as a disciplined armed force; or to promote a sense of responsibility in offenders and an acknowledgment of the harm done to victims or to the community. The objectives of the sentence are dictated by the particularity of the case and of the offender, which is the fundamental principle of sentencing encapsulated in the *NDA*: “A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender”.

Role of counsel

[19] It is part of counsel’s mandate, in representing their respective client, to recommend to the Court a sentence that they deem fit and fair. Counsel have a comprehensive and complete knowledge of the circumstances surrounding the commission of the offence, and defence counsel is also aware of the offender’s personal situation. When considering an appropriate sentence to recommend to this Court, counsel will often times engage in resolution discussions and may agree on a joint submission. The Supreme Court of Canada (SCC) recognized in *R. v. Anthony-Cook*, 2016 SCC 43 that, “properly conducted, they [these resolution discussions] permit the system to function smoothly and efficiently.”

Benefits of a joint submission

[20] Joint submissions provide many benefits to the accused, the participants, the unit, and the military justice system. They assist in limiting the resources normally required to support a trial by court martial. A guilty plea offers accused persons an opportunity to take responsibility for their actions and tends to show that they are indeed remorseful.

Public interest test

[21] The SCC in *Anthony-Cook*, in recognizing these many benefits in the criminal justice system at large, has established the public interest test for trial judges dealing with a joint submission. It dictates that joint submissions should not be departed from by trial judges, unless the joint submission would cause an informed and reasonable

public to lose confidence in the institution of the courts or would be contrary to the public interest. Only then should the sentencing judge follow certain steps before considering rejecting the recommendation. This means that I, as the sentencing judge, have limited discretion in this case.

[22] This Court must therefore examine the joint submission and determine if it is contrary to the public interest or whether it would cause an informed and reasonable person or public to lose confidence in the institution of the courts. If it is not contrary to the public interest, or if it would not bring the military justice system into disrepute, this Court is required to accept it even though it may have arrived at a different sentence in the absence of a joint recommendation.

[23] When considering a joint submission, trial judges can rightfully assume that counsel were mindful of the statutory sentencing principles explained earlier when agreeing on the joint submission. It is also assumed that counsel took into consideration all relevant facts when mutually agreeing upon an appropriate sentence. The Agreed Statement of Circumstances that was read in court and filed as an exhibit provides the Court with the facts that guided counsel in coming to a joint submission, as it generally provides a fulsome description of the circumstances surrounding the commission of the offences, including the existence of aggravating factors. Also, when adduced as evidence as part of the sentencing hearing, an Agreed Statement of Facts provides additional information that may present mitigating factors that were also considered during the plea negotiations, which would presumably further support the joint submission.

The offences

[24] In consideration of the joint submission, the Court considered the objective gravity and the nature of both offences in which the guilty plea was offered. The offence of fraud is an objectively serious offence. A person found guilty of fraud when the subject-matter of the offence exceeds five thousand dollars is liable to a term of imprisonment not exceeding fourteen years. A breach of trust is also a serious offence, carrying a maximum punishment of imprisonment not exceeding five years. In *R. v. Boulanger*, 2006 SCC 32 at paragraph 52, the SCC described the purpose of an offence of breach of trust, which is indicative of its objective gravity:

The purpose of the offence of misfeasance in public office, now known as the s. 122 offence of breach of trust by a public officer, can be traced back to the early authorities that recognize that public officers are entrusted with powers and duties for the public benefit. The public is entitled to expect that public officials entrusted with these powers and responsibilities exercise them for the public benefit. Public officials are therefore made answerable to the public in a way that private actors may not be.

[25] In light of the nature of the offences, their objective gravity and the circumstances surrounding the commission of the offences, general deterrence and denunciation are the most important objectives for this punishment.

Aggravating factors

[26] When determining whether the proposed punishment meets the public interest test, the following aggravating factors were considered:

- (a) the offender's rank, training and position as detachment commander. In a system relying on integrity and honesty, Master Warrant Officer Tarso clearly failed to honour these values, using her privileged position, financial authorities and in-depth knowledge of the system as a supply technician to achieve the deceitful actions;
- (b) the impact of her conduct on the unit and its members. Because the offender held both a high rank and a position of leadership, her subordinates legitimately assumed that she was upholding the values of her office and position. Master Warrant Officer Tarso was their leader and broke that relation of trust. They felt betrayed, angry and hurt by her actions. The unit's operations were somewhat disrupted and valuable efforts, time and resources needed to support the unit and the CAF were redirected to support the conduct of the investigation;
- (c) the fraud involved over one hundred transactions spanning a period of seventeen months;
- (d) the fraudulent acts required a high degree of premeditation. Approximately one hundred DND 2227 forms were filled out with relevant details purposely left out and where names of subordinates were used without their knowledge, exposing them to being subjects of a criminal investigation. The offender carefully hid and kept the documents used for the fraud in her office. Additionally, on twenty occasions, she used Charlottetown's Purolator account to have items delivered to friends and family members at their home or other non-DND locations;
- (e) Her Majesty was deprived of a significant amount. This was a substantial fraud; and
- (f) the offender derived a personal benefit from those transactions. Despite the absence of evidence regarding what happened with the majority of the goods she purchased with the Corporate MasterCard, it is clear from the seizure of items from her residence by the CFNIS that she received some of them. Master Warrant Officer Tarso has not reimbursed any of the funds the CAF was defrauded of.

Mitigating factors

[27] In considering the joint submission, the following mitigating circumstances were also taken into consideration:

- (a) the offender pled guilty to the offences, dispensing subordinates affected by the commission of the crimes of the need to testify and live through the stress that a testimony in court generally causes. Further, more resources would have been required to sustain a longer, more costly trial. The guilty plea is effectively saving the Court, counsel and the unit supporting the Court, considerable time and resources. It also attests to the presence of remorse; Master Warrant Officer Tarso publically recognized her wrongdoing and took responsibility for her actions; and
- (b) Master Warrant Officer Tarso does not have a conduct sheet, she is a first-time offender.

The offender's situation

[28] Master Warrant Officer Tarso is fifty-three years old. She is married and has one dependent child. She enrolled in the CAF on 26 September 2002 and was promoted to master warrant officer effective June 2019. She deployed to Afghanistan in 2007 where she served for approximately seven months as a supply technician in a hospital. She was awarded the following military decorations: General Campaign Star – South-West Asia with a Bar; and the Canadian Forces' Decoration.

[29] She was medically released from the CAF in March 2022 as a result of health issues experienced from her deployment to Afghanistan. Her medical records show that she first had symptoms of Post-Traumatic Stress Disorder and major depressive disorder after her tour and her depression worsened during her posting to Prince Edward Island in 2016. She has been seen by a certified therapist on a bi-weekly basis since November 2021.

[30] She is currently unemployed. Presumably she will be, or is receiving, a pension or a return of contributions, representing a significant decrease in her income.

Attitude to the offence/efforts towards rehabilitation

[31] During her apology, the offender explained that she suffers from a gambling addiction. While this may be true, there was no evidence adduced to demonstrate the presence of a gambling addiction. The letter from her therapist entered as an exhibit does not even mention anything in this regard. Additionally, the use of the Corporate MasterCard is inconsistent with expenses related to compulsive gambling, because the funds were not used to provide for basic necessity, to use as cash or to directly pay for gaming such as online gaming or local casinos. They were mostly used by the offender to purchase gifts for her family.

[32] Nevertheless, despite the lack of evidence connecting the mental health problems she is experiencing with the commission of the offences, these offences were committed at a time that the offender did suffer from mental health ailments. She has turned to a professional for help, and seem dedicated to address her mental health issues.

Indirect consequences of finding and sentence

[33] Finally, Master Warrant Officer Tarso has some productive years remaining to give to society. Upon her conviction however, she will get a criminal record. Consequently, her professional aspiration post-retirement will most likely be limited in light of her criminal record for fraud and breach of trust convictions. It will have an impact on her professional and personal life; this indirect consequence cannot be overlooked.

Parity

[34] Having considered the circumstances surrounding the commission of the offences and the offender's personal situation, the Court examined precedents provided by counsel for similar offences to determine whether the joint submission is compliant with the parity principle (see *R. v. Arsenault P.D.*, 2013 CM 4007, *R. v. Tobin G.A.*, 2005 CM 1, *R. v. Martimbeault*, 2022 CM 5007, *R. v. Poirier C.*, 2007 CM 1023 and *R. v. Roche*, 2010 CM 4001). These cases provide an adequate range of punishment for the offences, where a punishment of a relatively short custodial sentence, combined in some cases with a reduction in rank or a fine, was imposed. These precedents satisfy the Court that the proposed sentence is within the range of punishments imposed in the past for similar offences. In fact, even for a former CAF member, the proposed punishment sends a strong message that the CAF has lost trust and confidence in the offender by dismissing her from its service, depriving her of her liberty and by stripping her of her senior non-commissioned officer rank.

[35] Indeed, a dismissal from Her Majesty's service can have far-reaching consequences on a former service person in civilian life. In addition, this punishment sends a serious message to the military community in promoting the sentencing objectives of general deterrence and denunciation of the conduct (see *R. v. Ayers*, 2017 CM 1012 at paragraph 22).

[36] As for a reduction in rank, as stated in *R. v. Reid*, 2010 CMAAC 4, at page 16:

A reduction in rank is an important tool in the sentencing kit of the military judge. It signifies more effectively than any fine or reprimand that can be imposed the military's loss of trust in the offending member. That loss of trust is expressed in this case through demotion to a position in which the offenders have lost their supervisory capacity.

Restitution order

[37] I have considered the request for a restitution order. Under the authority granted to me by section 203.9 of the *NDA*, and in consideration of similar cases, I accept that the imposition of the order in the circumstances is warranted, particularly since the amount for the financial loss was proven and involved public funds.

Criminal Code orders

[38] Turning to the two *Criminal Code* orders sought by the prosecution, applying the steps in *Anthony-Cook*, the Court raised concerns regarding its authority to impose these orders when there is no specific regime for their imposition under the *NDA*. Counsel were referred to the case of *R. v. McGregor*, 2019 CM 4016, a case where the prosecution sought a forfeiture order under section 490.1 of the *Criminal Code* but subsequently abandoned its request after the presiding military judge questioned the authority to ask for and make such an order in the context of a trial by court martial.

[39] The prosecution responded that the court martial powers found at section 179 of the *NDA* were used previously at court martial to impose a *Criminal Code* prohibition order in *R v Larouche*, 2012 CM 3023. The prosecution did not provide any argument to justify the use of the court martial powers to issue the two orders and further recognized that the specific orders sought have never been imposed by a court martial.

[40] Authority to impose certain ancillary orders such as weapons prohibition and restitution orders do exist in the *NDA*. However, for one reason or another, Parliament chose not to import, or create, into the military justice system the regimes for the issuance of a forfeiture order and for the imposition of a prohibition order in relation to employment. Consequently, I must turn to section 179 of the *NDA* and determine whether this section provides authority to impose these two *Criminal Code* orders. Subsection 179(1) of the *NDA* states that:

A court martial has the same powers, rights and privileges — including the power to punish for contempt — as are vested in a superior court of criminal jurisdiction with respect to

- (a) the attendance, swearing and examination of witnesses;
- (b) the production and inspection of documents;
- (c) the enforcement of its orders; and
- (d) all other matters necessary or proper for the due exercise of its jurisdiction

[41] Contrary to superior courts, courts martial do not have inherent jurisdiction. They draw their authority from the statute that creates them. Subsection 179(1) of the *NDA* provides authority to exercise the powers listed in the section when “necessary or proper for the due exercise of its jurisdiction”; in other words, these powers were not designed to be exercised automatically to import *Criminal Code* regimes or mechanisms

not found in the military justice system. These powers may be used only when necessary.

[42] I do not believe that imposing the two *Criminal Code* orders is necessary or proper for the due exercise of the Court's jurisdiction in the circumstances, mainly because the orders sought are discretionary. In addition to the issue of authority to impose strictly *Criminal Code* orders, an issue that seems to recurrently surface at courts martial, I am not convinced that discipline and morale in the CAF would be best achieved by imposing a five-year employment prohibition on a former CAF member seeking a civilian position. I also find that the burden of proof imposed on the prosecution at section 490.1 of the *Criminal Code* has not been met for the issuance of a forfeiture order.

[43] As for the contention that the authority of section 179 of the *NDA* was used in another case, the prosecution omitted to mention or consider the nature of the offence in *Larouche*, which was very different from the case at bar: in *Larouche*, the offender had admitted that he possessed 1054 electronic files containing child pornography. In addition to the nature of the offence being different from the case at bar, the military judge imposed an order prohibiting *Larouche* from attending certain places where persons under the age of sixteen years are present or can reasonably be expected to be present, such as school ground, playground or community centers, in accordance with section 161 of the *Criminal Code*. Unlike the entirely discretionary orders sought in the case of Master Warrant Officer Tarso, section 161 imposes the obligation on sentencing judges for sexual offences related to persons under the age of sixteen years to consider making the order. In sum, a section 161 prohibition order has a mandatory component that is absent from a section 380.2 prohibition order and from a section 490.1 forfeiture order.

[44] Interestingly, in *Larouche*, the military judge declined to issue an order pursuant to section 249.25 of the *NDA* (referred to as a "forfeiture order" in the decision) because the purpose of this provision is to return to its owner property that has been used to commit an offence, "not for property to be forfeited by virtue of its nature so that it is permanently removed from its owner" (at paragraph 36). The military judge also confirmed that there is no provision in the military justice system for an order of forfeiture, and that he could not simply rely on the *Criminal Code* provisions to issue the order sought (at paragraph 39).

[45] Thus, in consideration of the applicable provisions, in particular the powers set out at section 179 of the *NDA*, this Court does not have the authority to impose these two *Criminal Code* ancillary orders. Even if the prosecution had sought a restitution of property order in accordance with the *NDA* regime (see section 249.25), I am not satisfied that the conditions set out in the law are met.

Place of incarceration

[46] Finally, considering the significant costs and logistical concerns that would result from the offender being incarcerated in the province of Newfoundland, particularly where the burden to transfer would fall on her former unit which is located in North Bay, Ontario, considering that Master Warrant Officer Tarso's therapist has indicated that he can continue his support to her remotely, and considering the relatively short period of incarceration where only a portion would be served, I order that Master Warrant Officer Tarso be incarcerated in New Brunswick.

Conclusion

[47] In reviewing the documentary evidence introduced as exhibits and counsel's submissions, I find that counsel have generally identified and considered the most relevant aggravating and mitigating factors surrounding the commission of the offences. They properly addressed the applicable principles and objectives of sentencing in this case. I am therefore satisfied that the documents introduced as exhibits provided a complete picture of both the offences and of the offender's personal situation and I accept counsel's position that the need for denunciation and general deterrence are met with the proposed sentence. In addition, the proposed sentence would not hinder Master Warrant Officer Tarso's rehabilitation. Consequently, with the exception of the two ancillary orders that cannot be imposed because there is no authority to do so in the circumstances, the Court finds that the joint recommendation is not contrary to the public interest and would not bring the military justice system into disrepute.

[48] Master Warrant Officer Tarso breached the trust of subordinates, the chain of command, and of the CAF, depriving tax payers of over \$37,000. Her guilty plea and apology, however, show that she is on the right path for rehabilitation. Although I decided that in this case I cannot impose an order prohibiting the offender from seeking employment in a position requiring being entrusted with funds, this does not mean that the Court is of the view that she should seek this type of employment, on the contrary.

FOR THESE REASONS, THE COURT:

[49] **FINDS** Master Warrant Officer Tarso guilty of two offences punishable under section 130 of the *NDA*, that is to say, fraud, contrary to section 380 of the *Criminal Code* and breach of trust by public officer contrary to section 122 of the *Criminal Code*.

[50] **SENTENCES** Master Warrant Officer Tarso to thirty days of imprisonment to a civilian prison in the province of New Brunswick, a dismissal from Her Majesty's service, and a reduction in rank to the rank of sergeant.

[51] **ORDERS**, under the authority granted to me by section 203.9 of the *NDA*, that Master Warrant Officer Tarso pay to the receiver general the sum of \$37,268.19, as restitution for the public funds used for personal purposes. The full amount shall be paid in full by 1 February 2023.

Counsel

The Director of Military Prosecutions as represented by Major P.E. Craig

Lieutenant-Commander F. Gonsalves, Defence Counsel Services, Counsel for
Master Warrant Officer C.H. Tarso