

Citation: *R. v. Captain M.H. Danis*, 2007 CM 2015

Docket: 200725

**STANDING COURT MARTIAL
CANADA
ONTARIO
CANADIAN FORCES BASE KINGSTON**

Date: 4 October 2007

PRESIDING: COMMANDER P. LAMONT, M.J.

HER MAJESTY THE QUEEN

v.

**CAPTAIN M.H. DANIS
(Offender)**

**SENTENCE
(Rendered orally)**

[1] Captain Danis, having accepted and recorded your pleas of guilty to charges No. 1 and No. 8, being two charges of fraud; and to charges No. 5 and No. 7, being two charges of an act to prejudice of good order and discipline, this court now finds you guilty of charges 1, 5, 7 and 8.

[2] It now falls to me to determine and to pass a sentence upon you. In so doing, I have considered the principles of sentencing that apply in the ordinary courts of criminal jurisdiction in Canada and at courts martial. I have, as well, considered the facts of the case as disclosed by the evidence I have heard and the materials submitted during the hearing, as well as the submissions of counsel, both for the prosecution and for the defence.

[3] The principles of sentencing guide the court in the exercise of its discretion in determining a fit and proper sentence in an individual case. The sentence should be broadly commensurate with the gravity of the offence and the blameworthiness or degree of responsibility and character of the offender. The court is guided by the sentences imposed by other courts in previous similar cases, not out of a slavish adherence to precedent, but because it appeals to our common sense of justice that like cases should be treated in similar ways. Nevertheless, in imposing sentence the court takes account of the many factors that distinguish the particular case it is

dealing with, both the aggravating circumstances that may call for a more severe punishment and the mitigating circumstances that may reduce a sentence.

[4] The goals and objectives of sentencing have been expressed in different ways in many previous cases. Generally, they relate to the protection of society, which includes, of course, the Canadian Forces, by fostering and maintaining a just, a peaceful, a safe, and a law-abiding community. Importantly, in the context of the Canadian Forces, these objectives include the maintenance of discipline, that habit of obedience which is so necessary to the effectiveness of an armed force. The goals and objectives also include deterrence of the individual so that the conduct of the offender is not repeated, and general deterrence so that others will not be led to follow the example of the offender. Other goals include the rehabilitation of the offender, the promotion of a sense of responsibility in the offender, and the denunciation of unlawful behaviour.

[5] One or more of these goals and objectives will inevitably predominate in arriving at a fit and just sentence in an individual case. Yet it should not be lost sight of that each of these goals calls for the attention of the sentencing court, and a fit and just sentence should be a wise blending of these goals, tailored to the particular circumstances of the case.

[6] As I told you when you tendered your pleas of guilty, section 139 of the *National Defence Act* prescribes the possible punishments that may be imposed at court martial. Those possible punishments are limited by the provision of the law which creates the offence and provides for a maximum punishment, and are further limited to the jurisdiction that may be exercised by this court. Only one sentence is imposed upon an offender, whether the offender is found guilty of one or more different offences, but the sentence may consist of more than one punishment. It is an important principle that the court should impose the least severe punishment that will maintain discipline. In arriving at the sentence in this case, I have considered the direct and indirect consequences for the offender of the findings of guilt and the sentence I am about to impose.

[7] The facts of the offences are set out in a written Statement of Circumstances, Exhibit 6. They disclose that the offender joined the Canadian Forces as a Direct Entry Officer in the rank of second-lieutenant. He was accepted into the Dental Officer Training Programme and attended the University of Western Ontario for his training. Under the programme, the full cost of tuition, books, instruments and other necessary expenditures are reimbursed to members out of public funds. In August of 2002, he applied to the university and received a bursary in the amount of \$7500, falsely declaring his income by failing to disclose that he was then receiving an annual salary in excess of \$40,000 as a member of the Canadian Forces. In October and November of 2002, he received bursary monies in violation of the terms of Canadian Forces Administrative Order 9-63 which governs the Medical and Dental Officer Training

Plans, and forbids accepting any payment in respect of the performance of military duties such as, in the case of the offender, attendance at dental school. The following academic year, in August of 2003, he again applied for a bursary, this time in the amount of \$8700. It appears that a question arose in the minds of university officials as to whether the offender was entitled to receive the bursary, and when he was challenged on this at a meeting, he readily admitted to university officials that he had misled them in obtaining the bursary the previous year. His second application was refused, and, as a result of disciplinary proceedings by the university, he was suspended for a period of some months and was required to repay the amount of \$7500.

[8] Counsel for the prosecution and for the defence agree that a fit disposition in this case is a severe reprimand and a fine in the amount of \$2,000. The sentence to be pronounced is, of course, a matter for the court, but where, as in this case, both parties agree on a recommended disposition, that recommendation carries great weight with the court. The courts of appeal across Canada, including the Court Marital Appeal Court, have held that the joint submission of counsel as to sentence should be accepted by the court unless the recommended sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[9] A fraud upon public funds by a commissioned officer is a serious matter. As I have observed before, it is the kind of offence that will often result in the offender losing his or her rank, especially in circumstances, such as this case, where the fraudulent behaviour is a repeated course of conduct. Here, the offender admitted his responsibility at an early stage both to the university, and, apparently, to the military investigators. He has pleaded guilty at the first opportunity. I do not consider that his criminal actions were a mere lapse of judgement, as his counsel characterizes it, but I do accept that the facts demonstrate genuine remorse on his part. I also accept that the offender was under severe financial pressures at the time of the offences. I also accept that the lengthy delay during the investigation of the charges until charges were laid was particularly stressful for the offender, and delay, in these circumstances, should be treated as a mitigating factor. As well, the offender was punished to some degree by the university when he was suspended, and, as a result, he was delayed in qualifying as a dentist for a period of a year. He is now qualified as a dentist, and, apparently, he is a productive member of the Canadian Forces with prospects of a successful career in front of him.

[10] Taking account of all the circumstances, both of the offence and of the offender, I cannot say that the sentence recommended by counsel is either contrary to the public interest or would bring the administration of justice into disrepute, and, accordingly, I accept the joint submission. Stand up, Captain Danis.

[11] You are sentenced to a severe reprimand and a fine in the amount of \$2,000 to be paid in monthly installments of \$250 each, commencing 1 November 2007,

and continuing for the following seven months. In the event you are released from the Canadian Forces for any reason before the fine is paid in full, the then outstanding unpaid balance is due and payable the day prior to your release. March out Captain Danis.

COMMANDER P. LAMONT, M.J.

Counsel:

Major S.A. MacLeod, Directorate of Military Prosecutions
Counsel for Her Majesty the Queen
Major G.K. Duncan, Directorate of Defence Counsel Services
Counsel for Captain Danis
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