

Citation: *R. v. Lieutenant(N) J.M. Price*, 2009 CM 4009

Docket: 200909

**STANDING COURT MARTIAL
CANADA
NOVA SCOTIA
HALIFAX**

Date: 10 April 2009

PRESIDING: LIEUTENANT-COLONEL J-G PERRON, M.J.

HER MAJESTY THE QUEEN

v.

**LIEUTENANT(N) J.M. PRICE
(Offender)**

SENTENCE

(Rendered Orally)

[1] Lieutenant(N) Price, having accepted and recorded your plea of guilty to charge number two, the court now finds you guilty of this charge. The court directs a stay of proceeding with respect to charge number one. The court must now determine a just and appropriate sentence in this case.

[2] The Statement of Circumstances to which you formally admitted the facts as conclusive evidence of your guilt, an agreed statement of facts, and your testimony provide this court with the circumstances surrounding the commission of this offence. Your counsel has presented eight exhibits and the prosecutor presented one exhibit during the sentencing phase of this trial.

[3] You were appointed the executive officer of HMCS GOOSE BAY in May 2007. One of your responsibilities was the safekeeping and administration of the public and non-public funds for your ship. You were entrusted with an advance of public funds necessary for the future deployment of your ship. Each time you were entrusted with such funds, you had to sign a document that indicated the purpose of the funds and the strict regulations you had to follow to ensure the security and the proper usage of these funds.

[4] You began stealing small amounts of money on numerous occasions, approximately ten times, from September to December 2007, and you repaid these amounts from your salary. You stole this money because you were gambling and losing money. Your gambling losses became more important in December 2007 and you were not able to repay the amounts you were stealing from the advance of public funds of the unit. In mid-December 2007, you stole money from the ship's non-public funds to replace the money you had stolen from the public funds advance. You attempted to replace the money stolen from the non-public funds by trying to borrow money from friends, but you did not succeed.

[5] In January 2008, you were entrusted with an advance of public funds in the amount of \$6,000 in Canadian currency and \$4,000 in American currency. You took some of the Canadian currency and transferred it to the ship's non-public funds account. During the first week of February 2008, you learned that HMCS GOOSE BAY was scheduled to enter dry dock and that the ship's financial accounts would have to be reconciled. You attempted to obtain a bank loan to replace what you had stolen, but the loan was denied. You also increased your gambling in a vain attempt to win the money, but you only increased your gambling losses.

[6] On 8 May 2008, the Maritime Operations Group 5 Non-Public Funds Manager discovered that some non-public funds were missing from HMCS GOOSE BAY. Later that day, you learned that the ship's non-public funds account needed to be cleared. You sent an email to your commanding officer admitting that you had taken non-public funds to pay for your gambling losses.

[7] An accounting of HMC GOOSE BAY's public and non-public funds on 8 May 2008 revealed that \$2,000 in American currency was missing from the public funds and that \$8,060.91 in Canadian currency was missing from the non-public funds. On 11 May 2008, you admitted to stealing these funds during a military police interview.

[8] You took numerous steps, such as putting fake money or paper in an envelope to make it appear that no money was missing, in order to conceal the theft of money and to avoid detection.

[9] You are a reservist and you were employed in a Class C position aboard HMCS GOOSE BAY at the time of the offence. The ship's company is well aware of the present case and your actions have had an adverse impact on the morale of the unit. The naval reserve community is also aware of this offence.

[10] The prosecutor has recommended a sentence of two to three months of imprisonment, and argued that it was the least punishment necessary to maintain discipline. He argued that the sentencing principles of general deterrence and denunciation are the most important principles in this case. Your counsel has made

three recommendations: a severe reprimand and a fine ranging from \$5,000 to \$10,000; a reduction in rank and a smaller fine; or that the punishment of imprisonment be suspended if the court concludes that imprisonment is the appropriate sentence.

[11] The principles of sentencing, which are common to both courts martial and civilian criminal trials in Canada, have been expressed in various ways. Generally, they are founded on the need to protect the public, and the public, of course, includes the Canadian Forces. The primary principles are the principles of deterrence, that includes specific deterrence, in the sense of deterrent effect on you personally, as well as general deterrence; that is deterrence for others who might be tempted to commit similar offences. The principles also include the principle of denunciation of the conduct, and last but not least, the principle of reformation and rehabilitation of the offender. The court must determine if protection of the public would best be served by deterrence, rehabilitation, denunciation, or a combination of those factors.

[12] The court has considered the guidance set out in ss. 718 to 718.2 of the *Criminal Code of Canada*. The purposes and principles contained in those sections are to denounce unlawful conduct, to deter the offender and other persons from committing offences, to separate the offender from society where necessary, to assist in rehabilitating offenders, to provide reparations for harm done to victims or to the community and to promote a sense of responsibility in offenders and acknowledgment of the harm done to victims and to the community.

[13] The court is also required, in imposing a sentence, to follow the directions set out in article 112.48 Queen's Regulations and Orders which obliges it in determining a sentence to take into account any indirect consequences 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.

[14] The court must impose a sentence that should be the minimum necessary sentence to maintain discipline. The ultimate aim of sentencing is the restoration of discipline in the offender and in military society. Discipline is that quality that every CF member must have which allows him or her to put the interests of Canada and the interests of the Canadian Forces before personal interests. This is necessary because Canadian Forces members must willingly and promptly obey lawful orders that may have very devastating personal consequences such as injury and death. Discipline can be described as a quality, because, ultimately, although it is something which is developed and encouraged by the Canadian Forces through instruction, training and practice, it is an internal quality that is one of the fundamental prerequisites to operational efficiency of any armed force.

[15] I will examine the aggravating circumstances and the mitigating circumstances that I have considered in determining the appropriate sentence in this case. I will then

examine the Canadian jurisprudence that may assist this court in this sentencing exercise. I consider the following to be aggravating:

You held a key position within your unit; you were the executive officer of the ship. The Canadian Forces and the commanding officer of the ship had put their trust in you. One of your duties was to ensure the safekeeping and the careful administration of the public funds required for the ship's operations and of the non-public funds used to finance activities for the betterment of the morale of the ship's company. You used this position of trust to steal \$2,000 in American currency from the public funds; in effect, you stole from your employer. You also stole \$8,060.91 in Canadian currency from the non-public funds; you stole that amount from your fellow crew members. Your actions from September 2007 to May 2008 were a gross breach of trust. Your actions have had an adverse impact on the morale of your unit.

Trust is a highly valued quality in Canadian society, even more so in the Canadian Forces. The offence of stealing while entrusted is objectively a serious offence. Parliament has clearly made that point by imposing one of the most severe maximum sentences for this offence; it being 14 years imprisonment, while it imposed a sentence of seven years imprisonment for the offence of the stealing. The *Criminal Code of Canada* sets out that a court shall take into consideration certain aggravating circumstances when determining a sentence. Subparagraph 718.2(a)(iii) provides as an aggravating circumstance the fact, "that the offender, in committing the offence, abused a position of trust or authority in relation to the victim." The offence of stealing while entrusted predates this 1996 modification to the *Criminal Code* by decades.

It would appear from the Statement of Circumstances that you committed this offence over a period of approximately nine months. You started stealing from the public funds in September 2007, but you also repaid these amounts when you received your pay. You stopped repaying the stolen amounts in December 2007 when your gambling losses became too large. You stole money from the public and non-public funds on about 50 to 80 occasions during the months of December 2007 to May 2008. These actions were premeditated and you also tried to conceal the fact that you were stealing money;

The amount of money you stole, approximately \$10,000 of which \$8,060.91 is from non-public funds, is significant. The court does note that the actual impact on the activities or on the use of that money to

support the ship's morale has not been described other than a statement in the agreed statement of facts, found at Exhibit 7, to the effect that the offence has had an adverse impact on the morale of the unit.

Your rank and experience in the Canadian Forces is also considered an aggravating factor. You had enough experience and knowledge to know the value and the importance of the trust that was put in you by the Navy and by your commanding officer. You also knew the importance of the non-public funds. Those were funds used to improve the morale and the efficiency of your fellow shipmates.

[16] As to the mitigating circumstances, I note the following:

You do not have a conduct sheet; you are a first time offender. You admitted to your commanding officer on 8 May 2008 that you had taken non-public funds money to pay for you gambling losses. On 11 May 2008, you attended a military police interview and you admitted to stealing the amounts from the public and the non-public funds. You have pled guilty to the more serious of the two charges found on the charge sheet, since the theft over \$5,000, under section 334 of the *Criminal Code* carries a maximum sentence of ten years' imprisonment. You have also testified and you have expressed your shame and your remorse, and you did not attempt to deflect the blame to anyone else or to blame your gambling problem. During the cross-examination, you agreed with the prosecutor when he described your actions as a gross breach of trust, a lack of discipline, a lack of integrity, and you agreed with every comment the prosecutor made concerning the significance and the consequences of this offence.

You have increased your debt load since May 2008. The prosecution has argued that you have incurred more debt to improve your personal lifestyle and that this is not consistent with the feeling of remorse you claim to have. I cannot concur with this suggestion. One could argue that you could have delayed buying that house and the appliances until you had made full restitution to the Canadian Forces and to the non-public funds. You have testified that you signed the purchase agreement for the house in April 2008 and that cancelling that agreement would result in an important financial penalty. The cancellation of that contract and the probable adverse financial consequence would surely have aggravated an already strained relationship with your spouse. While it would have been more prudent to minimize your debts at that time of your life, the court does understand that other factors, such as you common law relationship, will influence such decisions. You

started a part-time job in October 2008 to permit you to meet your new financial obligations which include the restitution plan. Therefore, the court accepts that you do regret your actions and that you do take full responsibility for this offence.

You have lost your Class C position because of this offence and you are presently employed in a Class B position. You have lost 15 per cent of your pay as a consequence of this offence.

You appear to have a stable relationship with your common law spouse since approximately March 2007. This relationship is experiencing certain difficulties at this time because of your financial situation caused by your gambling losses and these disciplinary proceedings. Your spouse has suffered much stress since you informed her of your gambling problems in April 2008. Nonetheless, you are still in a relationship where you share a house purchased in August 2008 and where your spouse has total control of your collective finances since April 2008.

The prosecutor has questioned your credibility and has questioned what you actually did with the money stolen from the Canadian Forces while you were amassing money for the down payment of your new house. The evidence presented in the Statement of Circumstances, presented by the prosecutor as found at Exhibit 3, indicates at paragraphs 1 and 5 that you stole the money to pay for your gambling losses. This evidence does not demonstrate that you stole this money for other purposes. Although you and your spouse did pay a \$15,000 down payment for your house in August 2008 and that you did buy appliances for this new house, there is no evidence that shows you actually stole this money for these expenditures. Although one could argue that the theft of this money enabled you to use your own money for the purchase of the house and the appliances, the evidence before this court clearly states that you stole from the public and non-public funds to pay for your gambling losses. As such, the court will accept that you only stole those amounts to pay for your gambling losses.

You have been diagnosed as having pathological gambling which is an Impulse Control Disorder. At Exhibit 8, Ms McGrath, a registered psychologist with the CF Health Services Centre, CFB Halifax, describes this affliction and the treatment offered to CF members. A fundamental feature of this disorder is a persistent and recurrent maladaptive gambling behaviour that negatively impacts one's life. She described how you had initially sought out treatment in 2004 and that she had

diagnosed you as having pathological gambling and had offered you treatment. She states that you withdrew from treatment because you believed you could control your behaviour. You testified that she told you you were a pathological gambler and described the treatment you could follow. You decided not to follow that treatment and you ceased meeting with Ms McGrath because you could not understand why you were being questioned about your family and your past. Ms McGrath explains this decision not to follow treatment as a denial of the need for treatment that is commonly seen in such individuals. The flawed thinking that one does not have a problem contributes to the eventual loss of control of the gambling behaviour. Ms McGrath states that this occurred in your case.

In May 2008, you again sought help and were placed in a Phase II treatment programme which is a 30 day, Monday to Friday, with evening and weekend treatment-related assignments and activities such as attendance at Gambling Anonymous meetings. You attended Phase II from 20 May to 18 June 2008. Ms McGrath notes your motivation to participate in the program, your discussions describing how your gambling damaged your integrity, dignity and reputation as a member of the Canadian Forces. She mentions how you took full responsibility for your behaviour and the need to abstain from gambling to avoid problems in the future. She noted favourably your approach to resolve problems and your chances of success for recovery. You identified yourself as a problem gambler to the local casino and you are now barred for life from casinos in Nova Scotia. You testified that you had not gambled since 26 April 2008.

You are now enrolled in a one-year Phase III follow-up program. You have consistently attended 30 group meetings and only missed five meetings, each time providing advance notice and an acceptable reason for that absence. You participate fully in these meetings by sharing your own recovery experiences and by supporting others. You also attend regular Gamblers Anonymous meetings. You waived your right to medical confidentiality by volunteering your time to help others who are starting their treatment by participating in classroom presentations. Ms McGrath notes that your willingness to divulge the problems you experienced because of gambling and your acceptance of responsibility for your behaviour sets an excellent example for others in similar circumstances.

Although she cannot guarantee that you will not relapse, she notes that your positive attitude, your strong relapse prevention plan, your

commitment to your rehabilitation and your participation in Phase III increase the likelihood of continued success in recovery. She concludes that your gambling appears to be in remission.

You have been a member of the Reserve Force since 1996. You enrolled as an ordinary seaman and you became an officer cadet in 1998. You were commissioned as an acting sub-lieutenant in 1999. You were promoted to the rank of lieutenant(N) in August 2002. You were the top recruit in your course in 1996. The four course reports, found at Exhibit 10, describe your leadership potential and your technical qualities that make you an efficient naval officer. I have reviewed your last nine Personnel Evaluation Reports, and the 23 June to 31 July 2008 Personnel Development Review found at Exhibit 12. All these documents, except for the Personnel Evaluation Report for the period of 1 April 2007 to 31 March 2008, consistently describe a very competent naval officer who performs his tasks efficiently and continues to improve himself through hard work and participation in numerous courses. Your potential for promotion is always noted. The sole exception is the PER that covers the period of this offence. While this PER is quite negative because of the actions that led to this trial, it still notes your qualities as a ship handler and as an adept mariner. I have also reviewed the letters of appreciation found at Exhibit 11, they also paint the picture of an officer who has excelled and has always contributed to the success of the unit he was tasked to support.

I also take note of Commander Burke's testimony. Commander Burke is your present supervisor. He is a MAR SS officer who joined the Canadian Forces in 1976. He has been heading the N34 organization for approximately three years. He came back from a one-year tour in Afghanistan in September 2008 and returned to his duties at N34 in October 2008. Upon his return at N34, Lieutenant(N) Price, who was assigned to N34 during his absence, came to see Commander Burke to explain his situation. Commander Burke described Lieutenant(N) Price as honest and straightforward. He also described him as a very fine staff officer and as good, if not better, than any other of his previous subordinates at N34. He would recommend Lieutenant(N) Price be retained in the Canadian Forces if an administrative review was conducted on the question of a possible release. During cross-examination, he agreed that Lieutenant(N) Price's illegal conduct was a gross breach of trust, a gross lack of judgement and a lack of loyalty and of integrity. He would not put him in charge of money, and as Commander Burke said, "just like you would not put an alcoholic in

charge of a bar." I find that Commander Burke gave the court an honest and candid assessment of Lieutenant(N) Price.

These documents and Commander Burke's testimony do show that you have consistently been a most productive member of the naval reserve since your enrolment except for the actions that are at the heart of this court martial. I also note that, although you were relieved from your position of XO of HMCS GOOSE BAY, and thus lost your Class C employment, the decision was still made to employ you in a Class B position within MARLANT HQ N34. While the court was not provided any specific evidence on this issue, it would appear that you were deemed to be a person that could still contribute to the Canadian Forces and to the Navy, notwithstanding your admissions of having stolen funds from your ship and the future disciplinary proceedings.

You have begun to repay the money you stole in accordance with a restitution plan you have set up with the MOG 5 authorities. You began making payments in November 2007 and you are now making payments of \$500 per month; you have repaid \$1,000. While it is true that the Canadian Forces could recoup these amounts through different means, this restitution plan demonstrates that you take responsibility for your actions.

[17] I will now examine the case law that was presented to the court. The prosecutor argues that the present case is more egregious than the *Captain Loughrey* Standing Court Martial. In the 2001 *Captain Loughrey* Standing Court Martial, although originally charged with 21 offences, the accused pled guilty to six charges of stealing while entrusted. He stole \$52,181.88 over a period of 23 months. He was sentenced to four months of imprisonment. The mitigating factors were: the guilty plea, the rank and equity of the offender, he was a first-time offender, there had been an undertaking to reimburse the stolen money, his three PERs and two letters from psychologists, the mental and physical health of the offender, and the age, financial, economic and social circumstances of the offender.

[18] The aggravating factors were: the objective severity of the offence, the important amount stolen, the manipulation of the claims process by the offender over a 23 month period, representing a significant level of premeditation, and the fact that he was a police officer. The sentencing judge found that "arguably the most sacred of all trust is that of a peace officer sworn under oath to uphold and enforce the law." Captain Loughrey was also the manager of his unit's budget. After having discussed the information contained in the letter written by the psychologists, the sentencing judge was of the view that there was not much in the medical reports that could mitigate the sentence he was to pronounce.

[19] The sentencing judge discussed the need for general deterrence to all individuals holding positions of authority, but he also singled out all other peace officers who may be inclined to abuse their position of trust. Finally, it was noted that although there is no onus on the offender to provide an explanation for the commission of his crimes, no explanations had been provided to the court that could mitigate the sentence.

[20] Captain Loughrey appealed the severity of the sentence. The Court Martial Appeal Court dismissed the appeal. It found that the background of the offender as a military police officer, his position of trust over administrative matters in his unit, the seriousness of the six offences repeated over a two-year period, and the lack of a meaningful explanation for the conduct all militated against leniency.

[21] I do not agree with the prosecutor that the present case is more egregious than the *Loughrey* matter. The total amount stolen, the period of time of the offences, the manipulation of the claims process, the lack of meaningful explanations, the fact that the offender was a police officer represent a fact scenario that is much more serious than the present case.

[22] In the 2004 *Corporal Hache* Standing Court Martial, the offender plead guilty to one charge of stealing while entrusted. The offender worked at the pay office of HMCS IROQUOIS, had stolen \$13,195 over a period of approximately two months. The offender cooperated with the military police investigation. He was a pathological gambler and he had the support of his present supervisor. He was sentenced to detention for 14 days and reduction in rank to private.

[23] In the 2008 *Master Corporal Roche* Standing Court Martial, there was a plea of guilty to a charge of fraud under section 380 of the *Criminal Code*. Over a period of three months, the offender had defrauded the non-public funds accounts of CFB Kingston of \$8,700. The offender was a RMS Clerk in charge of the non-public funds account where she was in a position of trust. She tried to hide her illegal actions. She was a pathological gambler, and her participation in treatment programs and her assistance to others with their gambling problems were noteworthy. She and her husband had filed for bankruptcy and her work performance was otherwise without reproach. She had not yet attempted to repay the amount stolen. She was sentenced to imprisonment for 14 days, but the carrying out of that sentence was suspended, she was also sentenced to a \$2,000 fine.

[24] In the 2007 *Lieutenant Hynes* Standing Court Martial, the offender pled guilty to stealing while entrusted. He had stolen from a charitable organization. It was a joint submission. He was awarded a severe reprimand and a fine of \$3,450. It was noted by the sentencing judge that this was a very lenient sentence.

[25] Finally, in the 2006 *Master Corporal Noseworthy* Standing Court Martial, it was a plea of guilty. The offender was a clerk. He had submitted false claims over approximately six months and had defrauded the Canadian Forces of \$12,000. No money had yet been recovered. He had attempted to avoid detection. He had cooperated with police, he had apologized for his actions, he was a pathological gambler and he had filed for bankruptcy. His sentence was a reduction in rank to private, a severe reprimand and a fine in the amount of \$1,800.

[26] As we can see, the range in sentencing in the last eight years for charges of stealing while entrusted or charges of fraud under the *Criminal Code* while occupying a position of trust is significant. Sentences have included imprisonment, suspended imprisonment, detention, reduction in rank, severe reprimand and fines.

[27] I have also reviewed numerous provincial appellate court decisions concerning thefts or frauds from employers. Canadian jurisprudence has dealt severely with offenders who have abused their employers' trust when committing a theft or a fraud against their employer. General deterrence and denunciation of the abuse of trust has always been the two most important sentencing principles in such cases. Incarceration is usually the appropriate sentence in cases of thefts of important amounts or of thefts committed over a long period of time. Since 1996, the main question debated during the appeals of such cases is whether the sentence of incarceration should be served in a prison or whether it is appropriate to impose a conditional sentence.

[28] One must remember that a conditional sentence under section 742.1 of the *Criminal Code* remains a sentence of imprisonment even though the offender does not serve that sentence in a prison. A conditional sentence has been described by the Alberta Court of Appeal in *R. v. Brady* (1998) 121 C.C.C. (3d) 504 as falling "between a suspended sentence with probation and actual imprisonment." A conditional sentence is usually in the form of house arrest with other conditions imposed on the offender. This type of punishment is only found in the *Criminal Code of Canada* and is not found in the *National Defence Act*.

[29] Most cases dealt with by appellate courts involve large sums of money. I have reviewed a number of appellate court cases involving thefts or fraud from employers or when the offender was in a position of trust. In these cases, the amounts stolen range from \$61,000 to \$1,000,000, and the sentences ranged from four months' conditional sentence to two years in a penitentiary. I take from these cases that these courts have attempted to emphasize denunciation and general deterrence by awarding a sentence of imprisonment. The length of the sentence and whether it was custodial or not depended on the specific facts of each case. In some cases, the offender was diagnosed as a pathological gambler, but only once, in *R. v. Horvarth* (1997) 117 C.C.C. (3d) 110 Saskatchewan Court of Appeal, was this characteristic found to be a strong mitigating factor in assessing the moral blameworthiness of the offender. I also take from some

of these judgments the true value of general deterrence has been discussed and questioned in certain cases.

[30] Canadian criminal courts have sentencing options that are not yet available to courts martial such as conditional sentences, probation and restitution orders. Courts martial must craft the appropriate sentence using punishments found in the scale of punishments. These sentences must promote discipline. The scale of punishment contains certain punishments that are not found in the *Criminal Code of Canada*, such as dismissal with disgrace from Her Majesty's service, dismissal from Her Majesty's service, reduction in rank, forfeiture of seniority, severe reprimand, reprimand and minor punishments. These punishments reflect the importance we attach to honourable service in Her Majesty's Canadian Forces and the importance we attach to a person's rank. They are reflections of our values as members of the profession of arms.

[31] The key question in this case is the following: what is the just and appropriate sentence that is proportionate to the gravity of the offence and the blameworthiness of the offender and that will satisfy the principles of general deterrence and denunciation of the illegal conduct?

[32] In the civilian community, as in the military community, imprisonment is the most severe sentence. As stated by the Court Martial Appeal Court in *Second-Lieutenant Baptista v. R.* 2006 CMAAC 1, imprisonment should be imposed as a last resort. The changes to the sentencing regime of the *Criminal Code* in 1996 have reinforced that concept by the creation of the conditional sentence and by the inclusion of sentencing principles that mandate a court to consider all other available sanctions other than imprisonment that are reasonable in the circumstances, and that an offender should not be deprived of liberty if less restrictive sanctions can be appropriate in the circumstances.

[33] Canadian criminal courts have also clearly stated that in cases of thefts from an employer and abuse of trust, the denunciation and the deterrence of the type of infraction usually requires a sentence of imprisonment.

[34] Lieutenant(N) Price, stand up. I must now pass a sentence that will highlight the gravity of this offence, but that must still take into account the previous character of the offender. The offence you committed is exacerbated by the fact that you were the XO of your ship and that you stole your unit's non-public funds. You abused your position of trust to cater to your personal needs. You failed in your key leadership position when you stole from your shipmates. Your actions were not motivated by greed; you failed because you were not strong enough to deal with your pathological gambling.

[35] You dug yourself a deep hole because of that medical condition: you made many bad choices; you started gambling; you could not see your problem in 2004; you stole your unit's public funds and non-public funds to pay for your gambling losses; you gambled more, in a vain attempt to pay for the increasing gambling losses.

[36] Once your spouse was in the hospital, and I suspect the thought that your deceptions would soon be discovered, you stated making good choices. You stopped gambling, you admitted your unlawful actions to your commanding officer and to the military police, you sought help from the addiction counsellor, and you have fully participated in your treatment, but more importantly, in the treatment of others.

[37] Your present supervisor, a seasoned officer, has spoken highly of you, as have your Personnel Evaluation Reports. You have been a strong performer from the moment you joined the Canadian Forces and you continue to perform at that level. Notwithstanding your actions, the Navy has seen fit to still employ you in a Class B position. It would appear that the pathological gambling was your only, but disastrous, failing. Although health professionals cannot offer guarantees, the prognosis for recovery is very promising because of your acceptance of your gambling problem and your efforts to follow the prescribed treatment.

[38] Earlier, I have distinguished this case from the *Loughery* Standing Court Martial because the aggravating and mitigating factors on sentencing are so different. What is similar to the *Loughery* Standing Court Martial is the need to send a clear message to persons in authority, such as you were at the time of the offence, that stealing while entrusted cannot be tolerated in the Canadian Forces because of the harm it does to one of our core values.

[39] With this in mind, I believe that denunciation of this conduct and general deterrence will be better served by a purely military sentence that will be noticed in your immediate community as well as within the naval reserve on a daily basis for a considerable period of time. In this specific case, a sentence of imprisonment or of suspended imprisonment, I believe, would not achieve that goal.

[40] Lieutenant(N) Price, I sentence you to reduction in rank to the rank of sub-lieutenant. I would have reduced you to the rank of acting sub-lieutenant, which is the lowest commissioned rank to which you may be reduced, had I not been convinced by the evidence in mitigation that your actions are gross errors in judgement caused by your pathological gambling in an otherwise noteworthy career. I also sentence you to severe reprimand and a fine in the amount of \$2,500 to be paid at a rate of \$250 per month starting on 1 May 2009. You may sit down. The full amount of this fine is to be paid on the last day of your service, should a decision be made to release you from the Canadian Forces.

LIEUTENANT-COLONEL J-G PERRON, M.J.

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