



COURT MARTIAL

Citation: *R v Martin*, 2014 CM 3001

Date: 20140127

Docket: 201333

Standing Court Martial

Asticou Centre Courtroom
Gatineau, Québec, Canada

Between:

Her Majesty the Queen

and

Commander D.J. Martin, Offender

Before: Lieutenant-Colonel L.-V. d'Auteuil, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Commander Martin, having accepted and recorded a plea of guilty in respect of the first and only charge on the charge sheet, the court now finds you guilty of this charge.

[2] It is now my duty as the military judge, who is presiding at this Standing Court Martial, to determine the sentence.

[3] The military justice system constitutes the ultimate means to enforce discipline in the Canadian Forces, which is a fundamental element of the military activity. The purpose of this system is to prevent misconduct or, in a more positive way, see the promotion of good conduct. It is through discipline that an armed force ensures that its members will accomplish in a trusting and reliable manner successful missions. It also ensures that public order is maintained and that those who are subject to the Code of Service Discipline are punished in the same way as any other person living in Canada.

[4] It has been long recognized that the purpose of a separate system of military justice or tribunal is to allow the Armed Forces to deal with matters that pertain to the respect of the Code of Service Discipline and the maintenance of efficiency and the morale among the Canadian Forces. That being said, punishment imposed by any tribunal, military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances. It also goes directly to the duty imposed to the court to: "impose a sentence commensurate to the gravity of the offence and the previous character of the offender" as stated at QR&O, subparagraph 112.48 (2)(b).

[5] Here in this case, the prosecutor and the offender's defence counsel made a joint submission on sentence to be imposed by the court. They recommended that this court sentence you to a severe reprimand and a fine in the amount of \$10,000 in order to meet justice requirements. Although this court is not bound by this joint recommendation, it is generally accepted that the sentencing judge should depart from the joint submission only when there are cogent reasons for doing so. Cogent reasons mean where the sentence is unfit, unreasonable, would bring the administration of justice into disrepute or be contrary to the public interest.

[6] As the Supreme Court of Canada recognized in *R. v. Généreux*, [1992] 3 SCC 259 at page 293:

... To maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently.

At the same page, it emphasized that in the particular context of military justice:

Breaches of military discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct.

However, the law does not allow a military court to impose a sentence that would be beyond what is required in the circumstances of the case. In other words, any sentence imposed by a court must be adapted to the individual offender and constitute the minimum necessary intervention since moderation is the bedrock principle of the modern theory of sentencing in Canada.

[7] The fundamental purpose of sentencing in a court martial is to ensure respect for the law and maintenance of discipline by imposing sanctions that have one or more of the following objectives:

- a) to protect the public, which includes the Canadian Forces;
- b) to denounce unlawful conduct;
- c) to deter the offender and other persons from committing the same offences;
- d) to separate offenders from society where necessary; and

- e) to rehabilitate and reform offenders.

[8] When imposing sentences, a military court must also take into consideration the following principles:

- a) a sentence must be proportionate to the gravity of the offence;
- b) a sentence must be proportionate to the responsibility and previous character of the offender;
- c) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- d) an offender should not be deprived of liberty, if applicable in the circumstances, if less restrictive sanctions may be appropriate in the circumstances. In short, the court should impose a sentence of imprisonment or detention only as a last resort as it was established by the Court Martial Appeal Court and in Supreme Court of Canada decisions; and
- e) lastly, all sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[9] I came to the conclusion that in the particular circumstances of this case sentencing should place the focus on the objectives of denunciation and general deterrence.

[10] Here the court is dealing with an offence for an act of a fraudulent nature not particularly specified in sections 73 to 128 of the *National Defence Act*. While posted at Colorado Springs, USA, in 2009, Commander Martin submitted information for claiming Foreign Service Premium for three dependants when he was entitled to do it for one, and at a rate for which he had no entitlement, depriving Her Majesty in right of Canada of the sum of \$14,938. The two children of his second wife, with whom he got married in the year 2009, were supposed to come live with them, but they never did. Both children were added prior to his posting as his dependants and registered at a school in Colorado Springs, but his second wife never got their custody from her ex-husband. Commander Martin never corrected the situation. He also got a higher FSP rate because of his personnel situation for which he never informed the proper authority about the change. The situation was discovered and payments ceased in November 2012. As a matter of fact, this offence is a serious one *per se* as defined in the *National Defence Act*.

[11] As mentioned by the prosecutor, in *R v St. Jean*, a decision of the Court Martial Appeal Court reported at CMAC 2000, No. 2, a decision delivered in English, the Honourable Mr Justice Létourneau highlighted the impact of fraudulent acts within

public organizations such as the Canadian Forces. At paragraph 22 of the decision, he stated the following:

After a review of the sentence imposed, the principles applicable and the jurisprudence of this Court, I cannot say that the sentencing President erred or acted unreasonably when he asserted the need to emphasize deterrence. In a large and complex public organization such as the Canadian Forces which possesses a very substantial budget, manages an enormous quantity of material and Crown assets and operates a multiplicity of diversified programs, the management must [be] inevitably rely upon the assistance and integrity of its employees. No control system, however efficient it may be, can be a valid substitute for the integrity of the staff in which the management puts its faith and confidence. A breach of that faith by way of fraud is often very difficult to detect and costly to investigate. It undermines public respect for the institution and results in losses of public funds. Military offenders convicted of fraud, and other military personnel who might be tempted to imitate them, should know that they expose themselves to a sanction that will unequivocally denounce their behaviour and their abuse of the faith and confidence vested in them by their employer as well as the public and that will discourage them from embarking upon this kind of conduct.

[12] In arriving at what the court considers a fair and appropriate sentence, the court has considered the following mitigating and aggravating factors:

- a) the court considers as aggravating the objective seriousness of the offence. The offence you were charged with was laid in accordance with paragraph 117(f) of the *National Defence Act*. This offence is punishable by an imprisonment for a term not exceeding two years or to less punishment
- b) secondly, the subjective seriousness of the offences in that for the court it covers three aspects:
 - i. the first aggravating factor from a subjective perspective is the breach of trust. The claims system is base upon integrity, loyalty and judgement of each Canadian Forces member; however, you did exactly the opposite. It is impossible to investigate all statements made for financial purpose by each member. Such conduct also undermines respect that Canadian Forces members and the public must have in their institution.
 - ii. the second aggravating factor is the premeditation and the length of the period for committing the offence. You deliberately provided false information over a period of 40 months in order to take by fraudulent mean, and without any right, public funds that you were not entitled to possess. It means that you planned to act like this, which is far worse than acting on a unique set of unexpected circumstances that make you do something that you do not do normally. Moreover, you had an opportunity to amend yourself and you did not.

- iii. finally, the total amount that you took without any right is very important. Here, we are not talking about some hundred dollars, but about fourteen thousand dollars, such thing must be considered as an aggravating factor.

[13] There are also mitigating factors that I considered:

- a) first, there is your guilty plea. Through the facts presented to this court, the court must consider your guilty plea as a clear genuine sign of remorse and that you are very sincere in your pursuit of staying a valid asset to the Canadian Forces and it also discloses the fact that you are taking full responsibility for what you did;
- b) the restitution you started to make some time after the discovery of the fraud and your intent to reimburse the full amount;
- c) the fact that you do not have any annotation on your conduct sheet or a criminal record related to similar offences;
- d) the fact that you had to face this court martial. I am sure it has had already some deterring effect on you and also on others; and
- e) your record of service in the Canadian Forces. It appears from the evidence produced before this court that your leadership, planning and organizational skills, and your dedication is more than appreciated and that your performance at work is excellent despite what has happened to you so far. It disclosed that your problems are not professional, but personal in nature, and may be corrected if you pay close attention to it, considering your age and experience in life. All of this must go on your side as a mitigating factor in the circumstances.

[14] Here in this case, considering the nature of the offence, the circumstances it was committed, the applicable sentencing principles including sentences imposed on similar offenders for similar offences committed in similar circumstances by military tribunals and the aggravating and the mitigating factors mentioned previously, I conclude that a severe reprimand and a fine in the amount of \$10,000 would appear as the appropriate and the necessary minimum punishment in this case.

[15] As I said in my decision of *Leading Seaman Merriam*, 2010 CM 3021, the financial system in the Canadian Forces relies heavily on the integrity of its members. Public funds are money coming from many people and spent for a few like Canadian Forces members in order to allow them to accomplish their missions. If many military members like you start to take more than what they are allowed to receive, our society is clearly heading into big problems.

[16] I hope you learned something from this incident and that you will act accordingly, trying to correct those personal potential problems you may have and use this experience in the future from the leadership point of view in order to help others who could find or put themselves in a similar situation.

[17] The court will then accept the joint submission made by counsel to sentence you to a severe reprimand and a fine in the amount of \$10,000, considering that it is not contrary to the public interest and will not bring the administration of justice into disrepute.

FOR THESE REASONS, THE COURT:

[18] **FINDS** you guilty of the first and only charge on the charge sheet for an offence under paragraph 117(f) of the *National Defence Act*.

[19] **SENTENCES** you to a severe reprimand and a fine in the amount of \$10,000. The fine is to be paid in monthly instalments of \$100 each commencing on the 1st of February, 2014, and continuing up to the full restitution of the amount of the fraud you are actually reimbursing. Once reimbursed, then monthly instalments of \$100 shall increase to the amount of \$800 and will cease once the fine will be paid in full.

Counsel:

Major A.-C. Samson, Canadian Military Prosecution Services
Counsel for Her Majesty the Queen

Lieutenant-Commander B.D. Walden, Directorate of Defence Counsel Services
Counsel for Commander D.J. Martin