

**Citation:** *R. v. Major M. Arnett*, 2008 CM 1009

**Docket:** 200781

**STANDING COURT MARTIAL  
HEADQUARTERS, REGIONAL CADET SUPPORT UNIT (PACIFIC)  
CANADIAN FORCES BASE ESQUIMALT  
BRITISH COLUMBIA  
CANADA**

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**Date:** 19 March 2008

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**PRESIDING: COLONEL MARIO DUTIL, CHIEF MILITARY JUDGE**

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**HER MAJESTY THE QUEEN**

**v.**

**MAJOR M. ARNETT  
(Offender)**

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**SENTENCE**

**(Rendered Orally)**

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[1] Major Arnett, the Court having accepted and recorded a plea of guilty under paragraph 187(b) of the *National Defence Act* in respect of the first and second charge for offences under section 130 of the Act punishable under section 80 of the *Financial Administration Act* for having wilfully signed a false certificate, I now find you guilty of that first and second charge. As there is no charge remaining, I shall impose sentence.

[2] This is the last in a trilogy of cases heard this week concerning the wilful making of false statements in documents that were required for official purposes and the wilful signature of false certificates by senior staff officers and senior non-commissioned officers arising out of the Regional Cadet Support Unit (Pacific). The offenders in the two other cases were *Chief Petty Officer 2nd Class Gaudreau* who was tried by a Standing Court Martial on 17 March 2008 and *Major Braun* who pleaded guilty under paragraph 187(b) of the *National Defence Act*, in absence of the panel of a Disciplinary Court Martial yesterday. Chief Petty Officer 2nd Class Gaudreau was found guilty of an offence punishable under section 130 of the *National Defence Act* contrary to section 80 of the *Financial Administration Act* and sentenced to a reprimand and a fine of 200 dollars, whereas Major Braun was found guilty of an offence contrary to section 125 of the Act for having wilfully made a false statement in documents signed

by him, that were required for official purposes and he was sentenced to a severe reprimand and a fine in the amount of 500 dollars. Considering the leading role played by Major Arnett in the scheme used to commit all these offences, the court concludes this case to be the most serious of the three. With the knowledge and the benefit of the sentences imposed at the previous courts martial convened to try *Chief Warrant Officer 2nd Class Gaudreau* and *Major Braun*, counsel for the prosecution and defence have come up with a joint submission on sentence. They recommended that this court sentence Major Arnett to a severe reprimand and a fine in the amount of 1750 dollars.

[3] Although this court is not bound by the joint recommendation, it is generally accepted that a joint submission should be departed from only where to accept it would be contrary to public interest and would bring the administration of justice into disrepute. This is not the case here, where the proposed sentence constitutes, in my opinion, the minimum necessary intervention that is adequate in the particular circumstances.

[4] In accepting the joint submission on sentence, the court has considered the totality of the circumstances surrounding the commission of the offences that were presented during the sentencing procedure as well as the extensive documentary evidence filed with the court. The court considered also, for the purposes of sentencing, representations made by counsel and any direct and indirect consequences that the finding and the sentence will have on you.

[5] The facts of this case reveal that in late 2004/early 2005 you became aware of potential problems concerning employment or hiring in a number of key Reserve Force/CIC positions that fell within your sphere of influence as Staff Officer (Finance) at the Headquarters Regional Cadet Support Unit (Pacific). The circumstances that gave rise to the charges arose from the staffing of those of two key positions; one in Chilliwack and the one at the Cadet Summer Training Centre of Albert Head. With regard to the first charge, the incumbent of the position was Mr Green who was a former Regular Force chief warrant officer who had been employed in the Reserve Force on Class B terms of service in the CLCC position since his retirement from the Regular Force in '87. Captain Green, as he then was, was scheduled to retire at his compulsory retirement age effective 18 January 2005. For staffing issues or problems the NDHQ Career Manager was not able to fill the position before July 2005, the position that was designed or was to be used by Mr Green and a vacancy of six months would have taken place. So discussions with Mr Green, Major Braun, who was his supervisor, tried to find some attempts or solutions in order to extend his contract beyond CRA, but it was unsuccessful. Major Braun at the time asked Mr Green if he would be prepared to stay for an interim period of six months on a temporary civilian contract. Mr Green agreed but only if, of course, he would keep the same terms with regard to his rate of pay. This is where you were consulted by Major Braun. You agreed that the position could not be left vacant and filled with someone without the experience required. So you believed at

the time that there were two potential options to rehire Mr Green; first through a Federal Public Service contract or through an agency. Those options were put to your commanding officer and the option retained was to continue with the rehiring of Mr Green through the hiring agency "Platinum". You then contacted the President of Platinum and discussed the options available for hiring Mr Green and you informed that person of the detail of the contract worked out with Mr Green and the agreed rate of pay. So after some calculations and the fees or costs that would include the mark-up that would be collected by the company for the contract and the administrative costs, Platinum sent two proposed time sheets to Major Arnett or to you for approval. You briefed Major Braun and Mr Green on the arrangement that you were proposing and you instructed Mr Green to simply photocopy the pre-filled time sheets irrespective of the hours actually worked, fill out the dates, sign them and submit them to Major Braun for approval as supervisor. Major Braun would approve then the time sheets as hours actually worked and submit them to you for payment. You would then sign off the approval pursuant to section 34 of the *Financial Administration Act* and, of course, Mr Green would accordingly be paid with the same effective wage as he had previously been making as a Reserve captain. So this arrangement was planned and initiated to cover the period from January to July 2005. The weekly pay sheets were submitted to you and you completed the call-ups against standing offer and invoice forms to enable payment to Platinum. You then signed the section 34 certificates on each of the call-up and invoice forms knowing that the hours submitted on the time sheet were false. Of course, you had successfully completed the mandatory expenditure management training pursuant to sections 32, 33 and 34 of the *Financial Administration Act* on numerous occasions during your career and, of course, you had been re-certified in September '02 and again in July '05. With regard to the second charge dealing with Mr McGuire, the same process was used with the same result and that, of course, that led to the second charge. With regard to the second charge it's also worth mentioning that on three occasions, in your absence on leave, Chief Petty Officer 2nd Class Gaudreau, the Master Warrant Officer Finance who worked under your supervision, was required to sign on your behalf. Although he initially refused to sign the form and questioned the propriety of that method, after raising the issue with you, you explained to him the arrangement worked out with Platinum. And after finding that explanation reasonable, Chief Petty Officer 2nd Class Gaudreau signed the certificates knowing also that the time sheets were false.

[6] I have said earlier this week that in order to contribute to military discipline, the sentencing principles and objectives are normally the protection of the public; the punishment and the denunciation of the unlawful conduct; the deterrence of the offender and other persons from committing similar offences; the separation of offenders from society, including from members of the Canadian Forces, where necessary and only as a last resort; the rehabilitation of offenders; the proportionality to the gravity of the offence and the degree of responsibility of the offender; and also that the sentence should be similar to sentences imposed on similar offenders for similar

offences committed in similar circumstances. After considering all of those principles and objectives, the Court has to consider any relevant aggravating or mitigating circumstances related to the offence and to the offender.

[7] The Court agrees with the prosecution that the sentence in this case should emphasize the need to protect the public through denunciation of the conduct and general deterrence. I also agree with defence counsel where he says that the principles of proportionality and parity are important considering the outcome in the cases of *Gaudreau* and *Braun*. The joint submission then shall be carefully reviewed accordingly. To achieve these principles and objectives, counsel jointly submit that the court should impose a sentence composed of a severe reprimand and a fine in the amount of 1750 dollars. I see no reason to depart from that joint submission in light of the previous decisions in *Gaudreau* and *Braun*. The joint submission properly reflects the leading role that you played, Major Arnett, in the illegal scheme used to pay civilian employees through a civilian agency to a rate of a pay that they would not have been entitled under the applicable rules. This joint submission falls also within the applicable range of sentences for similar offences. As I said in the Disciplinary Court Martial of *Major Braun*, these cases send a clear message that this type of conduct will not be tolerated and that the offenders will be brought to trial irrespective of their status, performance and highly distinguished career in the Canadian Forces.

### **Aggravating Factors**

[8] In accepting this joint submission, the Court has considered the following factors to aggravate the sentence:

1. The objective gravity of the offence. A person found guilty of an offence under section 80 of the *Financial Administration Act* is guilty of an indictable offence and liable to a fine not exceeding 5000 dollars and to imprisonment for a term not exceeding five years. This is a serious offence.
2. Your leadership role in being the author of the illegal schemes created to pay Mr Green and Mr McGuire in order to pay them at rates that they would not have been entitled under the applicable regime of employment governing employees hired through agency services.
3. The position of trust that you occupied when you committed the offence as the Staff Officer 2 (Finance) for Regional Cadet Support Unit (Pacific), a position that you held for over 10 years. In that capacity, you were the Comptroller for Pacific Region Cadets responsible to provide comptrollerhip and financial support to 135 Cadet Corps and four summer camps in British Columbia as well as

the daily management of 23 millions dollars. These offences constitute an abandonment of your overall responsibility to safeguards public funds and legitimate hiring practices.

### **Mitigating Factors**

[9] But I also considers the following factors to highly mitigate the sentence:

1. The fact that you have acknowledged full responsibility for your actions by pleading guilty before the court at the very first opportunity and dispensing with the need for a long and costly disciplinary court martial. You were also fully cooperative with auditors and police investigators during the various investigations and you voluntarily explained the circumstances surrounding the employment of both Mr Green and Mr McGuire from January to July 2005. The evidence before the court confirms without a doubt also that this admission of guilt today is a genuine sign of remorse.
2. The fact your actions are totally out of character and show a profound lack of judgment, although for a very short period of time, which is totally irreconcilable with your long and distinguished career of 42 years in the Canadian Forces. As stated by the former Chief of Review Services, Vice Admiral (Retired) G.E. Jarvis in his letter dated 13 March 2008 at Exhibit 13: " I sincerely believe that the circumstances that have led to Major Arnett's appearance before the court reflect an extremely rare and inexplicable lapse in judgment on his part, and they are not at all an indication of his true character." Based on the evidence before me, I fully endorse those statements.
3. Your long, unblemished and distinguished career in the Canadian Forces of over 42 years. You have always been recognized as a fine, highly competent and dedicated logistics and finance officer admired by both his subordinates and superiors.
4. The absence of a conduct sheet or criminal record.
5. Your personal and family situation and the delay elapsed since the laying of the charges. You are 62 years old and will now publicly stand convicted and sentenced before a court martial for offences committed in your primary area of expertise and responsibility. I am convinced that this is not the way you intended to conclude your military career.

6. The fact that now having been convicted of a designated offence under section 196.26 of the *National Defence Act*, you may be fingerprinted, photographed or subjected to any other measurement, process or operation having the object of identifying persons under the *Identifications of Criminals Act*, and this may restrict your freedom of movement in order to attend at your newly acquired winter residence in the United States.

[10] After having considered these elements, I am satisfied that the joint submission does not bring the administration of military justice into disrepute and I see no reason to depart from it. You will also have a criminal record for which you will now require a pardon under the *Criminal Records Act*. Therefore, this court sentences you to a severe reprimand and a fine in the amount of 1750 dollars.

COLONEL M. DUTIL, C.M.J.

COUNSEL

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