

Citation: *R. v. Captain J.B. Blacquier*, 2007 CM 4031

Docket: 200727

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

Date: 20 December 2007

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

HER MAJESTY THE QUEEN

v.

**CAPTAIN J.B. BLACQUIER
(Accused)**

**FINDING
(Rendered orally)**

[1] The accused, H41 740 931 Captain Blacquier, stands accused of three charges laid under section 130 of the *National Defence Act*. Specifically, he is accused of having committed a fraud contrary to section 380 of the *Criminal Code of Canada* of forgery contrary to section 367 of the *Criminal Code* and of having uttered a forged document contrary to subsection 368(1) of the *Criminal Code of Canada*.

[2] The evidence before this court martial is composed essentially of the following: Judicial notice, testimonies, and exhibits. Judicial notice was taken by the court of the facts and issues under Rule 15 of the Military Rules of Evidence. The testimonies heard in the order of their appearance before the court are those of Lieutenant Berthiaume, Captain Haynes, Mrs Peterson, Sergeant Pelletier, and Captain Blacquier. Eleven exhibits were entered by the prosecution and by defence counsel by consent.

[3] Before this court provides its legal analysis of each charge it is appropriate to deal with the presumption of innocence and the standard of proof beyond a reasonable doubt, a standard that is inextricably intertwined with the principal fundamental to all criminal trials. Although these principles are well known to counsel, other people in this courtroom may be less familiar with them.

[4] It is fair to say that the presumption of innocence is most likely the most fundamental principle in our criminal law, and the principle of proof beyond a reasonable doubt is an essential part of the presumption of innocence. In matters dealt with under the Code of Service Discipline, as in cases dealt with under Canadian criminal law, every person charged with a criminal offence is presumed to be innocent until the prosecution proves his or her guilt beyond a reasonable doubt. An accused person does not have to prove that he or she is innocent, it is up to the prosecution to prove its case on each element of the offence beyond a reasonable doubt. An accused person is presumed innocent throughout his or her trial until a verdict is given by the finder of fact.

[5] The standard of proof beyond a reasonable doubt does not apply to the individual items of evidence or to separate pieces of evidence that make up the prosecution's case, but to the total body of evidence upon which the prosecution relies to prove guilt. The burden or onus of proving the guilt of an accused beyond a reasonable doubt rests upon the prosecution and it never shifts to the accused person. A court must find an accused person not guilty if it has a reasonable doubt about his or her guilt after having considered all of the evidence. The term "beyond a reasonable doubt" has been used for a very long time and is part of our history and traditions of justice. In *R. v. Lifchus*, [1997] 3 S.C.R. 320, the Supreme Court of Canada proposed a model chart on reasonable doubt. The principles laid out in *Lifchus* have been applied in a number of Supreme Court and appellate court decisions. In substance, a reasonable doubt is not a far-fetched or frivolous doubt. It is not a doubt based on sympathy or prejudice, it is a doubt based on reason and common sense. It is a doubt that arrives at the end of the case based not only on what evidence tells the court, but also on what the evidence does not tell the court. The fact that the person has been charged is no way indicative of his or her guilt.

[6] In *R. v. Starr*, [2000] 2 S.C.R. 144, the Supreme Court held that:

... an effective way to define the reasonable doubt standard for a jury is to explain that it falls much closer to absolute certainty than to proof on a balance of probabilities....

[7] On the other hand, it should be remembered that it is nearly impossible to prove anything with absolute certainty. The prosecution is not required to do so. Absolute certainty is a standard of proof that does not exist in law, the prosecution only has the burden of proving the guilt of an accused person, in this case Captain Blacquier, beyond a reasonable doubt. To put it in perspective, if the court is convinced or would have been convinced that the accused is probably or likely guilty, then the accused would be acquitted since proof of probable or likely guilt is not proof of guilt beyond a reasonable doubt.

[8] What is evidence? Evidence may include testimony under oath or solemn affirmation before the court by witnesses about what they observed or what they did. It could be documents, photographs, maps, or other items introduced by witnesses, the testimony of expert witnesses, formal admissions of facts by either the prosecution or the defence, and matters of which the court takes judicial notice. It is not unusual that some evidence presented by the court may be contradictory, often witnesses may have different recollections of events. The court has to determine what evidence it finds credible. Credibility is not synonymous with telling the truth and a lack of credibility is not synonymous with lying. Many factors influence the court's assessment of the credibility of the testimonies of a witness. For example, the court will assess a witness' opportunity to observe, a witness' reasons to remember. Was there something specific that helped the witness remember the details of the event that he or she described, were the events noteworthy, unusual and striking, or relatively unimportant and therefore, understandably, more difficult to recollect? Does a witness have any interest in the outcome of the trial; that is, a reason to favour the prosecution or the defence or is the witness impartial. This last factor applies in a somewhat different way to the accused. Even though it is reasonable to assume that the accused is interested in securing his or her acquittal, the presumption of innocence does not permit a conclusion that an accused will lie where the accused chooses to testify.

[9] Another factor in determining credibility is the apparent capacity of the witness to remember. The demeanour of the witness while testifying is a factor which can be used in assessing credibility; that is, was the witness responsive to questions, straightforward in his or her answers, or evasive, hesitant, or argumentative. Finally, was the witness' testimony consistent with itself and with the uncontradicted facts. Minor discrepancies, which can and do innocently occur, do not necessarily mean that the testimony should be disregarded, however, a deliberate falsehood is an entirely different matter, it is always serious and it may well tint the witness' entire testimony. The court is not required to accept the testimony of any witness, except to the extent that it has impressed the court as credible, however, a court will accept evidence as trustworthy unless there is a reason rather to disbelieve it. The full test as set out in the Supreme Court of Canada decision of *R. v. W.(D.)*, [1991] 1 S.C.R. 742, can be applied because the accused, Captain Blacquier, testified. As established in that decision, the test goes as follows:

First, if you believe the evidence of the accused, obviously you must acquit.

Second, if you do not believe the testimony of the accused but you are left in reasonable doubt by it, you must acquit.

Third, even if you are not left in doubt by the evidence of the accused, you must ask yourself whether, on the basis of the evidence which you do accept, you are convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

[10] Having instructed myself on the onus and standard of proof, I will now turn to the questions in issue before this court. Captain Blacquier was enrolled in the Canadian Forces on 26 February 2001 under the Dental Officer Training Program and attended the University of Western Ontario. He received a briefing on 1 October 2002 from Lieutenant(N) Berthiaume, his career manager, on administrative, logistical, and academic topics. He was informed of his chain of command and of Lieutenant(N) Berthiaume's responsibility vis-a-vis subsidized students such as him. He was informed that he should not accept scholarships, awards, or bursaries of a monetary value. He was also informed that should he accept such monetary awards, his subsidy would be reduced by the same amount as that of the monetary award. Exhibit 3, is the Power Point presentation given by Lieutenant(N) Berthiaume on 1 October 2002. The information I just quoted is found at page 51 of Exhibit 3.

[11] Each DOTP student had to pay his or her tuition and then present a claim with receipts to the university liaison office to get reimbursed. A student could receive an advance of money from the university liaison office. This information is found at page 58 of Exhibit 3.

[12] Mrs Peterson is a financial aid officer at the University of Western Ontario. She reviews and approves a certain number of bursary applications from professional programs that are filled out and sent to her through the University of Western Ontario web site. She described Exhibit 8 as the application form that had to be completed by students applying for bursaries in 2003.

[13] She testified that the main purpose of the application is to determine the financial need of the applicant, to determine the income of the applicant, and to determine the needs of the applicant. Boxes for tuition, books, and additional program expenses are not present on the form that must be completed by the applicant. She explained that the expenses associated with tuition, books, and additional program expenses are inserted automatically in the application form by the computer program because such costs are the same for every student enrolled in the fourth year of the dentistry program. All other information in the form is inserted by the applicant.

[14] This computer modified application form submitted by Captain Blacquier on 28 September 2003, as received by Mrs Peterson, is found at Exhibit 9. Mrs Peterson testified that she used Exhibit 9 to assess the application and the needs of the applicant. Based on the information provided at Exhibit 9; that is to say, his income of \$43,000 and his line of credit of \$35,000 and his tuition of \$28,000, she concluded that Captain Blacquier could receive \$4,300 because he needed support.

[15] She testified in cross-examination that she had not made any decision as to his eligibility for a bursary before her 20 November 2003 meeting with Captain Blacquier. She testified the decisions to grant bursaries are made during the month of

October and that bursaries are given to the student in late November to early December. She also testified that few students at the University of Western Ontario are sponsored by indicating that 5 per cent at the most would fall in that category.

[16] She met Captain Blacquier on 20 November 2003 to discuss his application because she had been informed that fully subsidized students were receiving bursaries. Captain Blacquier informed her that the Canadian Forces were paying for his tuition, books, and equipment. Captain Blacquier also explained to Mrs Peterson that he needed the bursary because he was paying his wife's studies at the University of Western Ontario. Based on that information she denied his application.

[17] During her cross-examination, Mrs Peterson did indicate that other students had indicated other significant financial resources in the boxes at the end of Exhibit 9 or had contacted her to discuss such matters. Mrs Peterson also explained why the new application form, Exhibit 10, is different from Exhibit 8. This new form now requires the student to indicate their expenses for tuition and books. It also indicates "military" by the scholarship box and non-University of Western Ontario sponsorship box.

[18] Captain Blacquier understood he could not accept any money while he was subsidized by the Canadian Forces. He paid for his wife's tuition, books, and other expenses while he was completing his fourth year of dentistry at the University of Western Ontario. She was enrolled at the University of Western Ontario in a one-year education program. His wife's tuition and books amounted to approximately \$6,000. He was not asked to explain why his wife did not apply for any loans nor did he offer any explanations. She contributed no income. He would have had approximately \$20,000 in debts before he began his dentistry program.

[19] I will now apply the test found at *R. v. W.(D.)* quoted above. Captain Blacquier's evidence is to the effect that he has but a vague recollection of events when he completed the form or of his conversations with fellow DOTP students concerning bursaries. He states that he applied for a bursary to help defray the costs of his wife's one-year program at the University of Western Ontario and not for his own program since the Canadian Forces does not permit him to accept any monetary rewards for his program. He had applied once for a bursary at the University of Western Ontario before he was enrolled in the Canadian Forces. On 29 September 2003 he would have filled out the application rapidly without paying much attention to the form and would have submitted it. He asserts that he was not trying to hide anything from the university, but that the form did not provide him with the suitable boxes to include the amount of his subsidy.

[20] When asked by his defence counsel why he did not indicate that his tuition, books, and instruments were paid by the military in the "non-University of

Western Ontario scholarship and awards” box, Captain Blacquier replied that he did not consider it to be a scholarship or award. But he also added that he was not looking for somewhere to place where tuition was given to him when he was going through the form. Captain Blacquier was not asked by either counsel to clarify this statement. Immediately after uttering that statement he did say that he was not purposefully omitting to include it in the application form when he submitted the form. He explained that he “tabbed through the application.” While he explained that he scanned the form, that he should have taken more time to complete it, and that he did not recall reading the form found at Exhibit 7, he did agree with the prosecutor that he had read the declaration at the end of Exhibit 8. He also asserts that the form is imprecise and confusing.

[21] The court finds his explanations for his actions or omissions to be quite incredible. While he explains that the funding for his expenses comes from his military salary, the tuition provided by the military, and his line of credit, he persists in saying that the tuition and books subsidy from the CF is not an income. He chooses to use the definition of income as he would understand it when completing his income tax return. That might be true for income tax purposes, but the application form requests information on study-period resources and on funding source not just on income. A line of credit is not income yet he included it as a funding source. He also testified that he understood study-period resources to mean only his salary. These explanations leave me very incredulous. He also contradicts himself when he states that he is funding his expenses with his military pay, the tuition provided by the military, and his line of credit, but then asserts that his tuition is only considered an expense and not an income. It is clear from the evidence that a student under the DOTP program must pay his expenses and then claim for them to his or her ULO.

[22] His explanations of his intentions when he was inserting information in the boxes on the last page of Exhibit 9 are surely not evident from the information he did insert in those boxes. Especially, his stated intention to let the university know that he had enough funds for his program, but that he used his line of credit to pay for his wife’s tuition. His reasoning is not consistent. He agreed with the prosecutor that the subsidy from the Canadian Forces is a substantial amount of money, but he indicated that he could not insert the subsidy in the application form because there was no specific box for this type of support. He also stated that he was not looking to put that amount in the form. His counsel argued the 2003 form was confusing and not precise enough, and that this was corrected in the 2007 form. Yet, Captain Blacquier testified that he scanned through the form when he completed it and that he did not remember reading every part of it.

[23] Captain Blacquier even suggested that the personnel at the student aid office should be aware of the conditions of the Canadian Forces subsidized program. He suggested that the fact that he had indicated that he was in the armed forces is

enough for them to realize that he was subsidized. What of the case of a member of the militia who parades during the school year, but is not subsidized by the Canadian Forces? That person could well include the armed forces as a source of income, but this does not mean that he or she is subsidized. I view this comment from Captain Blacquier as an attempt of putting the responsibility of knowing when a student's tuition and books expenses are fully subsidized at the feet of others instead of making an effort to include it in the application form. That comment is not supported by any evidence or any logical inference, and demonstrates that he is attempting to deflect any blame from himself.

[24] He seems to view this situation in a very particular way that is confusing to an observer. During his interview with Sergeant Pelletier, when explaining why he had applied for his wife, he mentioned that it would have been dishonest for his wife to apply for a grant by leaving his salary from the Canadian Forces out of the application form. Why would she have omitted to include his salary in her application form? Captain Blacquier was not asked to explain that statement during the interview or during his testimony. It appears to the court that he is trying to justify his actions.

[25] Although Captain Blacquier voluntarily participated in the interview with the CFNIS and did testify at trial, I do not find that his answers are forthcoming. I do not find that he answered questions that might have a negative impact on him in a clear and unambiguous manner. His tone of voice was sometimes so low when he answered these questions that it was quite difficult to hear his answers. I find that he is quick to deflect the blame or responsibility to others and is more content to fail to remember what he might have read or not read or what topics of conversation he might have had or not had with other DOTP students. I find him to be evasive and hesitant when answering such questions. Also, he has contradicted himself on a number of significant issues such as his intention to include the amount of the subsidy in the application form as well as his understanding of what constitutes the funding or resources available to him.

[26] Based on his explanations that stretch the limit of one's common sense concerning his understanding of the application form, his explanations as to why he did not include the amount of his subsidy in the application form, his reasons for completing the application form instead of letting his wife complete it, his selective memory concerning the completion of the application form, and the contradictions in his testimony, I find that he is not a credible witness.

[27] I do not believe that his omission to include the amount of the subsidy he received from the Canadian Forces was a simple act of negligence or incompetence caused by the absence of a specific box on the application form. He testified that he was not looking for a box to insert the amount of money he was receiving as a subsidy. Mrs Peterson testified that other students did include additional information in the text boxes

or that they would contact her to clarify matters. He did neither. This is not a situation where one mistake was made such as the erroneous amount for food, this is a situation where an individual decided to make an application for a subsidy and failed to include a considerable amount of money in an application form because he did not want to do so. He completed a financial assistance application with his name, his student number, his SIN, his personal education, and family information. All the information he inserted in the application would lead the reader to one single conclusion, that Jeremy Blacquier is making an application for himself.

[28] He did not write in any of the boxes in the supplementary statements portion of the application that he was making this application in his wife's name because he is the sole provider in their family.

[29] The prosecutor has put much emphasis on the concept that DOTP candidates are not students, and he based his assertion on the evidence provided by the Lieutenant (N) Berthiaume. He argued that since Captain Blacquier knew he was not considered a student by his career manager he should have known not to apply for a bursary since bursaries are reserved for students at the University of Western Ontario. I will quickly deal with this issue. I do not find this argument to have much weight since the guide found at Exhibit 5, provided by the career manager to DOTP candidates, consistently refers to these candidates as students.

[30] With this assessment of the accused testimony in mind I will now address each charge. First, I will examine the charge of forgery. The prosecution had to prove the following essential elements of this offence beyond a reasonable doubt: The identity of the accused as the offender and the date and place as alleged in the charge sheet, that Captain Blacquier made a false document, that Captain Blacquier knew the document was false when he made it, that Captain Blacquier intended that the document be considered genuine, and that Captain Blacquier intended that someone would be prejudiced by treating the document as genuine.

[31] The identity of the accused as the offender and the date and place as alleged in the charge sheet are not contested by the accused and have been proven by the evidence. Exhibit 7 clearly indicates that bursaries are awarded on the basis of financial need. Bursaries supplement student's primary sources of funding such as OSAP, bank loans/lines of credit, and parental/spousal contributions. Financial need is determined by "assessing the costs of the program that students are registered in or are applying for and the resources available to them." It is clear from the eligibility criteria that the student completing the application is applying for himself or herself. Exhibit 8 requests personal information of the applicant. The fifth box in the supplementary statements portion, is provide to answer the following question: "Why do you require additional funds to pursue your studies?" Finally, the last box of this application form in the funding source portion of the application form is to be used to answer the following

question: "How do you intend to fund the majority of your expenses for the 2003/2004 academic year?"

[32] The declaration at the end of that form reads as follows:

I have read and agree to the following:

1. The information provided on this application is complete and accurate and I require additional funds to pursue my studies at Western.

The declaration clearly gives the message that the applicant is requesting additional funds to pursue his studies at Western. It also stipulates at paragraph 3 that the value of any bursary or award the applicant receives will be applied to the applicant's student account.

[33] This application form provides a clear message to the applicant, he or she is applying for himself or herself. It requests information about the applicant. Captain Blacquier states his intention was not to obtain the bursary for himself, but to obtain money to defray the cost of his wife's tuition and books. Therefore, according to his reasoning, this application was for his wife's expenditures not his, although all the information he inserted pointed directly to one conclusion, that Jeremy Blacquier is applying for a bursary. He did indicate that he paid for his wife's tuition in explaining his additional expenses. He explained why he needed additional funds to pursue "your studies" at box five of page 3 of 3 of Exhibit 9 in the following manner: "I have significant debt. I am paying for my wife's tuition and living expenses. I would like to reduce my debt load." The explanations provided in that box do not indicate that he is in fact applying for his wife and that he is not applying because he needs the money to pursue his studies.

[34] As stated in the Supreme Court of Canada of *Gaysek v. R.*, (1971) 2 C.C.C. (2d) 545, and applied in the Ontario Court of Appeal decision of *R. v. Ogilvie*, (1993) 81 C.C.C. (3d) 125:

... a document which is false in reference to the very purpose for which [the document] was created is one that is false in a material particular, within the meaning of section 321 of the *Criminal Code*.

The first sentence of the declaration found at the last page of Exhibit 8 is clear and precise. The applicant certifies that:

... The information provided on this application is complete and accurate and I require additional funds to pursue my studies at Western.

[35] Captain Blacquier admitted that he had read the declaration before sending the application. Having found that Captain Blacquier is not a credible witness, I do not accept his explanations to the effect that the application was defective in some way or was confusing. Captain Blacquier stated that he was not looking for a spot to indicate that his tuition was given to him. Captain Blacquier omitted to include the amount of the subsidy he was receiving from the Canadian Forces.

[36] As stated in the Quebec Court of Appeal decision *R. v. Couture*, (1991) 64 C.C.C. (3d) 227, at page 230:

... Everyone, regardless of his professional competence, is in the position to know whether a document that he himself has made reflects reality or not. This does not require reference to any kind of legal notion but strictly to facts....

[37] In the present case, I find that Captain Blacquier did make a false document because it is clear from the evidence that the information he provided on the application was not complete and was not accurate because he did not insert the amount of money he received from the Canadian Forces to subsidize his education, books, and other program expenses as a source of funding for his program. It is also a false a document because he did not require additional funds to pursue his studies at Western. He wanted additional funds to reduce his debts. Therefore, the financial assistance form completed by Captain Blacquier is a document which is false in reference to the very purpose for which the document was created and it is false in the material particular within the meaning of section 321 of the *Criminal Code*.

[38] The next essential element of this offence is whether Captain Blacquier knew the document was false when he made it. He read the declaration before he sent the application to the university and he knew what it contained. He knew he did not require the additional funds to pursue his studies at Western. He also purposefully did not indicate the amount of the subsidy he was receiving from the Canadian Forces in the application form. I find that he knew the document was false when he made the document.

[39] Did Captain Blacquier intend that the document be considered genuine? It is clear from the evidence that he submitted the application to the University of Western Ontario with the intent that the university would use that document in their process of determining what amount of bursary the university would give him.

[40] Finally, did Captain Blacquier intend that someone would be prejudice by treating the document as genuine? I find that the case at hand may be distinguished on its facts from the Quebec Court of Appeal decision in *R. v. Couture*. In *Couture*, the accused, a notary, had made a false document by attesting that the notice to the consumer and the deed of mortgage loan had been signed before him when, in fact, it

had not been signed before him. He was charged with forgery, uttering a forged document, and fraudulent registration of title. He was found guilty of the first count, but acquitted on the other two charges. He appealed his conviction. The evidence in that case did not demonstrate that the notary knew that the signature was false. As the Quebec Court of Appeal stated:

The intent to cause prejudice, like the intent to defraud, requires an element of moral blameworthiness (“deception, trickery, cheating, guile: *R.v. Wolfe*, (1961), 132 C.C.C. 130) [this morale blameworthiness] goes much beyond negligence or incompetence.

[41] The present case has quite different facts. Captain Blacquier is the sole maker of the document. He had the full knowledge of the information he had decided to insert or not to insert in the application form. Captain Blacquier applied to receive a bursary from the University of Western Ontario. This is a non-repayable grant that is awarded by the university on the basis of financial need. Captain Blacquier intended that the university use the application he completed and submitted when deciding the monetary amount of the bursary they would give him. I find that the evidence accepted by the court proves beyond a reasonable doubt that Captain Blacquier did knowingly make a false document with the intent that it be acted upon as genuine.

[42] I will now address the charge of uttering a forged document. The prosecution had to prove the following essential elements for this offence beyond a reasonable doubt. The identity of the accused as the offender and the date and place as alleged in the charge sheet, that the bursary application was forged, that Captain Blacquier knew that the bursary application was forged, that Captain Blacquier dealt with the bursary application, and that Captain Blacquier represented the bursary application as genuine.

[43] The identity of the accused as the offender and the date and place as alleged in the charge sheet are not contested and have been proven by the evidence. A forged document is a false document made by a person who knows it is false and who intends that it be dealt with as if it were genuine to the prejudice of another. I have already answered this question when dealing with the charge of forgery. Captain Blacquier knew the bursary application was forged since he is the person who completed the bursary application. Captain Blacquier did deal with the bursary application by sending it to the competent authorities of the University of Western Ontario in an attempt to obtain a bursary from the University of Western Ontario. Captain Blacquier did represent the bursary application as genuine. He completed it in his name and presented it to the University of Western Ontario as a completed bursary application knowing that he had not inserted all of the required information and that he did not require additional funds to pursue his studies at the University of Western Ontario. I find that the evidence accepted by this court proves beyond a reasonable doubt that Captain Blacquier did utter a false document.

[44] Finally, I will examine the charge of fraud. The prosecution had to prove the following essential elements of this offence beyond a reasonable doubt. The identity of the accused as the offender and the date and place as alleged in the charge sheet, that Captain Blacquier used deceit, falsehood, or other fraudulent means, that the means which Captain Blacquier used defrauded the University of Western Ontario of any property, money, or valuable security, and that Captain Blacquier intended to defraud the University of Western Ontario.

[45] Again, the identity of the offender and the date and place as alleged in the charge sheet are not contested and have been proven by the evidence. Did Captain Blacquier use deceit, falsehood, or other fraudulent means? Captain Blacquier submitted an application form that clearly indicated that the applicant was requesting a bursary because the applicant required additional funds to pursue his studies at the University of Western Ontario. Captain Blacquier testified that he read this declaration. He did not need any money to pursue his studies, he applied to reduce his debt load. He also did not include the amount of the subsidy he received from the Canadian Forces in the study-period resources or funding source portion of the application because, as he said, he was not looking to insert that amount when he was completing the form.

[46] I find that Captain Blacquier purposefully omitted to insert critical information in the form and that he made a false statement pertaining to the need of the bursary to pursue his studies. Therefore, I find that Captain Blacquier did use deceit and falsehood when submitting the bursary application.

[47] Did the means which Captain Blacquier used defraud the University of Western Ontario of any property, money, or valuable security? Deprivation need not be actual loss. The Supreme Court of Canada enunciated the following rule in *R. v. Olan et al.*, [1978] 2 S.C.R. 1175:

The element of deprivation is satisfied on proof of detriment, prejudice, or risk of prejudice to the economic interests of the victim. It is not essential that there be actual economic loss as the outcome of the fraud....

[48] The evidence demonstrates that Mrs Peterson uses the information provided by the applicant on the application form, submitted via the University of Western Ontario web site, to assess the application and to determine if the applicant may receive a bursary and to determine the amount of the bursary. She did not indicate that she normally meets with every applicant in the normal course of assessing an application for a bursary. The approval process usually occurs during the month of October and the money is provided to the applicant in late November or early December. She had assessed that based on the information in the application form and the needs not met Captain Blacquier could receive a bursary of approximately \$4,300.

[49] The only reason she met Captain Blacquier, as well as the other DOTP students, during this assessment process was the information she had received that certain military students were applying for bursaries, but were not disclosing all their assets. It is clear from her evidence that she would not have requested the meeting with Captain Blacquier to discuss his application had she not received that information. She wanted to meet him to discuss his resources and the extent of the support he was getting from the Canadian Forces.

[50] I find that the combination of the application, as submitted by Captain Blacquier, and the normal assessment and approval process satisfy the element of risk of prejudice to the economic interests of the University of Western Ontario. The evidence indicates that the actual deprivation was prevented by the anonymous telephone call to Mrs Peterson that led her to verify this information pertaining to specific applicants and thus her subsequent meeting with Captain Blacquier.

[51] Before leaving this element of this offence I wish to note that although the particulars allege that the amount defrauded was \$3,700, the evidence provided by Mrs Peterson was to the effect that she would have granted Captain Blacquier \$4,300. As such, since her evidence provides for a greater monetary value, I find that the amount of \$3,700 has been proven.

[52] Finally, did Captain Blacquier intend to defraud the University of Western Ontario? As can be found in the *R. v. Theroux* decision that was provided to me by counsel, the proper question to ask when determining the *mens rea* of fraud is:

... [W]hether the accused intentionally committed the prohibited acts (deceit, falsehood, or other dishonest act) knowing or desiring the consequences proscribed by the offence (deprivation, including the risk of deprivation)...

Having found that Captain Blacquier had intentionally completed the form as he did, I find that he intentionally committed the prohibited act. He also knew that the University of Western Ontario would be deprived of the amount of the bursary it would grant him and he desired that outcome. I find that Captain Blacquier intended to defraud the University of Western Ontario.

[53] Captain Blacquier, the court finds you guilty of charge No. 1, of charge No. 2, and of charge No. 3.

Lieutenant-Colonel J -G Perron, M.J.

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