

Citation: *R. v. Captain T. Emons*, 2007 CM 4030

Docket: 200724

**STANDING COURT MARTIAL
CANADA
ALBERTA
CANADIAN FORCES BASE COLD LAKE**

Date: 11 December 2007

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

HER MAJESTY THE QUEEN

v.

**CAPTAIN T. EMONS
(Offender)**

**SENTENCE
(Rendered Orally)**

[1] Captain Emons having accepted and recorded your plea of guilty to an attempt to commit charge number 1, the court now finds you guilty of attempting to defraud the University of Western Ontario of the amount of \$3,900.00. The statement of circumstances, to which you formally admitted the facts as conclusive evidence of your guilt, provides this court with the circumstances surrounding the commission of this offence.

[2] 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.

[3] The court must determine if protection of the public would best be served by deterrence, rehabilitation, denunciation, or a combination of those factors. The purposes of sentencing 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.

[4] The court is also required, in imposing a sentence, to follow the directions set out in article 112.48 of 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. The court must also give consideration to the fact that sentences of offenders who commit similar offences in similar circumstances should not be disproportionately different.

[5] The court must also impose a sentence that should be the minimum necessary sentence to maintain discipline because the ultimate aim of sentencing is the restoration of discipline in the offender and in military society.

[6] The prosecution and your defence counsel have jointly proposed a sentence of a severe reprimand and a fine in the amount of \$1,500.00. The Court Martial Appeal Court has stated clearly that a sentencing judge should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute or unless the sentence is otherwise not in the public interest.

[7] The prosecutor suggested that the principle of general deterrence is the most important sentencing principle in this case. I agree with this suggestion.

[8] I am of the opinion that an aggravating factor in this case is the fact that you were fully subsidized to pursue your degree and that you were also in receipt of a salary when you committed the offence. The amount involved and the nature of this attempted fraud are also aggravating factors.

[9] Although you were an officer at the time of the offence, I do not consider this factor as a serious aggravating factor since you were only in your first years in the Canadian Forces and had only completed your basic officer course. I hope that you now understand that you are an officer in the Canadian Forces and as such you are expected to respect the law and to promote the welfare, efficiency and good discipline of all your subordinates. As I said in the *Captain Cooper* case, you may only accomplish that duty by being an example for your subordinates.

[10] You are a first time offender. A plea of guilty is usually considered a tangible demonstration of the offender's remorse for his or her actions and that he or she takes responsibility for those illegal actions and the harm done as a consequence of these actions.

[11] Your plea has also greatly reduced the costs associated with the judicial proceeding.

[12] As I mentioned in the *Captain Cooper* matter, I will not comment on the issue of the time it took to take these charges to trial since the prosecution and your defence counsel have not provided me with any evidence on that issue. I do consider it as a mitigating factor but, as I mentioned in the *Captain Cooper* matter, may only give it little weight given the absence of any evidence on that issue.

[13] I also take note of the fact that you did not receive any money from the University of Western Ontario.

[14] I have reviewed exhibits 7, 8 and 9, the letter of reference and the Personnel Evaluation Report are quite positive in their descriptions of your performance and of your potential to progress in the Canadian Forces.

Captain Emons, please, stand up.

[16] You made very foolish decisions while at the University of Western Ontario. You did not explain the reasons for these decisions nor have you tried to provide the court with excuses for them. I hope that you have learned from these mistakes.

[17] After reviewing the case law presented by counsel and the totality of the evidence, I agree with the joint submission of the Prosecutor and your defence counsel.

[18] Captain Emons, I sentence you to a severe reprimand and a fine in the amount of \$1,500.00. The fine is to be paid immediately.

LIEUTENANT-COLONEL J -G PERRON

Counsel:

Major B.J.A. McMahon, Regional Military Prosecutions Central
Counsel for Her Majesty The Queen
Major C.E. Thomas, Directorate of Defence Counsel Services
Counsel for Captain Emons