Citation: *R. v. Petty Officer 2nd Class S.A. Reid and Petty Officer 2nd Class J.E. Sinclair*, 2009 CM 1004

Docket: 200862

GENERAL COURT MARTIAL
CANADIAN FORCES BASE ESQUIMALT
BRITISH COLUMBIA
CANADA

Date: 9 February 2009

PRESIDING: COLONEL M. DUTIL, C.M.J.

HER MAJESTY THE QUEEN
v.
PETTY OFFICER 2ND CLASS S.A. REID AND PETTY OFFICER 2ND CLASS J.E. SINCLAIR
(Offenders)

SENTENCE
(Rendered orally)

INTRODUCTION

[1] Petty Officers 2nd Class Reid and Sinclair, please stand up. Having accepted and recorded your pleas of guilty to the third charge, being one offence of wilfully damaging property of Her Majesty's Forces contrary to paragraph 116 (*a*) of the *National Defence Act*, this court now finds each of you guilty of that charge. You may be seated. I have now to determine and pass sentence upon you.

[2] The circumstances surrounding the commission of the offence reveal that Petty Officer Second Class (PO2) Reid and PO2 Sinclair are Regular Force members who worked at National Defence Headquarters (NDHQ), National Defence Command Centre (NDCC), Canadian Forces Support Unit Ottawa (CFSUO), when the offence was committed. NDCC's role is to provide situational awareness to the Canadian Forces, DND senior leadership, and the Government of Canada. They also provide Command, Control, Computer, Communications and Intelligence support to CF senior leadership with respect to contingency operations. PO2 Reid was posted at NDCC on 25 August

2006, and PO2 Sinclair was posted to NDCC on 17 May 2004. They both held security clearances called, "Top Secret Special Access" (TSSA). The positions they held at NDCC were extremely sensitive in nature and they were given a very high level of trust and responsibility from the Canadian Forces with highly classified information regarding Canada and our allies. PO2 Reid and her service spouse, PO2 Sinclair, impeded access to a classified database, contained on a classified system, within the NDCC, NDHQ, Ottawa, Ontario, on or about 16 July 2007. One system was a NORAD classified system available to CANUS eyes only from where the data emanates and is migrated to the TITAN system, a separate classified system containing, among other things, historical operational information, for eventual distribution to certain NDHQ desk officers. The migration from Processor Displays Subsystem Migration (PDSM) to TITAN was done manually by writing down on a piece of paper the information from the PDSM system to input it into the TITAN system. In the course of her duties, PO2 Sinclair had voluntarily created an application on the TITAN system using Microsoft Access software that allowed the NDHQ desk officer end user to search historical PDSM data and to view PDSM data in a table format. Ordinarily, PO2 Sinclair was the person that did its maintenance. The application provided the NDHQ desk officer users different options to search history, print monthly lists of PDSM information or view the entire database. After access to the database was damaged by removing the icon, the application was no longer accessible and the operator would have to manually type the information into the email and manually insert the headers of sensitive or classified information to select NDHQ officials, without the benefit of being able to send it in a spreadsheet format according to the features of the Microsoft Access database developed by PO2 Sinclair. The program facilitated more expedient and comprehensive access to classified information by end users at NDHQ. When the icon was damaged, there were delays in the flow of information to NDHQ desk officers regarding classified information relating to historical missile launches or space activity. Further, the benefits of the more user-friendly program to deal with the information were eliminated. The cost of repair was $536 plus four person hours. The PDSM database is classified secret, and contains sensitive information, which could compromise national security if made available to unauthorized individuals who don't have the need to know or have the appropriate security clearance.

[3] Transcripts of personal chat sessions that occurred between PO2 Reid and PO2 Sinclair prior to and during the incident show an intent to damage the database, if only by removing its easy access. These conversations occurred between their personal residence and NDCC.

[4] The chat logs between PO2 Reid and PO2 Sinclair were taken by co-workers from the NCR Net computer, an unclassified system, available for the use of CF personnel and contains many user profiles; users all of whom have administrator privileges and thus can access anyone's information contained on the system.

[5] On 29 June 2007, at 1536 hours, in a chat log of electronic text conversation between PO2 Reid and PO2 Sinclair, PO2 Sinclair explained to PO2 Reid how to impede the function of the database by corrupting or damaging its icon. The evidence indicates that PO2 Sinclair was a senior operator who, in addition to her normal duties, provided training to newly arrived Information Management Non-commissioned Members (IMNs) at NDCC. At the time she was training three individuals, including her own spouse, PO2 Reid. They were both upset at the other two trainees who, according to them, were lazy and did not perform adequately. Despite numerous complaints by PO2 Sinclair to their superiors, according to the offenders' testimonies, nothing was done to address the employees' deficiencies. As a result, they both decided to damage the database icon and cause a reaction that would force the staff to work in order to deal with the issue. This plan was concocted on the basis of frustration and retaliation. PO2 Sinclair testified that her state of mind at the time was affected by her first pregnancy and that she never intended to destroy or damage classified information.

[6] On 16 July 2007, at 0934 hours, their previous discussion became reality. PO2 Reid and PO2 Sinclair had the following discussion during which PO2 Sinclair told her spouse not to forget to crash the database. This is how their plan unfolded:

"PO2 Reid: I will now;
"PO2 Sinclair: make a backup;
"PO2 Reid: how do I do that again;
"PO2 Sinclair: when the thing with the buttons comes up, press the icon in the top left corner (look) like a triangle with a ruler, then click on the first button and delete... ..did you back it up?;
"PO2 Sinclair: just copy paste the closed DB to back it up;
"PO2 Reid: no that's what I cant remember how to do;
"PO2 Sinclair: close the DN find the original file, copy and paste
"PO2 Reid: done"

An electronic hand over note written by PO2 Reid on 16 July 2007, at shift change stating that she had a problem with the PDSM database and that she was not able to fix it.

[7] In early August 2007, a Damage Assessment Report was completed by Mr Pascal Michaud, the NDCC IM Tech Manager, approved by Colonel M. Foucreault, Director NDCC. In particular, the report indicated that only the link providing access to that particular database (the desktop icon) was corrupted or damaged, therefore rendering the application created by PO2 Sinclair inaccessible. A back-up program was obtained to repair expedient access to the database, albeit after a two-week delay. The Director of NDCC concluded in this report that the initial damage assessment revealed that the damage caused by PO2 Reid and Sinclair would cause no impact on operations and NDCC's mission effectiveness. However, he added that the assessment would be revised following CFNIS investigation recommendations.

[8] On 8 August 2007, PO2 Reid confessed that she wanted to see if anyone within the unit could fix it, but her actions were not motivated to test or evaluate the unit efficiency and she never even thought of the consequences. She wanted to "take it from the unit or crash it," because it was PO2 Sinclair's initiative/project and she didn't want to leave it in the unit's hands. Prior to impeding the PDSM Event Log database she advised police that she made a copy on the "N" drive. She stated that she named it, "crap" or, "bad data". With the assistance of PO2 Sinclair, she thought that she would eventually fix it; but wanted to teach them a lesson to do their job, but things got out of hand and worse than what they had expected, and the Military Police got involved.

[9] At the end of her interview with the CFNIS, PO2 Reid wrote a letter of apology to her chain of command.

[10] The investigation surrounding the offence began on 23 July 2007, when Lieutenant-Commander Gavin McCallum, at the time a Senior Watch Officer (SWO) at NDCC, put a complaint to the Canadian Forces Support Unit (Ottawa) Military Police Company. The matter was referred to the Canadian Forces National Investigation Services (CFNIS) for investigation. After meeting with various witnesses, the CFNIS obtained, on 7 August 2007, a warrant to search the residence of PO2 Reid and PO2 Sinclair, and their vehicle, for computerized records and documents stored on computer systems or computer data storage media. The following day, a team of CFNIS officers executed a sealed warrant at the residence of PO2 Reid and PO2 Sinclair. They seized 86 items, including: three computers; two cellphones; PlayStation 3; video camera; Wii console; a Gameboy; and other equipment that could store digital media. PO2 Reid and Sinclair described how this search affected them and how PO2 Sinclair felt violated in the process, although she acknowledged that the procedure was warranted in the circumstances. The CFNIS completed their report on 17 June 2008. The court has not been made aware if the findings made by the Director of NDCC in the initial damage assessment contained in Exhibit 13 were modified after the completion of the police investigation. Lieutenant-Commander McCallum recognized that the commander NDCC was in a better position to assess the overall damage of Reid and Sinclair's actions, but he testified that to his knowledge the initial damage assessment was correct and that the incident did not impact on national security. He added that the incident had not been raised at the NDCC morning briefing following the incident.

[11] On 5 August 2008, four charges were laid against the offenders, namely: sabotage, conspiracy, mischief to data, and willful damage to property. The conspiracy charge was an alternate to the willful damage charge, and the willful damage charge was an alternate to the conspiracy and mischief to data charge. The RDP was served to them on 12 August 2008.

[12] On 21 August 2008, CO MARPAC HQ referred the charges to Commander MARPAC, who then referred the matter to the Director of Military Prosecutions (DMP) the following day. On 2 September 2008, Acting Deputy Director Military Prosecu-

tions-2 assigned a prosecutor to the file for post-charge review. On 8 September 2008, Major Bolduc, Commanding Officer of CFNIS Central Region, requested authorization from Regional Military Prosecutor Central Region to return all the items seized on 8 August 2007 to their owners. Although the seized property has now been returned to their owners, PO2 Reid and Sinclair have chosen to replace the seized property pending its return. They spent approximately $5000 in the process.

[13] After the post-charge review, the charge sheet was issued on 26 September 2008, with charges that differed from the RDP. The charge sheet still related to mischief in relation to data and willful property damage. A charge of negligently performing a military duty was added. Charges of conspiracy and sabotage were removed.

[14] On 29 September 2008, the prosecution preferred the charges and forwarded them to the Court Martial Administrator to convene a court martial. On 7 October 2008, both defence counsel requested DMP to issue a new news release reflecting the new charges that were preferred on 26 September 2008, because, in their view, this was required in order to minimize their clients' stigmatization in the public, and minimize the risk that their right to a fair trial might be impaired by the previous news release. On 15 December 2008, the Court Martial Administrator convened a General Court Martial for the trial to commence on 2 February 2009.

[15] There is ample evidence before this court that the incident leading to the initial charges, which differed from the charges before this court, received significant national media interest. The original charges laid by the Canadian Forces National Investigation Services in August 2008 included charges of sabotage and conspiracy. These charges were not preferred by the Director of Military Prosecutions in September 2008, after the conduct of a post-charge review. The evidence indicates that shortly following the commission of the offence, they were removed from their regular duties, lost their security clearance and access to any classified information, and deprived of any computer access.

[16] During the sentencing procedure, the court heard several witnesses, including the two offenders. Lieutenant-Colonel Heuthorst, Commander NDCC, testified that the incident reduced the effectiveness of his organization for a two-week period, because it affected the timeliness of the passing of information. The court concludes that the timeliness was in fact reduced during the said period to the same level that existed before PO2 Sinclair's initiative to make a user-friendly application using Microsoft Access. The impact of Reid and Sinclair's actions is more significant than the timeliness issue. It brought in doubt the level of accuracy of the information passed to the senior leaders of the department and other interested parties, as well as raising concerns with the ability of NDCC to perform its very mission. It had created a level of uncertainty at the highest echelons of NDCC to the extent that they had concerns that their shortcomings could impact on national security if late, or bad decisions would have been made by the decision-makers as a result. In other words, the actions of Reid and Sinclair created an

internal crisis within NDCC, where doubt inserted itself in an organization that must rely on ultimate accuracy to properly inform the decision-makers of the Department of National Defence. Commander NDCC also testified that the publicity surrounding the incident has called into question our ability to have effective security procedures in the public eyes and with our allies.

[17] All military witnesses and both offenders agreed that the offence did amount to a serious breach of trust that should not be condoned. These actions constitute a flagrant and important breach of trust by senior non-commissioned members, who performed their military duties in a very secure and sensitive environment reserved to the most experienced, knowledgeable, and mature individuals. The military witnesses unanimously stated that the offenders' conduct was immature, demonstrated a profound lack of judgment and discipline, to a level that is not expected from persons of their rank or even lower in rank. Commander NDCC testified that he would never employ the offenders at NDCC in the future or in any operational billet. The secure environment at NDCC requires that individuals observe the highest level of computer discipline.

[18] Lieutenant-Colonel Inch, Chief Petty Officer 1st Class Ford and Mr Dunlop testified to the level of performance of the offenders today. PO2 Reid is employed in a very limited supervisory role at the Base Manual Party, here in Esquimalt, because she cannot handle classified information to the required Protected B level. Her performance is slightly above average and she only enjoys the level of trust necessary to do the work assigned to her. As to Petty Officer 2nd Class Sinclair, she was attached to the Personnel Support Programs at CFB Esquimalt since August 2008. She worked directly for Mr Dunlop, and was not provided access to a computer. She has created handwritten spreadsheets and conducted a visual verification of equipment. Mr Dunlop has observed her for a period of four and a half months, and found her to be reliable and dedicated. He would welcome her to work with him again after her maternity leave. Lieutenant-Commander McCallum described the offenders as excellent operators, particularly PO2 Sinclair, with whom he had previously served more than 15 years ago. He testified that PO2 Sinclair's conduct was an aberration; that it was out of character.

[19] The purpose of a separate system of military tribunals is to allow the armed forces to deal with matters that pertain directly to the discipline, efficiency, and morale of the military. However, the punishment imposed by any tribunal, military or civil, should constitute the minimum necessary intervention that is adequate in the particular circumstances.

[20] In determining sentence, the court has considered the circumstances surrounding the commission of the offence as revealed by the statement of circumstances,[1] as well as

[1]See Exhibit 10.

the evidence presented during the sentencing hearing, including an agreed statement of facts,[2] the testimony of all witnesses, and other documentary evidence composed of newspaper articles and media footage, as well as letters and Personnel Evaluation Reports for both offenders. This court has examined the evidence in light of the applicable principles of sentencing, including the normative principles set out in sections 718, 718.1, and 718.2 of the *Criminal Code*, when they are not incompatible with the sentencing regime provided under the *National Defence Act*. The court has also considered the representations made by counsel and the case law provided to the court and any direct and indirect consequence of the finding or of the sentence that will affect Petty Officers 2nd Class Reid and Sinclair, including financial and pensions implications.

[21] When a court must sentence an offender for offences that he has committed, certain objectives must be pursued in light of the applicable sentencing principles. It is recognized that those principles and objectives will slightly vary from case to case, but they must always be adapted to the circumstances and to the offender. It is trite law that that sentencing is an individualized process. In order to contribute to one of the essential objectives of military discipline, that is the maintenance of a professional and disciplined armed force that is operational, effective, and efficient, the sentencing principles and objectives could be listed as:

> Firstly, the protection of the public, and this includes the Canadian Forces;
>
> Secondly, the punishment and the denunciation of the unlawful conduct;
>
> Thirdly, the deterrence of the offender and other persons from committing similar offences;
>
> Fourthly, the separation of offenders from society, including from members of the Canadian Forces, where necessary;
>
> Fifthly, the rehabilitation of offenders;
>
> Sixthly, the proportionality to the gravity of the offence and the degree of responsibility of the offender;

---

[2] See Exhibit 18.

> Seventhly, the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
>
> Eighthly, an offender should not be deprived of liberty, if less restrictive punishment or combination of punishments may be appropriate in the circumstances; and,
>
> Finally, the court shall consider any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[22] This case is not about the simple or trivial removal of a database or computer icon, like counsel for PO2 Sinclair seems to suggest. This is not like removing an icon on a co-worker's computer to prevent access to his personal calendar or to a video game contained in the same computer. This case is about messing up tools and well established practices used to gather and relay information to our senior leaders in matters of national security, for personal motives fueled by anger and frustration with co-workers and the chain of command. The offenders' conduct had the immediate effect of creating a crisis within NDCC that was totally unjustifiable simply because they wanted to cause their co-workers to work. The removal of the database icon cannot be characterized in absence of its proper context. It is not the mere act of the offenders that is blamable, it is the act committed in the context of potential consequences to national security and making a source of information unreliable for two weeks. The unreliability does not stem from the incapacity to use the information, but from the doubt instilled in the managers of that information with regard to its absolute accuracy. It is for a legitimate and operational reason that Canadian Forces personnel serving as IMNs at NDCC must hold the rank of sergeant. This rank recognizes the following attributes: leadership, courage, integrity, honesty, dedication, judgment, and self-discipline.

[23] In this case, the protection of the public must be achieved by a sentence that will emphasize general deterrence, punishment and denunciation, as well as specific deterrence; however, the sentence must also assist to rehabilitate both offenders.

[24] Counsel for the prosecution recommends that the court impose to the offenders a sentence that would be composed of dismissal and reduction in rank to the rank of leading seaman. He submits that should the court believe that dismissal should not be imposed, the offenders should be reduced to the rank of ordinary seaman. The prosecution argues that both offenders should receive similar sentences because they planned and committed the crime together. Counsel for PO2 Reid recommends that the court should impose a sentence composed of a severe reprimand, and a fine between $2400 and $3,000, payable at a rate of $300 per month. Counsel for PO2 Sinclair recommends that the court impose on her a fine between $200 and $500. The prosecution invokes, as the main aggravating factors: the degree of premeditation, the objective nature of the offence, the experience of both offenders, the gross breach of trust in a highly classified environment, the lack of integrity, and the actual risk they put our country in, despite the fact that there is no

evidence of actual harm to national security. The prosecution notes that they have, for practical purposes, no previous criminal or disciplinary record and they have both pleaded guilty to the offence at the fist opportunity. Both counsel for the defence submit that the proceedings of this court martial have already achieved the necessary general and specific deterrent effect required in this case in light of the wide media coverage this case has received since the laying of the initial charges by the National Investigation Service, which included charges of sabotage and conspiracy. This, according to the defence counsel, would have caused a disproportionate stigmatization of the offenders that could not have been adequately corrected by subsequent press releases. They submit that the punishment should focus on rehabilitation.

[25] Although it is fair to say that the offence of sabotage under s. 52 of the *Criminal Code* is a serious offence that carries a maximum punishment not exceeding 10 years' imprisonment, it is only committed when a person does a prohibited act defined in s. 52(2) of the *Code*. It is also well established that the authority to prefer charges is within the discretion of prosecutorial authorities. They have absolute discretion to choose what charges will be brought to court. They are not necessarily the most serious offence that can be proven based on the facts known to them, including the circumstances surrounding the commission of the offence. The defence submissions imply that the offenders were erroneously charged with conspiracy and sabotage and forever stigmatized by the press releases and the media. Based on the evidence before the court, I find no merit in this argument. The preferral of charges by the Director of Military Prosecutions, albeit different from the initial set of charges, falls within the normal exercise of prosecutorial discretion, based on considerations that are not to be second-guessed by the court. However, it is absolutely correct to state that the offence of willfully damaging Her Majesty's property under paragraph 116(*a*) of the *National Defence Act* is objectively much less serious than the offence of sabotage. The circumstances surrounding the commission of the offence for which the offenders have pleaded guilty are, however, very serious, despite the fact that the removal of a computer icon may cause little or no damage to the computer.

[26] It must be made absolutely and unequivocally clear that a court cannot pass sentence on any offender for offences for which he or she has not been found guilty. The exercise of prosecutorial discretion to prefer specific charges and the decision to ask the court's permission to withdraw more serious charges after concurring with the acceptance and the recording of an accused's plea of guilty to the lesser charge, is not to be questioned by the court; however, the circumstances of the offence can only be related to that unique lesser charge for sentencing purposes.

Aggravating factors

[27] In arriving at what the court considers to be a fair, appropriate and minimal sentence, the court has considered the following factors to aggravate the sentence:

1. The subjective gravity of the offence. Any person who contravenes section 116 of the *National Defence Act* is liable to imprisonment for less than two years or to less punishment. Objectively, this is not a very serious offence. However, as I explained earlier, the damage caused to Her Majesty's property occurred in circumstances that not only impeded the timeliness of NDCC to perform its task for a two-week period, but more importantly it brought in doubt the level of accuracy of the information passed to the senior leaders of the department and other interested parties, as well as raising concerns with the ability of NDCC to perform its very mission. The offenders' actions temporarily caused a level of uncertainty at the highest echelons of NDCC to the extent that they were concerned that their shortcomings could impact on national security if late or bad decisions would have been made by the decision-makers as a result. The offenders, through their actions, created an internal crisis within NDCC by inserting doubt in an organization that must rely on ultimate accuracy to properly inform the decision-makers of the Department of National Defence, as I have previously stated. Unlike counsel for PO2 Sinclair, the court finds the subjective gravity of this offence very serious in the circumstances. It was unbecoming of any senior non-commissioned member, regardless of their position. Their respective role at NDCC and the circumstances surrounding the commission of the offence aggravate the subjective gravity of the offence.

2. The degree of planning and premeditation demonstrated by the offenders prior to the commission of the offence. PO2 Sinclair and Reid jointly prepared their actions because they wanted to teach a lesson to lazy staff and to see how they would react. Their actions were not the result of a spontaneous error driven by a momentary lack of judgment.

3. The rank and the status of the offenders at the time of the offence and the abuse of trust in their positions as members of NDCC. They held extremely sensitive positions that require the highest computer discipline, judgment, maturity, and integrity. In the context of national security interests and the safety of information, as well as the key mission of an organization such as NDCC, the level of trust expected from members who perform their military duties in such an environment is at the highest level. Any breach of that trust is equally at the highest level. It is even more aggravating for PO2 Sinclair, who had extensive knowledge as a senior IMN in

NDCC and whose duties included the maintenance of the database, as well as training the new INMs at NDCC, including her own spouse, PO2 Reid. The fact that PO2 Sinclair was at home on maternity leave when she committed the offence, as she was providing guidance and instructions to PO2 Reid by using an internet chat, is troubling. PO2 Sinclair partly blamed her hormonal changes from her pregnancy for her lack of judgment; such serious misconduct is hardly justifiable for a very experienced senior INM, pregnant or not. The fact that she was then at home on leave should have helped her to put some distance with her problems at work, not encourage her spouse to embark on their project to damage the database icon, regardless of whom had the bad idea in the first place.

4. The risk that their actions caused to national security interests, despite the fact that there is no evidence of actual harm to national security.

Mitigating factors

[28] However, the court considers the following factors to mitigate the sentence:

1. The offenders pleaded guilty to the charge before the court. I consider this plea of guilty as a sign of genuine remorse and the full acceptance of responsibility for their actions, especially in light of the public apology made by both offenders in writing and orally before the court. I believe that your apologies are genuine and sincere, and I also believe you when you say that you wish you could go back in time. Your admissions of guilt have also saved this court from a long trial where many witnesses would have been called to testify, including experts in computer forensic.

2. The fact that you both have had a very good record of service prior to the commission of the offence. PO2 Reid has more than 15 years of service, where PO2 Sinclair served her country for more than 20. You were considered to be solid performers and held in high esteem by your superiors. The various Personal Evaluation Reports speak highly of you. PO2 Reid was promoted to her current rank in 2006, whereas PO2 Sinclair was promoted to that same rank in 2003.

3. The fact that the events leading to this trial took place over 18 months ago is also a mitigating factor, considering the important media coverage. I agree that it has caused you and your family shame and embarrassment. However, we cannot loose sight of the

bare reality that you are the only persons directly responsible for that situation. Considering the various press releases and media clips provided to the court, I conclude that there was no impropriety in the coverage of the events.

4. The important steps that have been taken by both offenders to deal effectively with anger management issues and, to a much lesser degree, the stress and anxiety related to the legal proceedings. From 17 October 2008, to 30 January 2009, PO2 Reid met eight times with a psychologist who works with military personnel on an outpatient basis in Victoria, BC. According to Dr Goranson, PO2 Reid's attendance is always punctual, has shown a strong willingness to participate in and benefit from counseling. Dr Goranson reports that the components of anger management interventions have included psycho-education about constructive versus destructive anger as well as passive, assertive, and aggressive ways of expressing anger. According to her, psychotherapy has also assisted PO2 Reid with learning ways to evaluate whether or not her anger is "righteous" and has explored concrete and specific ways to cope with anger in socially acceptable and adaptive ways. Dr Goranson explains that the therapy has focused on helping PO2 Reid to identify the nature of underlying thoughts associated with feelings of anger and frustration; to examine these thoughts and beliefs for their accuracy; and, to learn how to react appropriately. It revealed that PO2 Reid identifies a tendency to react emotionally when faced with stress, which means that she openly expresses her emotions when she is feeling distressed and/or overwhelmed. As stress management strategies, Dr Goranson reports that she talked with PO2 Reid about expressing sources of frustration openly and honestly, risking "healthy" confrontation and asking for help from others. Dr Goranson assessed that PO2 Reid's emotional status has been significantly compromised by the stress associated with the pending legal proceedings. Dr Goranson expects that many of PO2 Reid's symptoms will remit following the resolution of the stress associated with the court martial, depending on the outcome. She reports that the stress and anxiety being experienced by PO2 Reid is similar, and she is presenting in the same way as other patients facing criminal prosecution. PO2 Sinclair has also met on several occasions with a social worker for stress and anxiety issues related to her outstanding charges. Through cognitive behavioural therapy, PO2 Sinclair has received help to manage stress, stabilize mood, and develop coping strategies. The court considers this process an important step for their rehabilitation.

5. The court considers the absence of a disciplinary and criminal record, in the case of PO2 Reid, and the absence of disciplinary or criminal record for a related offence in the case of PO2 Sinclair.

*Neutral Factor*s

[29] I will now move to what the court considers to be neutral factors in this case:

1. The court considered your family and financial situation. You are married and have one daughter, born on 27 July 2007; that is, 11 days after the commission of the offence. PO2 Sinclair will soon give birth to your second child. The evidence before the court indicates that the costs of day care for you children will amount to $1800 per month in January 2010. Your respective gross income, including the post differential allowance, is $75,780 for PO2 Reid and $77,040 for PO2 Sinclair. The combined income amounts to $140,820. The court does not consider the family and financial situation of the offenders as a mitigating factor in the circumstances, but as neutral. The court, however, recognizes that the sentence to be imposed will have significant financial implications on both offenders and their family. However, sentences imposed on offenders will always impact on their family. It is even more so when joint offenders are members of the same family. Even if the court has genuine sympathy for the offenders and their children, the offenders are the sole responsible for their actions and now live with the consequences.

2. The court considers also being a neutral factor the fact that you have decided to replace many of the goods that had been seized by the police and not returned to you for a period of 14 months and spent approximately $5100 in the process. This was your personal decision. A review of the receipts provided to the court indicates that you made conscious decisions to buy specific material. If state agents were negligent or acted illegally, for which the court has no evidence, nothing precludes you to exercise appropriate civil remedies to be compensated.

[30] The court reviewed the case law provided by counsel for the prosecution and agrees with the general principles contained therein. Although I find the American jurisprudence of little assistance for the determination of sentence in the context of Canadian military law, I fully accept the principle that "... [c]omputer discipline in this

high technology era when so much depends on computer support makes this sort of misconduct serious."[3]

[31] The prosecution seeks a similar sentence for both offenders since he considers them equally responsible for the commission of the offence. It is obvious that defence counsel for PO2 Reid and Sinclair have expressed different views, based on their respective recommendations. In imposing sentence on an accused, a court is not bound to impose a similar sentence to that imposed on a co-accused, but the sentence should not be so disparate as to cause bitterness or resentment on the part of the other accused. In the context of this case, including her larger experience, leadership role as a senior INM who trained newly arrived operators at NDCC, and being in charge of the maintenance of the database, the court believes that PO2 Sinclair deserves a stiffer sentence to that of PO2 Reid. The latter could have never caused the damage to the database icon without, not only PO2 Sinclair's guidance and support, but without following her step by step instructions.

Conclusion

[32] PO2 Reid and PO2 Sinclair. For these reasons, the court imposes upon you the following sentences:

> PO2 Reid, the court sentences you to reduction in rank, to the rank of leading seaman, and a fine of $3,000, payable at a rate of $300 per month;
>
> PO2 Sinclair, the court sentences you to reduction in rank, to the rank of leading seaman, a severe reprimand, and a fine of $3,000, payable at a rate of $300 per month;

[33] Should either or both of you be released from the Canadian Forces before the full payment of your respective punishment, the full payment will be payable immediately prior to your effective date of release. Be seated.

---

[3] *United States v. Chaplin*, 1991 CMR Lexis 1460, at p. 4.

[34] This sentence is the minimum sentence that the court considers appropriate to meet the interests of military discipline and justice in the circumstances of the only offence before the court and the circumstances of each offender. It is not a statement supporting or not supporting the offenders' retention in the Canadian Forces. The circumstances of this case are such that this decision should be left to the chain of command that is in a better position to decide what level of trust, if any, the institution is now willing to place in Leading Seamen Reid and Sinclair.

[35] The proceedings of this General Court Martial are terminated.

COLONEL M. DUTIL, C.M.J.

Counsel:
Major J. Samson, Regional Military Prosecution Halifax
Counsel for Her Majesty the Queen

Lieutenant-Commander P. Lévesque, Directorate of Defence Counsel Services
Counsel for Petty Officer 2nd Class Reid
Mr M. Reesink, Reesink Law Office, Ottawa
Counsel for Petty Officer 2nd Class Sinclair