

**Citation:** *R. v. ex-Master Corporal M.E. Dickson*, 2009 CM 1007

**Docket:** 200866

**STANDING COURT MARTIAL  
CANADA  
ALBERTA  
4 WING COLD LAKE**

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**Date:** 9 June 2009

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

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**HER MAJESTY THE QUEEN**

**v.**

**EX-MASTER CORPORAL M.E. DICKSON  
(Offender)**

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**SENTENCE**

**(Rendered orally)**

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[1] Ex-Master Corporal Dickson, having accepted and recorded a plea of guilty in respect of the second charge; that is, an offence of fraud for the amount of \$20,474.59, punishable under section 130 of the *National Defence Act* contrary to section 380 of the *Criminal Code*, this court finds you guilty of that charge and directs that the proceedings be stayed on the first charge.

[2] Sentencing is the most difficult task for a judge. Counsel know about this. It is true in this case in particular. The facts surrounding the commission of the offence were described in the Statement of Circumstances, filed as Exhibit 11. In essence, the relevant facts reveal that the offender was employed as a qualified plumping and heating technician with the Construction Engineering Squadron at 4 Wing Cold Lake. During the time frame, a very peculiar process was in place, or, I should say, the absence of a proper process with regard to the creation of work orders and purchase orders made it possible for the technician to raise and ultimately approve every phase of a work order without any check-and-balance procedures for legitimacy and accountability by his or her superiors.

[3] When a problem was found in a building, a call was made to the Construction Engineering "trouble-call desk" and a report was made. A work order was then raised in the name of the person who made the report. At the time of the events giving rise to the charge, it was also possible for a tradesman to raise work orders. The work order was given to the technician assigned to make the repair. The technician attended at the job site to make an assessment of what would be required in order to complete the repair. At this point, the technician raised a purchase order so that the materials required to complete the repair would be procured. Once the materials would have arrived at the Construction Engineering Squadron, the technician would attend at the site and make the necessary repairs or not. The technician would then record the number of hours that were required to make the repair and then close the work order. In short, no questions asked. As admitted by Mr Goodwin, the CE Chief Warrant Officer at the time of the incident, this process has now been changed and basic appropriate measures have been installed to prevent the illegitimate use of public funds in such a way.

[4] On 8 February 2007, the military police at CFB Cold Lake received a complaint from Chief Warrant Officer Goodwin, a senior supervisor with the Construction Engineering Squadron, alleging that ex-Master Corporal Dickson had been stealing materials from the Wing Construction Engineering Squadron. Concern regarding ex-Master Corporal Dickson's activities in the section arose, in part, because during the period in which the offence occurred, he was on the Special Personnel Holding List and was working half days. He was assigned administrative duties. He was not being used for repair work on the base and therefore he should not have been ordering materials. So basically that is how the misconduct was discovered. Chief Warrant Officer Goodwin discovered that ex-Master Corporal Dickson was raising his own work orders for jobs on the Wing. He was ordering materials against those work orders by creating purchase orders, billing time for the work performed, and then closing the work order.

[5] Mr Goodwin randomly selected five work orders prepared by ex-Master Corporal Dickson and conducted a physical inspection of the repairs and replacements alleged to have been made. He discovered that no repairs or replacements had been made, contrary to what was described in the work orders. Chief Warrant Officer Goodwin also noted that some of the materials ordered by ex-Master Corporal Dickson were not used in any application on the Wing, nor did any building on the base have those systems which would require a repair. Based on the information provided by Mr Goodwin, the military police detachment at Cold Lake began an investigation which included performing an audit of all work orders raised by the Construction Engineering Plumbing Section.

[6] On 26 March 2007, investigators obtained a warrant to search ex-Master Corporal Dickson's residence. The warrant was executed the next day in the presence of ex-Master Corporal Dickson. One hour into the search of his residence, ex-Master Corporal Dickson advised investigators that he could take them to the location where

the materials were stored. Prior to taking investigators to that location, he was taken to the military police detachment, at his request, and made a statement. He admitted that he had submitted false work orders and false purchase orders so that he could obtain plumbing and heating equipment. He explained that when the materials he ordered would arrive on the Wing, he would remove them to a storage facility off base.

[7] Following his statement, ex-Master Corporal Dickson provided the location of a friend's garage located in Cold Lake North where the materials were located. The search of the location provided by ex-Master Corporal Dickson resulted in the seizure of materials that were referred to today at Annex A of the charge sheet. As I said previously, the total amount of the fraud exceeds \$20,000. The investigation revealed that by creating and submitting false work orders and false purchase orders between 6 April 2005, and 27 March 2007, ex-Master Corporal Dickson obtained the goods contained at Annex A for personal purposes and thereby defrauded the Canadian Forces of funds referred to of over \$20,000. The goods have all been seized and they have been held in storage since that time pending the outcome of this court martial.

[8] It has been long recognized that the purpose of a separate system of military tribunals is to allow the Armed Forces to deal with matters that pertain directly to discipline, efficiency, and morale of the military. It is also recognized that the military context may, in appropriate circumstances, justify and, at times, dictate a sentence that is more severe than if the crime would be committed in a purely civilian context in order to promote proper military objectives. That being said, the punishment imposed by any tribunal, military or civil, should constitute the minimum necessary intervention that is adequate in the particular circumstances, including for offences of fraud committed by persons in a position of trust in the context of the Armed Forces. These military offenders should not be punished more severely than persons in similar positions in government unless there is clear and compelling evidence that the misconduct affected the efficiency, operational readiness, cohesiveness and morale of the Canadian Forces.

[9] The evidence heard during the sentencing phase by Mr Goodwin with regard to the morale of the unit during the investigation, and as a result of the investigation, is more related to the methods used by the military police during their investigation in having members of the unit, mostly civilians, to answer several questions, left a bad taste, I would say, with some members of that unit. So whether the morale of the unit declined as a result of the actions or the misconduct of the ex-Master Corporal Dickson, alone, or if the morale was affected by these actions, but also by the investigation techniques used at the time, is hard to assess, and I am not convinced beyond a reasonable doubt that the evidence before the court is that clear and compelling.

[10] In determining sentence, the court has considered the circumstances surrounding the commission of the offence as revealed by the Statement of Circumstances, the evidence heard during the sentencing hearing; namely, the documentary evidence

provided to the court, as well as the testimonies of various witnesses; namely, Mr Goodwin, Mr Hillier, Lieutenant-Commander Skanes, and the testimony of ex-Master Corporal Dickson. The court has examined this evidence in light of the applicable principles of sentencing, including those set out in sections 380.1 of the *Criminal Code*, as well as 718, 718.1 and 718.2 of that *Code*, of course, when they are not incompatible with the sentencing regime provided under the *National Defence Act*. The court has also considered the representations made by both counsel, including the case law provided to the court.

[11] When a court must sentence an offender for offences that he has committed, certain objectives must be persuaded in light of the applicable sentencing principles. It is recognized that these principles and objectives will slightly vary from case to case, but they must always be adapted to the circumstances and to the offender. In order to contribute to military discipline, the sentence must meet the fundamental purpose and goals of sentencing that have been codified in section 718 and following of the *Criminal Code*. A sentence that does not meet this threshold cannot be considered a fit and proper sentence and serve the maintenance of discipline. Illegitimacy does not serve the promotion and enforcement of internal discipline. The sentencing principles and objectives are often described in the following manner:

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;

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.

[12] As stated by counsel for the prosecution, in *R. v. St-Jean*<sup>1</sup>, a decision of the Court Martial Appeal Court, Létourneau, J.A., speaking for the court, did put in perspective the impact of fraudulent acts in a public organization such as the Canadian Forces:

[22] After a review of the sentence imposed, the principles applicable and the jurisprudence of this Court, I cannot say that the sentencing President erred or acted unreasonably when he asserted the need to emphasize deterrence. In a large and complex public organization such as the Canadian Forces which possesses a very substantial budget, manages an enormous quantity of material and Crown assets and operates a multiplicity of diversified programs, the management must inevitably rely upon the assistance and integrity of its employees. No control system, however efficient it may be, can be a valid substitute for the integrity of the staff in which the management puts its faith and confidence. A breach of that faith by way of fraud is often very difficult to detect and costly to investigate. It undermines public respect for the institution and results in losses of public funds. Military offenders convicted of fraud, and other military personnel who might be tempted to imitate them, should know that they expose themselves to a sanction that will unequivocally denounce their behaviour and their abuse of the faith and confidence vested in them by their employer as well as the public and that will discourage them from embarking upon this kind of conduct. Deterrence in such cases does not necessarily entail imprisonment, but it does not *per se* rule out that possibility even for a first offender. There is no hard and fast rule in this Court that a fraud committed by a member of the Armed Forces against his employer requires a mandatory jail term or cannot automatically deserve imprisonment. Every case depends on its facts and circumstances.

[13] The principles set out by the Court Martial Appeal Court in *St-Jean*, as well as in the decisions of *Lévesque*, *Leegarden*, and *Vanier*, preceded the amendments to section 380 of the *Criminal Code* in 2004, where Parliament increased the maximum punishment for the offence of fraud exceeding \$5,000 from 10 to 14 years' imprisonment. As recognized in *St-Jean*, the principle of general deterrence is the primary aspect that courts shall emphasize in fraud cases. When dealing with offences of employee fraud or substantial commercial fraud, recent jurisprudence by civilian courts and courts of appeal provide useful guidance. In *R. v. Stymiest*<sup>2</sup>, a judgement from the New Brunswick Court of Queen's Bench, McNally J. enunciated the relative importance of the sentencing principles in fraud related offences and the emphasis that should be placed on one or more principles when a court must sentence an offender in employee fraud or substantial commercial fraud at paragraph 53:

[53] The New Brunswick Court of Appeal recently confirmed its view that absent exceptional circumstances, the principles of denunciation and general deterrence trump considerations of an accused's first offender status and positive rehabilitation prospects,

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<sup>1</sup> [2000] C.M.A.J. No. 2.

<sup>2</sup>(2006) 70 W.C.B. (2d) 66; (2006) N.B.Q.B. 129.

generally warranting a sentence of incarceration when dealing with offences of employee fraud or substantial commercial fraud ...

[14] In cases of significant fraud, such as this one, when it was committed by a person in a position of trust, i.e., where the offender had *carte blanche* to order and buy the necessary material to be installed on behalf of the Plumbing and Heating Section within the Base Construction Engineering Unit, and where the offender blatantly abused his position in order to commit the fraudulent acts, the sentence shall emphasize the need to protect the public by ensuring general deterrence, denunciation and punishment and specific deterrence.

### **Aggravating Factors**

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

Firstly, the objective gravity of this offence. A person found guilty of the offence of fraud under section 380 of the *Criminal Code* is liable to imprisonment for a maximum of 14 years if the value of the fraud exceeds \$5,000. I do not have to repeat that the offence of fraud against an employer is objectively and subjectively a very serious offence.

Secondly, the position of trust that you occupied at the time. As a senior technician, you abused the trust vested in you to raise and complete work orders with absolute discretion. It may well be that management abdicated its responsibility in tolerating the absence of minimal security and accountability measures for the expense of public funds within the Heating and Plumbing Section; it remains that as a senior technician you knew that there were no accountability measures in place, therefore you decided to have a long and generous free lunch. You used not only your knowledge and experience to commit your crimes, but more importantly, you used your specific position in order to fabricate, submit, and process false work orders and purchase orders.

Thirdly, the fraud was planned and deliberate. Your stratagem took place over a period of almost two years.

And finally, I consider to be an aggravating factor, the importance of the amount defrauded; that is, in excess of \$20,000. Again, this is a significant fraud.

### **Mitigating Factors**

[16] The court considers the following factors to mitigate the sentence:

The fact that you have acknowledged full responsibility for your actions by pleading guilty before this court and cooperating fully with police authorities at the earliest opportunity. Those elements together, at least demonstrate in my opinion, that this plea of guilty today is a genuine sign of remorse.

Second, I consider to mitigate the sentence, your previous unblemished record in the Canadian Forces, and that seriously mitigates the sentence in this case. However, people convicted of similar frauds against their employer or fraud in the community often benefit of a good reputation in the community and at the workplace. This is a reason explaining how and why they often manage to be put in situations of trust: because they enjoy a good reputation.

Third, I considered your medical situation. The evidence indicates that you suffer from chronic osteoarthritis for which you have been medically released from the Canadian Forces in 2007.

Fourth, the fact that you have no meaningful employment. Knowing that your conviction would give you a criminal record which would prevent you to continue to work for Imperial Oil, you have decided shortly prior to these proceedings to abandon your employment as a result. I know that you were refused a leave of absence of 30 days for personal reasons, but the court reads between the lines, as it is clear that you would have had to disclose your conviction for a fraud against your previous employer and that you would have lost this employment in any event as a result of that conviction.

Fifth, the passage of time; that is, pre-charge delay of one year and the fact that this case is held almost two years after your release from the Canadian Forces, with all the personal history that comes with it, after your release.

Sixth, the absence of a criminal record and conduct sheet.

And seventh, in terms of neutral factors, I note that all items have been recovered and that you did not profit from your misconduct.

[17] In *R. v. Poirier*<sup>3</sup>, that was provided to me by Madame Prosecutor, the court stated at paragraph 13:

[13] The increased objective seriousness for the crime of fraud further to the amendment of section 380 of the *Criminal Code* does not, in my view, require that a fraud committed by a member of the Armed Forces against his employer must be punished by a mandatory custodial sentence. As stated in *St-Jean*, every case depends on its circumstances. For example, a non-commissioned member who submits a false claim further to a posting,

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<sup>3</sup>2007 CM 1023

absent of compelling circumstances, is unlikely to be sentenced to incarceration. However, in those cases where significant amount of public funds are defrauded by a person occupying a position of trust, who uses not only its knowledge and experience, but, more importantly, its very position in order to defraud the Canadian Forces, where that person is responsible to manage the very processes used to commit the crime, the court believes that absent exceptional circumstances incarceration is warranted.

[18] Counsel for the prosecution recommends that the court sentence ex-Master Corporal Dickson to imprisonment for a period of 30 days. Counsel for the defence suggests that a sentence composed of reduction in rank to private and a fine of \$5,000 would meet the interests of justice. Prosecution suggests that incarceration is warranted because you used your position to defraud; whereas the defence submits that incarceration is not necessary because you were not responsible to manage the process used to commit the crime. They are both correct. You abused the fact that there was a total absence of safeguards to commit the offence of fraud. However, I find this case to be of a lesser gravity to that of *Poirier*.

[19] A fair sentence in this case would normally consist of a period of imprisonment for a period of 30 to 60 days. A combination of punishments of reduction in rank and a fine would not be adequate in the circumstances of this case. Incarceration of a period of 30 days is warranted in itself. However, punishments shall be considered in their proper context. I fail to see how such a short, firm sentence would enforce the maintenance of discipline in the particular circumstances of this case, where the offender has been released from the Canadian Forces almost two years ago. He took upon himself to quit a lucrative job before these proceedings because of the effect of a criminal record on his employment. Having lost his reputation within the community, and having decided to remain in Cold Lake until today, he has been stigmatized in the community for which he spent his entire professional career. He has now lost contact with members of his family as a result of his misconduct. He put shame on himself and on his family. He has come to the only conclusion left with him and his wife: he will have to leave this community for good. This man has nothing in front of him. Does someone seriously think that sending this man to jail is the only way to deter others from doing the same? I beg to have a different view. The blind application of strict rules does not serve justice nor discipline.

[20] Sentencing is an individualized process and not a mere demonstration of revenge. In addition, should there have been minimum safeguards for processing work orders and purchase orders, these actions would have been promptly discovered. Based on the evidence of Mr Goodwin, I am left with the impression that this situation is hardly to repeat itself in the future.

[21] Therefore, I cannot find that the interest of justice requires that you serve a firm sentence of incarceration. I therefore sentence you to imprisonment for a period of 21 days and to reduction in rank to the rank of private and a fine of \$8,000, payable immediately. I also suspend the carrying into effect of the imprisonment.



[22] As I have taken into account the direct and indirect consequences that this finding and sentence will have on you, I have considered that the administrative authorities should make the necessary adjustments to your severance pay and to any other entitlements that you may have received and will continue to receive as a result of this sentence.

COLONEL M. DUTIL, C.M.J.

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