Citation: *R. v. Major M. Paradis*, 2006 CM 75

Docket: S200675

PERMANENT COURT MARTIAL
CANADA
QUÉBEC
REGIONAL CADETS SUPPORT UNIT (EASTERN)
MONTRÉAL DETACHMENT
AREA SUPPORT UNIT SAINT-JEAN

Date: 28 November 2006

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

HER MAJESTY THE QUEEN
v.
MAJOR M. PARADIS
(Accused)

SENTENCE
(Delivered from the Bench)

OFFICIAL ENGLISH TRANSLATION

[1] Major Paradis, since the Court has accepted and recorded your admission of guilt to the 1st and 3rd counts, the Court now finds you guilty of the 1st and 3rd counts and orders a stay of proceedings in respect of the 2nd count.

[2] Major Paradis admitted her guilt to a charge laid under paragraph 125(*a*) of the *National Defence Act* and to a charge under paragraph 117(*f*) of the *National Defence Act.* Counsel in attendance made a joint submission to the Court concerning the sentence that this Court should impose. Counsel recommended that the Court impose a sentence of demotion to the rank of Captain combined with a fine in the amount of one thousand dollars. The duty to devise an adequate sentence lies with the Court, which has the right to reject the joint submission of counsel. However, there is a long line of authority to the effect that only imperative reasons would allow the Court to deviate from the joint proposal. Thus, the judge should accept the joint submission of counsel unless it is found to be inadequate or unreasonable or contrary to public policy or unless it is felt that it would bring the administration into disrepute. For example, if it falls outside the range of sentences that have previously been imposed for similar

offences. In return, counsel are required to inform the judge of all the facts that support the joint submission.

[3] The Supreme Court of Canada recognized in *R. v. Généreux* that "to maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently." The Supreme Court noted that in the specific context of military discipline, breaches of discipline should be punished promptly and, in many cases, punished more harshly than if the same actions had been perpetrated by a civilian. Even if it is elevated to the status of a principle, this statement of the Supreme Court does not justify a military tribunal in imposing a sentence consisting of one or more penalties that might go beyond what is required in the circumstances of the case. In other words, any sentence imposed by a tribunal, whether civilian or military, must also constitute the minimum intervention that is required.

[4] Major Paradis, in determining the sentence it considers appropriate and minimal in the circumstances, the Court has considered the circumstances surrounding the commission of the offences as disclosed in the summary of the circumstances, the truth of which you accepted, the documentary evidence submitted to the Court, including the joint summary of fact, the submissions of counsel and the case law submitted. When it is a question of imposing an appropriate sentence on an accused for wrongdoing he has committed and for offences of which he is guilty, certain objectives are targeted in light of the applicable principles, although they vary slightly from case to case. The importance placed on them must, however, be adjusted to the circumstances of the case. To contribute to one of the essential objectives of military discipline, these goals and these principles are as follows:

> firstly, to protect the public and here the public includes the Canadian Forces;
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> secondly, to punish and denounce the offender;
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> thirdly, to deter the offender and anyone else from committing the same offences;
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> fourthly, to separate the offender, where appropriate, from society, including the members of the Canadian Forces;
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> fifthly, to rehabilitate and reform the offender;
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> sixthly, to ensure that the sentence is proportionate to the gravity of the offences and the degree of responsibility of the offender;
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> seventhly, to harmonize sentences;

> eighthly, the use of a sentence that deprives the offender of his liberty only where the court is satisfied that it is a sentence of last resort; and
>
> finally, the court will take into account any aggravating and mitigating circumstances relating to the circumstances of the case and the situation of the offender.

In this case, protection of the public will be achieved by a sentence that stresses deterrence of the offender and anyone else from reoffending, the punishment of the offender and denunciation of the act and the offender. General deterrence is all the more important in this case since it is the second permanent court martial in less than 18 months in the province of Quebec and it involves an officer of the Reserve Force who has committed crimes of a fraudulent nature in the performance of her duties, when she commanded a cadet corps. Furthermore, the fraudulent act in this case is more serious than that which was the subject of the charge against Captain Gagnon, who was tried before a Permanent Court Martial in July 2005, not to mention the fact that Captain Gagnon had not enjoyed the fruits of the fraudulent act, which is not the case here. An examination of the joint suggestion of counsel must allow us to achieve these objectives and implement these principles.

[5] In considering the sentence that would be appropriate, the Court has taken the following aggravating and mitigating factors into consideration. I shall begin with those factors that aggravate the sentence. The Court regards the following factors as aggravating:

> Firstly, the nature of the offences and the sentences provided by Parliament. In the case of the 1st count, involving an offence punishable under paragraph 125(*a*) of the *National Defence Act*, it is punishable by imprisonment for a term not exceeding three years. With respect to the 3rd count, involving an offence punishable under paragraph 117(*f*) of the same Act, it is punishable by imprisonment for a term of less than two years. These are offences that are objectively serious.
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> Secondly, the fact that you were on officer of the Reserve Force for the Cadet Instructors Cadre holding the position of commanding officer and that you abused your privileged situation by abusing the trust placed in you. Your actions displayed a serious lack of honesty and integrity because of the position you held, not to mention the fact that you indirectly gained a personal financial benefit as a result of deceit. In *R. v. St-Jean*, a decision of the Court Martial Appeal Court reported at CMCA 2000, No. 2, a decision rendered in English, the Honourable Létourneau J. cast light on the impact of acts of a fraudulent nature on public

organizations such as the Canadian Forces. At paragraph 22, he explained and I quote:

> 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.

As I mentioned in the case of *Captain Gagnon*, even though the cadet organizations are not part of the Canadian Forces under subsection 46(3) of the *National Defence Act*, in the opinion of the Court, these learned statements of the Court Martial Appeal Court are relevant in this case.

[6] The Court notes the following elements as mitigating factors:

> Firstly, your admissions of guilt in this Court and the fact that the Court considers that these admissions are, in the circumstances, sincere and that they testify to the remorse you feel concerning these incidents and that you have thus avoided the holding of a lengthy trial.
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> Secondly, your record of service within the Reserve Force as a member of the Cadet Instructors Cadre over more than 25 years. On the basis of the evidence submitted to this Court, it seems that this was an isolated case.
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> And thirdly, the fact that you have no disciplinary or criminal record.

[7] In the circumstances of this case, the Court is of the opinion that the joint submission of the parties to the effect that you should be demoted to the rank of Captain

combined with a fine of one thousand dollars is the minimum sentence in the circumstances to provide protection for the public and the Canadian Forces, as well as general deterrence, maintenance of discipline and denunciation of this kind of conduct. It is important to note as well that your actions will have other consequences for you, including the fact that your service record and your reputation have been tarnished as well as the fact that you will now have a criminal record. However, the Court is concerned to note that this is a second court martial in less than 18 months involving a commanding officer of a cadet corps in activities of a fraudulent nature in dealing with public moneys. It is essential that this situation be closely examined by the appropriate authorities within the Reserve Force in order that concrete action can be taken, where appropriate, to eliminate this kind of conduct and I order counsel for the prosecution to forward these concerns to the appropriate authorities.

[8] For all these reasons, the Court accepts the joint submission of counsel, which it considers to be the minimum sentence to provide protection for the public and maintenance of discipline without bringing the administration of military justice into disrepute.

[9] Consequently, the Court reduces you to the rank of Captain. This reduction of rank is accompanied with a fine of one thousand dollars. The fine shall be payable in equal consecutive instalments over a period of 12 months from today. These payments shall be paid by certified cheque, money orders or postal orders. If you are discharged from the Canadian Forces before payment in full of the fine imposed by this Court, the balance of this fine shall become payable immediately before the date of your discharge. Counsel for the prosecution will indicate the exact address of the recipient to which you must pay the fine once the proceedings of this court martial are concluded.

March out Captain Paradis.

The proceedings of this court martial concerning Captain Paradis are concluded.

COLONEL M. DUTIL, C.M.J.

Counsel:

Major J. Caron, Regional Military Prosecutor, Eastern Region
Counsel for the prosecution
Lieutenant Commander P. Lévesque, Director of Defence Counsel Services

Counsel for Captain M. Paradis