**COURT MARTIAL**

**Citation:** *R. v. Ruttan*, 2014 CM 1023

**Date:** 20141006
**Docket:** 201426

Standing Court Martial

2nd Canadian Division Support Base Valcartier Detachment St-Jean
Saint-Jean-sur-Richelieu, Québec, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Bombardier S. Ruttan, Offender**

**Before:** Colonel M. Dutil, C.M.J.

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## REASONS FOR SENTENCE

(Orally)

[1] Bombardier Ruttan has entered a plea of guilty for the following offences; namely, two counts of stealing, contrary to s. 114 of the *National Defence Act*, and six counts of an act of a fraudulent nature not particularly specified in ss. 73 to 128 of the *National Defence Act*, contrary to s. 117(f) of the *Act*. The prosecution submits that the Court should impose a sentence composed of the punishments of a reprimand accompanied with a fine in the amount of $1,000. Counsel for the defence submits that the compelling circumstances of the offender support the view that a reprimand and a fine although warranted, he argues that the quantum of the fine should not exceed $250 payable at the rate of $50 per month.

[2] The circumstances of the offence are the following: On 7 September 2012, a civilian employee who works for the Chaplains' office as an administrative assistant, went to the *Caisse populaire Desjardins* automatic teller at the St-Jean Garrison to withdraw $100 from the St-Jean Charity Fund account. That employee used the Charity Fund debit card to withdraw that money. Two employees, including her, were the only

two persons who had access to the Charity Fund debit card and could withdraw money from the account. Bombardier Ruttan obtained possession of the St-Jean Charity Fund debit card and on the same day, he was able to use it to withdraw $200 from the account. The *Caisse populaire* where the money was withdrawn provided a picture to the investigators of Bombardier Ruttan withdrawing the money. The offender knew that the money he withdrew from the bank account did not belong to him. On 1 October 2012, using the St-Jean Charity Fund debit card, Bombardier Ruttan withdrew $400 from the Charity Fund account. A $1.50 transaction fee was charged to the account. The bank where the money was withdrawn provided a picture of Bombardier Ruttan withdrawing the money. Again, Bombardier Ruttan knew that the money he withdrew from the bank account did not belong to him. The next day, the civilian employee working at the Chaplains' office noticed that the Charity Fund debit card had been lost and advised the *Caisse populaire* accordingly. On 9 October 2012, the employee looked at the bankbook associated with the missing card and noticed that withdrawals had been done between 7 September 2012 and 9 October 2012, withdrawals that neither herself nor the other employee had done. A complaint was made to the military police and an investigation followed. In relation to the acts of a fraudulent nature, Bombardier Ruttan received a posting message in the spring of 2012. Knowing that he would be posted to Saint-Jean-sur-Richelieu on Imposed Restriction (IR) in the summer of 2012, he signed a lease to rent an apartment from a Mr Beaupré. The lease was of $950 per month, including parking. Being on Imposed Restriction, the offender was entitled to be reimbursed the fees associated with his lodging, including the rent and the parking. On 10 July 2012, Bombardier Ruttan submitted a General Allowance claim and a receipt of $950 for his rent of July 2012. On 8 August 2012, Bombardier Ruttan submitted a General Allowance claim and two receipts; one was of $950 for his August 2012 rent, and one of $100 for the August 2012 parking fee. The offender knew that he had not paid $100 for parking for the month of August 2012. He was reimbursed $1,050 for the August 2012 expenses although he was only entitled to be reimbursed $950. On 31 August 2012, the offender submitted a General Allowance claim and two receipts, one was of $950 for his September 2012 rent and one was of $100 for the September 2012 parking fee. Bombardier Ruttan knew that he had not paid $100 for parking for the month of September 2012, and he was reimbursed $1,050 for expenses occurred for September 2012 although he was only entitled to be reimbursed $950. He proceeded in the same way on 4 October, 1 November and 30 November and these claims were for the months of October, November, December 2012 as well as January 2013, there again for the same amounts. These fraudulent acts were only discovered in April 2013 after an employee from the CFLRS Orderly Room conducted a verification of Bombardier Ruttan's March Imposed Restriction claim. That person noticed that the signatures on the rent receipt and the parking receipt did not match and she informed the landlord that Bombardier Ruttan was claiming $100 for monthly parking. The landlord confirmed that the signature on the parking receipts was not his and that the parking was included in the rent.

[3] The Court was also made aware of facts that are more personal to the offender through an Agreed Statement of Facts filed by consent. It states that Bombardier Ruttan is separated from his wife. He has a child of that marriage. Through a separation

agreement, he is required to pay $350 per month in child support and he also pays half of the child's expenses. In August 2014, Bombardier Ruttan filed for bankruptcy. He currently pays $175 per month to his creditors and he will be discharged from bankruptcy 21 months after he filed for bankruptcy. With regard to the fraudulent parking fee claims, the offender has made restitution completely to this date and he currently pays $600 per month for rent and in addition, he has made arrangements to reimburse $600 to the St-Jean Charity Fund at the next pay day. Finally, it was filed in evidence that Bombardier Ruttan has been diagnosed with Post-Traumatic Stress Disorder (PTSD).

[4] In light of those pleas of guilty and the facts and circumstances surrounding the commission of these offences, I must now determine what shall be an appropriate, fair and just sentence. In the context of sentencing an offender under the Code of Service Discipline, the Court Martial Appeal Court has expressly stated that a court martial should guide itself with the appropriate sentencing purposes, principles and objectives, including those enunciated in sections 718.1 and 718.2 of the *Criminal Code*. The fundamental purpose of sentencing at court martial is to contribute to the respect of the law and the maintenance of military discipline by imposing punishments that meet one or more of the following objectives: to denounce the unlawful conduct; to deter the offender and also others who might be tempted to commit such offences; to separate offenders from society, where necessary; to provide reparations for harm done to the victims or to the community; to promote a sense of responsibility in offenders and acknowledgment of the harm done to victims and to the community; and the reformation and rehabilitation of the offender.

[5] The sentence must also take into consideration the following principles: the sentence must be commensurate with the gravity of the offence, the previous character of the offender and his degree of responsibility; it should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; the Court must also respect the principle that an offender should not be deprived of liberty if less restrictive punishments may be appropriate in the circumstances; and finally, the sentence will be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or to the offender. In doing so, the Court must act with restraint in determining sentence and in imposing such punishment that should be the minimum necessary intervention to maintain military discipline.

[6] In *R. v. Master Corporal C. Poirier*, 2007 CM 1023, the Court emphasized the serious nature of fraudulent acts in the context of the Canadian Armed Forces in light of the guidance offered by the Court Martial Appeal Court and other appellate courts in recent years, and at paragraphs 7-9, it stated:

> [7] As stated by counsel for the prosecution, in *R. v. St-Jean*, a decision of the Court Martial Appeal Court, reported as [2000] C.M.A.J. No. 2, 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. Counsel for the prosecution read Justice Létourneau's comments at paragraph 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.
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> [8] 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 amendment 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. As recognized in St-Jean, the principle of general deterrence is the primary aspect that courts shall emphasize in fraud cases. This is even more so today. The principle of general deterrence must, however, be weighed with every other sentencing principle and objective.
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> [9] 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*, (2006) 70 W.C.B. (2d) 66, 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 and 54.

[7] Recent jurisprudence at courts martial, including in *R. v. Tardif*, 2014 CM 1022, delivered on 30 September 2014, have constantly applied the same principles and objectives in sentencing offenders for crimes related to fraudulent acts under s.117(f) and stealing under s. 114 of the *National Defence Act*, as well as fraudulent acts under s. 380 of the *Criminal Code*. These offences are objectively serious, although the circumstances surrounding the commission of the offences before the Court are not the more egregious for these types of offences. Counsel have provided several cases to illustrate that this case is one that does not require incarceration. Nevertheless, there is no doubt that the Court must recognize that the principles of deterrence, both general and specific, and denunciation must be the predominant objectives in the determination of a fit and proper sentence. Rehabilitation is also an important objective in this case as well.

[8] I now turn to the specific aggravating and mitigating circumstances of this case. The Court considers the following elements to be aggravating factors here:

(a) The nature of the fraudulent acts involved: Although this is not a massive and complex fraud, it remains that the acts committed by the offender involved a serious breach of trust in employee-employer relationship with regard to financial benefits. As stated by the Court Martial Appeal Court in *St-Jean* "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";

(b) The degree of planning and deliberation as well as the repetitive character of the fraudulent acts: Bombardier Ruttan used his scheme to defraud the Government of Canada over several months of relatively small amounts that could have gone undetected for a much longer period of time; and

(c) The fact that this is not the offender's first encounter with the military justice system as it appears on his conduct sheet with regard to his conviction for an unrelated matter in 2005: This factor, however, is only relevant in the context that the offender does not appear before the Court with an unblemished record or no record.

[9] The Court considers the following elements to be mitigating factors in the circumstances:

(a) The plea of guilty at the earliest opportunity: This is the most important mitigating factor in this case in the context that the offender admitted or pleaded guilty to all counts before the Court. In the context, the Court accepts that this acceptance of guilt can demonstrate a sincere expression of remorse and the full acceptance of his responsibility;

(b) The restitution: The offender has made full restitution of the amounts defrauded for the false parking fees and he has also made arrangements to reimburse the amount stolen to the St-Jean Charity Fund on his next pay period;

(c) The family and financial situation of Bombardier Ruttan: He is separated and pays $350 per month in child support as well as paying half of his child's expense. He also filed bankruptcy in August 2014 and he should be discharged in spring 2016. He currently pays $175 monthly to his creditors;

(d) The medical condition of Bombardier Ruttan: The offender suffers from Post-Traumatic Stress Disorder. Although the Court received no evidence as to the specific effects that these proceedings and upcoming sentence will have of Bombardier Ruttan, it is fair to say that they will cause an additional stress to that normally incurred on offenders not suffering from that condition;

(e) The age of the offender: Is 32 years old and he can certainly continue to provide good services to the Canadian Forces, although his age can also be used as an aggravating factor because in the context, he knew what he was doing, he should have known what he was doing and, in the context, those two things would amount to a neutral factor; and

(f) The number of years of service of the offender up to today.

[10] If it would not have been for the compelling circumstances of the offender and also if I would have excluded the rehabilitative aspect that is warranted in the circumstances of this case, I would have fully endorsed the recommendation made by the prosecution on the quantum of the fine. However, as we know, the sentence must fit the crime as well as the offender. It is also worth noting that, for the Court, the defence's submission tends to, respectfully, downplay the objective seriousness of the offences and the circumstances surrounding their commission. But overall, both of their recommendation illustrate that the proposed punishments are sound and that the proposed sentences per se, by counsel, would fall within the acceptable range of sentences for these offences. As I said, a fit and proper sentence, in this case, must promote the necessary objectives of sentencing required and they are general and specific deterrence, denunciation as well as rehabilitation.

**FOR THESE REASONS, THE COURT:**

[11] **FINDS** the offender, Bombardier Ruttan, guilty of the first and fourth charges of the offence of stealing under s. 114 of the *National Defence Act*; and guilty of the sixth, eighth, tenth, twelfth and fourteenth charges laid under s. 117(f) of the *Act* for acts of a fraudulent nature not particularly specified in ss. 73 to 128 of the *National Defence Act*.

AND

[12] **SENTENCES** the offender, Bombardier Ruttan, to a reprimand and a fine in the amount of $600 payable in 12 equal and consecutive monthly instalments of $50 beginning on 15 January 2015.

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**Counsel:**

Major A.-C. Samson, Canadian Military Prosecution Service, Counsel for Her Majesty the Queen

Lieutenant-Commander P.D. Desbiens, Directorate of Defence Counsel Services, Counsel for Bombardier S. Ruttan