



COURT MARTIAL

Citation: *R. v. Paas*, 2010 CM 3017

Date: 20100818

Docket: 201029

Standing Court Martial

Canadian Forces Base Winnipeg
Winnipeg, Manitoba, Canada

Between:

Her Majesty the Queen

- and -

Lieutenant J.A. Paas, Offender

Before: Lieutenant-Colonel L.-V. d'Auteuil, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Lieutenant Paas, having accepted and recorded a plea of guilty in respect of the first and only charge on the charge sheet, the court now finds you guilty of this charge.

[2] It is now my duty as the military judge who is presiding at this Standing Court Martial to determine the sentence.

[3] The military justice system constitutes the ultimate mean to enforce discipline in the Canadian Forces which is a fundamental element of the military activity. The purpose of this system is to prevent misconduct or in a more positive way, see the promotion of good conduct. It is through discipline that an Armed Force ensures that its members will accomplish in a trusting reliable manner successful missions. It also ensures that public order is maintained and that those who are subject to the Code of Service Discipline are punished in the same way as any other person living in Canada.

[4] It has been long recognized that the purpose of a separate system of military justice or tribunal is to allow the Armed Forces to deal with matters that pertain to the respect of the Code of Service Discipline and the maintenance of efficiency and the morale among the Canadian Forces. That being said, the punishment imposed by any tribunal, military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances. It also goes directly to the duty imposed to the court to "impose a sentence commensurate to the gravity of the offence and the previous character of the offender," as stated at QR&O 112.48 (2)(b).

[5] Here in this case, the prosecutor and the offender's defence counsel made a joint submission on sentence to be imposed by the court. They recommended that this court sentence you to a reduction in rank to the rank of second lieutenant and a fine in the amount of \$1,000 in order to meet justice requirements.

[6] Although this court is not bound by this joint recommendation, it is generally accepted that a court should not depart from it unless it has cogent reasons such as it is unfit, unreasonable, would bring the administration of justice into disrepute or be contrary to the public interest.

[7] The court has considered the joint submission in light of the relevant facts set out in the statement of circumstances and their significance and I have also considered the joint submission in light of the relevant sentencing principles including those set out in sections 718, 718.1, and 718.2 of the *Criminal Code* when those principles are not incompatible with the sentencing regime provided under the *National Defence Act*. These principles are the following:

Firstly, the protection of the public and the public includes the interest of the Canadian Forces;

Secondly, the punishment of the offender;

Thirdly, the deterrent effect of the punishment, not only on the offender, but also upon others who might be tempted to commit such offence;

Fourthly, the reformation and the rehabilitation of the offender;

Fifthly, the proportionality to the gravity of the offence and the degree of responsibility of the offender; and

Sixthly, the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

The court has also considered the representations made by counsel and the documentation introduced.

[8] I must say that the protection of the public must be ensured by a sentence that would emphasize on principles of denunciation and general deterrence. It is important to say that general deterrence means that the sentence imposed should deter not simply the offender from reoffending, but also others in similar situations from engaging for whatever reasons in the same prohibited conduct.

[9] Here the court is dealing with an offence for stealing while entrusted by reason of his employment with the custody, control and distribution of the NPF money. It is a serious offence per se as defined in the *National Defence Act*. Additionally, it may be considered as a specific military offence that goes to the heart of military discipline and the court will impose what it considers to be the necessary minimum punishment in the circumstances.

[10] In *R. v. St-Jean*, a decision of the Court Martial Appeal Court reported in CMAC-429, a decision delivered in English, the Honourable Mr. Justice Létourneau highlighted the impact of fraudulent acts within public organizations such as the Canadian Forces. At paragraph 22, he stated the following:

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.

[11] In arriving at what the court considers a fair and appropriate sentence, the court has considered the following mitigating and aggravating factors:

- A. The court considers as aggravating the objective seriousness of the offence. The offence you were charged with was laid in accordance with section 114 of the *National Defence Act*. This offence is punishable by an imprisonment for a term not exceeding 14 years or to less punishment. The maximum punishment for this offence is higher than the one for the offence of theft in the *Criminal Code*, and it is the same as the offence of fraud in the *Criminal Code*.
- B. Secondly the subjective seriousness of the offences in that for the court it covers two aspects:

- i. The first aggravating factor from a subjective perspective is the breach of trust. As an NCM at the rank of sergeant, with many years of experience within the CF, you knew that you had ethical obligations to fulfill such as integrity, loyalty, and judgement. You knew well that as a CF member, you must serve your country before yourself. However, you did exactly the opposite. Instead of exploring any other means to respect your personal financial obligations, you took the approach that you could use the NPF money for which you were responsible for in order to pay your bills. You held a position of trust and leadership with respect to the integrity of the payments, including those in cash, made to the Band for its services. You failed to do so.
- ii. The second aggravating factor is the premeditation and the length of the period for committing the offence. You repeatedly and deliberately did the same thing, about once a month for 18 months, in order to take by a fraudulent mean and without any right, the cash payments made by those who requested the Band' services. It means that you planned to act like this, which is far worse than acting on a unique set of unexpected circumstances that make you do something that you don't do normally.

[12] There is also mitigating factors that I consider:

- A. First, there is your guilty plea. Through the facts presented to this court, the court must consider your guilty plea as a clear genuine sign of remorse and that you are very sincere in your pursuit of staying a valid asset to the Canadian Forces and it also disclose the fact that you are taking full responsibility for what you did. At some point, you realized that your chain of command will find out about your wrongful actions and you made the decision to confess on your own, what exactly happened;
- B. The restitution made today of the full amount. I understand that you were ready to do this sooner, but you were told to wait until the matter of who is taking the payment is resolved by your counsel;
- C. The absence of any entry on your conduct sheet for a similar offence or any other kind of offence;
- D. The fact that you had to face this court martial. I'm sure it has had already some deterring effect on you but also on others;
- E. The absence of any impact on the operation of the Band. Missing money may have had some impact on the capacity of the Band to perform some activities or to buy some equipment. However, no evidence whatsoever has been put before this court to support such approach. Then, it is the

conclusion of this court that your actions had no significant impact on the Band's operations;

- F. The fact that your chain of command still has confidence in you despite the fact that you clearly confessed how unreliable you were at the time of the commission of the offence. Clearly, further to your return to your former unit in Winnipeg, you were put back in situations where you had to deal with money issues, and you demonstrated that you were still reliable. You also made steps to manage your personal budget in a more efficient manner in order to avoid difficult situations. You were also recently commissioned at the rank of lieutenant and sent recently to a course in order to be considered for a future promotion. It appears that some kind of trust has been re-established with your chain of command despite the fact it is aware of the actual proceedings; and
- G. The delay to proceed with the charge had little impact on you. While the court is ready to recognize that some time has elapsed since the commission of the offence, the inability of the chain of command to proceed in a timely fashion with the result of the police investigation had little impact on you. As soon as the charge was laid, things proceeded in a prompt and timely manner. In addition, the offender has not put in evidence any prejudice that could have resulted from such a situation. To the contrary, as raised by the prosecutor, nothing precluded the offender's career or life to go on for the last two years.

[13] A court martial may impose a custodial sentence on any grounds it considers appropriate to achieve the paramount objectives of general deterrence and denunciation in this type of case. Considering that incarceration may be used as a sanction of last resort when theft is committed against an employer, I would add that here, in this case, considering the nature of the offence, the circumstances it was committed in, the applicable sentencing principles including sentences imposed on similar offenders for similar offences committed in similar circumstances by military and civil tribunals, the aggravating and the mitigating factors mentioned above, I conclude that there is another sanction or combination of sanctions other than incarceration that would appear as the appropriate and the necessary minimum punishment in this case.

[14] So at this stage, the court will accept the joint submission made by counsels to sentence you to a reduction in rank to the rank of second lieutenant and a fine in the amount of \$1,000, considering that it is not contrary to the public interest and will not bring the administration of justice into disrepute.

[15] Lieutenant Paas, please stand up. Therefore the court sentences you to a reduction in rank to the rank of second lieutenant and a fine in the amount of \$1,000. The fine is to be paid in monthly instalments of \$200 each commencing on 1 September, 2010, and continuing for the following four months.

Counsel:

Major B.J.A. McMahon, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Major E. Charland, Directorate Defence Counsel Services
Counsel for Lieutenant J.A. Paas