



COURT MARTIAL

Citation: R. v. Chaban, 2014 CM 2007

Date: 20140416

Docket: 201373

Standing Court Martial

Canadian Forces Base Wainwright
Wainwright, Alberta, Canada

Between:

Her Majesty the Queen

- and -

Lieutenant C. Chaban, Offender

Before: Colonel M.R. Gibson, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Lieutenant Chaban, having found you guilty in respect of the first charge on the charge sheet following a trial, the court now finds you guilty of this charge and registers a conviction. It is now my duty to determine an appropriate, fair and just sentence.

[2] In doing so the court has considered the principles of sentencing that apply in the military justice system, the facts of the case as disclosed in the evidence heard by the court and the documents introduced in evidence, as well as the submissions of counsel for the prosecution and the defence.

The facts

[3] In March of 2012, 2nd Lieutenant Chaban, as she then was, was the Pay Accounting Officer at Canadian Forces Base (CFB) Wainwright. She needed to complete the Battle Fitness Test (BFT) to fulfill the prerequisites for her anticipated promotion to

lieutenant. On 16 March 2012, she was scheduled to complete the BFT, which was the last one scheduled at CFB Wainwright for that fiscal year, ending 31 March 2012. She did not do so. Instead, she spent that morning with members of an audit team at building 698. Lieutenant Chaban subsequently presented the form at Exhibit 6 to Corporal Sterner, one of her subordinates, asking her to make an entry in the HRMS indicating that she had successfully completed the BFT, and signed the section D block of Exhibit 6 prior to presenting it to the Base Administration Officer as substantiation that she had completed the BFT. The import of the signature of member block at section D of the BFT form is clearly to substantiate the information indicated there that she had successfully completed the BFT on 16 March 2012. The form was a document required for the official purpose of substantiating her successful completion of the BFT, for the purpose of being entered in HRMS, and also fulfilling the prerequisites for her anticipated promotion. Lieutenant Chaban was subsequently promoted, partly on the strength of her false representation that she had successfully completed the BFT on 16 Mar 2012. Lieutenant Chaban has been found guilty following a trial of wilfully making a false entry in a document signed by her that was required for an official purpose.

[4] The fundamental purposes of sentencing by service tribunals in the military justice system, of which courts martial are one type, are: to promote the operational effectiveness of the Canadian Forces by contributing to the maintenance of discipline, efficiency and morale; and to contribute to respect for the law and the maintenance of a just, peaceful and safe society.

[5] The fundamental purposes are achieved by the imposition of just sanctions that have one or more of the following objectives: to promote a habit of obedience to lawful commands and orders; to maintain public trust in the Canadian Forces as a disciplined armed force; to denounce unlawful conduct; to deter offenders and other persons from committing offences; to assist in rehabilitating offenders; to assist in reintegrating offenders into military service; to separate offenders, if necessary, from other officers or non-commissioned members or from society generally; to provide reparations for harm done to victims or to the community; and to promote a sense of responsibility in offenders and an acknowledgement of the harm done to victims and to the community.

[6] The fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[7] Other sentencing principles include: a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances; a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; an offender should not be deprived of liberty by imprisonment or detention if less restrictive sanctions may be appropriate in the circumstances; a sentence should be the least severe sentence required to maintain discipline, efficiency and morale; and any indirect consequences of the finding of guilty or the sentence should be taken into consideration.

[8] In the case before the court today, I must determine if the sentencing purposes and objectives would best be served by deterrence, denunciation, rehabilitation, or a combination of these factors.

[9] The court must impose a sentence that is of the minimum severity necessary to maintain discipline, efficiency and morale. Discipline is that quality that every Canadian Forces member must have that allows him or her to put the interests of Canada and of the Canadian Forces before personal interests. This is necessary because members of the Canadian Forces must promptly and willingly obey lawful orders that may potentially have very significant personal consequences, up to injury or even death. Discipline is described as a quality because ultimately, although it is something which is developed and encouraged by the Canadian Forces through instruction, training and practice, it is something that must be internalized, as it is one of the fundamental prerequisites to operational effectiveness in any armed force.

[10] The court considers that the aggravating factors in this case are the following:

- a. that Lieutenant Chaban dishonestly represented to the Base Administration Officer, and more generally to the Canadian Forces at large, that she had successfully passed the BFT, when in fact she had not;
- b. that she abused the trust imposed in her as a commissioned officer in the Canadian Forces by lying;
- c. that she used a subordinate, Corporal Sterner, as a mechanism through which to convey this false information into the HRMS;
- d. that she obtained a significant benefit, that is, promotion to the rank of lieutenant, partly on the strength of this inaccurate and dishonest representation; and
- e. that the commission of the offence involved a degree of premeditation, and the maintenance of a dishonest representation over an extended period of time.

[11] The mitigating factors in this case include the following:

- a. the long service of Lieutenant Chaban in the Regular and Reserve components of the Canadian Forces, both as a junior non-commissioned member, and more recently as a junior officer
- b. the absence of a conduct sheet or any other indication that she has previous convictions for offences of dishonesty; and
- c. the significant delay that has occurred from the time that she was first charged until the date of trial (over 14 months, and most particularly the

13 months since she elected to be tried by court martial), during which this charge has been hanging over her head, and the even longer period that has elapsed since the commission of the offence (two years), a considerable period for what is not a complex case. This delay is not consistent with what Parliament has prescribed at section 162 of the *National Defence Act*, which provides that charges laid under the Code of Service Discipline shall be dealt with as expeditiously as the circumstances permit.

[12] The principles of sentencing that the court considers should be emphasized in the present case are denunciation, and general and specific deterrence. Confidence in the honesty and integrity of officers in the Canadian Forces, both by other Canadian Forces members and the public at large, is critical. The actions of Lieutenant Chaban have undermined the trust reposed in her as a commissioned officer, and must give rise to doubts about her integrity and whether trust may continue to be reposed in her as an officer.

[13] The prosecution recommends a sentence comprising a reprimand plus a fine of \$2500. The defence submission is for a reprimand plus a fine of \$1000, payable in monthly instalments of \$200-\$300 per month.

[14] I have carefully canvassed all of the cases submitted to me by counsel as precedents for sentencing. The submissions of counsel in this case are consistent with those precedents.

[15] Having reviewed these cases, and the aggravating and mitigating factors present in this case, the court accepts the submission made by counsel that the minimum sentence necessary to meet the purposes and objectives of sentencing in the military justice system in this case involve a reprimand plus a fine. I consider however that the quantum of the fine must be significant enough to reflect the gravity of the offence, and to not be susceptible to the perception that it is inconsequential, given that the case involves dishonesty by a commissioned officer that had the direct consequence of conferring a significant benefit upon her, that is, eligibility for promotion that she had not fully honestly earned.

FOR THESE REASONS, THE COURT:

[16] **FINDS** you guilty of the first charge on the Charge Sheet.

[17] **SENTENCES** you to a reprimand and a fine of \$2500, payable forthwith.

Counsel:

Lieutenant-Commander S. Torani, Canadian Military Prosecution Services

Counsel for Her Majesty the Queen

Lieutenant-Commander D. Liang,, Directorate of Defence Counsel Services
Counsel for Lieutenant Chaban