



## COURT MARTIAL

**Citation:** *R v Reedy*, 2011 CM 2004

**Date:** 20110325

**Docket:** 201101

Standing Court Martial

Asticou Courtroom  
Gatineau, Québec, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Master Warrant Officer R.J. Reedy, Accused**

**Before:** Commander P.J. Lamont, M.J.

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### **REASONS FOR FINDING**

(Orally)

[1] Master Warrant Officer Reedy, would you stand please. Having previously found you not guilty with respect to the fourth charge, this court now finds you not guilty with respect to the first, second and third charges. You may be seated.

[2] Master Warrant Officer Reedy is charged with four offences contrary to the *National Defence Act*. The first and second charges, wastefully expending public property and an act of a fraudulent nature, are charged in the alternative and both particularize that he between 24 September 2003 and 30 September 2008, at or near CFB Trenton, Ontario, did use the acquisition card of the 8 Wing Pipes and Drums for purchases not required for the Pipes and Drums. The third charge alleges an offence of negligently performing a military duty in that while acting as an acquisition card holder he failed to keep a purchase register, as it was his duty to do. The fourth charge alleges an act to the prejudice of good order and discipline in that on or about 20 December 2007, he attempted to suppress a document kept for military purposes by asking Sergeant Marazzo

to destroy a Pipes and Drums funds ledger contrary to paragraph 125(c) of the *National Defence Act*.

[3] At the opening of his trial by Standing Court Martial Master Warrant Officer Reedy applied by written Notice of Application, Exhibit M1-1, for a stay of proceedings on the ground of an infringement of the right to a trial within a reasonable time guaranteed by section 11(b) of the *Canadian Charter of Rights and Freedoms*. At the conclusion of argument I dismissed the application with reasons to follow. These are those reasons.

[4] In the case of *R v LeGresley*, CMAC-496, 2008 CMAC 2, the Court Martial Appeal Court applied the reasoning set out by the Supreme Court of Canada in *R v Morin*, 1992 1 SCR 771 to a claim of an infringement of *Charter* section 11(b) at court martial. Speaking through the Chief Justice, at paragraph 33:

.... The approach to be followed on a s. 11(b) *Charter* analysis is the approach set out in *Morin*, above, and requires the weighing and balancing of each of the four factors in order to determine the reasonableness of the delay.

34. The approach described by the Supreme Court in *Morin* to determine whether a s 11(b) *Charter* right has been denied requires a balancing of the interests that the section is designed to protect against factors that either inevitably lead to delay or are otherwise the cause of delay. The Supreme Court stated that the factors to be considered in the analysis may be listed as follows:

1. the length of the delay;
2. waiver of time periods;
- 3 the reasons for the delay, including:
  - (a) [the] inherent time requirements of the case,
  - (b) [the] actions of the accused,
  - (c) actions of the Crown,
  - (d) limits on institutional resources, and
  - (e) other reasons for delay; and
4. prejudice to the accused.

35. At page 788 of its reasons, the Court went on to describe the judicial process as follows:

The judicial process referred to as "balancing" requires an examination of the length of the delay and its evaluation in light of the other factors. A judicial determination is then made as to whether the period of delay is unreasonable. In coming to this conclusion, account must be taken of the interests which s. 11(b) is designed to protect. Leaving aside the question of delay on appeal, the period to be scrutinized is the time elapsed from the date of the charge to the end of the trial. [authority cited]. The length of this period may be shortened by subtract-

ing periods of delay that have been waived. It must then be determined whether this period is unreasonable having regard to the interests s. 11(b) seeks to protect, the explanation for the delay and the prejudice to the accused.

36. It is useful at this point to briefly review the interest that s. 11 of the *Charter* is designed to protect. The primary purpose of s. 11(b) is the protection of the individual rights of accused persons: (1) the right to security of the person, (2) the right to liberty, and (3) the right to a fair trial. The right to a fair trial is protected by attempting to ensure that proceedings take place while evidence is available and fresh. A secondary interest of society as a whole has also been recognized by the Supreme Court of Canada (*Morin*, above), namely that those who are accused of crimes are brought to trial and dealt with according to law and are treated humanely and fairly.

[5] The events giving rise to the investigation that resulted in the charges before the court, including the history of the investigation, the laying of charges and their eventual referral for court martial, are set out in an agreed statement of facts, Exhibit M1-4. From the time allegations of financial improprieties were first made in late February of 2008 until charges were first laid in a Record of Disciplinary Proceedings dated 19 February 2010, there was an extensive investigation of the finances and the record-keeping of the two volunteer bands at 8 Wing Trenton, a pipes and drums band and a brass band. Master Warrant Officer Reedy is a musician by trade and was in charge of both bands.

[6] The period of delay in this case runs from the date charges were laid by the Canadian Forces National Investigation Service on 19 February 2010 until the conclusion of the trial just over 13 months later. No period of delay within this time-frame was waived by the defence.

[7] In his written submissions, Exhibit M1-3, counsel for the applicant referred to the delay of some ten months from the time charges were laid until 18 October 2010 when the case was referred to the Director of Military Prosecutions. For virtually all of that period the case remained with the accused's unit, the Canadian Forces Support Unit. In my view, and even allowing for the complexity involved in assessing what appears to have been a lengthy investigation of financial matters over a lengthy period of time, the Unit does not appear to have dealt with the matter as expeditiously as the circumstances would permit, as required by section 162 of the *National Defence Act*. I accept the submission of counsel for the applicant that the actions, or in this case the inaction, of the chain of command in dealing with the charges counts against the prosecution.

[8] My purpose here is not to blame anyone for such delays as have occurred, but simply to take account of the reasons for the period of time since charges were first laid. By the time of the referral to the DMP both the prosecution authorities and the defence moved with commendable alacrity to bring this case to trial. There was no lack of institutional resources, nor were there other reasons for the delay to trial.

[9] The applicant argues, on the basis of the evidence I heard in the course of this application from both the applicant and from his spouse, that he suffered significant prejudice as a result of the time taken to get to trial. I have closely considered the evidence which indicates that the applicant was devastated and traumatized from the time

these accusations were first made. He described his emotional state as a roller-coaster ride. It interfered with his sleeping and eating and ability to focus. It affected his relationship with his spouse and their son. The applicant had suffered from depression some years prior to the investigation and was successfully treated, but from the time of the investigation of the charges he was back to an all-time low. Throughout this time he has felt ostracized in the small community of musicians in which he works having been expelled from the band-room at some point in 2008. Nonetheless, it appears that his career progression in the Canadian Forces has not suffered, and he is currently taking the language course required for his further promotion.

[10] I accept the uncontradicted evidence of the applicant and his spouse as to the effects upon him of the investigation and the charges before the court. It is clear to me that the effects upon the applicant began with the making and the investigation of the allegations well prior to the time charges were actually laid in February of 2010. I accept that the emotional trauma he has suffered has continued from the time of the allegations being made until the present time, but I cannot conclude that these emotional difficulties and challenges have been exacerbated by the lapse of time between the laying of charges in February of 2010 and the present. I do not wish to be taken to be minimizing the effect of these events upon the security interests of the applicant. I consider they are real and substantial. But they are perhaps an inevitable consequence to some degree when a long-serving senior non-commissioned member of the Canadian Forces of previously unimpeachable character comes under suspicion of financial wrong-doing within a small community.

[11] Ultimately, my task is to balance all these factors, including the undoubted public interest in the resolution by trial of the allegations made against the applicant. In this case in my view the balance favours the continuation of the trial. For these reasons the application was dismissed.

[12] The prosecution at court martial, as in any criminal prosecution in a Canadian court, assumes the burden to prove the guilt of the accused beyond a reasonable doubt. In a legal context this is a term of art with an accepted meaning. If the evidence fails to establish the guilt of the accused beyond a reasonable doubt, the accused must be found not guilty of the offence. That burden of proof rests upon the prosecution and it never shifts. There is no burden upon the accused to establish his or her innocence. Indeed, the accused is presumed to be innocent at all stages of a prosecution unless and until the prosecution establishes, by evidence that the court accepts, the guilt of the accused beyond a reasonable doubt.

[13] Reasonable doubt does not mean absolute certainty, but it is not sufficient if the evidence leads only to a finding of probable guilt. If the court is only satisfied that the accused is more likely guilty than not guilty, that is insufficient to find guilt beyond a reasonable doubt and the accused must therefore be found not guilty. Indeed, the standard of proof "beyond a reasonable doubt" is much closer to absolute certainty than it is to a standard of "probable guilt."

[14] But reasonable doubt is not a frivolous or imaginary doubt. It is not something based on sympathy or prejudice. It is a doubt based on reason and common sense that arises from the evidence, or the lack of evidence.

[15] The burden of proof beyond a reasonable doubt applies to each of the elements of the offence charged. In other words, if the evidence fails to establish each element of the offence charged beyond a reasonable doubt, the accused is to be found not guilty.

[16] The 8 Wing Pipes and Drums band is one of two volunteer bands at CFB Trenton. Its members are members of the Canadian Forces, but their numbers also include civilians. Some of the military members of the Pipes and Drums, including Master Warrant Officer Reedy, also play in a Celtic music group called the Fiddleheads, and the Fiddleheads have joined the Pipes and Drums on some band engagements including a trip to the United States and the making of a recording.

[17] Like any other Canadian military organization, the expenses for the Pipes and Drums are met out of public funds. On occasion the Pipes and Drums received amounts of money, referred to in the testimony as honoraria, apparently from grateful benefactors, as well as cash winnings from a contest. At some stage a bank account was opened, by someone who was not identified in the evidence before me, at the QuintEssential Credit Union in Trenton, Ontario. The account was known as the "Trenton Pipe Band Fund" and was administered by Kenneth Marazzo who was a member of the Canadian Forces and a piper in the band. In his evidence Mr Marazzo referred to himself as the band treasurer, a position he occupied for some four to five years until 2007. Honoraria and other cash receipts were deposited into this account. The account was used to pay for different items including social functions, gas money for the trip to Virginia, special jackets and other items that the base fund would not cover. Mr Marazzo considered that the fund was a social fund holding the personal money of the band members. Mr Marazzo took it upon himself to keep some records of the operation of the QuintEssential account.

[18] In December of 2007, Chief Warrant Officer Secretan, in his capacity as the Band Officer, ordered in writing that the QuintEssential account be closed and a Non-Public Funds account be opened to deal with funds received by the Pipes and Drums band. The memorandum, Exhibit 3, was directed to the accused, Master Warrant Officer Reedy, for action to be completed by 21 December. Master Warrant Officer Reedy directed that some, but not all of the funds then in the QuintEssential account go into the Unit Non-Public Funds account, and the remainder, approximately \$5,000, be kept in a lock-box belonging to the band.

[19] At some point in December 2007, but likely after the written order of Chief Warrant Officer Secretan, Mr Marazzo telephoned his friend, Master Warrant Officer Reedy, and asked him if he wanted the file of records relating to the account, or what he wished done with them. Master Warrant Officer Reedy replied that the records were not required and Mr Marazzo was to dispose of them. Mr Marazzo in fact did not dispose of them. The records of which Mr Marazzo spoke were contained in a file that is

before me as Exhibit 5. The file consists of monthly statements from QuintEssential for the period of January to October 2007 as well as a document created by Mr Marazzo that he referred to as a "spreadsheet" containing many bookkeeping entries over the same period. This is the document that is referred to in the fourth charge. It is the theory of the prosecution that the file kept by Mr Marazzo is a funds ledger document that was kept for military purposes, and that Master Warrant Officer Reedy attempted to suppress the document contrary to section 125(c) of the *National Defence Act* by asking Mr Marazzo to destroy it.

[20] I accept the submission of the prosecution that the monies received by the Pipes and Drums band, by way of honoraria or otherwise, and deposited to the QuintEssential account were "non-public property" as that term is defined in section 2 of the *National Defence Act*. As such, these amounts vested in the Commanding Officer of the Unit for the benefit of all members of the Unit in accordance with section 38 of the *National Defence Act*. These funds were not the property of the Pipes and Drums as a whole, nor of the individual members of the band. Mr Marazzo's understanding to the contrary is simply incorrect.

[21] The fourth charge alleges an offence contrary to section 129(3) of the *National Defence Act*, that is, an attempt to commit the offence created by section 125(c) which reads as follows:

Every person who

...

- (c) with intent to injure any person or with intent to deceive, suppresses, defaces, alters or makes away with any document or file kept, made or issued for any military or departmental purpose,

is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding three years or to less punishment.

[22] The nature of the document in question is therefore an essential element of the offence charged in the fourth charge. Was the document "kept for military purposes" as alleged? I have some doubt that the document created and kept by Mr Marazzo was kept for a military purpose. Part of the document originated with the QuintEssential Credit Union in the form of monthly account statements which Mr Marazzo retained, at least for a period of some months through 2007. With respect to the spreadsheet, Mr Marazzo seems to have begun to keep this record on his own initiative, without any instruction from higher military authority either in writing or orally, even though the account to which it relates had been in operation for some years without records being kept.

[23] As well, the specific intent to deceive is an essential element of the offence charged in the fourth charge, as particularized by the prosecutor in the course of his address. I am not satisfied that there is a basis in all the evidence I have heard to reasonably conclude that Master Warrant Officer Reedy intended to deceive anyone by what

appears to me to be a casual remark made by him to Mr Marazzo to the effect that there was no longer any need to keep the record after the QuintEssential account was wound up on the order of Chief Warrant Officer Secretan.

Master Warrant Officer Reedy is not guilty on charge number 4.

[24] As I have already stated, the first and second charges in the charge sheet are charged in the alternative, and the particulars are identical. I am satisfied on the evidence I have heard that Master Warrant Officer Reedy was the holder of the acquisition card, a BMO MasterCard, for the 8 Wing Pipes and Drums from 15 October 2003. I am also satisfied that he used the card to purchase, or authorize the purchase of, many items which were paid for out of public funds. The issue for me is whether the items purchased were "not required for the Pipes and Drums" as alleged in both of these charges.

[25] Exhibit 8 is a series of documents relating to a Post Payment Verification of the purchasing and accounting of the Pipes and Drums over a 5-year period from 2003 which was conducted by Captain Mawhinney, the 8 Wing Financial Services Officer, with the assistance of others. The report was requested by the 8 Wing military police to assist in their investigation. It is fair to say that Captain Mawhinney conducted an extensive investigation that disclosed many accounting and bookkeeping irregularities of a serious nature.

[26] Within Exhibit 8 is a twelve-page report which summarizes the findings and conclusions of Captain Mawhinney. Annex A to Captain Mawhinney's report is a three-page document called "Acquisition Card Activity of MWO Reedy – suspicious items." This document lists a series of items purchased with Master Warrant Officer Reedy's acquisition card between 2003 and 2008. The column headed "purchaser" indicates either Master Warrant Officer Reedy, or simply "unknown," and in a column headed "comments" the writer indicates for many of the items that the specified item "does not meet Pipes and Drums requirement" or "unknown requirement." In the course of his address the prosecutor particularized that it is the items listed in Annex A that are alleged to be not required for the Pipes and Drums.

[27] On all the evidence I conclude that I am not satisfied that it has been established beyond a reasonable doubt that any or all of the items listed in Annex A were not required for the Pipes and Drums. Although she authored the document containing these observations, Captain Mawhinney readily acknowledged in cross-examination that she has no expert knowledge of the needs of the Pipes and Drums band, nor did she consult any authorities on the question of what a Pipes and Drums band would need. Some of the listed items seem to me to be obviously required by a Pipes and Drums band, such as "Drums and Cymbal Stands," and "drumsticks; carrier; drum heads," while others seem on their face to have little to do with a Pipes and Drums band such as "custom boots, headphones," and "block heater chords." None of the witnesses who might be considered to have knowledge of the material requirements of a pipes and drums band were closely questioned as to the specific items appearing in Annex A.

[28] The prosecutor argues, on the basis of the evidence of Warrant Officer Alderman, that the items in issue were purchased for the use of the Fiddleheads and therefore not for the use of the Pipes and Drums. I do not accept this submission. It is clear to me that the Fiddleheads were a part of the 8 Wing Pipes and Drums. Their personnel overlapped, and they performed together regularly in order to extend the repertoire of a conventional pipes and drums band to include Celtic music. It was not suggested in argument by the prosecutor that this was an improper or unauthorized military activity. I find the distinction drawn between items required for the Pipes and Drums and items that might be required for the Fiddleheads to be artificial. Some of the items listed in Annex A appear to be similar to some of the equipment and accessories shown in the photographs in evidence before me of the Pipes and Drums band setting up or rehearsing or performing.

Master Warrant Officer Reedy is not guilty on charges number 1 and 2.

[29] Charge number 3 alleges negligence in the performance of a military duty in that while acting as an acquisition card holder Master Warrant Officer Reedy did not keep an acquisition card purchase register as his duty required of him. As the holder of an acquisition card Master Warrant Officer Reedy acknowledged in writing, at the time the card was issued, his obligation to comply with the requirements set out in DAOD 1016-1 "Use of Acquisition Cards." This instrument is before me as Exhibit 7 and states at page 9 under the rubric "Responsibilities of the Cardholder" that cardholders must "keep an acquisition card purchase register." This document is described at page 2 of the DAOD. It is simply a document that details all purchases made with an acquisition card to include the name of the vendor, the amount and date of purchase and a description of the goods purchased. The purpose of the register is to be able to check the monthly credit card statement for accuracy. I am satisfied that as the holder of the card Master Warrant Officer Reedy was under a military duty to maintain a purchase register and that he was aware of his duty. But I am not satisfied beyond a reasonable doubt that he did not keep an acquisition card register.

[30] The defence argues that the evidence of Sergeant Smith was that Master Warrant Officer Reedy provided a register every month. In re-examination it became clear that Sergeant Smith was referring to the monthly credit card statement. This is not a purchase register and Sergeant Smith was mistaken if his understanding was that the statement was a purchase register.

[31] The prosecution points to the report made by Captain Mawhinney, Exhibit 8, to establish that a purchase register was not kept by Master Warrant Officer Reedy. Annex C to Captain Mawhinney's report entitled "Dated Listing Acquisition Card of MWO Reedy" presents information in table form for purchases made on Master Warrant Officer Reedy's acquisition card. I note, though, that three purchases during the fiscal year 2003/04 predate the acknowledgment of receipt of the card by Master Warrant Officer Reedy on 15 October 2003. One column of Annex C is headed "On ACC Purchase Register?" and the entries for each of the items indicate either "No register" or, after 1 May 2006, "yes." From this I am asked to infer that during the lengthy period of time



referred to in charge number 3 there was in fact no purchase register kept by Master Warrant Officer Reedy. Captain Mawhinney was not questioned as to the sources of her information for the entries she made in this column of Annex C. She must have seen something in order to indicate that for many items purchased after 1 May 2006 there in fact was a purchase register. If she saw a purchase register, or something else that satisfied her as to the existence of a purchase register, it was not produced in evidence before me. With respect to the "No register" entries for purchases after 1 May 2006, it is important to note that Master Warrant Officer Reedy is not charged with keeping an inadequate or insufficient purchase register, but with not keeping one at all. On all the evidence I am simply unable to say beyond a reasonable doubt that Master Warrant Officer Reedy did not keep a purchase register.

Master Warrant Officer Reedy is not guilty on charge number 3.

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