

**Citation:** *R. v. Captain J.C.B. Gagnon*, 2005CM34

**Docket:** S200534

**STANDING COURT MARTIAL  
CANADA  
QUEBEC  
AREA SUPPORT UNIT VALCARTIER**

---

**Date:** July 19, 2005

---

**PRESIDING: LIEUTENANT-COLONEL M. DUTIL, M.J.**

---

**HER MAJESTY THE QUEEN**

**v.**

**CAPTAIN J.C.B. GAGNON**

**(Accused)**

---

**SENTENCE**

**(Rendered orally)**

---

**OFFICIAL ENGLISH TRANSLATION**

[1] Captain Gagnon, the Court having accepted and entered your plea of guilty to the 2nd, 7th and 9th counts, the Court now finds you guilty of the 2nd, 7th and 9th counts and it orders a stay of proceeding on the 1st count.

[2] Captain Gagnon pleaded guilty to a charge laid under paragraph 117(f) of the *National Defence Act* and to two charges under section 129 of that Act for, on the one hand, conduct to the prejudice of good order and discipline, namely having harassed the cadet R.C., contrary to the Cadets Administration and Training Order 13-24; and, on the other hand, an act to the prejudice of good order and discipline, namely, having consumed alcoholic beverages while he was in direct contact with cadets, contrary to the Cadets Administration and Training Order 13-23.

[3] In *R. v. Généreux*, the Supreme Court of Canada held that “[t]o 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 special context of military discipline, breaches of discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct. These guidelines of the Supreme Court, however, do not allow a military tribunal to impose a sentence composed of one or more sentences that would go beyond what is required in the circumstances of the case. In other words, any sentence handed down by a court, whether civilian or military, must always represent the minimum necessary intervention.

[4] Captain Gagnon, in determining the sentence it considers appropriate and minimum in the circumstances, the Court has weighed the facts and the circumstances surrounding the commission of the offences as disclosed by the summary of circumstances, the truthfulness of which you have accepted. The Court has also considered the documentary evidence filed with the Court, the submissions by counsel and the applicable sentencing principles.

[5] When giving an accused an appropriate sentence for the misconduct he has committed and in regard to the offences for which he is guilty, certain objectives are addressed in light of the applicable sentencing principles, although these objectives and principles vary slightly from one case to another. The importance assigned to each must be adapted to the circumstances of the case, but also to the particular circumstances of the offender. To contribute to one of the essential objectives of military discipline, the maintenance of a professional, disciplined, operational and effective armed force, these objectives and principles may be set out as follows:

First, protection of the public, and the public here includes the Canadian Forces and, in the particular context of this case, the cadet organizations that use members of the Reserves;

Second, punishment and denunciation of the offender;

Third, deterrence of the offender, or of anyone, from committing the same offences;

Fourth, rehabilitation and reform of the offender;

Fifth, proportionality to the gravity of the offences and the degree of responsibility of the offender;

Sixth, harmonization of sentences; and

Finally, the Court will take into account the aggravating and mitigating circumstances related to the circumstances of the case, but also related to the situation of the offender.

In this case, the protection of the public will be achieved by a sentence that puts the emphasis on collective and individual deterrence and the punishment and denunciation of the offender's acts.

[6] In considering which sentence would be appropriate, the Court has considered the following aggravating factors and mitigating factors. And I will begin with the factors that aggravate the sentence. The Court considers the following factors to be aggravating:

First, the nature of the offences and the penalties provided by Parliament. In the case of the 2nd charge, an offense punishable under paragraph 117(f) of the *National Defence Act*, it is punishable by a maximum sentence of less than two years' imprisonment. The maximum sentence for the offences under section 129 of that Act is dismissal with disgrace from Her Majesty's service. These offences are objectively serious.

Second, the fact that you were a Reserve Force officer for the Cadet Instructor Cadre holding a position as Commander, and that you have exploited your privileged position by undermining or abusing the trust that was placed in you. On the one hand, concerning the offence of having committed an act of a fraudulent nature, you were, as commanding officer of the cadet corps, responsible for managing and authorizing paid days for each of the members of the Cadet Corps. You took advantage of this to fraudulently authorize the payment of a sum of \$610 to a person who was not entitled to it, your former spouse moreover. This was a serious lack of honesty and integrity given the positions you held, and irrespective of the fact that you derived no personal benefit from it. In *The Queen v. St-Jean*, a decision of the Court Martial Appeal Court, reported in CACM 2000, No. 2, 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, 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.

Although cadet organizations are not part of the Canadian Forces under subsection 46(3) of the *National Defence Act*, the Court is of the opinion that these learned remarks by the Court Martial Appeal Court are relevant in this case. Concerning the charges under section 129 of the Act, the fact that you were the commanding officer of this cadet corps is especially aggravating. In relation to the harassment to which you submitted the young cadet R.C., even if it was only a joke in bad taste and a serious lack of judgment on your part, you had the duty and the responsibility to guide teen-age youth toward adult life by promoting an environment imbued with a sense of civic responsibility and respect for others in order to prepare them, amongst other things, to become responsible young citizens. The treatment to which you submitted the young cadet, while it may not objectively be a situation as serious as cases of repeated sexual harassment, is not only likely to seriously undermine the respect these young people ought to have toward authority, but is likely to deprive them of the trust they should have toward the responsible adults who have been assigned to pave their way toward adult life. Worse still, these young persons or the persons observing them may well copy this kind of conduct toward other young people once they are themselves in a position of authority. In short, a simple joke in bad taste may leave deep scars in the development of the persons who have been entrusted to you. As for the consumption of alcohol in the presence of cadets, it may have a similar effect on the young people who will remember that the commanding officer himself does not obey the rules.

[7] As to the mitigating factors, the Court notes the following:

First, your guilty pleas in this Court and the fact that the Court considers that these guilty pleas, in the circumstances, are sincere and demonstrate the remorse you feel in relation to these incidents and that you have thereby avoided the holding of a lengthy trial.

Second, your service record within the Reserve Force as a member of the Cadet Instructors Cadre for more than 10 years. From the record filed in this Court, it appears that this is an isolated case resulting from a lack of judgment concerning the fraudulent act and that your reprehensible conduct during the Christmas dinner is likewise an isolated act.

Third, the fact that your financial situation is precarious, to say the least, judging by the evidence filed with the Court. By way of indication, suffice it to observe that your total annual income for the 2003 taxation year was less than \$16,000, while it amounted to less than \$12,000 in the previous year.

Fourth, the time elapsed since the commission of the offences for a matter which, when all is said and done, was not very complex. On the one hand, it is necessary to consider your confession to the investigators in April 2004, concerning the fraudulent act; and, on other hand, it is necessary to recognize the simplicity of the facts in relation to the incidents of December 2003, which were the subject of a complaint as early as January 2004.

[8] The Court rejects the prosecution's submissions concerning the relevance of the *Birt* and *Brake* sentencing decisions, except insofar as they highlight the importance of the consequences of acts of a fraudulent nature within public organizations such as the Canadian Forces, as the Court Martial Appeal Court indicated. In view of the facts and circumstances of those cases, including the particular circumstances of the offenders, it is impossible for this Court to use them as a guide in determining the *quantum* of the fine or in choosing between a severe reprimand or a reprimand, as the case may be.

[9] In the circumstances of this case, the Court is of the opinion that a severe reprimand is warranted both for the act of a fraudulent nature and for your act and your conduct to the prejudice of good order and discipline. You were the commanding officer of a cadet corps and you were not only responsible for managing funds but for setting an example for everyone under your orders, and in relation to the young cadets. The Court shares the opinion expressed by counsel that a fine is also necessary for the purposes of justice and the maintenance of discipline. The Prosecution has submitted no evidence that would warrant a fine of the scope it recommends, \$2,500. Considering your precarious financial situation, such a fine would clearly be exaggerated and would not serve the interests of justice. However, the Court believes that the fine should be substantial in order to promote the factors of general and individual deterrence and the denunciation of the conduct involved in the 2nd, 7th and 9th counts.

[10] Consequently, Captain Gagnon, the Court imposes on you a severe reprimand accompanied by a fine of \$1200. The fine will be payable through consecutive instalments of \$100 per month for a period of 12 months beginning today. These payments will be made through certified cheques or bank or postal money orders. Should you be released from the Canadian Forces before complete payment of the fine imposed by this Court, the balance of the fine will become payable forthwith before the date of your release. The prosecutor will indicate to you the exact address of the receiving entity to which you should pay the fine once the proceedings of this court martial are concluded.

[11] This sentence was rendered at 2:50 p.m. on July 19, 2005.

LIEUTENANT-COLONEL M. DUTIL, M.J.

Counsel:

Major G. Roy, Regional Prosecutor, Eastern Region  
Counsel for the Prosecution  
Major C.E. Thomas, Director of the Defence Counsel Services  
Counsel for Captain J.C.B. Gagnon

Certified true translation

Kelley A. Harvey, BCL, LLB