



## COURT MARTIAL

**Citation:** *R v Collins*, 2012 CM 4006

**Date:** 20120213

**Docket:** 201136

General Court Martial

Canadian Forces Base Edmonton  
Edmonton, Alberta, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Sergeant C.P. Collins, Offender**

**Before:** Lieutenant-Colonel J-G Perron, M.J.

---

### REASONS FOR SENTENCE

(Orally)

[1] Sergeant Collins, you were originally charged twice of having uttered a forged document contrary to paragraph 368(1)(a) of the *Criminal Code of Canada*. The prosecutor concurred in the acceptance of your plea of guilty to a less serious offence on facts that differ materially from the facts alleged in the statement of particulars of charge No. 1. The prosecutor with the consent of the court withdrew charge No. 2.

[2] Having accepted and recorded your plea of guilty to charge No. 1, being an act of a fraudulent nature not particularly specified in sections 73 to 128 contrary to subsection 117(f) of the *National Defence Act*, the court now finds you guilty of this offence. The court must now determine a just and appropriate sentence in this case.

[3] The Statement of Circumstances to which you formally admitted the facts as conclusive evidence of your guilt provides this court with the circumstances surrounding the commission of this offence.

[4] Sergeant Collins was a member of the Reserve Force serving as a Resource Management Support (RMS) Clerk on a Class "B" full-time employment at 1 ASG Headquarters in Edmonton. As part of his terms of employment he held the rank of corporal, although he was effectively a master corporal. While Sergeant Collins was posted to CFB Edmonton his dependent, his wife, remained in Prince Edward Island.

[5] On or about October 2008, Sergeant Collins submitted a claim to cover the difference between the lower temporary duty benefits, which he had been receiving for the previous eight months, and the higher attached posting benefits, which he should have been receiving.

[6] Against the aforementioned claim, Sergeant Collins requested and was paid an advance of public funds in the amount of \$1,800 on 3 October 2008. Sergeant Collins forged the signature of Corporal Pelletier on the 3 October 2008 form (see Exhibits 7 and 8). He again requested and was paid an advance of public funds in the amount of \$1,800 on 9 October 2008. That form was signed by Corporal Pelletier (see Exhibit 9). Sergeant Collins requested and was paid a third advance of public funds in the amount of \$1,200 on 28 October 2008. Sergeant Collins again forged the signature of Corporal Pelletier on the 28 October 2008 form (see Exhibits 7 and 10).

[7] As indicated by the Court Martial Appeal Court, sentencing is a fundamentally subjective and individualized process where the trial judge has the advantage of having seen and heard all of the witnesses, when there are witnesses, and it is one of the most difficult tasks confronting a trial judge (see *R v Tupper* 2009 CMAC 5 paragraph 13).

[8] The Court Martial Appeal Court clearly stated that the fundamental purposes and goals of sentencing as found in the *Criminal Code of Canada*<sup>1</sup> apply in the context of the military justice system and a military judge must consider these purposes and goals when determining a sentence (see *R v Tupper* 2009 CMAC 5 paragraph 30):

The fundamental purpose of sentencing is to contribute to respect for the law and the protection of society, and this includes the Canadian Forces, by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and

---

<sup>1</sup> RSC 1985, c C-46.

- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

[9] The court must determine if protection of the public would best be served by deterrence, rehabilitation, denunciation, or a combination of those factors.

[10] The sentencing provisions of the *Criminal Code*, sections 718 to 718.2, provide for an individualized sentencing process in which the court must take into account not only the circumstances of the offence, but also the specific circumstances of the offender (see *R v Angelillo* 2006 SCC 55, at paragraph 22). A sentence must also be similar to other sentences imposed in similar circumstances (see *R v L.M.* 2008 SCC 31, at paragraph 17). The principle of proportionality is at the heart of any sentencing (see *R v Nasogaluak* 2010 SCC 6, at paragraph 41). The Supreme Court of Canada tells us that proportionality means a sentence must not exceed what is just and appropriate in light of the moral blameworthiness of the offender and the gravity of the offence.

[11] The court must also impose a sentence that should be the minimum necessary sentence to maintain discipline. The ultimate aim of sentencing is the restoration of discipline in the offender and in military society.

[12] The prosecution and your defence counsel have jointly proposed a sentence of a severe reprimand and a fine in the amount of \$1,000, to be paid in 20 monthly payments of \$50. The Court Martial Appeal Court has stated that a sentencing judge should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute or unless the sentence is otherwise not in the public interest.

[13] I will now set out the aggravating circumstances and the mitigating circumstances that I have considered in determining the appropriate sentence in this case. I consider the following to be aggravating:

- (a) You served in the Regular Force from 1979 until 1995 as a RMS Clerk. You then joined the Reserve Force in 1997 and have been employed as a clerk mostly in Class "B" or Class "C" service until 2009. You have not paraded since 2009. The prosecutor was quite correct when he said that you should have known better. You are a RMS Clerk and you know the importance of honesty and integrity in the completion of forms, especially those forms that pertain to public funds. The Canadian Forces have put in place numerous checks and balances to ensure that public funds are disbursed according to the relevant laws, regulations, and specific policies;
- (b) Thus, any act of a fraudulent nature pertaining to public funds is usually deemed to be objectively serious. While the Court Martial Appeal Court in the *Private M.J. St. Jean and Her Majesty the Queen* CMAC 429 decision was dealing with an appeal of a conviction and a sentence for

fraud contrary to subsection 380(1) of the *Criminal Code*, I find that its comments at paragraph 22 of that decision are relevant to the present proceedings. As the court stated:

... 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.

- (c) The evidence before this court indicates that you were entitled to a certain amount, specifically the difference between the lower temporary duty benefits, which you had been receiving for eight months, and the higher attached posting benefits, which you should have been receiving. You falsified the signature of Corporal Pelletier on two occasions to obtain \$3,000;
- (d) Basically, the evidence does not tell the court whether you were entitled to the amounts you received or whether you were not entitled to those amounts. The evidence also does not tell the court if you have ever defrauded the Department of National Defence. You are not guilty of fraud, but you are guilty of an act of a fraudulent nature; and
- (e) What is important in this case is that you intentionally falsified an official document to obtain public funds. This is a breach of the trust and the faith the Canadian Forces had put in you. It is objectively serious, but I cannot accede to the prosecutor's assertion that this is also a subjectively serious case. I have not been presented with the evidence that would allow me to clearly determine the subjective severity of this offence.

[14] The prosecutor has also stated that the present case is less serious than the three cases he presented to the court. I agree that the three cases, the *Leading Seaman Merriam* Standing Court Martial, the *Master Corporal Louis* Standing Court Martial, and the *Corporal Buck* Standing Court Martial, are more serious since the offenders had in fact

defrauded the Crown of substantial amounts (approximately \$9,100 in the *Merriam* matter, approximately \$6,000 in the *Louis* matter, and approximately \$5,000 in the *Buck* matter). These cases do provide the court with facts and circumstances taken into account by the sentencing judges in other cases involving a guilty plea to a subsection 117(f) offence.

[15] I agree with defence counsel that this case is quite different from these three cases since the court has not been provided with any evidence of misappropriation of public funds, but only evidence of the falsification of two request forms. The court is not condoning the actions of the offender, but the court must sentence the offender for what he has done, not what he might have done.

[16] As to mitigating circumstances I note the following:

- (a) You do not have a conduct sheet;
- (b) You are a first-time offender; and
- (c) You have pled guilty to having forged the signature of Corporal Pelletier on two different Request for Accountable Advance of Public Funds forms.

[17] A plea of guilty will usually be considered as a mitigating factor. This approach is generally not seen as contradiction of the right to silence and of the right to have the prosecution prove beyond a reasonable doubt the charge laid against the accused, but is seen as a means for the courts to impose a more lenient sentence because the plea of guilty usually means that witnesses do not have to testify and that it greatly reduces the costs associated with the judicial proceeding. It is also usually interpreted to mean that the accused wants to take responsibility for his or her unlawful actions and the harm done as a consequence of these actions.

[18] It would appear this case involved a lengthy and complex investigation. I was informed by the prosecutor that irregularities were discovered in 2009 and that the investigation was complex and that it was a complicated matter. It was described by defence counsel as a voluminous investigation. A charge was laid in November 2010 and the first charge sheet was initially preferred in June 2011. The second charge sheet was preferred in January 2012. The prosecutor has advised the court that this delay was considered when he agreed with defence counsel on the joint submission.

[19] Defence counsel has informed the court, with the consent of the prosecutor, that Sergeant Collins' wife suffers from depression and that the delay has had a negative effect on Mrs Collins and Sergeant Collins. As such I have taken counsels' comments into account and do consider this delay as a mitigating factor.

[20] You presently work for the Canadian Corps of Commissionaires as an assistant regional manager. I was informed by defence counsel that your monthly expenses are

higher than your net revenue partly because of your wife's medical expenses. Your wife is not working at the present, but you hope she soon will be able to work.

[21] Sergeant Collins, I agree with the prosecutor that denunciation and general deterrence are the main sentencing principles that need to be applied in the present case. Having reviewed the totality of the evidence, the jurisprudence, and the representations made by the prosecutor and your defence counsel, I have come to the conclusion that the proposed sentence would not bring the administration of justice into disrepute and that the proposed sentence is in the public interest. Therefore, I agree with the joint submission of the prosecutor and of your defence counsel.

**FOR THESE REASONS, THE COURT:**

[22] **SENTENCES** Sergeant Collins to a severe reprimand and a fine in the amount of \$1,000. The fine shall be paid in 20 monthly instalments of \$50, starting on the 1st day of March, 2012.

---

**Counsel:**

Major E. Carrier, Canadian Military Prosecution Services  
Counsel for Her Majesty the Queen

Major D. Berntsen, Directorate of Defence Counsel Services  
Counsel for Sergeant C.P. Collins