

**Citation:** *R. V. Corporal A.V.J. Chevrier*, 2004 CM 12

**Docket:** S200412

**STANDING COURT MARTIAL  
CANADA  
QUÉBEC  
ASTICOU CENTRE, GATINEAU**

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**Date:** 7 September 2004

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**PRESIDING: COLONEL K.S. CARTER, M.J.**

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**HER MAJESTY THE QUEEN  
v.  
CORPORAL A.V.J. CHEVRIER  
(Accused)**

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**SENTENCE  
(Rendered Orally)**

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[1] Thank you. Corporal Chevrier, the court having accepted and recorded your plea of guilty to the second charge on the charge sheet, the court finds you guilty of that charge. As the first charge on the charge sheet is an alternate charge to the second charge to which you have pled and been found guilty, the court having reviewed Exhibit 3, the statement of circumstances, and pursuant to QR&O 112.05(8)(a), 112.25, 112.40 paragraph 2 and 112.80, stays proceedings on the first charge.

[2] The court in determining an appropriate sentence in this case, has considered the statement of circumstances, the testimony of Officer Cadet Fleurant, the documents submitted by both counsel and their submissions. The court has also considered the general principles of sentencing, the nature of this offence and the mitigating and aggravating factors that have been disclosed.

[3] Given the stage that you are at in your service with the Canadian Forces, the court has taken time to go back and review the fundamental nature of the sentencing process. And that fundamental nature is set out by the Supreme Court of Canada in the case of *R. v. Lyons* found at 1995 (2) S.C.R. 309 at page 329 where it states:

**The purpose is to enhance the protection of society.**

The protection of society is achieved if the imposition of legal sanctions serves to deter, both convicted offenders from re-offending and those who have yet to offend from doing so at all.

[4] A sentence must also be proportionate to the offence and the degree of responsibility of the offender. This requires that the sentence is appropriate not only to the nature of the offence but also to the moral blameworthiness and the character of the offender, the circumstances that it was committed in and the consequences of its commission.

[5] It must always be kept in mind that sentencing is an individualized process. The court must determine which principle or combination of principles, when applied, will enhance the protection of the public, reestablish respect for the law and in the case of courts martial, as a consequence of this, achieve the ultimate aim which is to reestablish discipline.

[6] A court martial must, in imposing a sentence, follow the directions set out in QR&O 112.48 which obliges it in determining sentence to take into account any indirect consequence of the finding or of the sentence and, in this case, of course, we're talking about the sentence primarily, and also impose a sentence commensurate with the gravity of the offence and the previous character of the offender. Both, civilian and military law requires that the offence be punished by the minimum punishment necessary to achieve these aims.

[7] The court has considered the guidance and it is guidance, it is not binding upon the court, of the general purposes of sentencing that exist in criminal law in Canada. The court also takes into account that the ultimate aim of sentencing as the prosecution has pointed out is a restoration of discipline in the offender and in military society. Discipline is that quality that every Canadian Forces member must have which allows him or her to put the interests of the Canadian Forces before their personal interests. And it's clear that in this particular offence, you put your own personal interests, as you perceived them, before the interest of the Canadian Forces.

[8] The facts of the commission of this offence are that it involves the submission of a falsified document indicating that you not only completed your Canadian Forces Fitness test but that you've done so at a sufficiently high level to be exempted from testing for the subsequent year. The exact reasons why you did this are not clear. Officer Cadet Fleurant said yesterday that it might have something to do with the desire to be selected to join a specialized military unit with high physical fitness standards. Significantly, from the point of view of the court, your Personnel Record Résumé, Exhibit 5, indicates that at the time of the commission of this offence, you were capable of passing your physical fitness test, even if you were necessarily capable of being exempted from subsequent testing.

[9] The prosecution submitted that an appropriate sentence would be a fine in the range of 800 to \$1000, indicating that this would serve the goal of general deterrence while appropriately reflecting the considered and deliberate nature of your action and the fact that it was generally out of character in the context of your good service that was testified to by Officer Cadet Fleurant.

[10] Your defence counsel generally agreed with the submissions of the prosecution, except as they related to a suggestion that this was a case involving a breach of trust. He argued, however, that the case law presented to the court and your general conduct, current situation and good service should leave the court to conclude that a sentence in the range of \$500 would be more appropriate, particularly as you'd effectively already lost an opportunity for appointment to Master Corporal due to your misconduct.

[11] The court, in considering this matter, has found as aggravating factors that there was deceit, a considered deceit on your part, not in the financial sense but in the sense of an obligation to be forthright.

[12] The court has considered your previous conviction but given it little weight, it is simply something that indicates that this is not a unique situation for you. It seems here that one of the most important thing is this was a planned and deliberate action even though, ultimately, it would seem to most people who weren't involved, one that was doomed to failure. It's something that occurred over a period of seven weeks, more or less, and it is one where you tried to induce other public servants to take action based on the lies that you had created, though the court would say that as this is not what you're charged with it takes this into account simply as an aggravating factor.

[13] Another aggravating factor is your many years of experience with the Canadian Forces and your clear knowledge of how the system works.

[14] The court has accepted as mitigating factors your guilty plea, which is an indication that you accept responsibility for your action. The court has taken into account that this is a rare situation. As it said, it is not unique, you do have a previous conviction for dishonesty offence on your conduct sheet, but it appears that after 15 years, having gradually overcome the detrimental effects of your previous misconduct, you seem, for some reason, compelled to do something to endanger your career again.

[15] The court would indicate it does not consider the submission of a falsified CF Express Program, a breach of trust offence in this context and in that regard it would agree with your defence counsel and as it has indicated, it would consider the consequences of this action much more serious if there was evidence that this was being done because you could not meet the required physical fitness standards; that is, if this

was being done to hide something which relates to a fundamental requirement of military service.

[16] In considering your character, the court has taken into account that you are 40 years old and you have approximately 16 years of service. Most of that time has been spent in Ottawa. You appear to be competent, you're at the top of your pay range as a Corporal. That means your gross pay is approximately 46,000 dollars a year. The loss of potential appointment to Master Corporal appears to relate more to the issue of rank and progression rather than any financial loss, having reviewed the pay scales respectively of Corporal and Master Corporal. You have a family and it is clear that whatever sentence is imposed by the court if it relates to a fine, this is something that will fall on them as well as you. It is not clear from your Personnel Record Résumé, what your educational background is but given your age and your years of service, your current salary, it would seem reasonably clear to the court that it is much better for you to remain in the Canadian Forces than be compulsorily released as this stage in your career. And the court has taken into account that, clearly, your unit is prepared to give you, what I would imagine is now a third chance to recover.

[17] The court has considered the cases submitted. In the case of *Ordinary Seaman Jobe*, this was a joint submission by both the prosecution and the defence and that is very significant. It is a very minor case and much less serious. The case of *Officer Cadet van den Heuvel* is more serious and it is one which has the involvement of personal gain to the individual, that is, financial gain. The court agrees that the case of *Corporal Brulé* is the one that is closest to this situation and that was one where a military policeman who was involved in stopping a vehicle, acted, it appears, impulsively and falsified a record in order to make it look as though he had done the requisite work beforehand.

[18] The court, however, takes into account there that there was, amongst the factors that were listed, a significant delay in proceedings. The court has accepted that the general principle here is one of deterrence. It is not clear whether or not any specific deterrence is still required. The court will accept that your plea of guilty indicates it isn't.

[19] In terms of general deterrence, because it's somewhat unclear as to why you did this, it is challenging to determine how to generally deter other individuals from doing something similar. So the court has looked at general deterrence in the very widest basis. The court would say, here that it did consider very seriously the issue of a reprimand. And it did not reject this as a result of the brief analysis produced by the prosecution. The reason why the court decided not to impose a reprimand was because, clearly, you have indicated that for long periods of time, you can overcome the problems that you create for yourself; that is, you have a conduct sheet that relates to a dishonesty offence, nevertheless you have managed to work your way up to a position of clear trust,

working in the cashier shop and handling money. The court has also taken into account the testimony and relies on it very heavily of Officer Cadet Fleurant, and your performance and reliability and the attitude of your unit towards you and finally, as the court has indicated, it has taken into account that whatever the situation, you were not trying to conceal an actual inability to complete the physical fitness testing.

[20] The court, however, in saying that it sees this as a situation that is more like the *Brulé* case than others, does consider this more serious because of the calculated long term nature of this and the attempt to get other people to act on the document.

[21] So the court here, will impose a sentence of a \$650 fine.

Now, let me ask you, Major Thomas, does your client require any time to pay this or is your client in a position to pay this immediately?

[22] DEFENCE COUNSEL: My client would like some time to pay, Your Honour, and I would ...

[23] MILITARY JUDGE: And how long would that be, Major Thomas?

[24] DEFENCE COUNSEL: I would suggest six months might, be appropriate.

[25] MILITARY JUDGE: Okay. In that case, the court would order that the amount of this fine be paid over a period of six months. The first payment is to be made out of October pay since I know that the pay system sometimes takes a little while to get things organized. If for any reason, Corporal Chevrier, you either take your release or are released from the Canadian Forces, the full amount outstanding will be due the day before your release, that is, it would be recovered from any monies that are due and owing to you from the Canadian Forces.

[26] I sincerely hope that the civilian and military justice system do not have the occasion to see you again before them either as an accused and most particularly as an offender. March out, Corporal Chevrier.

[27] The proceedings in this matter are now terminated.

COLONEL K.S. CARTER, M.J.

Counsels:

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