



## COURT MARTIAL

**Citation:** *R v Labadie*, 2012 CM 1021

**Date:** 20121211

**Docket:** 201253

Standing Court Martial

Régiment du Saguenay  
Jonquière, Quebec, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Sergeant J.R.R. Labadie, Offender**

**Presiding:** Colonel M. Dutil, C.M.J.

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### OFFICIAL ENGLISH TRANSLATION

#### **REASONS FOR SENTENCE**

(Rendered orally)

[1] Sergeant Labadie has pleaded guilty to two charges, namely, the offence of stealing under section 114 of the *National Defence Act*, for having stolen fuel belonging to Her Majesty in Right of Canada, and the offence of committing an act to the prejudice of good order and discipline, contrary to section 129 of the *National Defence Act*, for having attempted to steal fuel belonging to her Majesty. Counsel filed a joint submission with the Court, recommending that Sergeant Labadie be sentenced to a reduction in rank to corporal. The Court is not bound by this recommendation, but cannot disregard it unless the Court deems it to be inadequate, unreasonable or contrary to public order, or unless the Court finds that it would bring the administration of justice into disrepute, for example, if it were outside the range of sentences previously imposed for similar offences. Correspondingly, counsel are required to present all of the facts in support of this joint submission to the judge. Counsel submit that the proposed sentence is within the acceptable spectrum consistent with recent case law. I agree and confirm their recommendation.

[2] The circumstances of this case are the following. At the time of the events, the offender was a member of the Régiment du Saguenay, working as a supply technician in charge of the unit quartermaster stores. At approximately 2230 hours on 2 May 2011, during a routine patrol at CFB Bagotville, a military police officer observed a vehicle parked near Department of National Defence fuel pumps. Because the driver was using the fuel pump keyboard, the officer approached the individual and identified him as the accused by his military identification card. Master Corporal Labadie, as he then was, first told the military police officer and later told one of the officer's colleagues who had arrived as backup that he was at the fuel pumps because one of his subordinates had lost a key enabling him to operate the fuel pumps and that he was trying to find it. At approximately 2252 hours, after having asked Master Corporal Labadie to hand over the fuel key he had in his possession, the officer asked Master Corporal Labadie to follow him to the station to attempt to clear up the situation, which Master Corporal Labadie did in his own vehicle. At the police station, one of the officers telephoned the subordinate in question to verify the offender's story. This third party told him verbally that he had not lost anything on 2 May 2011, contrary to the account given by Master Corporal Labadie. A few minutes later, on the basis of the information provided by the third party, the officer placed Master Corporal Labadie under arrest for attempted stealing and read him his rights. After he had waived these rights, at approximately 0044 hours on 3 May 2011, the military police officers interrogated Master Corporal Labadie about the evening's events. After he was read his rights and cautions, Master Corporal Labadie waived his right to counsel and later provided a written statement. In this statement he admitted his intention to take fuel for his personal vehicle on the evening of 2 May 2011. He also admitted that the story about the third party having lost a key was a lie. Between 3 May 2011, and 9 September 2011, an investigation was conducted to determine whether the offender had used fuel key number 28 for personal use on other occasions. The investigation revealed that Master Corporal Labadie was the non-commissioned officer in charge of procurement for the Régiment du Saguenay and that in the course of his duties he frequently used fuel key number 28 to fuel vehicles from his unit and that unlike other military personnel from his unit, he was not obliged to sign the fuel key register maintained by a certain Corporal Noël, who was responsible for transport and who was subordinate to Master Corporal Labadie, in order to obtain a fuel key. It was also submitted as evidence that he always had key number 28 in his possession so that he would not be obliged to return to the quartermaster stores every time he had to work, or rather to fuel, a vehicle. On 9 September 2011, Master Corporal Labadie made a voluntary written statement to the police officer in which he admitted to using Department of National Defence fuel pumps to fuel his own vehicle when he knew that this was prohibited. He also declared at that time that he was experiencing financial difficulties and that he lacked money to fuel his car and wanted to meet his family's needs. Approximately 22 transactions were identified in the transaction register for fuel key number 28 as having been made for personal reasons between 23 February 2010, and 9 April 2011. According to the facts in evidence, the total amount stolen was \$1,397.34, and this amount was reimbursed by Sergeant Labadie before the beginning of this trial.

[3] Sergeant Labadie testified before the Court. He explained that when he had committed the acts, he had been crippled by debt and his salary and his spouse's were not enough to support the family's lifestyle at the time. During that period, he held several maxed out credit cards and even had to remortgage his house. He testified that his financial situation had since improved, but that he had been forced to sell his house and get rid of all of the household credit cards once they had been fully paid off. In the evidence filed before this Court, he is described as a dedicated and professional worker.

[4] In imposing an appropriate sentence on an accused for the wrongful acts that he or she has committed in relation to the offences of which he or she is guilty, certain objectives must be aimed for in light of the principles applicable to sentencing, which vary slightly from one case to the next. The fundamental purpose of sentencing in a Court Martial is to build respect for the law and maintain military discipline by imposing fair, appropriate and individualized 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 to return to their environment in the Canadian Forces or civilian life; and
- (e) to promote a sense of responsibility in military members who are offenders.

[5] The sentence must also take into consideration the following principles. It must be proportionate to the gravity of the offence, the previous character of the offender and his or her degree of responsibility. The sentence should also take into consideration the principle of parity in sentencing, that is, a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. In addition, the sentence must take into account any aggravating or mitigating factors relating to the offence or the offenders. Finally, the sentence should account for any direct or indirect consequence of the sentence on the offender.

[6] Counsel submit that the joint submission primarily contributes to the objectives of general deterrence, punishment of the offender and denunciation of the offender's act.

[7] In this case, the Court considers the following circumstances to be aggravating:

- (a) the objective gravity of the offences. The offence of stealing under the *National Defence Act* is punishable by up to seven years' imprisonment in cases where the person is not entrusted with the stolen property. The prosecution accepted the admission of guilt. The offence committed

under section 129 is punishable by dismissal with disgrace from Her Majesty's service. There is no doubt that these are serious offences;

- (b) the fact that Sergeant Labadie had privileged and unrestricted access to the fuel pumps at CFB Bagotville and that he held a position of trust in this respect; and
- (c) the fact that his scheme extended over a long period and occurred more than 20 times for an amount approaching \$1,500.

[8] The Court considers the following factors to have a mitigating effect on the sentence:

- (a) Sergeant Labadie's admissions of guilt: In light of the circumstances of the case and his testimony before the Court, I find that the remorse he expressed was sincere and that he accepts full responsibility for his actions;
- (b) the particulars of service of the accused: Sergeant Labadie has served with the Canadian Forces for more than 22 years. He has served several times in the theatre of operations, including in Afghanistan, the Middle East, Bosnia Herzegovina and Haiti, as a gunner or as a supply technician since 2004. He is an accomplished and dedicated military member.
- (c) the lack of a conduct sheet or criminal record: This is Sergeant Labadie's first run-in with criminal justice;
- (d) Sergeant Labadie's personal and financial situation: He is 43 years old, married, and the father of two daughters aged 15 and 19 years respectively. There is no doubt that Sergeant Labadie's conviction would have a direct impact on his family, financially speaking, but what is more, he would have to face the consequences of his actions with his new rank in his actions and in his family relations. There is no need to elaborate further, given our understanding of how important it is for parents and children to be able to feel pride in each other. Therefore, it must be understood that Sergeant Labadie will soon have to face the reactions of his children and spouse to the acts that he has committed. These are not small children; they are young adults. He will also have to face his colleagues, who will be able to see at a glance the consequences of his actions by looking at his uniform. Returning to the financial impact, the proposed sentence is significant, as it represents an amount of \$450 a month, or close to \$5,000 annually. Therefore the reduction in rank alone carries with it a significant financial impact. Furthermore, because he had just been promoted to the rank of Sergeant, the resulting gap will increase in the coming years; and

- (e) Sergeant Labadie was detained for one day following his arrest at approximately 2300 hours on 2 May 2011.

[9] There is no doubt that a reduction in rank from sergeant to corporal sends a clear message that the fraudulent appropriation of public goods without colour of right is a particularly serious offence, especially if the offender had privileged access to the stolen property. Apart from the financial impact of such a sentence on an offender, it shows his peers that this person is no longer worthy of the rank that had been bestowed upon him not only for his professional efforts, but also for his integrity and his loyalty to the institution. Nothing more need be said about the impact Sergeant Labadie's reduction in rank will have the first time he appears before his subordinates holding the same rank as them. This sentence is severe, but it is fair and appropriate in the circumstances.

**FOR THESE REASONS, THE COURT:**

[10] **FINDS** the accused guilty with respect to the first charge, namely, the offence of stealing under section 114 of the *National Defence Act* for having stolen fuel belonging to Her Majesty in Right of Canada;

**AND**

[11] **FINDS** the accused guilty with respect to the third charge, namely, the offence of committing an act to the prejudice of good order and discipline, contrary to section 129 of the *National Defence Act*, for having attempted to steal fuel belonging to her Majesty;

**AND**

[12] **UPHOLDS** the stay of proceedings regarding the second and fourth charges;

**AND**

[13] **SENTENCES** Sergeant Labadie to a reduction in rank to corporal.

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**Counsel:**

Major G. Roy and Captain M. Ferron, Canadian Military Prosecution Service  
Counsel for the Her Majesty the Queen

Major E. Thomas, Defence Counsel Services  
Counsel for Sergeant J.R.R. Labadie