

**Citation:** *R. v. Captain W.A.Khan*,2004CM42

**Docket:** S200442

**STANDING COURT MARTIAL  
CANADA  
NOVA SCOTIA  
CANADIAN FORCES BASE HALIFAX**

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**Date:** 16 April 2004

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

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**HER MAJESTY THE QUEEN**

**v.**

**CAPTAIN W.A. KHAN  
(Accused)**

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**SENTENCE**

**(Rendered verbally)**

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[1] Captain Khan, please stand up. Having accepted—having recorded and accepted your plea of guilty to the second charge, this court finds you guilty of that charge.

[2] Now, as to sentence. The purpose of a separate system of military tribunals is to allow the Armed Forces to deal with matters that pertain directly to the discipline, efficiency, and morale of the military. The Supreme Court of Canada has recognized that breaches of military discipline must be dealt with speedily and frequently punished more severely than it would be the case for a civilian engaged in a similar conduct. However, the punishment imposed by any tribunal, be it military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances.

[3] In determining sentence, the court has considered the circumstances surrounding the commission of the offence, the mitigating and aggravating evidence presented during the sentencing hearing, including the testimony of yourself and that of Dr Wicker, your treating physician. The court considered, also, for the purposes of the sentence, representations made by counsel and the relevant case law provided to the court. The court has also considered and direct or indirect consequence that the finding and the sentence will have on you.

[4] The principles to be used in considering what should be an appropriate sentence generally relate to the following: firstly, the protection of the public, and that includes the Canadian Forces; secondly, the punishment of the offender; thirdly, the deterrent effect of the punishment, not only on the offender, but also upon others who might be tempted to commit such offences; and fourthly, the reformation and rehabilitation of the offender. The prime principle is the protection of the public, and that includes the protection of the Canadian Forces. And the court must determine if that protection would be best achieved by deterrence, rehabilitation, or punishment. Counsel before the court agree that the court should impose a sentence that will emphasize general deterrence, and I agree. Your counsel also mentioned that one of the important aspects of this sentence was rehabilitation. The court is not convinced that it is a significant factor in this case.

[5] The circumstances of this case involve a breach of trust, in the general sense, by an officer in the performance of his duties, and it breaches the trust that is vested in any officer by the Canadian Forces and the Government of Canada. And breaches of trust are always serious, especially in cases dealing with officers. These actions were the instrument to cover the outcome of an impulsive decision to help an acquaintance who was working at the Officer's Mess who could not afford the cost of new dentures, as he was explaining it to you, and you decided to provide a set of dentures at public expense by your actions.

[6] A series of actions led to the making of an entry in a CF555, Dental Laboratory Instructions Form, in which you indicated that a prescription for a complete dental set-up of teeth in wax was required for a CF member that was entitled to CF dental services, knowing that this was false, in order to cover the cost of a set of dentures made for that acquaintance that was not entitled to receive such dental services at public expense. The commission of the offence may well have been the outcome of impulsive actions by yourself, but the making of the document was not. The evidence before the court indicates that it was planned and deliberate.

[7] In determining sentence, the court has considered several mitigating and aggravating factors, and I will start with the aggravating factors. First, the objective seriousness of this offence and the prescribed maximum punishment. This offence is a serious offence. Section 125 of the *National Defence Act* provides that a person found guilty of that offence is liable to imprisonment for a term not exceeding three years or to less punishment. Second, the position of trust that you occupied when you committed the offence; that is, that of a dental officer who is responsible to manage, responsibly and honestly, the material and financial resources allocated to him or her in order to maintain the level of dental services that is required for the men and women in the Canadian Forces. By your actions you abdicated the responsibility and trust vested in you by the CF, by the Government of Canada, but also by every Canadian tax payer.

[8] It is commendable to help people who need it. However, you cannot do that by falsifying documents that would ultimately result in a loss of public funds at someone else's expense. If you wish to help people, use your own money. As emphasized by counsel for the prosecution, officers of the Canadian Forces are expected to be beyond reproach and have an exemplary conduct, and I agree with that statement. So your actions were not only planned and deliberate, but it was deceitful.

[9] Now, turning to the mitigating factors. The court considers that the fact that you pleaded guilty to that offence is a public acknowledgement of the responsibility you have for your actions. And let me tell you, that is very important in this case. Second, the particular circumstances of the case. You did not make a false statement in order to gain anything personally or with intent to subvert the course of justice. Prosecution argued that this court—to this court that this should not be a mitigating factor in this case because your actions resulted in a loss of public funds and citing the cases of *Grant* and *Pattullo*. The court disagrees. In *Grant*, the accused was convicted of four offences under section 117(f) of the *National Defence Act* and the evidence at trial, at least from a video tape interview, showed that he had a profound disrespect for the law, especially when the law got in the way. This is not present in this case. At least it is not before the court.

[10] The third mitigating factor is your work performance, before and after the incident leading to the finding of guilt. You are a hard working and dedicated young dental officer who is striving, not only to improve himself as a dentist and as an officer, but trying to improve the workplace environment by having innovative ideas, and it goes to your credit. Your most recent PER already demonstrates that you are a superior performer despite your relatively short time in rank, and that your efforts with respect to professional development are very impressive. The court also considered your age and time in rank at the time of the commission of the offence, as well as your involvement in the community at various levels, be it professional level, academic, or even in charitable organizations.

[11] The court has also considered the fact that you have no disciplinary or criminal record. And finally, the time elapsed since the commission of the offence, which is also a very significant factor in this case. Your counsel refers to the fact that your medical condition causes impulsive reactions for which you do not think about their consequences. It may be true, but the circumstances revealed to the court demonstrate, clearly, that the commission of the offence for which you have pleaded guilty, and found guilty, was not the result of impulsive acts. Your treating doctor has said that you respond well to the treatment that she prescribed for you or to you. She added that it has had a profound impact on your impulsiveness in that you are now, at least since May 2003, in a much better control of your manners, including the way you speak to people and maintain composure.

[12] Having had the privileged position to assess your conduct in this court this week I can only think and imagine how your conduct was before. Captain Khan, I think that you are a brilliant individual and an extremely competent dentist. In terms of officer-like qualities, you still have a lot to learn. And this is something that you may not find in text books, but with respectful relationships with your superiors and senior non-commissioned members. You said that your life is on fast-forward; slow down and think. You need to acquire that maturity if you wish to become a senior officer in the Canadian Forces, but more importantly, you need to understand the meaning of the word humility. This court sentences you to a reprimand and a fine in the amount of \$1,000. March out Captain Khan.

[13] The proceedings of this court martial in respect of Captain Khan are terminated.

LIEUTENANT-COLONEL M. DUTIL, M.J.

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