

Citation: *R. v. Sergeant C.G. Duhamel*, 2004 CM 32

Docket: S200432

**STANDING COURT MARTIAL
CANADA
QUEBEC
CHARLES-MICHEL DE SALABERRY ARMOURY**

Date: October 15, 2004

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

HER MAJESTY THE QUEEN

v.

**SERGEANT C.G. DUHAMEL
(Accused)**

SENTENCE

(Delivered from the bench)

OFFICIAL ENGLISH TRANSLATION

[1] Sergeant Duhamel, in determining the sentence that it considers to be the appropriate and minimum sentence in the circumstances, the Court has considered the circumstances surrounding the commission of the offence, as established by the evidence adduced and heard during the trial and the evidence presented at the sentencing hearing, including your own testimony, and has also had regard to counsel's argument and the principles that apply to sentencing.

[2] In imposing an appropriate sentence on an accused for the wrongful acts he has committed and in relation to the offences of which he is guilty, certain principles are followed, which may be stated as follows: first, protection of the public, which includes the Canadian Forces; second, punishment and denunciation of the offender; third, deterrence, not only of you but also of other people who might be tempted to commit similar offences; fourth, rehabilitation and reform of the offender; and fifth, the principles of proportionality, consistency in sentencing and comprehensiveness.

[3] Obviously, the first principle is protection of the public, and the Court must determine whether that protection will be achieved by a sentence that is designed to punish, rehabilitate or deter. How much stress is to be placed on any of those principles will of course depend on the circumstances, which vary from case to case. In some cases, the primary concern, if not the sole concern, will be general deterrence, or specific deterrence, or both. In those circumstances, no weight may be placed on rehabilitation of the accused or reform of the offender. In other cases, the emphasis will instead be placed on rehabilitation rather than deterrence. In this case, the Court is of the view that the emphasis must rather be placed on collective deterrence and denunciation of the offence committed.

[4] The Court is satisfied that the offence you committed resulted from a profound lack of judgment and is an isolated action. Accordingly, the Court does not believe that it is necessary to impose a sentence that would also reflect the principle of individual deterrence in order to protect the public and maintain discipline. The Court believes that your encounter with the military justice system alone is sufficient in this regard.

[5] In considering what sentence would be appropriate, the Court has taken the following mitigating and aggravating factors into account. I will begin with the factors that mitigate sentence. The Court considers the following factors to be mitigating, as I said:

first, the fact that you admitted all the facts at trial and that since the beginning of the investigation process you have acknowledged that you used the Government of Canada credit card issued to you as quarter master sergeant for personal purposes;

second, the fact that you have reimbursed or replaced the loss incurred by the Canadian Forces since August 2002, although it was very recently;

third, the fact that, as I said earlier, this was an isolated act committed in circumstances from which, it would appear, it cannot be concluded that there was any planned and deliberate act on your part involving the use of the credit card in question, but rather the mistaken use of the credit card which you knowingly validated after the fact when you realized what had happened, which made your action illegal;

fourth, the Court finds your service in the Canadian Forces and your good performance in general to be a mitigating factor;

fifth, the Court finds the time that has passed since the offence and since the end of the trial to be a mitigating factor.

However, the Court considers the following factors to be aggravating factors:

first, the nature of the offence and the sentence provided by Parliament. Obviously, for an act to the prejudice of good order and discipline charged under section 129 of the National Defence Act, the maximum sentence is dismissal with disgrace from Her Majesty's service. This is therefore inherently an offence that is objectively serious, even though, on the facts, the economic consequences of the act were not particularly serious;

second, the Court considers the fact that you were an experienced soldier who exhibited a lack of honesty and integrity by using the Government of Canada credit card issued to you for the purpose of your duties as sergeant quarter master;

third, the fact that you betrayed your employer's trust, and particularly the trust of Captain St-Denis who had placed his trust in you and given you broad latitude in the use of the credit card for official purposes, including by not requiring that you make a specific request for approval of purchases under \$350; and

fourth, the Court considers the fact that you were negligent and wilfully blind in failing to report your purchase immediately to your chain of command, as soon as possible. On the contrary, you even told the Court that you had even decided to make them wait. In other words, had the authorities not discovered your illegal use of the credit card over seven months after the events, it is highly unlikely that you would have made the first move.

[6] As your counsel said, this was a serious error in judgment on your part. You must realize that this will quite simply have serious consequences for you, including the fact that it has tarnished your military record and also your reputation after many years of loyal service, but also the fact, which is not insignificant in the circumstances, when you are just starting a new career at the age of 39, that you will now have a criminal record.

[7] Accordingly, I would ask you to rise, the Court sentences you to a reprimand and a fine of \$500. You may be seated.

[8] I would like to add that the reprimand is particularly significant because of the position you held, as sergeant quarter master, and because of the responsibilities and the necessary level of trust associated with that position in relation to the use of the Government of Canada credit card, which trust you have sadly betrayed. A fine alone is not adequate in the circumstances to reflect and stress the principle of general deterrence.

[9] Take Sergeant Duhamel out.

[10] I would like to thank the court officer and his staff for the logistical support provided this week here at the 4th Battalion and also thank counsel for the way they conducted the case, which made it possible for the Court to focus on the sole issue involved. I think that this approach enabled each of the parties to make their arguments in this regard without the less important details making or counteracting the efforts they made in their argument, and I think they did so adequately. I therefore think that this was an effective way of dealing with this case in the circumstances for counsel and the court appreciated the approach they took. Thank you.

[11] The proceedings of this Standing Court Martial regarding Sergeant Duhamel are concluded.

LIEUTENANT-COLONEL M. DUTIL, M.J.

Counsel:

Major G. Roy, Regional Military Prosecutor, Eastern Region

Counsel for the prosecutor

Captain N.M.M.F. Dorais-Pagé, Office of the Legal Advisor to DND and the Canadian Forces

Assistant counsel for the prosecutor

Major J.A.M. Côté, Directorate of Defence Counsel Services

Counsel for Sergeant C.G. Duhamel