



COURT MARTIAL

Citation: *R. v. Ellison*, 2025 CM 6002

Date: 20250429

Docket: 202503

Standing Court Martial

22 Wing North Bay
North Bay, Ontario, Canada

Between:

His Majesty the King

- and -

Major J.J. Ellison, Offender

Before: Colonel N.K. Isenor, M.J.

REASONS FOR SENTENCE

(Orally)

I. Overview

[1] Major (Maj) Ellison, the Court has accepted and recorded your plea of guilty to one charge under section 130 of the *National Defence Act* for fraud contrary to section 380 of the *Criminal Code*. The particulars of the charge allege that between 1 May 2015 and 31 July 2018, at or near North Bay, Ontario, by deceit, falsehood or other fraudulent means, you did defraud the Government of Canada of funds of a value not exceeding \$5,000 by prescribing medications in the name of Sergeant (Sgt) Krysti Fawcett for the benefit of your spouse, Amy Ellison. As part of his submissions at the sentencing hearing, the prosecution recommended that I impose a punishment of a fine in the amount of \$3,000. Defence counsel proposed that I direct an absolute discharge on the basis that otherwise, any punishment I impose for this offence will result in a criminal conviction, impacting your ability to pursue civilian employment, volunteer work and to support your elderly family members residing in the United States of America (U.S.A.) who are facing medical challenges.

[2] The Court must therefore determine whether directing an absolute discharge would be in Maj Ellison's best interest and not contrary to the public interest. Should the Court conclude that an absolute discharge is not available in this case, the Court must determine a sentence that is proportionate to the gravity of the offence and to the offender's degree of responsibility.

Positions of the parties

Prosecution

[3] The prosecution recommended that the Court impose a sentence of a fine in the amount of \$3,000. He explained that the objective gravity of the offence is serious, considering the fact that this case is a fraud against Major Ellison's employer, ultimately the Government of Canada. He contended that the case is also subjectively serious, given the fact that Maj Ellison, as a senior ranking medical officer, prescribed Ativan, a controlled substance, to his patient, Sgt Fawcett, knowing that it was for the benefit of his spouse. As a result, denunciation and deterrence should be the most important objectives for this case, and insofar as the principle of rehabilitation is concerned, it should be a secondary objective.

[4] The prosecution contended that the sentence must be severe enough to deter and denounce the conduct, and that the proposed sentence takes into account the mitigating factors. The prosecution suggests their recommended sentence is appropriate based on the circumstances of the offence and the offender and is in line with sentences for similar convictions of fraud. He is of the view that a sentence of a fine in the amount of \$3,000 would serve to denounce and deter the conduct, while not interfering in any way with the offender's rehabilitation. Both the prosecution and defence counsel agree that should Maj Ellison be sentenced to a fine, terms directing Major Ellison to pay \$1,000 monthly for a period of three months would be appropriate.

[5] The prosecution specifically noted that although he concedes that the direction of an absolute discharge would be in Maj Ellison's best interest, he is opposed to the imposition of an absolute discharge because in this specific case, he believes an absolute discharge would be contrary to the public interest, considering the fact that Maj Ellison, by virtue of his senior rank, and his role as a medical officer, was in a position of trust as it relates to his patient, as well as to the Canadian Armed Forces (CAF) when he committed the fraudulent act. Consequently, the lack of a punishment flowing from an absolute discharge would not have any of the requisite effects of denouncing and deterring the conduct and would therefore not be in the public interest. The prosecution further noted that the imposition of a fine would, in no way, interfere with Maj Ellison's rehabilitation or his personal obligations as they relate to his immediate family, and submits that a desire to travel to the U.S.A. ought not be a relevant consideration with respect to the imposition of an absolute discharge.

Defence

[6] Counsel for the defence submits that the imposition of an absolute discharge is most appropriate based on the facts in this case.

[7] Defence counsel acknowledged that fraud against an employer is a serious offence, however stressed that it is open to the Court to direct the imposition of an absolute discharge, even for serious offences such as this, when it can be shown that it is in the best interests of the accused, and not contrary to public interest. Defence counsel submitted that a sentence must be individualized to the specific circumstances of both the offence and the offender, and that registering a conviction in this case would result in a criminal record for Maj Ellison. They contend that this would have adverse second order effects, including adversely affecting both Maj Ellison's ability to find civilian employment and/or volunteer work providing support to individuals with opioid use disorder in the future, once his own medical situation stabilizes, as well as preventing him from traveling to the U.S.A to provide support to his elderly in-laws with medical issues and deteriorating health,

[8] Counsel for the defence also indicated that Maj Ellison has suffered some indirect consequences as a result of this charge being laid, including a significant deterioration of his mental health, ceasing to practice medicine, and being medically released from the CAF sooner than he had planned, all of which has had significant negative impacts on him and his family. Defence counsel contended that there is no risk that Maj Ellison will reoffend because the conduct was out of character, he no longer possesses a medical licence, and he has taken significant and prolonged steps to rehabilitate himself. Defence counsel argued that the imposition of an absolute discharge is not only in the accused's best interest, allowing Maj Ellison to continue making progress in his rehabilitation, but also not contrary to the public interest, given the fact that a criminal record would ensue from the imposition of any other sentence, and this would result in a punishment that has a disproportionately severe impact on Maj Ellison considering his degree of responsibility and the gravity of the offence in this case, thereby breaching the principle of parity.

Evidence

[9] In this case, the prosecutor provided the documents required under *Queen's Regulations and Orders for the Canadian Forces* (QR&O) paragraph 112.51(2) that were supplied by the chain of command; namely, a Statement as to Particulars of Service of Accused, his career summary in the form of an Member's Personnel Record Résumé and a copy of Maj Ellison's pay guide. The offender has no conduct sheet, revealing that Maj Ellison is a first-time offender with no previous record. The prosecution informed the Court that he had made inquiries and provided a reasonable opportunity to the chain of command, however they did not wish to tender a victim impact statement nor a military impact statement in this case. A Statement of Circumstances, which is reproduced later in this decision, was read on the record and produced as an exhibit by the prosecution with the consent of defence counsel.

[10] For its part, the defence produced the following documents that were read on the record and produced as exhibits by defence counsel with the consent of the prosecution:

- (a) an Agreed Statement of Facts (ASOF) provided further details regarding Maj Ellison including:
 - i. his practicing status;
 - ii. information describing future employment and volunteer aspirations;
 - iii. information regarding Maj Ellison's wife's guilty plea resulting from criminal charges laid as a result of the same Canadian Forces National Investigation Service (CFNIS) investigation that relates to the fraud charge that Maj Ellison is currently facing;
 - iv. information describing his personal situation and the specific challenges that each of his immediate family members are currently facing;
 - v. information describing Maj Ellison's resulting familial responsibilities; and
 - vi. information describing Maj Ellison's cooperation with CFNIS investigators, his voluntary statement admitting his responsibility, his guilty plea, and expressions of deep remorse through a written apology.
- (b) certain documents were annexed to the main ASOF including letters providing information regarding:
 - i. his current medical and mental health challenges and ongoing treatments;
 - ii. his membership status with the College of Physicians of Ontario;
 - iii. training certificates he has earned;
 - iv. volunteer work he is involved with and associated reference letters;
 - v. a charitable donation he has made;
 - vi. character references; and
 - vii. information demonstrating that Maj Ellison has elderly family members residing in the U.S.A. that are currently facing medical challenges that require support.

[11] Particularly relevant portions of the ASOF will be reproduced later in this decision.

[12] Maj Ellison also apologized to the Court, where he outlined his deep remorse for his actions, as well as recognizing the seriousness of his actions regarding his failure as

a medical officer to act in the best interest of Sgt Fawcett who was his patient, as well as the dangerous situation he allowed to continue with respect to his spouse's addiction, and the harm caused to all of his other patients who lost a treating physician as a result of his actions.

[13] Maj Ellison recognized that his actions have also caused distress to his family and indicated that as a result of these failures, he has lost confidence in his abilities as a physician and subsequently decided to resign his membership with the Ontario College of Physicians. He has not practised medicine since his arrest. He has earned a certificate in opioid dependence treatment from the University of Toronto to ensure that he is better equipped to provide support to people with addictions in the future, although on a volunteer basis and not as a physician. He is deeply committed to his own rehabilitation and to making amends, and in this regard, he volunteers twice a week in his community, and has done so since 2021. He has made a charitable donation to support the organization where he volunteers.

Circumstances of the offence

[14] The relevant facts surrounding the commission of the offence were summarized in the Statement of Circumstances, to which Maj Ellison admitted as true, and read as follows:

“STATEMENT OF CIRCUMSTANCES

1. At all relevant times, Major Ellison was the Detachment Commander and Base Surgeon at 22 Wing North Bay.
2. Between May 2015 and July 2018, Maj Ellison wrote fraudulent prescriptions for medications for the benefit of his spouse, Amy Ellison.
3. Major Ellison wrote prescriptions in the names of Kristi Fawcett, who was his patient and a sergeant in his unit.
4. Sgt Fawcett reported Maj Ellison to her chain of command after obtaining a copy of her Blue Cross history. The Blue Cross history detailed a long list of prescriptions that she claimed had never been prescribed for, nor obtained by her.
5. Text messages provided to the investigator showed conversations between Sgt Fawcett and Amy Ellison where they planned to share and obtain medication with the assistance of Maj Ellison.
6. During this period, while Sgt Fawcett had a legitimate requirement for the medication Lorazepam (Ativan), she agreed to provide and to share prescriptions made by Maj Ellison for Ativan with Amy Ellison.

7. Lorazepam is a controlled substance in Schedule IV of the Controlled Drugs and Substance Act.
8. In a cautioned interview, Maj Ellison admitted to police that at least by late 2016 or early 2017 he was aware that his spouse and Sgt Fawcett were sharing medications (e.g. Lorazepam) that he was prescribing and that he continued to provide those prescriptions despite this knowledge.
9. The prescriptions made out by Maj Ellison for the shared use of Sgt Fawcett and Amy Ellison or for the sole use of Amy Ellison were drawn from civilian pharmacies and were paid for using the Blue Cross number of Sgt Fawcett. The deprivation or risk of deprivation to the CAF is created by the reimbursement of the pharmacies by Blue Cross, which is then reimbursed in turn by VAC and the CAF.
10. As the majority of the prescriptions were shared by Sgt Fawcett and Amy Ellison, it is not possible to assign a specific pecuniary amount to the actual deprivation and risk of deprivation caused by the fraudulent prescriptions, but the actual deprivation would amount to no more than \$500.”

Circumstances of the offender

[15] Maj Ellison is fifty-three years old and joined the CAF through the Medical Officer Training Program in 2004. He completed medical school between 2004 and 2007, followed by a family medicine residency from 2007 to 2009. He served as a practicing physician in the CAF from 2009 to 2020. In 2010, he qualified as a flight surgeon.

[16] Maj Ellison was medically released from the military on 14 December 2022, having accumulated just over eighteen years of service.

[17] Maj Ellison deployed five times throughout his military career. In 2011, he deployed on Operation (Op) IGNITION in Iceland; in 2013 on Op ATTENTION in Kabul, Afghanistan; between 2015 to 2016 on Op PROVISION in Lebanon; in 2016 on Op NEVUS in the Ellesmere Islands; and in 2019 on Op REASSURANCE in Latvia.

[18] Throughout his career, Maj Ellison was awarded four medals. He received the Canadian Forces Decoration, the General Campaign Star – South West Asia, the Operational Service Medal – HUMANITAS, and the Special Service Medal.

[19] In 2012, Maj Ellison received a Canadian Forces Health Services Commander’s coin for leadership when he was posted to the Cold Lake clinic. The clinic was chronically undermanned, and he was recognized for stepping up during difficult conditions, including being on call for medical emergencies for a period of two months straight that summer.

[20] In 2014, Maj Ellison received a coin from the 22 Wing Commander, Colonel Boyle, for providing exemplary care after he suffered severe injuries in a paragliding accident. Maj Ellison made several house visits during the recovery.

[21] Maj Ellison began consulting for mental health issues in December 2019. Those mental health issues were exacerbated upon his arrest on 16 December 2020.

[22] In March 2021, Maj Ellison was diagnosed with major depressive disorder, generalized anxiety disorder, panic disorder, migraines and insomnia. He has been on anti-depressant medication since 2019 and has been and is still consulting with multiple therapists including an occupational therapist, a psychiatrist and a psychotherapist.

[23] Since 2020, he has been under the care of psychologist, Dr Stewart, who stated the following in a letter submitted as an exhibit in this sentencing hearing:

“It is important to note that Jason was navigating a highly stressful and complex work and personal environment at the time. He has shared openly about the emotional toll of witnessing his spouse struggle with addiction and his overwhelming desire to prevent her from suffering. He has also discussed the stressful work environment in detail, which combined with personal pressures, contributed significantly to his momentary lapse in judgment.

Jason’s behavior in this matter was entirely out of character. In my professional opinion, he does not present a risk to reoffend. He has demonstrated profound remorse, insight, and a genuine commitment to making amends. This isolated incident stands in stark contrast to his longstanding record as a conscientious and caring physician.

In addition, Jason has worked diligently to address underlying mental health concerns. He has made considerable progress through a combination of psychological treatment and prescribed mood stabilizers. He remains actively engaged in ongoing therapy and has expressed his intention to continue this work for the foreseeable future.”

[24] On 2 June 2024, Maj Ellison voluntarily resigned his membership with the College of Physicians of Ontario. He has not practised medicine since his arrest in December 2020, and he has no intention of ever practising again. The College is aware of the current proceedings.

[25] Following his release, Maj Ellison completed a one-year Opioid Dependence Treatment Certificate Program at the University of Toronto. This program trains professionals, including physicians, nurses, pharmacists, and counselors, in delivering services to individuals with opioid use disorder.

[26] Due to ongoing mental health challenges, Maj Ellison is not currently working. However, he has been volunteering twice weekly at The Gathering Place since September 2021, a community organization supporting people in need, including seniors, veterans, families, and youth. Maj Ellison also donated \$1,000 to The Gathering Place.

[27] Although Maj Ellison is not currently working, he is open to the idea of working or volunteering in the future in the addiction support field, though not in a medical role.

[28] Major Ellison has received support and character reference letters from two of his former colleagues.

[29] With regards to his personal situation, Maj Ellison has been married to Amy Ellison since 2002. Mrs Ellison experienced mental health struggles and developed a dependency on Ativan, initially prescribed by her physician. She has not used Ativan since 2019.

[30] As a result of the CFNIS investigation, Mrs Ellison was charged within the civilian system and subsequently pled guilty to one count of use of a forged document contrary to paragraph 368 (1)(a) of the *Criminal Code*, and one count of theft under \$5,000, contrary to paragraph 334(b) of the *Criminal Code*. A charge of uttering forged documents was withdrawn, and she received a conditional discharge, six months' probation containing mandatory conditions, specific conditions to accomplish twenty hours of community work and to meet with a probation officer.

[31] Major Ellison and his wife have two children who also each are facing challenges that require Major Ellison to play a central role in supporting his family, performing essential daily tasks and providing emotional and logistical support.

[32] Maj Ellison collaborated with the investigation and provided a voluntary statement in which he admitted he was aware that his spouse and Sgt Fawcett were sharing medication - specifically Lorazepam, that he was prescribing and that he continued to provide those prescriptions despite this knowledge.

[33] Maj Ellison pled guilty, accepting full responsibility and has expressed deep remorse through a written apology.

[34] A letter from Maj Ellison's mother-in-law was produced as an exhibit where she explains that her and her husband, who reside in the U.S.A., are both elderly and in deteriorating health and are currently facing medical challenges that require the family's support. Maj Ellison and his family have been waiting for these proceedings to be terminated before going to visit. A criminal record would prevent him from travelling to the U.S.A.

II. Whether directing an absolute discharge would be in the accused's best interest and not contrary to the public interest. Otherwise, what is the appropriate punishment in this case?

Sentencing Principles

[35] When determining a sentence, the Court must be guided by the sentencing principles contained in the *NDA*. In this context, section 203 of the *NDA* provides that:

203.1(1) The fundamental purpose of sentencing is to maintain the discipline, efficiency and morale of the CAF. This is to be achieved by imposing punishments that have one or more of the following objectives:

(2) The fundamental purpose of sentencing is to be achieved by imposing just punishments that have one or more of the following objectives:

- (a)** to promote a habit of obedience to lawful commands and orders;
- (b)** to maintain public trust in the Canadian Forces as a disciplined armed force;
- (c)** to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (d)** to deter offenders and other persons from committing offences;
- (e)** to assist in rehabilitating offenders;
- (f)** to assist in reintegrating offenders into military service;
- (g)** to separate offenders, if necessary, from other officers or non-commissioned members or from society generally;
- (h)** to provide reparations for harm done to victims or to the community; and
- (i)** to promote a sense of responsibility in offenders and an acknowledgment of the harm done to victims or to the community.

[36] When imposing a sentence, a sentencing judge must also take into consideration the following principles:

203.2 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

...

203.3 Sentences must be imposed in accordance with the following other principles:

- (a)** a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and aggravating circumstances include, but are not restricted to, evidence establishing that

- (i) the offender, in committing the offence, abused their rank or other position of trust or authority,
- (ii) the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor,
- (iii) the offender, in committing the offence, abused their spouse or common-law partner,
- (iv) the offender, in committing the offence, abused a person under the age of 18 years,
- (v) the commission of the offence resulted in substantial harm to the conduct of a military operation,
- (vi) the offence was committed in a theatre of hostilities,
- (vii) the offence was committed for the benefit of, at the direction of or in association with a criminal organization, or
- (viii) the offence was a terrorism offence;
- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (c) an offender should not be deprived of liberty by imprisonment or detention if less restrictive punishments may be appropriate in the circumstances;
- (c.1) all available punishments, other than imprisonment and detention, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders;
- (d) a sentence should be the least severe sentence required to maintain the discipline, efficiency and morale of the Canadian Forces; and
- (e) any indirect consequences of the finding of guilty or the sentence should be taken into consideration.

[37] One or more of these objectives will inevitably predominate in the crafting of a fit sentence in an individual case, yet it must be kept in mind that each of these goals calls for the attention of the sentencing court, and a fit sentence should reflect an appropriate blending of these goals, tailored to the particular circumstances of the case.

[38] As recognized by the Supreme Court of Canada, courts martial allow the military to enforce internal discipline effectively and efficiently.

[39] Punishment is the ultimate outcome once a breach of the Code of Service Discipline has been recognized following either a trial or a guilty plea.

[40] It is the only opportunity for the Court to deal with the disciplinary requirements brought about by the conduct of the offender, on a military establishment, in public and in the presence of members of the offender's unit.

[41] The imposition of a sentence at court martial proceedings, therefore, performs an important disciplinary function, making this process different from the sentencing usually performed in civilian criminal justice courts.

[42] The military judge imposing punishment should ensure, at a minimum, that the circumstances of the offence and the offender are not only considered, but also adequately laid out in the sentencing decision to an extent that may not always be necessary in other courts.

[43] As this Court informed the offender when he entered his plea of guilty, section 139 of the *NDA* prescribes the possible punishments that may be imposed at courts martial. Those possible punishments are limited by the provision of the law which creates the offence and provides for a maximum punishment.

[44] Only one sentence is imposed upon an offender whether the offender is found guilty of one or more different offences, but the sentence may consist of more than one punishment.

Principles of sentencing deserving greatest emphasis/Priority of objectives

[45] Regarding the objectives of sentencing to be emphasized in this case; in the Court's view, the circumstances of this case require that the focus be placed on the objectives of denunciation and general deterrence in sentencing the offender, but not to the detriment of rehabilitation, which I find important in this case. In achieving the purpose of denouncing the conduct and deterring others, the challenge lies in reconciling what is needed to deter others from committing something similar, while still ensuring that Maj Ellison has the best possibility of success in his personal rehabilitation.

[46] In terms of the main purpose of sentencing in section 203.1 of the *NDA*; namely, "to maintain the discipline, efficiency and morale of the Canadian Forces", the sentence proposed must be sufficient to denounce Maj Ellison's conduct in the military community, and to act as a deterrent to others who may be tempted to commit fraud against the Government of Canada.

Aggravating and mitigating factors

[47] The Court considered the following factors to be aggravating in this case:

- (a) first, the objective gravity of the offence of fraud. Any person who is found guilty of fraud for an amount not exceeding \$5,000 is guilty of

either an indictable offence and liable to imprisonment for a term not exceeding two years or an offence punishable on summary conviction. In matters of fraud, Parliament has implicitly expressed a heightened level of denunciation for fraud committed by persons when the offender's employment, employment skills or status or reputation in the community were relevant to, contributed to, or were used in the commission of the offence by not permitting the Court to regard these factors as mitigation. Objectively, it is therefore a serious offence even though Maj Ellison did not directly benefit from this fraud and the likely sums involved in this fraud are relatively low;

- (b) second, the subjective gravity of the offence, including the offender's rank and position at the time of the offence, as well as the breach of Krysti Fawcett's trust as a patient when prescribing a prescription in her name for the benefit of his spouse, as well as the nature of the substance being prescribed, Ativan being a controlled substance;
- (c) third, the prolonged nature of the fraud, having occurred over the years 2015 to 2018, continued over a significant period of time; and
- (d) last, the fact that the commission of a crime of fraud against the government is a direct attack on the bond of trust that must exist between the member and the government institution in order to uphold the government's integrity in its business dealings and maintain the public trust in its public institutions.

[48] As mentioned by Letourneau J.A. of the Court Martial Appeal Court (CMAC) in the case of *R. v. St-Jean* (2000) CMAC-429, at paragraph 22:

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.

[49] The Court also identified the following mitigating factors:

- (a) first, the fact that the offender did not directly benefit from the fraudulent act;
- (b) second, the likely sum deprived or at risk of deprivation from the Government of Canada, although unknown, is estimated as being

relatively low, and no more than \$500 over the entire period of 2015 to 2018;

- (c) third, Maj Ellison's career in the CAF, including eighteen years of service, five deployments, the award of four medals and two Commanders' coins in recognition of outstanding service, all demonstrate a highly performant and highly contributing member. However, the Court cannot consider his performance while he was posted in North Bay between May 2015 to July 2018, since under subsection 380.1(2) of the *Criminal Code*, the commission of the offence was related to the offender's status as a medical officer during that period;
- (d) fourth, the fact that Maj Ellison has taken significant steps to address his mental health and personal challenges by seeking medical professionals and treatment to ensure his continued rehabilitation;
- (e) fifth, Maj Ellison's efforts to make amends and reparations by pursuing training in opioid dependency treatment and his significant and lengthy volunteer work in the community, including his charitable donation;
- (f) sixth, the absence of a conduct sheet or criminal record, showing that Maj Ellison is a first-time offender; and
- (g) lastly, Maj Ellison's guilty plea, which avoided the expense and energy of running a trial and demonstrates that he's taking responsibility for his actions in this public trial in the presence of members of his unit and the military community.

Indirect Consequences to be taken into account

[50] As part of the indirect consequences that should be taken into consideration, the registration of a criminal record could influence the punishment to impose. It is important to recognize that members convicted of many offences under the *NDA* are not convicted of an offence where a criminal record is entered, whereas members convicted of *Criminal Code* offences through section 130 of the *NDA* acquire a criminal record which has second-order adverse effects and consequences. This is an important distinction that sets the military justice system apart from the civilian justice system.

[51] In the case at hand, the imposition of a criminal record is indeed an indirect consequence that would result if the Court were to register a conviction for the offence of fraud, to which he has pled guilty. Evidence was adduced during the sentencing hearing outlining the fact that Maj Ellison is open to pursuing civilian employment or volunteering to provide support to individuals with opioid dependency disorders once his own mental health challenges improve. The imposition of a criminal record could drastically reduce Maj Ellison's chance of obtaining civilian employment or volunteer

opportunities in this regard. Equally, evidence demonstrated that Maj Ellison has elderly family members suffering deteriorating health who reside in the U.S.A. A criminal record would prevent him from being able to provide direct support to them as he would be unable to enter the U.S.A

Cases relied on by prosecution

[52] The prosecution referenced many cases in support of his submissions during the sentencing hearing including *Norberg v. Wynrib*, [1992] 2 SCR 226; *R. v. Pilkington*, 2015 MBQB 2; *R. v. Topp*, 2023 CM 5016; *R. v. Cadieux*, 2019 CM 2019; and *R. v. Malvoisin*, [2006] O.J. No. 3931.

[53] I have narrowed the cases and am listing only the cases that prosecution referred to in support of his recommendation that the Court impose a fine in the amount of \$3,000. The prosecution referred to the following six cases:

- (a) *R. v. Hastings*, 2024 CM 4006. A case where a captain pled guilty to one offence under section 130 of the *NDA* for fraud over \$5,000 contrary to section 380 of the *Criminal Code*. The offender claimed separation expenses in the amount of \$15,300 over a period of nine months after he had separated from his common-law spouse and requested to be posted on imposed restrictions to live with his new girlfriend. The offender provided false monthly rent receipts in support of his claims. The offender was diagnosed with attention deficit hyperactivity disorder, and brought evidence from his treating psychiatrist to show that incarceration would adversely affect his mental health. The military judge stated that the evidence was of no value to the issues raised in the case due to the fact that the mental conditions were diagnosed years after the offence and had no relationship with its circumstances. The military judge imposed a sentence of a severe reprimand and a fine in the amount of \$7,000;
- (b) *R. v. Master Corporal C. Poirier*, 2007 CM 1023. A chief clerk at the rank of master corporal pled guilty to five charges including two counts of fraud under section 380 of the *Criminal Code* and three counts of fraud under paragraph 117(f) of the *NDA*, after abusing her position. The total combined amount defrauded was \$34,000. The offender was sentenced to 30 days' imprisonment. The Chief Military Judge indicated that absent exceptional circumstances, a custodial sentence should be provided in circumstances such as this case;
- (c) *R. v. Berlasty*, 2019 CM 2032. A Corporal was found guilty of one count of paragraph 117(f) of the *NDA*, an act of a fraudulent nature, for claiming reserve force injury compensation while being gainfully employed as a civilian during his period of incapacitation. The military judge noted a lack of remorse, estimated the additional fraudulent

amount received as \$2,500 and characterized the action as a flagrant breach of the public trust. The offender was sentenced to imprisonment for a period of ten days and a fine in the amount of \$4,000. Both this case and the *Poirier* case were advanced to demonstrate that even if evidence reveals that the rehabilitation of the offender is an objective to be considered, the principles of denunciation and general deterrence must be paramount in cases of fraud, trumping first-offender status and positive rehabilitation prospects and the objectives of rehabilitation are secondary;

- (d) *R. v. Wight*, 2014 CM 1021. Corporal Wight pleaded guilty to an offence contrary to paragraph 117(f) of the *NDA* for fraudulently obtaining medication in the amount of \$913.32 for his then-common law spouse. The Court sentenced the offender to a reprimand and a fine in the amount of \$900 payable in consecutive monthly instalments of \$100;
- (e) *R. v. Cyr*, 2012 CM 3015. A case where a sergeant was found guilty of one charge under section 130 of the *NDA* for possession of a prohibited device contrary to subsection 92(2) of the *Criminal Code*, one count of stealing contrary to section 114 of the *NDA*, one count of willfully making a false statement in a document contrary to paragraph 125(a) of the *NDA* and one count of improperly selling public property contrary to paragraph 116(a) of the *NDA*. The offender stole and improperly sold multiple items over a period of five years. The offender was sentenced to a reduction in rank to the rank of corporal and a fine in the amount of \$2,000; and
- (f) *R. v. Tarso*, 2022 CM 5013. A master warrant officer pled guilty to one count of fraud, contrary to section 380 of the *Criminal Code*, and one count of breach of trust by public officer contrary to section 122 of the *Criminal Code* for making unauthorized purchases on her Government-issued payment card on ninety-nine occasions while she was employed as the detachment commander for her personal use. The value of the goods purchased was \$36,414.62 and the offender took intricate steps to falsify documents to hide the purchases. The member was sentenced to thirty days' imprisonment, dismissal from Her Majesty's service, a reduction in rank by two ranks to the rank of sergeant and a restitution order in the amount of \$37,268.19.

[54] The prosecution explained that he arrived at his recommendation on sentence using the punishments imposed in the above cases and considered the *Wight* case to bear the closest resemblance to the case at bar.

Cases relied on by defence counsel

[55] Defence counsel also referred to numerous civilian cases in support of the proposition that there is ample case law demonstrating that a direction of an absolute discharge is available and imposed by sentencing judges on offenders who occupy high ranking positions of trust and responsibility, some of whom had defrauded large sums, while others did not benefit monetarily at all. These include the following cases: *R. c. Hellstrom*, 2017 QCCQ 10231; *R. v. Murray*, [2018] O.J. No. 3083; *Harbour c. R.*, [2017] J.Q. No 748; *R. v. Mills*, [2022] O.J. No. 2264; *R. c. R.T.*, 2019 QCCQ 137; *R. c. Pelletier*, 2016 QCCQ 15193; *R. c. Blain*, 2004 CanLII 13737 (QCCQ); and *R. v. Mastantuono*, [2024] Q.J. no 12648.

[56] I have narrowed the cases and am listing only the Court Martial cases that defence counsel referred to in support of her recommendation that the Court direct an absolute discharge in this case:

- (a) *R. v. Goulding*, 2023 CM 2019. A case where a master corporal was convicted by a General Court Martial on a total of four charges; those being:
 - i. two charges under section 130 of the *NDA* for assault, contrary to section 266 of the *Criminal Code* for making unwarranted physical contact by “tagging” one student in the private area, and disrupting another’s balance by shaking him while he was using the urinal;
 - ii. one charge under section 130 of the *NDA* for assault with a weapon contrary to paragraph 267(b) of the *Criminal Code* for striking an unsuspecting student by tossing a shoe at them, and;
 - iii. one charge contrary to section 97 of the *NDA* for drunkenness;

the military judge described the three assaults factually as more harassing than violent and directed an absolute discharge on those charges and imposed a severe reprimand and a fine in the amount of \$4,800 for the charge of drunkenness;
- (b) *R. v. Anderson*, 2024 CM 4008. A case where a master warrant officer pled guilty to one charge under section 130 of the *NDA* for unauthorized possession of a restricted firearm at an unauthorized place contrary to section 93 of the *Criminal Code*. The offender was a member of the military police (MP) responsible for providing security to very important persons on a Royal Canadian Air Force aircraft, who accepted a request to assist an MP colleague of the rank of captain to become more familiar with the Sig Sauer firearm in anticipation of qualification in another MP position. While on leave immediately following an overseas mission, MWO Anderson brought his personal Sig Sauer 226 pistol to the Canadian Forces National Counter-Intelligence Unit Detachment at 1 Canadian Air Division (1 CAD), a place he was not authorized to

possess the firearm. The firearm was not loaded and not capable of firing a round as he had, before arriving at 1 CAD, inserted a wooden bolt into the firearm. An MP master corporal, an MP sergeant and a civilian employee witnessed the presence of the firearm. MWO Anderson apologized to those who were present when he had his firearm in the office, acknowledging that his conduct could have raised security or mental health concerns. An absolute discharge, and a weapons prohibition order for a duration of five years was directed by the military judge following a joint submission by counsel; and

- (c) *R. v. Hykawy*, 2024 CM 3021: A corporal was found guilty of one count of assault with a weapon contrary to section 267 of the *Criminal Code* for threatening to use a knife in committing an assault upon a sergeant. The offender was soon releasing from the CAF and was seeking civilian employment that would have been precluded by the imposition of a criminal record. The military judge directed an absolute discharge.

[57] Counsel for the defence explained that she arrived at her recommendation on sentence using the punishments imposed in the above civilian and military cases and considered the *Mastantuono* case to bear the closest resemblance to the case at bar.

Parity

[58] To determine the appropriate sentence for Maj Ellison, I must first identify the objective range of sentences for similar offences. This assessment considers typical offence characteristics, assuming the accused has good character and no criminal record. The sentencing process requires military judges to closely examine past precedents and compare the facts of the case with similar situations. Treating similar conduct with parity is crucial for maintaining discipline in the military context.

[59] Having considered the circumstances surrounding the commission of the offence and the offender's personal situation, the Court examined precedents for similar offences to determine whether counsel's proposed sentences are similar to sentences imposed on similar offenders in similar circumstances.

[60] Upon reviewing the case law that was provided by counsel, I find that the majority of the cases can be distinguished because of the nature of the facts, which are very different than those in the case at bar, and many of the situations presented in their cases have facts that are much more aggravating than the case at bar, or civilian case law having punishments that are not available under the Code of Service Discipline. Unfortunately, I find that there were few cases with similar situations. The cases that guide the Court when applying the parity principle in this case are *Wight* and *Mastantuono*.

[61] The wide range of cases before me range from fines to imprisonment, which underscores the extensive spectrum of potential punishments for the offence of fraud.

Consequently, it is possible to find case law that supports a varied range of penalties for this offence. A comprehensive examination of the case law exemplifies the critical importance of carefully considering the context and circumstances surrounding the commission of the fraud when determining the offender's level of responsibility. It is clear that there is a corresponding correlation showing that imposed sentences tended to be higher on the scale of punishment for offences where either the offender occupied a position of greater responsibility or trust or there was an elevated sum that was deprived or at risk of deprivation.

[62] After thoroughly reviewing all the case law presented by both the prosecution and defence of the precedents of punishments imposed in the past for similar offences, I find that for findings of guilt for offences similar to which Maj Ellison has pled guilty, which I find to be on the lower level of the spectrum, punishments range from a fine to a fine combined with a reprimand. A severe reprimand to a relatively short period of detention coupled with a fine could be imposed for the most serious cases.

[63] Although an absolute discharge is not a punishment and does not appear in the scale of punishments, a survey of applicable case law demonstrates that the direction of an absolute discharge is available to the sentencing judge as an appropriate disposition, even where the offender occupied positions of greater trust or responsibility, and the amount of deprivation was significant. That is sufficient to allow the Court to conclude that the proposed sentence by the prosecution is well within the range of punishments, while defence counsel's recommendation of the imposition of an absolute discharge also remains an appropriate option for consideration in this case.

Sentence to impose

[64] The imposition of a sentence must be individualized to Maj Ellison, while promoting the operational effectiveness of the CAF by contributing to the maintenance, efficiency, and morale of the unit.

[65] Major Ellison's defence counsel has asked this Court to direct that he be discharged absolutely pursuant to section 203.08 of the *NDA*.

[66] Subsection 203.08(1) of the *NDA* reads as follows:

If an accused person pleads guilty to or is found guilty of an offence, other than an offence for which a minimum punishment is prescribed by law or an offence punishable by imprisonment for 14 years or for life, the court martial before which the accused appears may, if it considers it to be in the accused person's best interests and not contrary to the public interest, instead of convicting the accused person, direct that they be discharged absolutely.

[67] I agree with Sukstorf M.J. when she stated in *Goulding*, at paragraph 63, that the Court must proceed first to determine whether the imposition of an absolute discharge is appropriate in the particular circumstances and then proceed to sentence should an absolute discharge not be directed.

[68] The Court shall first determine whether an absolute discharge is available based on the offence charged. If it is, the Court shall then decide if it is in the best interest of the offender that an absolute discharge be directed by the Court, and if the granting of an absolute discharge is not contrary to the public interest.

[69] This Court adopted the judicial test set out in *R. v. Fallofield*, [1973], 13 C.C.C. (2d) 450 in deciding whether the imposition of an absolute discharge should be directed pursuant to section 203.08 of the *NDA*.

Is a discharge available based on the offence charged?

[70] The maximum punishment for fraud not exceeding \$5,000, when proceeding as an indictable offence is imprisonment for a term not exceeding two years. Under section 203.08 of the *NDA*, for an offender to be eligible for consideration by the Court of an absolute discharge, the offence committed must be one for which there is no minimum punishment prescribed by law and must not be punishable by imprisonment for fourteen years or for life. Consequently, the Court concluded that based on the charge before the Court, the offender's case is eligible for consideration.

Is it in the best interest of the offender?

[71] The first condition precedent requires the Court to determine whether directing a discharge would be in the best interest of the offender. *Fallofield* at pages 454 to 455 sets out the test to determine whether directing a discharge would be in the best interests of the offender:

Generally, the first condition would presuppose that the accused is a person of good character, without previous conviction, that it is not necessary to enter a conviction against him in order to deter him from future offences or to rehabilitate him, and that the entry of a conviction against him may have significant adverse repercussions.

[72] The prosecution concedes that directing a discharge would be in the best interests of the offender. Equally, defence counsel has provided ample evidence to demonstrate Maj Ellison's good character, his lack of criminal record and that it is not necessary to enter a conviction against him in order to deter him from future offences or to rehabilitate him, and that the entry of a conviction against him may have significant adverse repercussions.

[73] Specifically, the evidence demonstrated a highly productive and successful career in the CAF, provided letters from his treating physicians establishing his extensive rehabilitative treatment and commitment thereto and the fact that Maj Ellison voluntarily resigned his membership to practise medicine.

[74] In terms of significant adverse repercussions flowing from the entry of a conviction against him, defence counsel provided evidence establishing two repercussions that are likely to impact Maj Ellison:

- (a) Maj Ellison has pursued training with respect to opioid dependency treatment and hopes to volunteer or find civilian employment to provide support to individuals with opioid use disorder, however not as a physician, and having a criminal record would adversely affect his ability to be employed in that regard; and
- (b) Maj Ellison has elderly family members suffering health challenges and deteriorating health who reside in the U.S.A. A criminal record would prevent him from being able to provide direct support to them as he would be unable to enter the U.S.A.

[75] The evidence supports the fact that the actions for which he was found guilty are out of character for him, and he continues to have the support of his family and friends.

[76] The evidence demonstrates that he is a person of good character, and that it is not necessary to enter a conviction against him to deter him from future offences or to rehabilitate him.

[77] As previously stated by this Court, the offence for which the offender was found guilty in this case is not included in the list found at section 249.27 of the *NDA* as not constituting an offence for the purpose of the *Criminal Records Act*. Therefore, in the absence of a discharge, any sentence imposed on Maj Ellison will result in him having a criminal record.

[78] Based on the evidence adduced in the sentencing hearing, the Court has no trouble concluding that it is in Maj Ellison's best interest that he be discharged absolutely for the offence.

Is it contrary to the public interest?

[79] The second condition precedent requires the Court to ensure that the granting of an absolute discharge is not contrary to the public interest. "Not contrary to the public interest" is a concept which includes a consideration of the need for the deterrence of others.

[80] In assessing whether an absolute discharge is not contrary to the public interest, the Court must examine the nature of the offence, the prevalence of the offence within the CAF community, and whether the circumstances of the offence are something that should be a matter of public record. It is the prosecution's position that this is where the test fails.

[81] The fact that Maj Ellison was charged, held to account, and pled guilty in this court martial for the offence denounces the conduct and sends a strong message of general deterrence.

[82] The nature of the offence committed by Maj Ellison is serious; however, there is no evidence before the Court demonstrating that the operational readiness of the unit and the morale and discipline of its members were compromised by the actions of Maj Ellison. The Court took note of the fact that neither a victim impact statement nor a military impact statement was provided, despite the prosecution providing a reasonable opportunity for the chain of command to do so.

[83] In terms of prevalence of this type of offence in the CAF community, no evidence was adduced regarding the prevalence of this type of offence within the unit or the CAF. Although counsel provided case law with respect to CAF members being sentenced for fraud, or similar types of offences, the Court notes that it was very difficult for both the prosecution and defence counsel to identify case law that contained similar circumstances to the case at hand.

[84] Equally, the circumstances of the offence indicate that Maj Ellison did not directly benefit from prescribing medications in the name of Krysti Fawcett for the benefit of his spouse and it is noted that although the actual monetary loss to the Government of Canada is unknown, the likely sum involved in this fraud is relatively low. As such, I find that it is not necessary to make the circumstances of the offence a matter of public record to prevent Maj Ellison from committing another offence or to warn the public. In fact, evidence was produced that demonstrated that the charges against Maj Ellison have been reproduced under “Other Notifications” on the public-facing website of the College of Physicians and Surgeons of Ontario. In the Court’s view, although not evidence of a conviction, it is clear that the circumstances of the offence are already a matter of the public record.

[85] There is no indication in the evidence that Maj Ellison poses a risk to the public by reoffending at any point in the future. This is consistent with Dr Stewart’s professional assessment of Maj Ellison that he does not pose a risk to the public by reoffending.

[86] Lastly, it is clear that a criminal record would result from the imposition of any sentence, and the Court finds that this would result in a punishment that has a disproportionately severe impact on Maj Ellison considering his degree of responsibility and the gravity of the offence in this case.

[87] Considering all of the circumstances, it is my conclusion that it is not contrary to the public interest that the offender be discharged absolutely of the offence by this court martial.

III. Conclusion

[88] The circumstances of the offence that you admitted to having committed reveal behaviour that was harmful, dangerous and not at all in line with behaviour we would expect from a senior ranking medical officer with a long history of service in the CAF, who is trusted to care for our fellow CAF members. However, through your apology to

the Court, as well as the significant steps you have taken towards your own rehabilitation, it is clear to me that you have reflected on this and have come to that realization as well.

[89] You have demonstrated that you accept responsibility for your offence, and your counsel has asked me to consider your conduct as a significant lack of judgement on your part, during a period in your life and career where you were under great pressure both at work and at home, and facing some medical and personal challenges of your own. In fact, the words your counsel used were to the effect that this dark period in your life should not define you, nor overshadow the many positive contributions and accomplishments you have made within the CAF as a medical officer. I am prepared to do exactly that.

[90] Without downplaying the severity of the acts you committed, the Court has decided to direct an absolute discharge for this offence. In the Court's view, this recognizes your capacity to make a positive contribution, albeit outside the CAF, and limits consequences to you.

[91] I am convinced, based on the evidence that has been adduced in this hearing, that you possess a great capacity to contribute positively to Canadian society. I hope that you use the strengths and skills you clearly possess, along with the opportunity that you have been given, to embrace change and leverage this experience to the benefit of your community. As you told this Court, there are many ways to provide support, and I wish you luck in finding the best way forward to be a part of something that is bigger than yourself.

FOR THESE REASONS, THE COURT:

[92] **DIRECTS** that Maj Ellison, be discharged absolutely on the charge before the Court.

Counsel:

The Director of Military Prosecutions as represented by Captain I. Shaikh

Major I. Gagné and Lt(N) D. De Thomasis, Defence Counsel Services, Counsel for Major Ellison