

Citation: *R. v. Chief Petty Officer 2nd Class B. Gaudreau*, 2008 CM 1007

Docket: 200779

**STANDING COURT MARTIAL
HEADQUARTERS, REGIONAL CADET SUPPORT UNIT (PACIFIC)
CANADIAN FORCES BASE ESQUIMALT
BRITISH COLUMBIA
CANADA**

Date: 17 March 2008

PRESIDING: COLONEL MARIO DUTIL, CHIEF MILITARY JUDGE

HER MAJESTY THE QUEEN

v.

**CHIEF PETTY OFFICER 2ND CLASS B. GAUDREAU
(Offender)**

**SENTENCE
(Rendered Orally)**

[1] Chief Petty Officer 2nd Class Gaudreau, the Court having accepted and recorded a plea of guilty in respect of charge 1 for an offence punishable under section 130 of the *National Defence Act* contrary to section 80 of the *Financial Administration Act*, I find you guilty of that charge.

[2] It has been long recognized that the purpose of a separate system of military justice or tribunals is to allow the Armed Forces to deal with matters that pertain directly to discipline, efficiency and morale of the military. It is also recognized that in the military context may, in appropriate circumstances, justify and, at times, dictates a sentence more severe than if committed in a purely civilian context and that in order to promote proper military objectives. That being said, the punishment imposed by any tribunal, military or civil, should constitute the minimum necessary intervention that is adequate in the particular circumstances.

[3] In determining sentence today, the Court has considered the totality of the circumstances surrounding the commission of the offence as contained in the statement of circumstances that you have accepted as conclusive evidence and also the evidence presented during the sentencing hearing including the testimonies of Ms Vanier and Commander Mountford as well as the documentary evidence filed during

that hearing. And finally, I have considered the representation made by counsel and the case law provided as well. I have also considered any direct and indirect consequences that the finding and the sentence will have on you.

[4] When a court must sentence an offender for offences that he has committed, certain objectives must be pursued in light of the applicable sentencing principles. It is recognized that these principles and objectives will slightly vary from case to case, but they must always be adapted to the circumstances and to the offender. In order to contribute to military discipline, the sentencing principles and objectives could be listed as:

firstly, the protection of the public and this includes the Canadian Forces;

secondly, the punishment and the denunciation of the unlawful conduct;

thirdly, the deterrence of the offender and other persons from committing similar offences;

fourthly, the separation of offenders from society, including from members of the Canadian Forces, where it is necessary;

fifthly, the rehabilitation of offenders;

sixthly, the proportionality to the gravity of the offence and the degree of responsibility of the offender;

seventhly, the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

eighthly, and offender should not be deprived of liberty, if less restrictive punishment or combination of punishments may be appropriate in the circumstances; and

finally, the Court shall consider any relevant aggravating and mitigating circumstances relating to the offence or the offender.

[5] The Court agrees with the prosecution that the sentence in this case should emphasize the need to protect the public by a sentence that will deter others of committing similar offences and also denunciation. This case deals with the violation of the *Financial Administration Act* which is an act to provide for the financial administration of the Government of Canada, the establishment and maintenance of the accounts of Canada and the control of Crown assets. In this particular case, you have wilfully signed three certificates pursuant to section 34 of the *Financial Administration*

Act certifying that the performance of work or services rendered by Mr Phillip John McGuire as the Finance Officer for the Albert Head Air Cadet Support Training Centre that that work had been provided knowing that the specific work or services had not been rendered. The circumstances indicate that you initially refused to sign those certificates, but signed them afterwards after being informed by your superior, Major Arnett, of a special arrangement with Mr McGuire in order to address the issue of the temporary staffing of the critical position of Financial Officer during that period. The evidence heard during the sentencing hearing reveals that your organization is complex and that it manages important amounts of public funds in order to support extensive cadet program in the pacific region and also that your organization faces important challenges to find and retain competent personnel by reason of the favourable economic context in western Canada. In this context, it is even more crucial that the rules governing the payment for work, goods and services be scrupulously applied.

Aggravating Factors

[6] In arriving at what the Court considers to be a fair and appropriate sentence, the Court has considered the following factors to aggravate the sentence:

1. The objective gravity of this offence. A person found guilty of an offence under section 80 of the *Financial Administration Act* is guilty of an indictable offence and liable to a fine not exceeding 5000 dollars and to imprisonment for a term not exceeding five years. This is a serious offence.
2. The particular context of this case as revealed by the Statement of Circumstances. Although you may have felt, as submitted by your counsel, that it was an acceptable solution to deal with a staffing issue in the interests of the unit, it indicates your willingness to disobey the applicable law, that is the *Financial Administration Act*, that you had the duty to ensure that your organization complied with. I do not find it acceptable to justify your actions arguing that you did it in the interest of your unit. The Canadian Forces are the Armed Forces of Her Majesty raised by Canada, therefore a public institution not a distinct private society where its members can decide to bend or violates Canadian laws in the name of overall unit effectiveness.
3. The position of trust that you occupied at the time and your enormous amount of experience as a financial senior non-commissioned member. If the Government of Canada and the Canadian Forces can not rely on their most experienced and specially trained personnel to protect the financial integrity of public institutions, who can they trust? You abdicated your overall responsibility to the Government of

Canada by being willfully blind to the scheme set up by your supervisor, Major Arnett, which was apparently designed to support your unit interests. Hear me and hear me clear, the overall interests of your unit as far as you were concerned, being the Chief Warrant Officer (Finance) of your organization, could only be achieved by your fulfilment of your statutory duties as a financial officer and protecting the integrity of your organization, not helping it violate the law and applicable policies. If compliance with the rules caused concerns to senior officers in your organization, they had to address their issues in compliance with the law and proper procedures.

Mitigating Factors

[7] However, the court considers the following factors to mitigate the sentence:

1. The fact that you have acknowledged full responsibility for your actions by pleading guilty before the court at the very first opportunity. Based on the statement of circumstances, I accept the comment made by your counsel that you acknowledge your responsibility and that your admission of guilt is a sincere sign of remorse.
2. The fact that you have had a long and distinguished career and that this incident is unfortunately a profound lack of judgment and momentary abdication of your responsibilities. Although your actions were very limited in the scheme set up to pay Mr McGuire as the Finance Officer for the Albert Head Air Cadet Support Training Centre, they caused an important and costly audit as well as an investigation that would not have been required otherwise. This situation caused a significant disruption in your unit and impacted negatively on it.
3. Your excellent performance prior and after the incidents. You have always been a reliable and outstanding performer and your record of service is sufficiently eloquent that your superiors are still willing to trust your judgment and this is commendable to them. That does not concern me at all in the circumstances because it is—and it is always really sad at this stage of your career—bad error in judgment.
4. And finally, the absence of a conduct sheet or criminal record.

[8] I disagree with the prosecution that your case can be compared to those of *Captain Khan* and *Corporal Patullo*. Not only, they were not charged with a similar offence, but their false statements in public documents were made to cover up their own inappropriate actions. However, I agree with the prosecution that principles of general deterrence and denunciation of the conduct must be emphasized in cases such as this one, but also the Court believes that the principles of proportionality as well as parity are also important in this case. It appears that your role in the unlawful scheme was limited to the actions for which you have pleaded guilty today. Therefore, I believe that a sentence composed of a reprimand and a fine in the amount of 200 dollars would constitute the minimal intervention to maintain discipline and confidence in the proper administration of military justice. I am satisfied that you will not be involved in a similar conduct in the future. In the mean time, you will now have a conduct sheet for which you will require a Pardon under the *Criminal Records Act* at 56 years old. In your particular situation, it must be extremely humiliating.

[9] Therefore, this court sentences you to a reprimand and a fine in the amount of 200 dollars.

COLONEL M. DUTIL, C.M.J.

COUNSEL

Captain R.J. Henderson, Regional Military Prosecution, Western
Counsel for Her Majesty The Queen
Captain B. Tremblay, Directorate of Defence Counsel Services
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