

## **Be careful for what you wish for! The Vice-Admiral Norman breach of trust charge**

### **Breach of trust by a public officer:**

*“Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person”.*

*and the elements to prove should include:*

- 1. The accused is an official;*
- 2. The accused was acting in connection with the duties of his or her office;*
- 3. The accused breached the standard of responsibility and conduct demanded of him or her by the nature of the office;*
- 4. The conduct of the accused represented a serious and marked departure from the standards expected of an individual in the accused’s position of public trust; and*
- 5. The accused acted with the intention to use his or her public office for a purpose other than the public good, for example, for a dishonest, partial, corrupt, or oppressive purpose.*

For a period of time in the late 90s, I worked in the Privy Council Office, providing military advice to senior government officials, including the Prime Minister. One of the takeaways from that experience was watching how senior public service and political staff at the centre of government managed challenging issues for decision by the PM.

I saw two general management styles by advisors. One group was hard-charging, eager and keen to address issues forcefully and quickly. They tended to be younger and less experienced. The other was generally more

reflective, seasoned and incremental. They tended to be older hands. I like to think that both had the best interests of senior government in mind and depending on the circumstances could be effective. However, the former could make challenging decisions even more complicated by their rush to success.

Notwithstanding, it is important to note that advisors are not decision-makers—a key distinction. For the toughest calls are rightfully or at least should be the PM's, sifting through sometimes opposing political and bureaucratic staff advice to chart the way ahead with all the rewards and criticisms that go with the top job. Decision-makers live with the consequences—not advisors.

While leading the Navy, I cautioned new commanding officers to be particularly mindful in their first months in command. I advised a measured approach as their command experience was limited and could lead to miscues and difficulties.

I see parallels in the case against Admiral Norman. I have watched from the outside this unfolding “drama” with concern and an uncomfortable feeling that the situation developed from poor analysis of what was really at risk, the government motivation and how to achieve end-game.

The Government of 2015 was reflective of a new, exuberant, but inexperienced political leadership dealing with its first major defence procurement issue with significant political overtones left over from the previous Conservative government. At the same time, at the Navy helm was an experienced and forthright military officer attempting to correct a significant and immediate operational deficiency for the Navy – a missing support ship capability. This had the makings for tough sledding on this issue between the Navy and the Government.

My experience of some 12 years in Ottawa as a senior officer forged a very different mindset than one developed at sea. As a commanding officer in a ship, you were absolutely in charge; your decisions, in real time, generally had immediate consequences—hopefully positive. A nautical analogy might be that when you put the rudder hard over you got instant feedback and

results. There is immense satisfaction heading a team of 200 to 300 folks all on the same page and working together for a common aim.

While in Ottawa, when you put the rudder hard over, you literally might wait years, suffer through a glacially slow process, and, in the end watch as the “ship of state” goes steaming over the horizon in the opposite direction to which you applied the rudder. Think military procurement!

It is why some senior military officers, who are exceptional operational commanders cannot always make the transition to thriving in what is a politically challenging and incredibly different environment. You need your elbows up, be ready to fill space and be prepared to take advantage of every situation. It is a very hard slog with so much demand chasing so few dollars. And defence dollars in the capital budget are always at risk-they represent a significant pool of “discretionary” funds for government, either for cutting or more likely re-profiling into the outer years of budget (perhaps never to be seen again). Admiral Norman’s experience in Ottawa made him an astute player at the political/military interface. It was why he was selected to be the Commander of the Navy and Vice Chief of the Defence Staff.

Within our equipment procurement process, there is a very diffuse responsibility and accountability structure. It may be a surprise to some, but the influence of the Commanders of the Navy, Army and Air Force (the end-user or customer if you like) has become increasingly limited to the front end of the procurement-i.e. defining the operational need. The reality is that as a project matures, the Service Chiefs have less and less influence on the actual procurement, but will certainly wear the consequences of a procurement process gone wrong. I watched as several projects that were close to approval-think submarines, helicopters, supply ships cancelled and not revived for literally decades later. Service Chiefs have enormous responsibilities for helping Government get the Armed Forces that Canada needs. To fail represents a huge setback with potentially enormous consequences to the nation.

As a flag officer, I occasionally received information on high level government decisions from foreign officials or private industry in advance of official word. Perhaps senior government discussions are more secure

today, but, I suspect there is still a propensity for trial balloons, occasional regional politicking and bureaucratic and lobbyist positioning pushing against cabinet secrecy.

Naval ship design, build, and procurement is the most expensive and complex defence undertaking in the nation. When building a ship, decisions made early on can have cascading, monumental and costly effect later on. It pays to think through requirements and consequences while still in the earliest planning stage. But don't expect perfection; things get missed and the project scope can change, so you need to ensure off-ramps and work arounds. Shaping outcomes at senior levels of government requires the same rigour and flexibility. Doubling down is generally not the best policy in either case, especially as more information comes to light. This case against the Admiral has dragged on for so long, that the nub of the issue-whether to award a sole source contract to a shipyard to re-purpose a civilian ship for navy needs-that the ship is now operational in the Canadian naval fleet. This should have been celebrated as a government success except it can't because this case revolves around the government wanting to at least delay (or arguably stop) its acquisition. Uncomfortable when you go to court to show that Admiral Norman did not have the "public good" in mind.

I understand how Government may have been caught off-guard and upset with media reports so shortly after a cabinet decision to delay a procurement decision on a major naval deficiency. But, critical thinking early on, combined with a measured approach might have allowed the government to maintain agenda control and avoid the high stakes situation now in play. This is not to suggest that any concerns around cabinet confidences should have been downplayed, but there are other approaches to managing these types of issues.

I do not know what went into the final decision for the RCMP to lay this charge against Admiral Norman or how much other evidence will be tabled to support it, but, what is currently in the public domain would not suggest to me an overly compelling case for the Crown. Under this breach of trust charge, public trust, public good and a criminal threshold are three areas which I expect will be vigorously contested. The political fallout could be significant, even with a win for the Crown. Comments from the 19th century

still apply to cabinet decisions today-“to retain respect for sausages and laws, one must not watch them in the making.” How much sausage making could find its way into court could make for an interesting and not so flattering look. Think Mike Duffy. And of course, it is not a certainty that Admiral Norman will prevail, incurring tough personal, financial and even criminal consequences. Indeed, he has already paid a high price as this issue has dragged on for years and a long and honourable career is in jeopardy. High risk for both parties.

Let me return to my original point. Weighing the way ahead at the beginning, understanding where you might end up and how best to get there is essential when dealing with issues of this magnitude in government. Once a course of action has been chosen, it can be difficult to change course or adjust thinking, particularly if you have passed control to others. And how often in politics do you see governments admitting they may have handled a situation poorly? Perhaps years later, but not often in the same mandate. More the reason to get it right in the first place or at least preserve maneuverability as the situation unfolds. “Sunny ways,” indeed. This situation is sad and was avoidable. Did it have to come to this?

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