



COURT MARTIAL

Citation: *R. v. Dowe*, 2017 CM 1009

Date: 20170606

Docket: 201608

General Court Martial

1st Canadian Ranger Patrol Group
Yellowknife, Northwest Territories, Canada

Between:

Her Majesty the Queen

- and -

Warrant Officer B.M. Dowe, Offender

Before: Colonel M. Dutil, C.M.J.

REASONS FOR SENTENCE

(Orally)

[1] Yesterday, Warrant Officer Dowe admitted his guilt to one count of drunkenness contrary to section 97 of the *National Defence Act (NDA)*, and the prosecution was granted leave by the Court to withdraw the other charge prior to assembly of the court martial panel. The Court must now determine the sentence to be imposed on the offender. This offence is liable to imprisonment for less than two years or to less punishment.

[2] Today, counsel have made a joint submission on sentence. They recommend that this Court impose a reprimand and a fine in the amount of 2,000 dollars to be paid in ten monthly consecutive and equal instalments. They submit that their analysis led them to conclude that such a sentence would meet the necessary objectives of denunciation, general deterrence and rehabilitation. The following aggravating factors were taken into account by the prosecution in making this joint submission; the fact that Warrant Officer Dowe occupied a position of trust with the young rangers that night; the fact that some young rangers were frightened by his conduct; that his consumption of alcohol created a risk in the context of his role as the senior non-commissioned member that night.

[3] The circumstances surrounding the commission of the offence are found in the Statement of Circumstances that was filed as an exhibit before the Court which provides the following information:

“1. Warrant Officer (WO) Dowe enrolled in the Canadian Armed Forces on 21 March 1997. His trade is Artilleryman. He was promoted to his current rank in December of 2011. He was posted to 1 Canadian Ranger Patrol Group (1 CRPG) in Yellowknife in September of 2015. He was posted to the position of Canadian Ranger Instructor. 1 Canadian Ranger Patrol Group is responsible for over 1850 Rangers and 1650 Junior Canadian Rangers in communities across the north in Nunavut, Northwest Territories, Yukon, and Atlin, B.C.

2. WO Dowe was assigned to be the Duty Non-Commissioned Officer (NCO) for the period 0900 9 October to 0900 10 October 2015 at a facility being used by 1 CRPG as barracks for Rangers staying in Yellowknife for a leadership course. The building is known as the Personnel Administration Building (PAB). The Rangers came from various northern communities. The course had finished and most of the Rangers had returned to their homes. Approximately 10 Rangers remained in the building on the night of 9-10 October, awaiting the next available transport home. The Duty NCO is:

- a. responsible for the safety and well-being of the personnel staying at the PAB;
- b. responsible for enforcing rules and regulations in the PAB,
- c. the first point of contact for the Rangers for any issue that arises;
- d. responsible for passing reports to the chain of command in a timely manner if there is any situation or emergency requiring any sort of response.

3. Staff from 1 CRPG held a barbeque on the evening of 9 October. Some of the Rangers attended. They returned to the PAB at approximately 2100h. That evening, WO Dowe made some remarks to one of the female Rangers that she considered were inappropriate. Two of the Rangers also came to believe that WO Dowe was intoxicated. The situation made the Rangers afraid. They spoke with Ranger Sergeant (Sgt) Matto Michael, who called WO Larocque who was at home. WO Larocque contacted Sgt Pélichowski, who was also at home. They met at the PAB to deal with the situation.

4. They knocked on the door of the Duty NCO's room. WO Dowe opened the door and appeared intoxicated and confused.

5. WO Dowe was unfit for duty as a result of his intoxicated state. He was relieved of his duty as the Duty NCO.

6. A charge was laid on 1 November 2016. The matter was referred to Commander Joint Task Force North (Comd JTF(N)). Comd JTF(N) referred the charge to the referral authority on 12 February 2106. Charges were preferred on 3 June 2016.”

[4] This joint submission is made in the context of the recent Supreme Court of Canada decision in *R. v. Anthony-Cook*, 2016 SCC 43, where the court exposed the legal test that trial judges should apply in deciding whether it is appropriate in a particular case to depart from a joint submission. The court affirmed that the public interest test is the proper legal test that trial judges should apply, which means that a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. What that means is that trial judges should depart from the proposed sentence only if it would be viewed by a reasonable and informed person as a breakdown in the proper functioning of the justice system.

[5] It is recognized by the Supreme Court of Canada that it is an accepted and entirely desirable practice for prosecution and defence counsel to agree to a joint submission on sentence in exchange for a plea of guilty. Agreements of this nature are commonplace and acknowledged as vitally important to the well-being of our criminal justice system and I will add to the military justice system. The prospect of a joint submission that carries with it a high degree of certainty encourages persons to enter a plea of guilty. It means also that for joint submissions to be possible, the parties must have a high degree of confidence that they will be accepted. If there is too much doubt about it, then the parties may choose instead to accept the risks of a trial or a contested sentencing hearing. Guilty pleas save the justice system precious time, resources and expenses that can be channelled into other matters. As expressly stated by counsel, this trial was scheduled originally for two weeks and the plea of guilty spared many young rangers from having to testify, some of whom had been frightened by the situation during the evening in question.

[6] This approach, recognized by the Supreme Court of Canada, relies heavily on the work of the prosecution as representing the community’s interest, Major Cottrill and Major Martin and Lieutenant-Colonel Berntsen and Lieutenant(N) Tremblay, the defence counsel acting on the accused’s best interest. Counsel must, of course, provide the Court with a full account of the circumstances of the offender and the offences. In addition to the circumstances surrounding the commission of the offence, the Court was informed that Warrant Officer Dowe is 48 years old and joined the Regular Force in 1997. He has a conduct sheet showing three previous civil convictions for incidents that occurred between 2010 and 2012, one of which involved the consumption of alcohol and the operation of a motor vehicle. He also has two daughters, aged 17 and 27, his oldest now attending post-secondary studies. He is now living with his common law spouse since 2013. As of today, he is the Unit Standard Representative reporting on the quality of the training provided within the unit; he is the assisting coordinator for the publication documentation review board; and this year, he has been awarded the Commanding Officer Commendation for his good work as a Unit Standard Representative. Warrant Officer Dowe has the full support of his commanding officer and, finally, he pays ongoing child support in the amount of 800 dollars a month and has debt payments in relation to a credit card and a car loan.

[7] As trial judges are obliged to depart only rarely from a joint submission, this is why counsel have a corollary obligation to ensure that they amply justify their submission. I have no hesitation in accepting this joint submission today as it fully meets the standard set by the Supreme Court of Canada.

FOR THESE REASONS, THE COURT:

[8] **FINDS YOU GUILTY** of one count of drunkenness under section 97 of the *National Defence Act*.

[9] **SENTENCES** you to a reprimand and a fine in the amount of 2,000 dollars payable in ten equal monthly and consecutive instalments of 200 dollars starting 15 June 2017.

Counsel:

Major E.J. Cottrill and Major D.G.J. Martin for the Director of Military Prosecutions

Lieutenant-Colonel D. Berntsen and Lieutenant(N) J.-M. Tremblay, Defence Counsel Services, Counsel for Warrant Officer B.M. Dowe