



## COURT MARTIAL

**Citation:** *R. v. Leblond*, 2015 CM 4002

**Date:** 20150202

**Docket:** 201414

General Court Martial

Canadian Forces Base Edmonton  
Edmonton, Alberta, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Corporal M.J. Leblond, Offender**

**Before:** Commander J.B.M. Pelletier, M.J.

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### **REASONS FOR SENTENCE**

(Orally)

#### ***Introduction***

[1] Corporal Leblond pleaded guilty to two charges under section 130 of the *National Defence Act (NDA)* for possession of a substance, contrary to section 4(1) of the *Controlled Drugs and Substances Act* and for possession of a prohibited weapon, contrary to section 91(2) of the *Criminal Code of Canada*.

[2] As counsel requested, I have received Corporal Leblond's plea of guilty and, given that there are no other charges remaining on the charge sheet, it is now my duty as the military judge assigned to preside at this General Court Martial to determine the sentence.

[3] In so doing, I have considered the principles of sentencing that apply in the ordinary courts of criminal jurisdiction in Canada and at courts martial. I have as well considered the statement of circumstances, the exhibits and the authorities submitted by the prosecutor, as well as the testimony of both Chief Warrant Officer Harrison for the prosecution and Corporal Leblond in mitigation. I have also considered the submissions of counsel, both for the prosecution and for the defence.

***Objectives and principles of sentencing***

[4] The military justice system constitutes the ultimate means to enforce discipline in the Canadian Forces (CF), and a fundamental element of the military activity. The purpose of this system is the promotion of good conduct by allowing the proper sanction of misconduct. It is through discipline that an armed force ensures that its members will accomplish, in a trusting and reliable manner, successful missions. In doing so, it also ensures that the public interest in promoting respect for the laws of Canada is served by punishment of persons subject to the Code of Service Discipline.

[5] It has been long recognized that the purpose of a separate system of military justice or tribunal is to allow the Armed Forces to deal with matters that pertain to the respect of the Code of Service Discipline and the maintenance of efficiency and morale among the Canadian Forces. As the Supreme Court of Canada recognized in *R. v. Généreux*, [1992] 1 S.C.R. 259 at page 293:

To maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently.

[6] At the same page of that decision, the Supreme Court emphasized that in the particular context of military justice:

Breaches of military discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct.

[7] That being said, punishment imposed by any tribunal, military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances. What a sentencing judge must do is, "impose a sentence commensurate with the gravity of the offence and the previous character of the offender" as stated in the *Queen's Regulations and Orders for the Canadian Forces (QR&O)*. In other words, any sentence imposed must be adapted to the individual offender and the offence he or she committed.

[8] The fundamental purpose of sentencing in a court martial is to ensure respect for the law and maintenance of discipline by imposing sanctions that have one or more of the following objectives:

- a) to protect the public, which includes the Canadian Forces;

- b) to denounce unlawful conduct;
- c) to deter the offender and other persons from committing the same offences;
- d) to separate offenders from society where necessary; and
- e) to rehabilitate and reform offenders.

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

- a) a sentence must be proportionate to the gravity of the offence;
- b) a sentence must be proportionate to the responsibility and previous character of the offender;
- c) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- d) an offender should not be deprived of liberty, if applicable in the circumstances, if less restrictive sanctions may be appropriate; and
- e) lastly, all sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[10] As mentioned above, a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

### ***The offender***

[11] Before the court is a 27 years old former Corporal who was released from the CF on 9 May 2013, after having served with 1 Service Battalion in Edmonton since 2007. He had joined the CF in 2004 as a Reservist with the 34th Combat Engineering Regiment in Rouyn-Noranda before transferring to the Regular Force in 2006, to follow training in CFB Borden. Corporal Leblond has a conduct sheet stemming from a conviction to a fine of \$150 at summary trial for using a vehicle of the CF without authority in 2011.

[12] Corporal Leblond testified on sentencing that following a severe motorcycle accident about two and a half years ago, he was prescribed pain killers through CF health authorities. He stated that he became addicted to those, and, as the prescriptions ran out, he began self-medicating with a number of substances, notably hydromorphone tablets found in his possession at his home during the execution of a search warrant by the Canadian Forces National Investigation Service (CFNIS) on 19 April 2013. Last

summer, on 31 July 2014, he suffered almost fatal gunshot wounds near his home in Edmonton. He stated that the incident caused him to become estranged from his family, especially his mother and father, who had come from Northern Quebec to his bedside at the hospital and were highly unimpressed when they realized the kind of persons he was associated with. As a result of the shooting incident, he testified that he developed Post-Traumatic Stress Disorder (PTSD) and depression, which caused him to fall into significant drug and alcohol dependency. He said that he has been clean for two months now, and has found a job in a warehouse just over a week ago.

### ***The Offences***

[13] In arriving at evaluating what would be a fair and appropriate sentence, the court has considered the objective seriousness of the offences which, as provided by section 4(1) of the *Controlled Drugs and Substances Act* and section 91(3) of the *Criminal Code*, both incorporated by section 130 of the *NDA*, are punishable by imprisonment not exceeding seven or five years respectively.

[14] The circumstances of the offence of which Corporal Leblond pleaded guilty are as follows:

- a) on 11 April 2013, the CFNIS National Drug Enforcement Team at Edmonton received information which led them to commence an investigation, including periods of visual surveillance of the residence of Corporal Leblond;
- b) as a result of that investigation, a search warrant was obtained and executed on 19 April 2013. The police seized drug paraphernalia, residual amounts of cocaine and 32 pills of hydromorphone along with brass knuckles; and
- c) Corporal Leblond testified that the pills of hydromorphone were used by him to self-medicate. As for the brass knuckles, Corporal Leblond testified that they were part of the handle of a mug which he had purchased as a souvenir on a trip to South West Asia, and that he did not know they were a prohibited weapon.

[15] At the sentencing hearing, the prosecution called Chief Warrant Officer Harrison, who testified about the impact of drugs within 1 Service Battalion, stating that they cause significant operational concerns given the risks involved should a member of the unit be impaired by drugs when handling the heavy equipment and vehicles operated by the unit, especially in the course of domestic operations. He stated that he has collaborated with the CFNIS to try to prevent drug use by CF members. Indeed, drugs steal careers and the future of young soldiers.

### ***The submissions of the parties***

[16] In terms of the determination of an appropriate sentence, the prosecution stressed the objectives of denunciation and deterrence, asking this court to impose a sentence of a fine in the amount of \$1,500 corresponding to sentences imposed in the cases of Ex-Private Humphrey 2011 CM 1009 and Private Johnstone 2007 CM 4007. The prosecution also asked this court to impose a weapons prohibition order for a duration of five years under article 147.1 of the *NDA*. The prosecution took the view that although Corporal Leblond appears to be on his way to recover from substance abuse problems, the short period of abstinence coupled with the absence of a formal recovery plan are not enough to place rehabilitation at the forefront of the court's sentencing decision in this case.

[17] In response to submissions by the prosecution, defence counsel argued that rehabilitation is the most important objective to be met. Corporal Leblond should benefit from having pleaded guilty. He expressed a desire to recover from addiction and although his plan to do so can be seen as basic, it should not be weighed on the basis of a myriad of options available to those still serving in the CF. The defence stated that the problems of Corporal Leblond started with an addiction to prescribed drugs and that this is less severe than a recreational use of drugs. As for the possession of a prohibited weapon, the defence stated that even if the offender is guilty despite his ignorance of the prohibited nature of the weapon, the evidence suggests that the weapon was incorporated in a souvenir and was not possessed for use as a weapon. As there was no evidence of violence at all in this case, the defence submitted that it would be inappropriate to make a weapons prohibition order in this case. Defence counsel proposed, as an appropriate sentence, a fine of \$1,000.

***Objectives to be emphasized***

[18] I came to the conclusion that, in the particular circumstances of this case, sentencing should place the focus on the objectives of denunciation, general deterrence and rehabilitation.

[19] The Court considers the following factors to be aggravating in the circumstances of this case:

- a) the seriousness of the offence of possession of hydromorphone, as it is a powerful pain killer whose possession is prohibited for a reason, and was used by Corporal Leblond at a point in his life when he could be entrusted with care of a CF vehicle as a member of the Regular Force. Courts martial and the Court Martial Appeal Court (CMAC) have constantly held that the use of drugs is more serious in the military community because of the very nature of the duties and responsibilities of CF members in ensuring the safety and the defence of our country and fellow citizens. The military community cannot tolerate breaches of its strict and well-known policy prohibiting the use of illicit drugs.

- b) the decision of Corporal Leblond to self-medicate, at a point in his life when he had other options open to him as a member of the CF who could seek help for his pain management problems or addiction to pain killers. The court cannot condone this kind of decision given the serious consequences on health and operational effectiveness if members were self-medicating in large numbers.

[20] The Court does not consider the conduct sheet of Corporal Leblond to be aggravating in any way, given that it bears no relationship with the offences to which he has pleaded guilty and was sanctioned with a very small fine almost four years ago. Incidentally, the prosecution did not discuss the conduct sheet at all in submissions on sentence.

[21] The court also considered the following mitigating factors, as mentioned in submissions by counsel and demonstrated by the evidence:

- a) the fact that Corporal Leblond pleaded guilty this morning, which the court considers as a genuine sign of remorse and an indication that the offender is taking full responsibility for what he has done. The offender's plea avoids the expense of a trial;
- b) the fact that the substances illegally possessed were used in the context of an addiction: even if Corporal Leblond made the wrong choice in self-medicating, it remains that the circumstances which made him addicted to pain killers initially, were not entirely within his control;
- c) as for the prohibited weapons offence in relation to the brass knuckle, the Court considers that the circumstances of that offence, as related by the unchallenged version of the accused, is such as to make this one of the most minor cases one can think of. The fact that the brass knuckle was incorporated into the handle of a mug bought as a souvenir in a far-away land in Southwest Asia, combined with the ignorance of the prohibited nature of the brass knuckle under Canadian law, make this offence almost insignificant in terms of determination of the appropriate sentence; and
- d) the fact that Corporal Leblond has found a job and appears determined to continue his efforts to remain abstinent after two months away from drugs is a factor which causes the Court to consider that any sentence imposed should not compromise those efforts. Indeed, I believe that the rehabilitation of persons suffering from drug addiction is an ongoing process.

***The determination of the appropriate sentence***

[22] The respective propositions of counsel are very close on what they suggest to the court as adequate punishment. They agree on a fine, and they are separated only by an amount of \$500, the prosecution asking for \$1,500 while the defence submits \$1,000 is sufficient.

[23] As stated above, three sentencing objectives need to be reconciled: denunciation, general deterrence and rehabilitation. The first two objectives, highlighted by the prosecution, militate for a more severe sentence. The final objective, highlighted by the defence, militates for more leniency so that the offender's efforts in rehabilitating are not compromised. The Court needs to be careful not to overemphasize one set of objectives as it can compromise others, either way. Indeed, too much rehabilitation may compromise denunciation and general deterrence just as the other way around.

[24] After careful consideration, I have come to the conclusion that I agree with the defence to the effect that imposing a fine of \$1,000 is the maximum that can be done not to compromise the rehabilitation of the offender in the circumstances of this case. At the same time, I conclude that such a fine would not be sufficient to meet the other objectives of denunciation and general deterrence at play here. I also concluded that the fine of \$1,500 proposed by the prosecution would not be adequate to meet these objectives either, while compromising the objective of rehabilitation. Consequently, the Court must look higher in the scale punishment found at section 139 of the *NDA*.

[25] The punishments of reprimand and severe reprimand are listed just above the fine in the scale of gravity. The prosecution argues that those punishments are less than adequate given that most members do not understand what they mean. If that is the case, this is an education issue, largely of the domain of the legal advisors and disciplinary staff at units. For the Court, those punishments send a message of disapprobation that is particularly adequate when trying to meet the objectives of denunciation and general deterrence. The fact that Corporal Leblond is no longer serving does not preclude imposition of those punishments, as they have an effect on the military records the offender leaves behind. Those kinds of punishment have been imposed on released and releasing members in the past, along with punishments such as reduction in rank, even if an offender will no longer be wearing a rank. The sentence of reduction in rank imposed in the very public case of General Ménard, 2011 CM 3007 is a case in point: although the offender would never wear the reduced rank of Colonel, the effect on general deterrence and denunciation remains strong, especially given that the sentence was coupled with a fine commensurate with the means of the offender.

[26] The Court has considered the imposition of a sentence of reduction in rank and even detention. Indeed, detention was imposed in the case of Ex-Private Champion-Wright, 2010 CM 1015, brought to my attention by the prosecution, even after the offender had been released. That said, it is an important principle that the court should impose the least severe punishment that will maintain discipline. As highlighted by defence counsel, there was no violence involved in any way in relation to the possession of a prohibited weapon in this case, contrary to the situation in *Campion-Wright*.

Furthermore, the substances possessed here were used by the offender in the context of an addiction to pain killers, which started with an accident. These important mitigating facts are unique to this case. I am of the view that in all of the circumstances, it is not necessary to aim above the punishment of severe reprimand and impose reduction in rank or detention.

[27] The Court is of the view that the imposition of a severe reprimand, coupled with a fine in the amount of \$1,000 would constitute the appropriate punishment in this case. A severe reprimand constitutes a punishment that is not insignificant, as it expresses adequately the required reprobation for the unacceptable acts committed by the offender. The Court will accompany this punishment with a fine as it is important that the sentence have a personal impact on the offender and be seen as such. The Court is of the view that the sum of \$1,000 is the minimum required to maintain discipline in the circumstances of this case.

### ***Ancillary Order***

[28] Given that Corporal Leblond pleaded guilty to an offence that involves a prohibited weapon, I shall, in accordance with section 147.1 of the *NDA*, consider whether it is desirable to make a prohibition order. The prosecution submits that a prohibition order is required for a period of five years while the defence submits no prohibition order is required. The Court wants to emphasise the very peculiar circumstances of this case, as it pertains to the offence of possession of a prohibited weapon. The unchallenged version of the accused is that the brass knuckle was incorporated into the handle of a mug bought as a souvenir in Southwest Asia and he did not know the prohibited nature of the brass knuckle under Canadian law. There is no evidence whatsoever that the brass knuckle was found in a location where it could be used to offer violence to anyone, nor was any circumstance offered to the Court that the offender could use violence in relation to the possession of substances or had used violence in the past. Should there have been any such circumstances presented to the Court, I would have had no hesitation in making a prohibition order. There was none and, in the circumstances, the Court does not consider desirable, in the interest of the safety of the public, to make a prohibition order under section 147.1 of the *NDA*.

### ***Imposition of the sentence***

[29] Corporal Leblond, you made a mistake in self-medicating and failing to seek help with addiction to pain killers. You made that mistake as you were serving in the Regular Force, with 1 Service Battalion, in circumstances which led your colleagues and leaders to lose confidence in you as they do with anyone using prohibited drugs. Since your release, things have apparently gotten worse, to the point that you got shot, almost died and lost the confidence of your family, who must have been devastated by what had happened with you. I am one of the last persons in authority to deal with you in your capacity as a member of the CF. I have been impressed by the willingness to get out of trouble that you expressed to me. I truly hope that you can succeed in turning things around. Without downplaying the severity of the acts you committed, the Court



has decided to impose a sentence that should not compromise your rehabilitation and your capacity to make a positive contribution to Canadian society, now and in the future.

**FOR THESE REASONS, THE COURT:**

[30] **FINDS** you guilty of the two charges under section 130 of the *National Defence Act*, for possession of a substance contrary to section 4(1) of the *Controlled Drugs and Substances Act* and for possession of a prohibited weapon contrary to section 91(2) of the *Criminal Code of Canada*.

[31] **SENTENCES** you to a severe reprimand and a fine in the amount of \$1,000, payable in five equal payments of \$200 each. The first payment will be no later than 6 February 2015, the second payment no later than 6 March 2015, the third payment no later than 6 April 2015, the fourth payment no later than 8 May 2015, the fifth and final payment no later than 5 June 2015. These payments have to be made to the Cashier at 3rd Canadian Division Support Base Headquarters in Edmonton, Alberta.

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**Counsel:**

The Director of Military Prosecutions, as represented by Major R.J. Rooney

Lieutenant-Colonel D. Berntsen, Defence Counsel Services, Counsel for Ex-Corporal M.J. Leblond