



## COURT MARTIAL

**Citation:** *R. v. Clarke*, 2015 CM 1006

**Date:** 20150521

**Docket:** 201412

Standing Court Martial

Canadian Forces Base Kingston  
Kingston, Ontario, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Captain R.M. Clarke, Offender**

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

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### REASONS FOR SENTENCE

(Orally)

[1] Captain Clarke has pleaded guilty to one count of absence without leave contrary to section 90 of the *National Defence Act* and one count of conduct to the prejudice of good order and discipline contrary to section 129 of the *National Defence Act*. These offences relate to being absent from a training class during 1.5 hours, whereas the prejudicial conduct relates to a rude email sent to a superior concerning his view that common sense no longer applied within the work place. This email was sent privately and did not amount to a direct attack against the superior. Prosecution and defence have made a joint submission on sentence where they recommended that Captain Clarke be sentenced to a reprimand and a fine in the amount of \$500. Although the court is not bound by this joint submission, it can only reject it if the recommendation is contrary to the public interest and the sentence would bring the administration of justice into disrepute.

[2] The fundamental purpose of sentencing at a court martial is to contribute to the respect of the law and the maintenance of military discipline by imposing punishments that meet one or more of the following objectives:

- (a) the protection of the public, including the Canadian Forces;
- (b) the denunciation of the unlawful conduct;
- (c) the deterrent effect of the punishment, not only on the offender but also upon others who might be tempted to commit such offences; and
- (d) the reformation and rehabilitation of the offender.

[3] The sentence must also take into consideration the following principles:

- (a) it must be commensurate with the gravity of the offence, the previous character of the offender and his or her degree of responsibility;
- (b) the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; and
- (c) the court must also respect the principle that an offender should not be deprived of liberty if less restrictive punishments may be appropriate in the circumstances.

However, the court must act with restraint in determining sentence at all times.

[4] As mentioned by both counsel, this case sits at the low end of the spectrum for similar offences.

[5] The mitigating circumstances are the following:

- (a) the guilty plea of the offender at the earliest opportunity, which indicates the remorse and full acceptance of responsibility by Captain Clarke; and
- (b) the long and successful career of the offender who performed extremely well since 1998, although he had some discipline issues along the way which were overcome each time.

[6] However, it is the third time the offender faces a military tribunal; first, in relation to improper behaviour in 2002 and, second, for prejudicial conduct during a deployment in Afghanistan in 2007. Counsel submitted that the court should give very little weight to the conduct sheet in the circumstances. After review, I accept their submission on that point as this case sits in the very low end of the spectrum both objectively and subjectively.

[7] The court accepts that the proposed sentence is the minimum sentence in the circumstances to achieve general deterrence and denunciation of the conduct. It is not contrary to public interest and it would not bring the administration of military justice into disrepute.

**FOR THESE REASONS, THE COURT:**

[8] **FINDS** you guilty of the first charge of absence without leave under section 90 of the *National Defence Act* and of the third charge under section 129 of the *National Defence Act* for conduct to the prejudice of good order and discipline.

[9] **SENTENCES** you to a reprimand and a fine in the amount of \$500.

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**Counsel:**

The Director of Military Prosecutions as represented by Major E. Carrier

Major S. Collins, Defence Counsel Services, Counsel for Captain Clarke