



## COURT MARTIAL

**Citation:** *R. v. Anderson*, 2014 CM 4013

**Date:** 20141114

**Docket:** 201435

Standing Court Martial

Gagetown Courtroom  
Oromocto, New Brunswick, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Master Corporal G.M.E. Anderson, Offender**

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

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### REASONS FOR SENTENCE

(Orally)

#### ***Introduction***

[1] The court has found Master Corporal Anderson guilty of one charge under section 130 of the *National Defence Act* for assault with a weapon contrary to section 267(a) of the *Criminal Code of Canada*.

[2] It is now my duty as the military judge presiding at this Standing Court Martial to determine the sentence. 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 also considered the facts relevant to this case as were revealed during the trial and the exhibits, testimony and authorities submitted during the course of the sentencing hearing. I have also considered the submissions of counsel, both for the prosecution and for the defence.

***Objectives and principles of sentencing***

[3] The military justice system constitutes the ultimate means to enforce discipline in the Canadian Forces, 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.

[4] 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.

[5] 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.

At the same page, it 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.

[6] That being said, punishment imposed by any tribunal, military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances. Indeed, moderation is the bedrock principle of the modern theory of sentencing in Canada. What a sentencing judge must do is «impose a sentence commensurate to the gravity of the offence and the previous character of the offender» as stated in the QR&O. In other words, any sentence imposed must be adapted to the individual offender and the offence he or she committed.

[7] 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.

[8] 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) all sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

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

### ***The offender***

[10] Before the court is a 26-year-old infantry master corporal who joined the Canadian Forces in December 2005 as a member of the Primary Reserve at the age of 17. As a reservist, he volunteered for several periods of full-time employment on Class B and C Reserve Service in Canada, notably in Valcartier and Wainwright and was deployed overseas with the National Support Element of Joint Task Force Afghanistan in 2009. Master Corporal Anderson joined the Regular Force in October 2011 and has since been employed with the Infantry School on Base Gagetown. He has no conduct sheet. He is married and has an 8-month-old son.

[11] At the sentencing hearing, the prosecution called Lieutenant-Colonel Oberwarth, who has been Commanding Officer of the Infantry School since June 2013, hence Commanding Officer of the offender. He said that he was very disappointed with the conduct displayed by Master Corporal Anderson on 25 July 2013. Treating a student in such a way is entirely contrary to what instructors at the Infantry School are expected to do in relation to their role in training candidates on course. It has a negative impact on the reputation of the Infantry School and its instructors in the broader military community. He said that he expected more maturity from Master Corporal Anderson especially in his consumption of alcohol in the presence of students. As a consequence of the events, Lieutenant-Colonel Oberwarth lost confidence in Master Corporal Anderson as an instructor and would rather see him leave his unit. That said, the witness added that he does not think Master Corporal Anderson is an inherently bad person. He

believes in rehabilitation and thinks Master Corporal Anderson could become a productive member once again.

[12] Lieutenant- Colonel Oberwarth also described what action had been taken following the 25 July 2013 incidents, including in relation to Master Corporal Anderson who was prohibited from instructing at the school. He also confirmed that a posting which would have sent Master Corporal Anderson to the 2nd Battalion of the Royal Canadian Regiment (2RCR) was cancelled at his request in July 2014 because he wanted to maintain Master Corporal Anderson at his unit pending the conclusion of this court martial. He said that, besides restrictions on the posting and the employment as instructor, there have been no formal career consequences flowing from the allegations made against Master Corporal Anderson at this point in time, although this could change. Master Corporal Anderson did not miss any formal career courses as a result of his pending court martial.

[13] Master Corporal Anderson also testified on sentencing. He explained that following the incident, he was no longer allowed to instruct at the school and has since tried to assist instructors in whatever way he can. He said that he had become aware that a posting to the 2RCR was cancelled last summer. He stated, not without some emotion, that being prevented from instructing candidates had caused a loss of purpose for him at the Infantry School and that he would have welcomed a change to the 2RCR where he would have felt more useful. He provided some details of his financial and family situation. He said that he very much wished to remain in the Canadian Forces.

[14] In arriving at evaluating what would be a fair and appropriate sentence, the court has considered the objective seriousness of the offence which, as provided in section 267(a) of the *Criminal Code*, incorporated by section 130 of the *National Defence Act*, is punishable by imprisonment for a term not exceeding ten years or to less punishment.

[15] The circumstances of the offence for which Master Corporal Anderson was found guilty are as follows:

- (a) Master Corporal Anderson was part of the Directing Staff on the BMOQ Land course, as second-in-command (2i/c) of one of the sections. He attended a party organized by students, mostly of the rank of officer cadet, to celebrate the end of the course on the evening of 25 July 2013, at Dooly's in Oromocto.
- (b) Master Corporal Anderson was offered drinks by students, including by Officer Cadet Hartwick. He admitted consuming a minimum of seven drinks, beer, shots and highballs. He was intoxicated but was able to stand on his own.
- (c) He said that students were interested in discussing their weaknesses and areas for improvement. Engaging in a conversation with Officer Cadet

Hartwick, he commented frankly on the student's weaknesses in reconnaissance skills and his difficulties in accepting direction.

- (d) At one point in the conversation, Master Corporal Anderson took out a pocket knife, held it, arm extended, towards Officer Cadet Hartwick's throat and said, "I will" or "I could kill you right now".
- (e) Officer Cadet Hartwick, promoted to second lieutenant at the time of trial, testified that Master Corporal Anderson's actions were totally unexpected and that he felt threatened by having a knife pointed at him in such a fashion. He said that when the knife was pointed a few inches from his throat, Master Corporal Anderson's eyes were intense and that he did not appear to be all there.
- (f) The incident was interrupted when a fight erupted close by. Master Corporal Anderson placed the knife back in his pocket. He prevented Officer Cadet Hartwick from intervening to stop the fight, a gesture which Officer Cadet Hartwick considered appropriate and appreciated.
- (g) Afterwards, Officer Cadet Hartwick retired near an exit to the bar to cool off. No one was injured in the knife incident and no complaints were made to security staff or members of the Directing Staff present at the party. Officer Cadet Hartwick left shortly thereafter with fellow students. He was upset concerning what had happened. Once back on base, he called family members and a cousin who is an officer with the Infantry School.
- (h) The next day was the last day of the course. Officer Cadet Hartwick and Master Corporal Anderson saw each other and shook hands. No mention was made of the incident. Officer Cadet Hartwick made a complaint to the military police about the incident once he was in Ontario on leave the next day.

[16] The court considers the following factors to be aggravating, in the circumstances of this case:

- (a) The subjective seriousness of the offence committed in that it was committed by an instructor in relation to a student during an important and challenging career course. Even if it occurred in the course of a social activity, the party was attended by numerous members of the Directing Staff and it is clear from the testimony heard that the staff-student relationship of authority was still applicable.
- (b) The offence was committed by a member of the Directing Staff placed by his superiors in a position of trust, entrusted to care for and train the

future leaders of the army. The offence constitutes a serious breach of that trust.

- (c) The offence involved a knife, pointed at a person in a public place while intoxicated.
- (d) The rank, status and experience of Master Corporal Anderson in the military and training communities who, as a master corporal, is expected to give the example to subordinates as to his conduct, off and on duty.

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

- (a) The fact that the event constitutes an isolated event, out of character for Master Corporal Anderson, which took everyone involved by surprise and does not show a pattern of aggression;
- (b) The satisfactory performance and conduct of Master Corporal Anderson following the events despite having been constrained in his employment;
- (c) Finally, Master Corporal Anderson's record of service with the Canadian Forces and absence of conduct sheet. Also, copies of letter of reference and performance evaluations show a promising career for him, which was understandably slowed by virtue of these proceedings. Yet, the court takes from the material provided and the testimony of his commanding officer that Master Corporal Anderson has the potential to continue making a positive contribution to the Army.

### *The submissions of the parties*

[18] 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 combining the punishments of detention for 30 days and a reduction in rank. To support this submission, the prosecution brought the court's attention to a number of cases, from courts martial and civilian courts, showing that custodial sentences of short duration are within the range of potentially appropriate sentences for an offence committed in circumstances similar to these.

[19] In response to submissions by the prosecution, defence counsel submitted that the only objective to be considered here is rehabilitation. The defence counsel has expressed the view that, given the fact that the incident was a demonstration of very bad judgement, Master Corporal Anderson had no intention of hurting anyone and that he had paid a price throughout the last year by being excluded from instructing and denied a posting to 2RCR. Defence counsel submitted that an appropriate sentence should be a severe reprimand coupled with a fine of a minimum of \$2,000. Defence counsel also submitted a number of cases showing that the combination of the punishments of

reprimand or severe reprimand with a fine was appropriate in circumstances such as these.

***Objectives to be emphasized***

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

***The sentences proposed are within the appropriate range***

[21] As far as the case law submitted by counsel is concerned, the court gained the assurance that the proposition of counsel is within the range of potential sentences in circumstances such as those here.

***Determination of the appropriate sentence***

[22] It is an important principle that the court should impose the least severe punishment that will maintain discipline. The most severe punishment being proposed to the court, based on the scale found at section 139 of the *National Defence Act*, is the punishment of detention which the prosecution submits should be for a period of 30 days. I will use this punishment as a starting point for my analysis and make my way down the scale.

[23] The prosecution stressed the rehabilitative effect of a sentence of detention. There is, indeed, an element of retraining in that punishment. On the other hand, however, the courts have ruled repeatedly that an offender should not be deprived of liberty if less restrictive sanctions may be appropriate. The prosecution submits that detention is appropriate due to the objective seriousness of the offence, as evidenced by the maximum punishment of 10 years, and the seriousness of the circumstances in which the offence was committed. I agree the offence is serious. Yet, there is no minimum prescribed for this offence, allowing the court to tailor a sentence adapted to a broad range of circumstances. The circumstances here are not trivial, by any stretch. The conduct of Master Corporal Anderson was shameful. Yet, an important element that came out in the testimony of Second Lieutenant Hartwick is how, immediately after the incident was interrupted by a fight, Master Corporal Anderson placed the knife back in his pocket and prevented Second Lieutenant Hartwick from intervening to stop the fight, a gesture considered appropriate and appreciated. Also, I take from the testimony of Second Lieutenants Bowser and Lee that they initially interpreted the acts of Master Corporal Anderson as a joke. In fact, the victim himself needed to reflect on what had happened and consult before coming to the conclusion that he needed to report the incident.

[24] The court is of the view that these elements demonstrate that the very stupid act committed by Master Corporal Anderson towards Officer Cadet Hartwick was not motivated by hostility or intention to hurt. As Military Judge Lamont concluded in the Standing Court Martial of *Corporal Levesque*, 2005CM08, incarceration may be called

for when misuse of weapons is proven, but will not necessarily ensue when the offender is not motivated by hostility against a fellow military member. I am of the view that, in all of the circumstances of this case, detention is not required.

[25] The next punishment being proposed by the prosecution is a reduction in rank. Again, the rehabilitative nature of that punishment was stressed to the court. Even if it is so, the court must decide if reduction in rank is the minimum punishment required to rehabilitate the offender. In doing so, the court cannot make abstraction of the fact that such a punishment would reduce Master Corporal Anderson to the rank of private as master corporal is an appointment not a rank. That is an extremely severe impact, not only in terms of financial consequences on pay, but also on the standing and contribution that Master Corporal Anderson can be called to make in the Canadian Armed Forces, an institution he joined at the age of 17.

[26] In the letters of reference and evaluation reports produced as Exhibits 6 and 7, the qualities and work ethics of Master Corporal Anderson have been highlighted eloquently, by officers and senior non-commissioned officers (NCO) alike. Furthermore, Master Corporal Anderson's background and experience in the military and his knowledge and understanding of the training system, as displayed when testifying on those matters at trial, show that he is at his place and productive in the appointment of master corporal. A reduction in rank would have effects for years and would add up to the limitations in Master Corporal Anderson's employment since he committed the offence in July 2013. Such an extensive period of rehabilitation before Master Corporal Anderson could regain a position allowing him to contribute fully and with purpose to the Canadian Armed Forces would be akin to crossing a desert. It would be a punishment that the court considers to be disproportionate to the offence he committed, in the circumstances in which it was committed.

[27] The court is encouraged by the testimony of Lieutenant-Colonel Oberwarth to the effect that Master Corporal Anderson can be rehabilitated. The court is of the view that a reduction in rank is not necessary to effect this rehabilitation and, in fact, the court believes the chances of rehabilitating Master Corporal Anderson would be better if he maintains his current appointment of master corporal. Consequently, the court will not impose a punishment of reduction in rank.

[28] Going down the scale of punishment, the court meets the recommendation of defence counsel for the imposition of a severe reprimand, coupled with a fine, in the minimum amount of \$2,000. The court is of the view that 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 \$3,000 is the minimum required to maintain discipline in the circumstances of this case.



***Ancillary orders***

[29] Pursuant to section 196.14 of the *NDA*, I shall make an order authorizing the taking of DNA samples of the offender.

[30] Given that Master Corporal Anderson was convicted of an offence in the commission of which violence against a person was threatened, the court martial shall, in accordance with section 147.1 of the *National Defence Act* 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 given that the offender is not a threat. Although the court notes that the offender has no conduct sheet or criminal record, his behaviour on 25 July 2013 constituted a threat, in a public place, which remains unexplained. In the circumstances, the court considers it desirable, in the interest of the safety of the public, to make a prohibition order under section 147.1 of the *National Defence Act*.

***Imposition of the sentence***

[31] Master Corporal Anderson, the circumstances of the charges you have been found guilty of reveal a behaviour that I consider highly unacceptable on the part of an instructor in the army. I hope you will come to that realization. Yet, your chain of command has expressed confidence in your abilities and capacity to rehabilitate and continue to make a meaningful contribution to the Canadian Army, either as an infantryman with a battalion or as an instructor. In line with this, without downplaying the severity of the acts you committed, the Court has decided to impose a sentence that recognizes your capacity to make a positive contribution and limits consequences to you and your young family.

**FOR THESE REASONS, THE COURT:**

[32] **SENTENCES** you to a severe reprimand and a fine in the amount of \$3,000 payable in 10 monthly instalments of \$300, beginning on 1 December 2014. The fine must be fully paid at the latest on 1 November 2015, or upon release from the Regular Force of the Canadian Forces, whichever comes first.

[33] **MAKES THE FOLLOWING ORDERS, NAMELY:**

- (a) an order authorizing the taking of bodily substances for forensic DNA analysis pursuant to section 196.14 of the *National Defence Act*;
- (b) an order prohibiting you, for a period of five years starting today, from possessing any firearm, cross-bow, prohibited weapons, restricted weapons, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things, pursuant to section 147.1 of the *National Defence Act*.

**Counsel:**

The Director of Military Prosecutions as represented by Lieutenant-Commander D.T. Reeves.

Lieutenant-Commander P. Desbiens, Defence Counsel Services, Counsel for Master Corporal G.M.E. Anderson.