



## COURT MARTIAL

**Citation:** *R.v. Laurin*, 2015 CM 4011

**Date:** 20150611

**Docket:** 201533

Standing Court Martial

22 Wing North Bay  
North Bay, Ontario, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Sergeant H.S. Laurin, Offender**

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

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### REASONS FOR SENTENCE

(Orally)

#### **Introduction**

[1] Sergeant Laurin, having accepted and recorded your plea of guilty in respect of the one charge on the charge sheet, the court now finds you guilty of that charge under section 129 of the *National Defence Act (NDA)* for Conduct to the Prejudice of Good Order and Discipline, for having made remarks tending to bring Colonel Boyle into contempt.

[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 considered as well the facts relevant to this case as disclosed in the statement of circumstances and the evidence 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 mean 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 successful missions in a trusting and reliable manner. 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] When imposing sentences, a sentencing judge must 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) finally, all sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[5] That being said, punishment imposed by any tribunal, military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances. For a court martial, this means imposing a sentence composed of the minimum punishment or combination of punishments necessary to maintain discipline.

### **Objectives to be emphasized**

[6] I came to the conclusion that, in the particular circumstances of this case, sentencing should place the focus on the objectives of denunciation and general deterrence. I also believe that the objective of rehabilitation is important, as any sentence I impose should not have extensive detrimental effects on the efforts the offender will have to make to regain the confidence of his superiors to adequately lead and mentor personnel under his supervision.

[7] Queens Regulations & Orders (QR&O) 112.48 provide that the sentencing judge shall:

(a) take into consideration any indirect consequence of the finding or of the sentence; and

(b) impose a sentence commensurate with the gravity of the offence and the previous character of the offender.

In other words, any sentence imposed must be adapted to the individual offender and the offence he or she committed.

### **The offender**

[8] Before the court is a 39-year old-sergeant who has joined the Regular Force in 1995 as a communicator with the Army and has been serving as an Aerospace Telecommunications and Information Systems Technician since 2004. Following basic and occupational training, he was posted to Valcartier and Petawawa and served on three overseas tours with the Army. In his current occupation, he has served in Trenton, Alaska and Dubai following training in Kingston. He has been promoted to his current rank in December 2012 and has served here in North Bay since July 2013. He is married and has a son and a daughter.

[9] Sergeant Laurin has no conduct sheet and, as far as the court can tell by looking at the documents presented by the prosecutor in application of QR&O 112.51, he has an unblemished service record. Since committing the offence subject to the plea, Sergeant Laurin was initially dealt with by Summary Trial in September 2014 but his conviction and sentence were subsequently quashed by a superior authority.

### **The offence**

[10] Turning now to the offence. In arriving at evaluating what would be a fair and appropriate sentence, the court has considered the objective seriousness of the offence as illustrated by the maximum punishment that the Court could impose. Offences under section 129 of the *National Defence Act* are punishable by dismissal with disgrace from Her Majesty's service or to less punishment.

[11] The specific circumstances of the offence were brought before the court by means of a Statement of Circumstances produced as Exhibit 6, read by the prosecutor and accepted as conclusive evidence by Sergeant Laurin. The contents of the Statement of Circumstances were amplified by Exhibit 7, a copy of the poster that is the subject of the offence. The events following the commission of the offence were the subject of admissions by the prosecution, laid out in writing at Exhibit 8. The relevant circumstances are as follows:

On Saturday, 19 July 2014, Sergeant Laurin was Crew Chief on a shift with three subordinates at the Sergeant

David L. Pitcher NORAD Complex (hereinafter “DLP Building”) at 22 Wing North Bay. The DLP Building is a secure and controlled area not accessible to the public, civilian personnel or Canadian Forces members who do not have the required security clearance.

During the shift, Cpl Elliott suggested creating a poster mocking a policy of the Wing Commander and prepared a poster using an Internet meme (image macro). Sergeant Laurin reviewed the poster and suggested some changes to the overlaid text.

The posters were a letter-sized print of an Internet meme featuring a character named “Scumbag Steve”, essentially a youth wearing a sideways-fitted baseball cap standing in a hallway. The overlaid top text reading: “NO DANGEROUS ACTIVITIES SUCH AS HOCKEY PERMITTED ON MY WING”, and the overlaid bottom text reading: “BUT I’M GOING PARASAILING IN FRANCE.”

The overlaid top text referred to Cpl Elliott’s belief or understanding that the Wing Commander had denied authorization to some Wing members to participate in hockey in a non-military league.

The overlaid bottom text “BUT I’M GOING PARASAILING IN FRANCE” referred to a recent paragliding accident which had left Colonel Boyle severely injured. The accident happened while Colonel Boyle was on leave in France. Colonel Boyle was medically airlifted from France and was still recovering at the hospital when the poster was created and displayed.

A total of six posters were printed and displayed on 19 July 2014, on various public bulletin boards within the DLP Building. Sergeant Laurin knew the posters were to be displayed by his personnel within the DLP Building.

Sergeant Laurin and his crew completed their shift at approximately 1430 hours on 19 July 2014. When a member of the incoming shift found one of the posters, the Senior Non-Commissioned Officer of the incoming shift ordered a search to be conducted for similar posters on display. Within minutes, the remaining five posters had

been found and removed. It is estimated that very few people saw the posters.

Upon being informed that the posters had created an angry reaction on the part of the authorities, Sergeant Laurin called his superior Warrant Officer Seymour and took responsibility for the posters that had been displayed by members of his crew. Later, on 21 July, he wrote to Warrant Officer Seymour to apologize for his and his crew's actions. He explained that this had been a failed attempt at humour over the contradictory nature of the Wing Commander's policy and his action while on leave.

As a direct consequence of the events of 19 July 2014, Sergeant Laurin was charged on 4 September 2014 and summarily tried, convicted and sentenced on 26 September 2014. The Commander 1 Canadian Air Division subsequently quashed the conviction. Sergeant Laurin was re-charged on 16 December 2014 in relation to the same events of 19 July 2014 and elected to be tried by court martial.

Initial disclosure of evidence was made to Sergeant Laurin's counsel on 25 February 2015 and a further disclosure was made on 25 April 2015. The charge as laid in December 2014 was preferred on 1 May 2015. That charge was withdrawn on 1 June and replaced by the charge at Exhibit 2.

[12] The circumstances outlined above demonstrate to me that I am dealing with an incidence of lack of judgement on the part of Sergeant Laurin. A supervisor of his rank and experience should have recognized that the idea proposed by one of his subordinates to make and display a poster attempting to highlight the contradictions between the reasons for a controversial decision by the Wing Commander and the subsequent accident leaving him in serious condition at the hospital was inappropriate and not at all funny. This is a leadership failure which can have the effect of eroding the trust and confidence that Sergeant Laurin's superior needs to have in his judgement as a supervisor. It also potentially prejudiced his subordinates, especially those present on the day in question, who could have benefitted from the wisdom and guidance of their supervisor before potentially getting themselves into trouble.

[13] Any offence of this type impacts on the trust that members of units must have towards each other to succeed, not to mention the impact in terms of distraction and diversion of resources. In that sense, the offence does prejudice good order and

discipline. That being said, there are significant mitigating factors at play here, which the court has considered, on the basis of submissions of defense counsel:

- (a) First and foremost, the offender's guilty plea, which the court considers as an indication that the offender is taking full responsibility for what he has done. This admission of responsibility occurred in a very formal and public forum of this court martial, in the presence of a good number of military and civilian members of the Wing and the community at large.
- (b) The fact that the offender admitted his responsibility for the offence early, in communications with his supervisor, first verbally, and in writing, on the first work day following the events to apologize. He also communicated his intent to plead guilty early, thereby avoiding expenses related to the preparation and conduct of a full trial. I also note that Sergeant Laurin had to go through the Summary Trial process and has been having this matter hanging over his head for quite a number of months.
- (c) The third mitigating factor is the fact that the circumstances of the offence are really minor; the humour or criticism attempted by the poster, although rude and of bad taste, is not of the kind to incite hatred or mistreatment of anyone. The posters were displayed in a secure and controlled area not widely accessible, even to members of the Canadian Forces, on a Saturday and for a very short period of time as Sergeant Laurin's relief had the judgement and the presence of mind to recognize the inappropriate nature of the material and order the removal of the posters.
- (d) Finally, an important mitigating factor is the outstanding contribution of Sergeant Laurin to the Canadian Forces in almost 20 years of service, comprising numerous postings and deployments, as well as his age and potential to make a positive contribution to his unit, the Canadian Forces and, indeed, Canadian society in the future.

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

[14] The prosecutor and defence counsel made a joint submission on the sentence to be imposed by the court. They recommended that this court impose a sentence of a fine of \$200 in order to meet justice requirements. Although this court is not bound by this joint recommendation, it has been determined by the Court Martial Appeal Court in *R. v Taylor*, 2008 CMAC 1 at paragraph 21, that the sentencing judge at a court martial cannot depart from a joint submission unless there are cogent reasons for doing so. Cogent reasons mean where the sentence is unfit, unreasonable, would bring the administration of justice into disrepute or be contrary to the public interest.

[15] Those restrictions imposed on sentencing judges dealing with a joint submission make sense. A joint submission is the result of resolution discussions between parties, on the basis of information that is not always available to the court. It has been recognized that resolution discussions are inherently desirable, and of considerable practical benefit to the administration of justice in Canada. At courts martial, they involve representatives of the Director of Military Prosecutions, who is the guardian of the public interest which includes the interests of the Canadian Forces. A military prosecutor is very much aware of the strength of his or her case and of the interests at play in the case and perhaps other cases or matters related to it. He or she has access to the chain of command as required to assess their needs. If a prosecutor states that a given joint submission is in the public interest, this opinion must be given its proper weight. As for defence counsel, one of the most important gains from a joint submission is certainty. Accused persons may waive their right to a trial far more readily if the outcome of such a waiver is certain. This is also true from the perspective of the prosecution; agreed-upon resolutions that have a stronger, rather than weaker, sense of certainty to them are more desirable because there is less risk that what the prosecutor concludes is an appropriate resolution of the case, in the public interest, will be undercut.

[16] As a military judge, I may not like the sentence being jointly proposed, and I may think that I would have come up with something more appropriate. Yet, any such opinion I may have is not sufficient to reverse the joint submission that was made to me.

[17] In the course of the sentencing hearing, the prosecution and defence counsel discussed a few cases which may be considered as useful to determine the range of punishments which may be relevant to the imposition of a proper sentence in this case. I conclude from those cases that offences of improper comments in minor circumstances such as what I have here, where an error of judgement is committed by an offender with previous unblemished records of service, the punishments are amongst the very lowest that a court martial can impose. The submission jointly made to me to impose a fine of only \$200 is certainly within that category.

[18] Considering the nature of the offences, the circumstances in which they were committed, the applicable sentencing principles and the aggravating and the mitigating factors mentioned previously, I am of the view that the punishment of a fine of \$200 jointly proposed by counsel is not outside of the range of sentences imposed in similar cases. I cannot conclude that the joint submission made by counsel is contrary to the public interest or that it would bring the administration of justice into disrepute. The court will, therefore, accept it.

[19] Sergeant Laurin, the circumstances of the charge you pleaded guilty to reveal an error in judgement that is, in my view, more than trivial. The rank you hold and the supervisory positions that go with that rank require more of you than technical knowledge and experience. It requires judgement and leadership, two things you failed to display on 19 July 2014. Your superiors require of a person of your rank and

experience to support the chain of command, including any decision that may not be popular. Your subordinates need you to guide them and sometimes protect them from themselves, including from misunderstandings or bad ideas they may have as a result of their limited experience. They need your guidance and wisdom at all times. That said, you have acknowledged your error early and with the termination of this trial, the disciplinary aspects of your errors are behind you. You now need to move on as a leader within your unit and continue your strong contribution to the Air Force and the Canadian Forces.

**FOR THESE REASONS, THE COURT:**

[20] **FINDS** you guilty of the first charge, for an offence under section 129 of the *National Defence Act*.

[21] **SENTENCES** you to a fine of 200 dollars, payable forthwith.

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**Counsel:**

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

Mr D. Couture, Counsel for Sergeant Laurin