



COURT MARTIAL

Citation: *R. v. Soudri*, 2015 CM 3008

Date: 20150507

Docket: 201502

Standing Court Martial

Canadian Forces Base Bagotville
Bagotville, Quebec, Canada

BETWEEN:

Her Majesty the Queen,

- and -

Second Lieutenant N. Soudri, Offender

Before: Lieutenant-Colonel L.-V. d'Auteuil, M.J.

Corrected decision: The text of the original decision was corrected on February 2, 2016.

Correction made: In par. 13(d), in the second last sentence, the word “denunciation” has been replaced by “deterrence”.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR SENTENCING

(Rendered orally)

[1] The Standing Court Martial found Second Lieutenant Soudri guilty on the second charge, namely, uttering forged documents contrary to section 368 of the *Criminal Code*.

[2] As the military judge presiding at this Court Martial, it now falls to me to determine the sentence. This is an individualized process as it was so well described by

the Supreme Court of Canada in its various decisions respecting the Court Martial Appeal Court.

[3] In the special context of an armed force, the military justice system constitutes the ultimate means of enforcing discipline, and is a fundamental element of military activity in the Canadian Forces. The purpose of this system is to prevent misconduct or, in more positive terms, to promote good conduct.

[4] It is through discipline that an armed force ensures that its members perform their missions successfully, confidently and reliably. The military justice system also ensures that public order is maintained and that persons charged under the *Code of Service Discipline* are punished in the same way as any other person living in Canada.

[5] The prosecution suggested to the Court to impose a fine of \$3,000 on the offender. Counsel for the defence asked the Court to consider a severe reprimand only. If, alternatively, the Court concludes that a fine should be imposed, he suggested that the Court consider a lower fine and monthly payments.

[6] The fundamental purpose of sentencing in a court martial is to ensure that the law is respected and that discipline is maintained. The law does not allow a military court to impose a sentence that would be beyond what is required in the circumstances of the case, in other words, any sentences imposed by the Court must be individualized and constitute the minimum necessary intervention, since moderation is the bedrock principle of the modern theory of sentencing in Canada.

[7] The Court must take into account the following objectives in determining a fit and just sentence:

- (a) first of all, protecting the public, which includes the Canadian Forces;
- (b) denouncing unlawful conduct;
- (c) deterring the offender and other persons from committing the same offences;
- (d) separating the offender from society, where necessary; and
- (e) rehabilitating and reforming the offender.

[8] In sentencing, a military court may also take into consideration the following principles:

- (a) A sentence must be proportionate to the gravity of the offence, and to the degree of responsibility and previous character of the offender.
- (b) A sentence should be similar to sentences imposed on offenders for similar offences committed in similar circumstances.

- (c) Before considering depriving an offender of liberty, the Court has the duty to consider whether less restrictive sanctions may be appropriate in the circumstances. In short, the Court should impose a sentence of imprisonment or detention only as a last resort.
- (d) All sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[9] The Court is of the opinion that sentencing in this case should focus on two objectives. First, denouncing the actions and, second, general deterrence. It is important to remember that the principle of general deterrence means that the sentence imposed should deter not only the offender from re-offending, but also others in similar situations from engaging in the same prohibited conduct.

[10] Second Lieutenant Soudri enrolled in the Canadian Forces, Regular Force, as a pilot in August 2007. He completed his Basic Military Officer Qualification course in 2008 and took various training courses from 2009 to 2012. As part of his on-job training, he worked at the Operations Section of the 439 Squadron, Canadian Forces Base (CFB) Bagotville, from December 2012 to September 2013. He was very recently released from the Canadian Forces.

[11] The second lieutenant used nine attendance certificates for seven different days when he had allegedly accompanied his spouse to a women's health clinic at the Chicoutimi Centre de santé et de services sociaux (Chicoutimi CSSS) to justify his absences from the Operations Section of 439 Squadron between the end of January 2013 and the beginning of July 2013, while he knew that the documents submitted did not reflect reality because her appointments never took place, thus committing the offence he was convicted of.

[12] In arriving at what it considers to be a fit and just sentence, the Court considered the aggravating and mitigating factors that emerged from the facts of this case. The Court finds the following to be aggravating factors:

- (a) First, the objective seriousness of the offence. You have been found guilty of a service offence, that is, an offence punishable under section 130 of the *National Defence Act* for uttering forged documents contrary to section 368 of the *Criminal Code*. The offence carries a maximum sentence of imprisonment not exceeding 10 years.
- (b) The Court also took into account the subjective gravity of the offence and considered three factors:
 - i. First, there was a breach of trust especially towards your supervisors, your superiors, your unit and, to a lesser extent, your peers. You understand that using those documents to justify a situation that did not occur while your supervisors trusted you and

took you at your word is a factor the Court must take into account for sentencing.

- ii. There is also the lack of integrity and loyalty, which are two principles that are well known by members of the Canadian Armed Forces. In order to succeed in their missions, members of the Canadian Armed Forces must believe that the people they work with will act with integrity and loyalty especially in critical situations. Therefore, if members of the Canadian Armed Forces are not able to apply those principles in everyday operations, what happens in much tougher situations when people's lives may be at stake? This is the fact I want to emphasize: integrity and loyalty must be shown and there has been a lack of either in your conduct with respect to these principles.
- iii. Finally, your conduct was deliberate, repeated, planned and sought to gain a personal benefit. You understand that the circumstances show that these were not exceptional circumstances that have resulted in this offence being committed repeatedly. The facts show that this took a certain form of planning, at the very least, to enable you to use false documents to justify your absences, as the circumstances have shown. Sometimes, the certificates did not come on the same day, but the next day, and all of that shows a form of planning, which is an aggravating factor in sentencing.

[13] The Court finds the following factors to be mitigating:

- (a) There are no entries of the same nature or of any other nature on your conduct sheet regarding an offence that you may have committed and you have no criminal record.
- (b) The Court also takes into account your personal financial situation; however, I must say that the profile provided to the Court is rather incomplete with respect to financial information. The Court obtained information on some of your monthly payments and it also obtained as evidence the fact that you are currently unemployed, but I certainly do not have all of your assets and liabilities and those of other members of your family, particularly, your spouse, namely, whether she is employed, etc. I do not have the full profile, but I do have a sense of what is going on with respect to your financial situation.
- (c) In addition, I must consider that in the circumstances that have been shown during the trial, the impact of your conduct is rather limited. You have mostly derived a personal benefit by being absent from your work. It was not demonstrated, as shown by the testimony of Major Gauvin, that your conduct and the consequences of it have had an impact on the section's operations. On the contrary, it was very difficult for the major to

identify anything pointing to that effect, and there was also a very limited impact on your team. We understand that what Major Gauvin revealed in his testimony is that there was some tension, some mistrust or unease caused – I cannot say only by your actions – but it is certainly a situation that worried the other members of the section, and this imposed a certain burden on the supervisors in managing the staff.

- (d) It is also important for the Court to take into account the parity factor in sentencing for similar offences. You understand that the offence you were found guilty of usually refers to fraud situations, that is, those of economic gain. This may be through the fabrication or use of false documents or simply of fraud or of fraudulent actions, and in this area, I looked a little bit more broadly at cases, among others, that do not necessarily reflect a conviction solely under section 368, but where there is as a theme, more generally, referring to the nature of fraud offences, and I looked, for example, at cases like *M.S., Collins*, which were before me, *Baptista*, and I also considered *Stewart* and *Cheung*. Generally speaking, what these cases show is that a severe reprimand and a fine were imposed, although the situation was not exactly the same and neither was the number of offences. However, the fact remains that, when this is a first conviction, that is the principle applied, and in my view, that is the principle the Court must apply as the minimum sentence to be imposed in the circumstances, not just a fine or just a severe reprimand as suggested by the parties, but a combination of both. Since the severe reprimand is imposed in order to denounce the conduct as such, this reflects also the trust that was lost because of the conduct and the denunciation that must be reflected in sentencing. The fine, in turn, really represents the deterrence. With respect to the fine, without looking at the amount itself, I believe it is appropriate to combine this with a severe reprimand in order to add the deterrence aspect to the sentence.

[14] Clearly, we must now determine the amount. In the circumstances, I must say that one of the mitigating factors that I accept – and this is also part of what I noticed as part of my decision on the verdict – is a rather limited impact, and in the circumstances that were described to the Court, and from that perspective, I am not prepared to accept the prosecution's suggestion of \$3,000 and I also do not believe that the defence's suggestion of a \$500 fine would be appropriate in the circumstances.

[15] Taking into account all of the cases that are relatively similar, some circumstances, as it was shown to me, warranted a fine of up to \$6,000 and others much less, I have come to the conclusion, while also taking into account your personal financial situation, that an amount of \$2,000 would be appropriate in the circumstances and in accordance with the objectives used by the Court in terms of sentencing, especially with respect to general deterrence.

[16] Therefore, in the circumstances, I conclude that a severe reprimand and a fine of \$2,000 are appropriate in the circumstances.

[17] Now, in terms of payment, I looked at the options. I understand very well what was suggested to me by the defence with respect to imposing a monthly payment, but, on the other hand, given the circumstances explained to me, among other things, the existence of an amount that will have to be disbursed by the Canadian Forces for the severance pay; there is still uncertainty about when the amount would be imposed. I believe that the only way to make this amount payable is to make the fine amount payable immediately. That is not to say – and this is a comment because I cannot gauge the Canadian Forces' position on this – and even if it is payable right away, in my view, before we can begin the process of claiming that amount, it is much easier to just wait until the severance pay is paid. This will be up to the Canadian Forces administration to ensure that that amount is taken out of the amount payable as severance pay. Therefore, I place some trust on the Canadian Forces administration, and for the follow-up that will be made on the file, to not impose or seek immediate enforcement in the circumstances by not taking into account the existence of that amount. I believe that this was the prosecution's goal in calling the witnesses that it called. To explain not only the reasons for release but also the consequences and, in these circumstances, I believe that, legally, the best way for the Court to make this possible is to make the fine payable right away.

FOR ALL OF THESE REASONS, THE COURT:

[18] **SENTENCES** Second Lieutenant Soudri to a severe reprimand and a fine in the amount of \$2,000 payable immediately.

Counsel:

The Director of Military Prosecutions as represented by Major P. Doucet, Major B. Tremblay and Lieutenant (Navy) V. Pagé

Lieutenant-Commander P.D. Desbiens, Office of the Director of Defence Counsel Services, counsel for Second Lieutenant N. Soudri