



COURT MARTIAL

Citation: *R. v. Laporte*, 2015 CM 3016

Date: 20151203

Docket: 201521

Standing Court Martial

William Armoury
Sherbrooke, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Corporal E. Laporte, Accused

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

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR SENTENCE

(Orally)

[1] Corporal Laporte, having accepted and recorded your guilty plea to the second and third charges on the charge sheet, the Court now finds you guilty of both charges. As for the first charge, the Court will not consider it, because it has been withdrawn by the prosecution. Therefore, the Court has no other charges to address at this time.

[2] It is now my duty as the military judge presiding at this court martial to determine the punishment to be imposed on Corporal Laporte.

[3] The military justice system constitutes the ultimate means to enforce discipline, which is a fundamental element of military activity in the Canadian Forces. The purpose of this system is to prevent misconduct or in a more positive way to promote good conduct. It is through discipline that an armed force ensures that its members will accomplish successful missions, in a trusting and reliable manner. The military justice system also ensures that public order is

maintained and that those who are subject to the Code of Service Discipline are punished in the same way as any other person living in Canada.

[4] It is important to remember that 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 punishment imposed by the Court must be adapted to the individual offender and represent the minimum necessary intervention, as moderation is the bedrock of modern sentencing theories in Canada.

[5] In this case, the prosecutor and the offender's defence counsel made a joint submission on the punishment to be imposed. They recommended that the Court impose a reduction in rank to the rank of private and a fine in the amount of \$500 to meet the requirements of justice. Although the Court is not bound by this joint recommendation, it is generally accepted that a joint submission should be departed from only where the sentence is unfit, unreasonable and where to accept it would be contrary to public interest and would bring the administration of justice into disrepute. On this, I refer to the criteria developed in *R. v. Taylor*, 2008 CMAAC 1, at paragraph 21.

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

- (a) 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 the society, where necessary; and
- (e) rehabilitating and reforming the offenders.

[7] The sentence imposed by a military court must also take into consideration the following principles:

- (a) it must be proportionate to the gravity of the offence;
- (b) it must reflect the degree of responsibility and previous character of the offender;
- (c) the punishment should be similar to punishments imposed on similar offenders for similar offences committed in similar circumstances;
- (d) where possible, the offender should not be deprived of liberty in the circumstances if less restrictive sanctions may be appropriate. In short, the Court should impose a punishment of imprisonment or detention only as a last resort, as it has been established by the Court Martial Appeal Court and the Supreme Court

of Canada in their decisions;

- (e) lastly, any punishment should be adapted to account for aggravating or mitigating circumstances relating to the offence and the offender.

[8] I conclude that in the specific circumstances of this case the punishment should focus on the objectives of denunciation and general deterrence. It should be noted that general deterrence is not only to deter the offender but also any member of the Canadian Forces who might be tempted to commit similar or comparable offences.

[9] Corporal Laporte is a medical technician who enrolled in the Canadian Forces in 2009. He was promoted to his current rank in August 2011. While he was a reservist with the 52nd Field Ambulance, he participated in a skills maintenance program at the St-Jean Garrison.

[10] On 31 October 2013, his last day of this training, he consulted and printed part of the medical file of Master Corporal Lambert. Moreover, he consulted part of the medical file of Corporal Laliberté. At the time he consulted and printed parts of those different files, Corporal Laporte knew exactly what he was doing. In fact, he had received the relevant training regarding the use of information in the medical files at the Canadian Forces Health Services Group and had even signed a confidentiality and system access agreement in July 2013.

[11] The evidence showed that his actions were purely for personal reasons, because he had a legal conflict with Master Corporal Lambert regarding the purchase of his house and this also involved the notary at the time of the transaction, Corporal Laliberté.

[12] Master Corporal Lambert expressed to the Court in writing that he felt "betrayed, violated and humiliated" by the way Corporal Laporte behaved with regard to the information in his Canadian Forces medical file.

[13] A charge was prepared and signed by the prosecution on 6 November 2015, and today, 3 December, the Court must address these charges.

[14] To arrive at what it believes to be a fair and appropriate punishment, the Court considered the aggravating and mitigating circumstances supported by the facts presented to this Court through various documents.

[15] Regarding the aggravating factors, the Court noted three elements:

- (a) First, Corporal Laporte, there was a breach of trust. You knew the value, the sensitive nature of the information in the medical and personal files of the individuals targeted. You knew full well the confidentiality of the information in the system and the medical files, and this concept is very important at Health Services. In 2013, you had the required training and experience, which indicate that what you did, you did knowingly. You knew that you were violating the trust of your superiors and your peers by accessing this information and printing it.

- (b) The second element I consider an aggravating factor is the fact that you did this purely for personal reasons. It was not for the purpose of an operation, it was not a request from a superior or for a military file; it was simply for your own personal purposes that you sought out this information. The circumstances do not demonstrate any other motivation that could have justified such actions and this constitutes an aggravating factor.
- (c) Lastly, I note the impact of these acts on one of the victims. He stated that he still did not know, nor did he know at the time, how this information had been handled or distributed. Whether it was or not, it is not necessarily relevant to the case, but for an individual knowing that the data was used and could be subject to disclosure to other individuals he does not know or who are known to him but to whom the information would not normally be disclosed by him is in itself an impact on the individuals who were targeted, in particular Master Corporal Lambert.

[16] Now, the mitigating factors:

- (a) First, there is your guilty plea. The Court considers this to be a clear and authentic sign of remorse and that you take full responsibility for the actions you have committed. In this sense, it is a very important factor the Court notes and considers to be mitigating.
- (b) I also note there are no entries in your conduct sheet. The Canadian Forces conduct sheet generally includes good and bad deeds. As for bad deeds, there are none. It is actually the first time you have been in such a situation with regard to discipline or any other criminal accusations, and I am taking this into consideration.
- (c) There is clearly your personal situation. First, in terms of military matters, you were the subject of an administrative measure. Your actions were subject to an investigation and from what I understand, you were given a notice of intent, then placed on counselling and probation for your actions. Although this administrative measure is not a punishment in and of itself, it still has a deterrent effect, not only on you but also on others, who understand that if they were to act in the same manner, measures would be taken against them.
- (d) There is also the fact you decided to leave the Canadian Forces. I do not have the exact reasons or circumstances, but I understand that shortly after you were placed on counselling and probation, two days later in fact, you informed the military authorities that you planned to leave the Canadian Forces; you did so a short time later.
- (e) On a purely personal note, 2015 seems to have been the year you resolved many things, and in that sense it was positive. You tried to sort things out, to get a fresh start on your life. You had a conviction in a civil matter involving monetary

obligations; there is a judgment against you in a case that is perhaps at the heart of the motivations that led you to commit the actions for which you are before the Court today. This conviction does not only involve you but also your ex-spouse. There is the fact that you filed for bankruptcy; from a financial perspective, you chose this option to rebuild your fiscal health. There is also the fact you are going through a separation, reflected by support payments, but which also means you are experiencing significant events in your life, which require a reorganization. Consequently, among other things, you are now living with your mother and you pay her a certain amount to help with the expenses related to your presence in her home.

- (f) Lastly, there is the fact you are a student, which indicates that you are trying to gain the skills to enter a new field or profession to rebuild your life; however, as a student, you cannot find another full-time job; you are working at Costco, so you do not have the tendency to sit around, to leave the Forces and then sit around doing nothing. You took the bull by the horns; you decided to get your life in order. For me, this is an indication that you will look at things from a different, more positive perspective, in order to be an asset to society and to those around you. These various signs are, in my opinion, mitigating factors I must take into consideration.

[17] For the act you committed, a reduction in rank was suggested to me. As I mentioned earlier, in *R. v. Reid and Sinclair*, 2010 CMAC 4, the Court Martial Appeal Court clearly stated that a reduction in rank is an expression of the military institution's loss of trust in a member. This loss of trust goes beyond a severe reprimand or a mere reprimand. It is in large part because of the duties, not the rank, but your duties and responsibilities as a medical technician, as well as the access to privileged information that you are here today in this Court.

[18] As I understand the circumstances, what transpired led the military world to lose trust in you and it cannot be regained. The reduction in rank would be an expression of this lost trust that cannot be regained, considering the duties and responsibilities you had. In my opinion, this also corresponds to a punishment that adequately denounces the acts performed and that will deter other medical technicians or any other person in the medical world who, because they have access to privileged and confidential data that is provided for medical purposes and that should only be used for those purposes, might be tempted to do the same thing you did, to use it for personal reasons in one way or another. You will understand that a reduction in rank under the circumstances seems reasonable; severe but reasonable. The fact to accompany it with a fine also seems reasonable to me and the amount of \$500, suggested to the Court, considering your financial situation and the suggestion that the payment be made in a number of instalments, all lead me to accept the proposal.

[19] Therefore, as a result, the Court accepts the joint sentencing recommendation from counsel and sentences you to a reduction in rank to the rank of private and a fine in the amount of \$500, considering this punishment is not contrary to public interest and is not likely to bring the administration of justice into disrepute.

FOR THESE REASONS, THE COURT:

[20] **DECLARES** Corporal Laporte guilty of the second and third charges that make up the offence under section 129 of the *National Defence Act*.

AND

[21] **SENTENCES** the offender to a reduction in rank to the rank of private and to a fine in the amount of \$500, payable in four equal payments of \$125, beginning 15 December 2015 and continuing for the following three months.

Counsel:

The Director of Military Prosecutions, as represented by Major J.S.P. Doucet

Major C.E. Thomas, Defence Counsel Services, Counsel for Corporal E. Laporte