



COURT MARTIAL

Citation: *R. v. Soares*, 2016 CM 3019

Date: 20161121

Docket: 201541

Standing Court Martial

Asticou Centre
Gatineau, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Lieutenant V. Soares, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Lieutenant Soares, having accepted and recorded your plea of guilty in respect of the fifth charge, the Court finds you now guilty of this charge, and considering that the other charges were withdrawn by the prosecution, then the Court is left with no other charge to deal with.

[2] In the particular context of an armed force, the military justice system constitutes the ultimate means of enforcing discipline, which is a fundamental element of military activity in the Canadian Armed Forces. The purpose of this system is to prevent misconduct or, in a more positive way, promote good conduct. It is through discipline that an armed force ensures that its members will accomplish, in a trusting and reliable manner, successful missions. The military justice system also ensures that public order is maintained and that those subject to the Code of Service Discipline are punished in the same way as any other person living in Canada.

[3] Here, in this case, the prosecutor and the offender's defence counsel made a joint submission on sentence to be imposed by the Court. They recommended that this Court sentence you to a severe reprimand and a fine in the amount of \$3,000. Although this Court is not bound by this joint recommendation, it is generally accepted that a sentencing judge should depart from the joint submission only when it will not be contrary to the public interest, as stated by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43, at paragraph 32:

Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[4] My understanding of this recent case law from the Supreme Court of Canada is that this more stringent test does not involve anymore the fitness test. So the public interest test, our approach, is good for a number of reasons.

[5] First, it's proper and necessary to the military justice system because it provides certainty for the accused. Basically, Lieutenant Soares gave up her right to trial, but in exchange, has some kind of certainty that her plea of guilty and the joint submission on sentence could be accepted by the Court. It also provides certainty for the prosecution, because it minimizes the risk and secures a conviction. Finally, it minimizes the stress on the accused, it minimizes legal costs and impacts on other participants, such as the victims and the witnesses.

[6] Basically, a court is allowed to depart from the joint submission made to it "only where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system (*Anthony-Cook*, paragraph 42)

[7] Essentially, this approach relies heavily on the work of the prosecution, as representing the community's best interest, and the defence counsel as acting in the accused's best interest. I would suggest here that it was exactly what was requested by Lieutenant Soares from her counsel, to achieve a settlement in her best interest.

[8] This Court has considered, in assessing the public interest, the personal circumstances of the offender as a Reservist and as a Regular Force member, other personal circumstances, and the circumstances related to the commission of the offence as revealed by the Statement of Circumstances and the Agreed Statement of Facts read respectively by the prosecutor and defence counsel. Both documents read as follows:

"STATEMENT OF CIRCUMSTANCES

1. Lieutenant Soares is a member of the Regular Force, Canadian Armed Forces (CAF) and is currently posted to the Integrated Personnel Support Centre Detachment Ottawa.

2. Lieutenant Soares enrolled as a non-commissioned member in the Reserve Force on 30 November 2000 and was enrolled and commissioned under the ROTP (Nursing) in the Regular Force on 24 May 2006 as a Nursing Officer. Subsequent to receiving a subsidized nursing degree from the University of New Brunswick, Lieutenant Soares was posted to Canadian Forces Health Services Centre Ottawa (CFHSC (O)) on 6 August 2007.
3. At all material times, Lieutenant Soares was a member of the Regular Force. In September 2015 Lieutenant Soares was employed as a Nursing Officer at CFHSC (O). Her normal duty hours were from 0700 to 1500. As a Nursing Officer, she was entitled to subsidized/reimbursed annual College of Nursing Licensing fees.
4. On 30 September 2013, Lieutenant SOARES, provided an update to her chain of command which detailed that: on January 2012 she was put on sick leave related to pregnancy complications; she had been on maternity leave since 6 Feb 2012 to 4 Feb 2013; she had been on subsequent intermittent sick leave from May to July 2013; and that as of July 2013, she had been on a Return to Work program in which she could only work 3 days per week, and was due to give birth on 15 December 2013.
5. On 14 October 2013, while on Maintenance of Clinical Readiness Program (MCRP) at the Ottawa Hospital General Campus (TOH), Capt Godwin, a member of CFHSC (O), encountered Lieutenant Soares working in a nursing capacity at TOH. Lieutenant Soares explained that she was moonlighting at TOH and was working an 8-hour day shift. She also explained that she was put on medical restrictions of “reduced hours” by her General Duty Medical Officer due to complications related to her current pregnancy.
6. As a result of this incident, on 18 November 2013, Captain Broadbent, reviewed Lieutenant Soares Medical Employment Limitations (MEL) in force at the time which were annotated: “Sick Leave: member is not able to do light duties, desk work, hospital work or shift work”. Captain Broadbent contacted TOH who confirmed that Lieutenant Soares had worked that on 14 Nov 13 at TOH on the medical floor and was on contract as a casual employee.
7. On 19 November 2013, the National Capital Region Clinical Placement Coordinator confirmed that he had not organized any MCRP clinic placements for Lieutenant Soares within the past two years and confirmed that she was not authorized to undertake civil

employment at any civilian facility. As a result, Military Police Unit Ottawa conducted an investigation and learned that Lieutenant SOARES had been working at the Civic Campus of The Ottawa Hospital during time frames where she had been on a Medical Chit from the CAF.

8. At all material time, and prior to engaging in any civil employment, Regular Force members of Canadian Forces Health Service Group required prior authorization from their Commanding Officer (CO). At all material times, Lieutenant Soares was aware of this Policy and its corresponding references which had been communicated to all members of Canadian Forces Health Service Group.
9. The Canadian Forces Health Service Group Policy in place at the time indicated that members who complete an approved Maintenance of Clinical Skills Program (MCSP) activity during unpaid off-duty time may receive non-CF compensation. However, there will be no reimbursement for associated costs (e.g. parking, meals) and no time-off will be granted to compensate for the off-duty hours worked. Furthermore, clinical practitioners cannot use off-duty participation to MCSP as a reason to refuse a military task and they cannot conflict with any military duty. Prior to engaging in off-duty activities, including civilian employment, clinical practitioners should review References F-I (**Ref F is QR & O 19.42**). Failure to comply with these regulations could result in administrative, disciplinary and/or legal action.
10. Ref F of the Policy, being *Queens Regulations and Order for the Canadian Forces*, chapter 19 article 19.42, states in part that members on full time service shall not engage in any civil employment or undertaking that is likely to be detrimental to the interests of the Canadian forces, or that is continuous without the prior authorization of the members CO.
11. The Military Police investigation confirmed that between June 2008 and November 2013, Lieutenant Soares did not request authorization from her successive COs or supervisors to engage in civilian employment. The Military Police investigation did not disclose any authorization to engage in civilian employment from Lieutenant Soares before June 2008.
12. On 21 May 14, through authorised Access to Information and Privacy and Production Orders, Military Police Unit Ottawa obtained Lieutenant SOARES' Medical Chits, MELs and civilian hospital employment records for the related time periods which

showed that she had been working for The Ottawa Hospital as a Permanent Part Time/On-Call Casual/Regular Part-Time Commitment RN since June 2008, during time frames where she was on sick leave or ordered to be on light duties and/or "no shift work".

13. Military Police obtained four employment contracts from the Ottawa Hospital concerning Lieutenant Soares during the time periods in question. These letters detail the following:
 - a. On 3 June 2008, an offer letter reference Competition # 28629 offering Ms. Danilenko (Lieutenant Soares now) employment for the position of On-Call Casual Registered Nurse, rotation, on the 5 North West Medicine Unit, Medicine program, General Campus of The Ottawa Hospital (TOH). This Offer was effective 28 May 2008. Lieutenant Soares signed and accepted 10 Jun 2008;
 - b. On 10 Jun 2008, Ms. Danilenko (Lieutenant Soares now) received another offer letter reference competition # 27542. This letter of offer, offers employment for the position of Permanent Part Time Registered Nurse, rotation- days and evenings, 8 & 12 hour shifts in the 5 North West Medicine Unit, Medicine program, General Campus of The Ottawa Hospital (TOH). This offer is in effect 24 Aug 2008;
 - c. On 27 Oct 2008, Ms. Danilenko (Lieutenant Soares now) received a change of status letter from the Ottawa Hospital. The letter provides written confirmation of her change of status from Permanent Part Time to On-Call Casual Registered Nurse in the 5 North West Medicine Unit, Medicine program, General Campus of The Ottawa Hospital (TOH). This is effective 1 Nov 2008;
 - d. On 10 Aug 2011, Ms. Soares (Lieutenant Soares) received a letter of offer from the Ottawa Hospital. The letter offers Regular Part-Time Commitment #1 Registered Nurse, Rotation-days, evenings and nights, including weekends, 8 and 12 hour shifts, in the 5 North West Medicine Unit, Medicine program, General Campus of The Ottawa Hospital (TOH). This offer is effective 7 Aug 2011.
14. Copies of letters of employment dated 3rd June 2008, 10 June 2008, 27th October 2008 and 10 August 2011 are attached as "**Annex A**" to this Statement of Circumstances.

15. A document produced with information obtained by Military Police Unit Ottawa sets forth the time periods under which Lieutenant Soares worked at the Ottawa Hospital and time periods under which she was subject to Medical Employment Limitations. A copy of this document is attached as **“Annex B”** to this Statement of Circumstances.
16. At all material times, the respective Commanding Officers of Lieutenant Soares confirmed that the nature and duration of the unauthorized civil employment undertaken by LIEUTENANT Soares while she was on employment limitations was inconsistent with the needs of the Canadian Forces, incompatible with the granted sick leave, and was considered continuous and in violation of CF regulation and Canadian Forces Health Service Group Policy. In the circumstances as described herein, the conduct of Lieutenant Soares was prejudicial to good order and discipline.
17. Charges were laid against Lieutenant Soares on 09 April 2015 by the Canadian Forces Health Service Group Ottawa and were referred to the Director of Military Prosecutions on 03 June 15. The Director of Military Prosecutions preferred charges on 19 June 2015. Counsel for Lieutenant Soares was contacted on 03 November 2015 to set this matter down for trial. Due to a request from counsel for Lieutenant Soares, this matter was set for trial on 21 November 2016.”

“AGREED STATEMENT OF FACTS

PERSONAL CIRCUMSTANCES

1. Following an Administrative Review of Lieutenant Soares’s Medical Employment Limitations, the Directorate of Military Career Administration has rendered a decision imposing an administrative release for medical reasons. A copy of this decision, dated 18 August 2016 is introduced as an exhibit in these proceedings.
2. Lieutenant Soares is to be medically released on the 2nd March 2017.
3. Lieutenant Soares is a first time offender. This Standing Court Martial constitutes her first appearance before a Military Tribunal.
4. Lieutenant Soares received a Recorded Warning on 20 May 2008 in relation to an incident in which she was supposed to be on duty at a medical conference, had claimed she was on duty, and was then discovered that in fact she admitted to being at home doing personal administration. A copy of the Recorded Warning is being entered as an exhibit in these proceedings.
5. Following change of Defence Counsel, Lieutenant Soares instructed her new counsel to resolve this matter efficiently and to proceed with a guilty plea, Prosecution was quickly engaged thereafter and a resolution was achieved on 19 October 2016.
6. Lieutenant Soares suffers from numerous mental health issues and has been diagnosed with the following disorder:
 - a. Depression in February 2015
 - b. Adjustment disorder with anxiety in July 2015
 - c. Generalized Anxiety Disorder with Panic Attacks in November 2016
6. Lieutenant Soares was diagnosed with Multiple Sclerosis (MS) in December 2009.

Multiple Sclerosis is a demyelinating disease in which the insulating covers of nerve cells in the brain and spinal cord are damaged. This damage disrupts the ability of parts of the nervous system to communicate, resulting in a range of signs and symptoms, including physical, mental, and sometimes psychiatric problems.
7. Lieutenant Soares has been prescribed the following medications: Trazodone, an anti-depressant, Cymbalta, an anti-depressant and Lyrica, an anti-convulsant.

8. Lieutenant Soares is a mother of three children, aged seven, four and two.
9. Lieutenant Soares is in a relationship since 2005 and has been married for 6 years.
10. Lieutenant Soares's husband is a Canadian Armed Forces reserve member, and is part of The Cameron Highlanders of Ottawa since, he joined in January 2008, Serial Number H23 599 426.
11. Lieutenant Soares economic situation is difficult, the family monthly budget indicates a free balance of three hundred dollars (300.00\$).
12. Following her Medical Release of the Canadian Armed Forces, Lieutenant Soares will be on a long term disability insurance plan with Service Income Security Insurance Plan (SISIP) and intends to complete the ADAPT Framework Level One of the Kresser Institute.
13. Lieutenant Soares has been approved by SISIP to follow that yearlong training.
14. The Kresser Institute provides training for clinicians in functional and evolutionary medicine.
15. Lieutenant Soares has recently obtained diploma as a Registered Holistic Nutritionist and her goal is goal is to work with clients who suffers from autoimmune disorders in order to better their physical and mental wellbeing."

[9] From my perspective, I will accept the joint submission made by counsel to sentence you to a severe reprimand and a fine of the amount of \$3,000, considering that it is not contrary to the public interest and will not bring the administration of justice into disrepute.

[10] I would, first, wish you good luck with all your personal circumstances. I understand that you went through a difficult time and you are still coping with personal medical issues, mental issues, a family and you have to adapt to other changes and some other changes will come in your life. I understand that you have decided, mainly, to plead guilty in order to put an end and turn the page, and this is what you are doing today. I just want to wish you good luck. Now, about the payment for the fine, what I will do, I will set circumstances. I will put it for ten monthly instalments of \$300 starting 30 December 2016, with a condition that, if released, because things may change by March 2017, but, if released, the full amount will have to be paid. So it will respect the suggestion of the defence counsel, and I understand that there is an agreement, from prosecution, regarding payment of the fine.

FOR THESE REASONS, THE COURT:

[11] **FINDS** you guilty of the fifth charge;

[12] **SENTENCES** you to a severe reprimand and a fine in the amount of \$3,000. This fine will be paid in monthly instalments of \$300 for a period of ten months, starting on the 30th of December 2016. In any case, if you are released from the Canadian Armed Forces, the outstanding amount must be paid in full at the time of your release.

Counsel

The Director of Military Prosecutions as represented by Major C. Walsh

Major B.L.J. Tremblay and Captain P.H.C.C. Cloutier, Defence Counsel Services,
Counsel for Lieutenant V. Soares