



COURT MARTIAL

Citation: *R. v. Poirier*, 2016 CM 1012

Date: 20160713

Docket: 201604

Standing Court Martial

Canadian Forces Base Edmonton
Edmonton, Alberta, Canada

Between:

Her Majesty the Queen

- and -

Private M.F. Poirier, Offender

Before: Colonel M. Dutil, C.M.J.

REASONS FOR SENTENCE

(Orally)

[1] Private Poirier admitted his guilt to the offence of absence without leave under section 90 of the *National Defence Act*. The statement of particulars read as follows:

In that he, at 0800, 31 August 2015, at 3rd Canadian Division Support Base Edmonton, absented himself without authority from the 1st Battalion, Princess Patricia's Canadian Light Infantry lines at Edmonton Garrison, and remained absent until 16 December 2015.

[2] The circumstances surrounding the commission of that offence reveal that he enrolled in the Canadian Armed Forces in the Regular Forces at the Recruiting Centre in Sherbrooke, Quebec, on 28 July 2015. He had previous Reserve Forces service in 2013. As he had completed Developmental Period 1, modules 1 and 2, Basic Military Qualification, and Infantryman Qualification Level 3 as a Reservist, he was not required to attend the Basic Military Qualification course on entering the Regular Force. He was

assigned to 1st Princess Patricia's Canadian Light Infantry (1 PPCLI) in Edmonton on 8 August 2015.

[3] The circumstances revealed that he experienced some challenges during his integration into 1 PPCLI perhaps related to his lack of Regular Force experience and training. On 24 August 2015, Private Poirier approached his platoon warrant, Warrant Officer Rachynski, and requested a release, stating that he wished to return to work on his family's dairy farm. On 28 August 2015, he submitted a memorandum requesting a voluntary release. He was advised by his warrant officer that the soonest he could possibly be released, if anything, would be in six months. The 4 Platoon Commander, Captain Macaluso, noted by a minute on Private Poirier's memorandum, that he did not support the request. The Officer Commanding B Company, Major Braybrook, noted by a minute, that B Company was "unable to proceed" with Private Poirier's request for release.

[4] On Monday, 31 August, Private Poirier was noted absent from his place of duty in the unit lines. His military kit was found in his room, though all of his civilian clothing and possessions were gone. He was contacted by telephone by his company sergeant major, Master Warrant Officer Hryniw. Private Poirier told Master Warrant Officer Hryniw that he had decided to leave, and that he did not intend to return. He was told that a warrant would be issued for his arrest and Private Poirier replied that he would face the consequences if that happened.

[5] On 1 September 2015, a warrant for arrest was signed by the acting commanding officer of 1 PPCLI, Major McMichael. On 16 December, Private Poirier was visited at his home in Canton de Melbourne, Quebec by military police. By agreement, he was not arrested and returned to 1 PPCLI lines, but undertook to return on his own by 6 January 2016 when the regiment returned from Christmas leave, and he did so.

[6] The charges were laid against Private Poirier on 6 January 2016 under section 88 of the *National Defence Act*. The case was referred for court martial by the Commanding Officer of 1 PPCLI on 6 January 2016. The referral authority referred the case to the Director of Military Prosecutions and the charge that appears on the charge sheet was preferred by Commander Sheila Archer, an officer authorized in accordance with section 165.15 of the *National Defence Act*, on 20 April 2016.

[7] In this case, both counsel made a joint recommendation on sentence. They recommended that the court impose a fine in the amount of \$800. This recommendation fits within the range for similar offences but this case sits at the lower end of the spectrum for this type of offence. In particular, this case deals with the absence, with no intent to return, one month after the enrollment of the offender in the Regular Forces. In this context, the Court considers that the submission is not contrary to public interest and it will not bring the administration of justice into disrepute. Therefore, the Court is bound by this joint submission.

[8] This case turns on its own facts and involves a young soldier who decided that he had made a personal mistake in joining the Canadian Forces one month prior, and leaving his unit to return home in order to help his family on the family farm. The way he proceeded was certainly not appropriate, but his plea of guilty today shows that he accepts full responsibility for his behaviour.

[9] Other than the length of the absence, which is agreed to be 106 days, and the fact that he did not contact his chain of command after his departure from the unit, there are no other aggravating factors.

[10] However, the mitigating factors are significant:

- (a) a plea of guilty was made at the earliest opportunity and the court accepts it as an expression of his full acceptance of responsibility for his actions;
- (b) no prior record for the offender, whether it's disciplinary or criminal;
- (c) Private Poirier has also performed very well since his return to the unit; and
- (d) there is no evidence of prejudice as a result of his absence.

[11] With regards to his career, which would normally appear as a mitigating factor, the fact that he left a month after his enrollment does not provide an adequate record of employment by the court to consider a mitigating factor. This case turns on its own facts and it would not serve or provide any jurisprudential value for cases of a similar nature. Therefore, the Court accepts the joint submission made by counsel, which was straightforward and well made.

FOR THESE REASONS, THE COURT:

[1] **FINDS** you guilty of absence without leave contrary to section 90 of the *National Defence Act*.

[2] **SENTENCES** you to a fine in the amount of \$800.

Counsel:

Major E. Cottrill for the Director of Military Prosecutions

Major C.E. Thomas, Defence Counsel Services, Counsel for Private M.F. Poirier