



## COURT MARTIAL

**Citation:** *R. v. Mader*, 2015 CM 3003

**Date:** 20150205

**Docket:** 201314

Standing Court Martial

Canadian Forces Base Trenton  
Trenton, Ontario, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Corporal G.G. Mader, Offender**

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

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### REASONS FOR SENTENCE

(Orally)

[1] Corporal Mader has been found guilty by this court of an offence for behaving with contempt towards a superior officer, contrary to section 85 of the *National Defence Act*. Now, it is my duty as the military judge presiding at this court martial to determine sentence.

[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 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 always 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 submitted to the court to sentence Corporal Mader to a reduction in rank. The offender's defence counsel recommended to the court to impose a fine between \$500 and \$1,000.

[4] The fundamental purpose of sentencing in a court martial is to ensure respect of the law and the maintenance of discipline. However, 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 sentence imposed by a court must be adapted to the individual offender and constitute the minimum necessary intervention since moderation is the bedrock principle of the modern theory of sentencing in Canada.

[5] In order to make this determination, I have to follow some objectives and principles. As a matter of objectives, I have to consider the following:

- (a) to protect the public, which includes the Canadian Forces;
- (b) to denounce unlawful conduct;
- (c) to deter the offender and other persons from committing the same offences;
- (d) to separate offenders from society where necessary; and
- (e) to rehabilitate and reform offenders.

[6] I also have to 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 in the circumstances. In short, the court should impose a sentence of imprisonment or detention only as a last resort as it was established by the Court Martial Appeal Court of Canada and the Supreme Court of Canada decisions; and

- (e) lastly, all sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[7] The court is of the opinion that sentencing in this case should focus on the objectives of denunciation and general deterrence. It is important to remember that the principle of general deterrence means that the sentence should deter not only the offender from reoffending, but also to deter others in similar situations from engaging in the same prohibited conduct.

[8] On 11 May 2012, while his supervisor, Master Corporal Clemens, was asking about his whereabouts on the previous afternoon, Corporal Mader became upset; he felt that his integrity, honour and ethics were attacked. He felt a lot of anger, but was unable to verbalize it, so he took it out on the furniture around him. As described by his supervisor, he became ballistic, exploded, and left the office.

[9] In arriving at what the court considers a fair and appropriate sentence, the court has considered the following aggravating and mitigating factors. As a matter of aggravating factors, the court considers:

- (a) the objective seriousness of the offence. The offence you were charged with was laid in accordance with section 85 of the *National Defence Act* for having behaved with contempt towards a superior officer, which is punishable by dismissal with disgrace from Her Majesty's service or to less punishment;
- (b) there is also, as a matter of aggravating factors, the subjective seriousness of the offence that I considered, and for me it covers two aspects:
  - i. first, you heard me talk about it and you heard counsel refer to it, it is respect. The fundamental principles of ethical values for Canadian Forces members mention respect of the law and respect of others, and it is one of the most important things to do for those who are wearing this uniform. Clearly, the manner in which you expressed your dissatisfaction when you were asked about your whereabouts was totally inappropriate in the circumstances and you recognized that. Respect involves the fact that you may disagree with some kind of attitude, but also with some things that are said to you, but there's an acceptable manner in how to respond to it or, at least, how to express your feelings about it. When it is done in an appropriate manner, there's no problem with that. Clearly, in these circumstances, on 11 May 2012, the problem was the way you expressed, with some kind of violence and in an aggressive manner, how you felt about those questions asked; and

- ii. there is also your experience and your rank. It was not the first time that a supervisor probably questioned you in 2012 about some things, and you have probably seen others being questioned about what they did or did not do, what they said or did not say, and you knew how the military environment must be respected, and as you yourself expressed it, you should have done better.

[10] As a matter of mitigating factors, I have considered:

- (a) the fact that you apologized and you expressed some regrets and remorse for what you did. Maybe, for some people, it appeared very late in the process, but the fact that you did it is a sign that you are taking full responsibility for what you did; that's a good sign;
- (b) the other thing is that no matter what it took, eventually, to come before this court martial, you had to face it. No matter what people think, it is clear that for those who would conduct such behaviour, at any level in any unit of the Canadian Forces, they know that one way or another way, they would have to come, maybe to that extent, to appear before a court martial, and for me, it's not a usual event, probably unusual for the unit. You heard your chief warrant officer mentioning that there were not many summary trials that have been held so far; there's less as a matter of court martial probably. It's always an event, but it is also a message that people will have to face their own responsibilities, and it has some kind of deterrent effect, generally speaking;
- (c) I also consider your personal limitations raised during this trial; the stress that was recognized at the time of the incident that you were going through; the fact, as mentioned by your counsel, that it was, so far as I understand it, out of character. Violence and wrecking in that way is not your usual way of doing things. You may be, sometimes, argumentative, you may dispute some reasons why things are done, but, usually, you do not react in that way, so it makes it out of character;
- (d) there is the fact that you do not have any annotation of your conduct sheet for similar incidents; and
- (e) that being found guilty of an offence, pursuant to the Code of Service Discipline, you are going to get a criminal record, and some weight must be given to that fact.

[11] Usually, as it was shown by the case law presented by the prosecution, such situations call, as a sentence to be imposed, something that goes from a severe reprimand and a fine, to a reprimand and a fine, to, ultimately, a fine. What I have been

asked to consider by the prosecution is, in these circumstances, to impose a reduction in rank.

[12] I just want to remind the position of the Court Martial Appeal Court on this issue, where, in the decision of *Reid and Sinclair*, 2010 CMAC 4, at paragraph 39, the court said:

A reduction in rank is an important tool in the sentencing kit of the military judge. It signifies more effectively than any fine or reprimand that can be imposed the military's loss of trust in the offending member. That loss of trust is expressed in this case through demotion to a position in which the offenders have lost their supervisory capacity.

I do understand where the prosecution is coming from. For sure, I direct my attention to what has been said on sentencing concerning all the circumstances that follow this incident.

[13] It is clear for me that the loss of trust is not coming only from that incident, for which you are sentenced today, but also from many subsequent events that occurred by reason of handling the consequences of that incident. I have to say that the ability of the Canadian Forces to put the right emphasis on the right things contributed in a huge way to having this matter end here. I think the unit did its best to use the tools that it had in order to deal with the matter. Unfortunately, when things took an administrative or disciplinary turn, it appears the system failed. It left the unit with handling a situation they knew about and what to do about it, but they were not able to implement a final solution. Basically, the system failed to handle the matter from both an administrative and a disciplinary perspective.

[14] I would say that it's a coincidence that, from my perspective, the disciplinary system was engaged on the issue. I think the unit did what it had to do in terms of investigating and laying charges, but your file ended up in a time where there were a few military judges dealing with a lot of matters, and a very unusual year where many General Courts Martial, such as it was supposed to be for you, ended up. Scheduling was an issue from a court martial perspective. No matter the volume, a number of judges must be there, too, and for a short period of time, the system was not able to deal, I would say, in a timely manner with some circumstances and your file was amongst those caught in the middle of it. From an administrative perspective, where some things happened with the case, no concrete result occurred. These delays created a huge burden on the unit to continue to deal with the matter, knowing what the solutions were, yet unable to engage them.

[15] It took also a long time for the system, generally speaking, to recognize that you didn't fit anymore in the military environment and everybody had to, I would say, deal with the situation the best they could, but for me, it is clearly not a situation calling for a reduction in rank in the circumstances. It is not different from any other decision where a first time offender lost it. In these circumstances, I think a reduction rank is still not appropriate, especially from the perspective where you did not have any supervisory

role. I can understand a loss of trust but, from my perspective, it is not coming from the incident itself, but from what happened after all the delay.

[16] As I mentioned, the sentence must be commensurate with the gravity of the offence and the previous character of the offender. I still have doubts about the fact that a suggestion made by the prosecution would have been the same if it would have been earlier in the process. So, the court cannot accept a reduction in rank, as suggested, as being the minimum sentence to be imposed in these circumstances. However, I would say, for generally the same reasons, that only a fine does not appear either as being a fit sentence.

[17] From my perspective, I would say that, very similar to the case of *Corporal Menard* in 2012, and other similar cases, a call for a reprimand or a severe reprimand and, from my perspective, a severe reprimand plus a fine would be the minimum sentence to be imposed by this court. And, there was some violence involved, which you did in an aggressive manner. It had an impact on your supervisor, so, as for today, he is still in doubt about his capacity to lead people. And, the principle of parity calls for such a sentence, so for me a severe reprimand and a \$2,000 fine would be appropriate.

[18] Corporal Mader, you are turning the page today; no matter what, the issue, is not a matter of insubordination, but is a matter of respect. I think it is fundamental. You are old enough to understand and learn some lessons from it. You will be potentially released from the Canadian Forces soon; it doesn't mean that you should not learn from this. No matter what is your next step in your life, respect should be part of all your relationships with others and I hope that, from a health perspective, you will do better and be able to still have a good life, no matter what course it takes.

**FOR THESE REASONS, THE COURT:**

[19] **SENTENCES** you to a severe reprimand and a fine in the amount of \$2,000, payable immediately.

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**Counsel:**

Major A.-C. Samson, Canadian Military Prosecution Service  
Counsel for Her Majesty the Queen

Major D.M. Hodson, Directorate of Defence Counsel Services  
Counsel for Corporal G.G. Mader