



## COURT MARTIAL

**Citation:** *R. v. Britz*, 2014 CM 3016

**Date:** 20140912

**Docket:** 201385

General Court Martial

Canadian Forces Base Petawawa  
Petawawa, Ontario, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Corporal J.M. Britz, Offender**

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

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### REASONS FOR SENTENCE

(Orally)

[1] Corporal Britz was found guilty by a General Court Martial yesterday, 11 September 2014, of two counts for disobeying a lawful command of a superior officer.

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

[3] It has long been recognized that the purpose of a separate system of military justice or tribunal is to allow the Armed Forces to deal with matters that pertain to the

respect of the Code of Service Discipline and the maintenance of efficiency and the morale among the Canadian Forces (see *R v Généreux*, [1992] 1 SCR 259 at 293).

[4] Here in this case, the prosecutor and 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 \$750. Although this court is not bound by this joint recommendation, it is generally accepted that the sentencing judge should depart from the joint submission only when there are cogent reasons for doing so. Cogent reasons mean where the sentence is unfit, unreasonable, would bring the administration of justice into disrepute or would be contrary to the public interest as established in *R. v. Taylor*, 2008 CMAC 1, at paragraph 21.

[5] The fundamental purpose of sentencing in a court martial is to ensure respect of the law and maintenance of discipline. 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.

[6] When imposing a sentence, a military court must take into consideration some objectives and principles. As a matter of objectives, the court must 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.

[7] Also, the court must 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 decisions of the Court Martial Appeal Court of Canada and the Supreme Court of Canada; 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.

[8] Here in this case, on 16 August 2012, Corporal Britz was informed by Petty Officer 1st Class Poirier that he would have to take a duty on the 24th of August, 2012 to make a data pull of classified information at the Brigade Headquarters and bring it back to the analyst in order to prepare the weekly briefing of the Brigade Commander. At that time, Corporal Britz raised an issue concerning the fact that he would have to drive in order to get that. More specifically, it was about his ability to drive a military vehicle considering his knee injury.

[9] On 24 August 2012, he was reminded by Master Corporal McIvor, his direct supervisor, to take his duty. At that time, some kind of transportation was arranged and it ended up that Corporal Britz would use the personal vehicle of another fellow soldier. However, he raised the issue that his account was disabled. He was told how to reactivate it and at that point, he mentioned that he had had enough, and clearly told his supervisor that he intended to go to the Warrior Centre where there were social workers he could meet. His supervisor agreed and he made sure that he could go there. Corporal Britz came back and carried on with his other tasks. The end result of all of this is that the task he was asked to perform was not done on that day.

[10] As I mentioned in my instructions to the panel members, obedience to orders is fundamental in all aspects of the military life. The efficiency of any military task and success of any mission rests on that principle.

[11] The court is of the opinion that sentencing in this case should focus mainly 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.

[12] I took into account the following aggravating factors:

- (a) first, there is the objective seriousness of the offence of disobeying a lawful command of a superior officer. The maximum punishment for such an offence is imprisonment for life or less punishment;

- (b) there is also the subjective seriousness of the offence and it covers three aspects:
  - (i) by not performing the task the way you did, you expressed some disrespect for the authority;
  - (ii) in those circumstances, you made the decision at that time; it doesn't mean you are like this all the time but, at the time of the incident, you put yourself before your unit or the Canadian Forces; and
  - (iii) you knew in advance what the task would be. Considering your age, your experience as a soldier in the Canadian Forces, you should have known better in those circumstances.

[13] On the other hand, I considered some mitigating factors:

- (a) as expressed by the prosecutor, there was some delay in order to deal with this matter. You may have heard me mention that section 162 of the *National Defence Act* is very specific, "Charges laid under the Code of Service Discipline shall be dealt with as expeditiously as the circumstances permit." This event occurred in August 2012 and we are now in September 2014. I do not blame anybody because things went on at some point, but in order for the military justice system and the disciplinary system to be efficient, it is always better that the hearing take place as close as possible to the time of the incident. Otherwise, there are a lot of things that could happen between the time the Court deals with this, from the time the thing happened, life goes on, things change, the dynamics change, so when the hearing takes place, sometimes the very meaning of sentencing somebody for the incident that occurred two years ago is less relevant in those circumstances, and I have to consider that; it has an impact;
- (b) also, as expressed by the prosecutor, despite the fact that there are some annotations on your conduct sheet, they are there for incidents that occurred sometime after the incident that I am dealing with today. So I have to consider you as a first offender, because, as a matter of chronology, this thing happened two years ago, so there was nothing at that time indicating to the court that you had any issues with discipline or with authority, anything of that sort. So, it means I have considered this as the first time you being involved in such a thing; and
- (c) from my perspective, it has not been mentioned a lot, but your counsel introduced many documents concerning your injuries and your health. As mentioned by your counsel, the incident of April 2012 caused you some distress, I would say. You could not achieve things the way you

wanted to and this may have impacted, in one way or another, on our emotions. This situation together with the injury imposed many limitations on the things you were supposed to do, and the fact that you had to remuster is just an illustration that those circumstances may have impacted on your character. It doesn't mean that you are like this, but with all those things, at some point, could make you more reactive, and this I consider is a mitigating factor in the circumstances.

[14] I don't know about your future in the military. This morning, it has been revealed that you remustered, so you're interested in staying in the military, but what I have also heard, from Dr. Davenport, is that your medical category is being reviewed so your future in the military is uncertain. Your plans may change despite the fact that you wish to stay in the Canadian Forces. I would suggest to you to take this as an opportunity today to turn the page on an incident that occurred two years ago. I don't know how long you will stay; you may stay longer. My hope is for you to stay with us for a very long time, but try to make it positive for you and for others. You are still an experienced corporal in the Forces; and do not let it go over you and show people how you really are. This incident did not reveal the best of you and you know that. It is a constant battle for you to accept to live with those limitations; be careful in doing so. There is nothing you can change, but there is something you can do yourself, take what could be positive for you and others when you are asked to do something in uniform.

[15] So, I will accept the joint submission made by counsel to sentence you to a severe reprimand and a fine in the amount of \$750 considering that it is not contrary to the public interest and will not bring the administration of justice into disrepute.

**FOR THESE REASONS, THE COURT:**

[16] **SENTENCES** you to a severe reprimand and a fine of \$750, payable in monthly instalments of \$50 each, starting on 1 October 2014 for a period 15 months. If, for any reason, you are released from the Canadian Forces, the remaining amount of the fine shall be paid in full before being released.

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**Counsel:**

The Director of Military Prosecutions as represented by Major J.E. Carrier

Major C.E. Thomas, Defence Counsel Services, Counsel for Corporal J.M. Britz