



## **COURT MARTIAL**

**Citation:** *R. v. Rouleau*, 2016 CM 3015

**Date:** 20161011

**Docket:** 201622

Standing Court Martial

Asticou Courtroom  
Gatineau, Quebec, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Major-General M.N. Rouleau, Offender**

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

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### **REASONS FOR SENTENCE**

(Orally)

[1] Major-General Rouleau, having accepted and recorded a plea of guilty in respect of the first and only charge on the charge sheet, the Court now finds you guilty of this charge.

[2] Being the presiding judge at this Standing Court Martial, it is now my duty to determine the sentence.

[3] 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.

[4] 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 fine in the amount \$2,000. 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.

[5] The fundamental purpose of sentencing in a court martial is to ensure respect for 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.

[6] When imposing a sentence, a military court must take into consideration the following objectives:

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

[7] The court must also take into consideration the following principles:

- (a) the sentence must be proportionate to the gravity of the offence;
- (b) the sentence must be proportionate to the responsibility and previous character of the offender;
- (c) the 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 and the Supreme Court of Canada decisions;  
and

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

[8] The court is of the opinion that sentencing in this case, as suggested by both parties, 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.

[9] The circumstances of this case may be summarized as follows:

- (a) On 19 December 2015, Major-General Rouleau arrived in the Canadian area of operations in Iraq to conduct an official visit with the troops on the ground deployed as members of Operation IMPACT. On the same day, considering the nature of his visit, he was provided with personnel protective equipment including a pistol and a C8 carbine rifle.
- (b) On 20 December 2015, Major-General Rouleau started his visit. He was told by Master Warrant Officer Cassidy, who verified all of his personnel protective equipment in his duffle bag, that his C8 was loaded, but not readied. This meant that a 30-round magazine had been inserted into the weapon, but there was no round in the chamber.
- (c) After the first stop of the visit, Major Day, who was with Major-General Rouleau, heard Major-General Rouleau remove his C8 from the duffle bag, cock the action, and then heard one round discharge. Major-General Rouleau immediately indicated to Major Day that he did not realize that there was a magazine already in the weapon.
- (d) One round was discharged from the C8 into the ground in front of the SUV in which Major-General Rouleau was travelling in and within two feet of where Major Day was standing. The round impacted into the ground about two feet in front of their position. The round did not injure anyone or damage any property.
- (e) Prior to the date of the incident, Major-General Rouleau had served as a Canadian Armed Forces member for over twenty-eight years in various positions within the combat arms, including as a qualified Special Operations Assaulter with Joint Task Force 2. Prior to visiting Iraq in December 2015, Major-General Rouleau had received refresher training on the C8 carbine and was, at all material times, fully qualified and trained on all aspects of the C8 carbine.

- (f) In January 2016, Major-General Rouleau, in a letter addressed to the Chief of Defence Staff, General Vance, admitted full responsibility for his action.
- (g) At all material times, Major-General Rouleau was aware that the correct procedures that he was required to follow upon retrieving his C8 at that time, was to confirm the state of the weapon as being loaded, remove the magazine, point the muzzle upward, tilt the rifle to the right, and pull the cocking handle to the rear twice. While the cocking handle is to the rear, the rifle is to be tilted to the left, and a visual inspection is required to ensure that the chamber is empty. Only after this is done, is the cocking handle permitted to go forward, and the action is then fired.

[10] In arriving at what the court considers a fair and appropriate sentence, the court has considered the following mitigating and aggravating factors:

- (a) The court considered as aggravating the objective seriousness of the offence. The offence you were charged with was laid in accordance with section 129 of the *National Defence Act* and it is punishable by dismissal with disgrace from Her Majesty's service or to less punishment.
- (b) With respect to the subjective seriousness of the offence, the court considers three things as aggravating factors as suggested by the prosecutor:
  - (i) First, the rank and position. It is easy for you to imagine that expectations are very high towards someone like you, with your rank and position. I do not have to elaborate a lot about that, but because of that, your rank and position constitutes, in the circumstances, an aggravating factor.
  - (ii) Your experience with weapons and with the C8 carbine, which was referred to by the prosecutor as your familiarity with the weapon. Clearly you knew what you were handling, you knew how to handle it, and you were negligent, so I have to consider this factor, experience with this type of weapon, as an aggravating factor.
  - (iii) Location and circumstances. It is true it was in a war environment. What I kept from those circumstances is the location; you were not in a controlled environment like a fire range where some safety measures are taken. Basically, each soldier must rely on each other to take his own safety measures in order to avoid causing any injuries to someone. Fortunately, nothing happened, but I have to consider it as an aggravating factor.

[11] The court has also considered the following mitigating factors:

- (a) First, there is your guilty plea. Clearly you accepted full responsibility for what you did since the incident occurred. There is your statement just after the incident, there is your letter, and there are your instructions to your counsel to plead guilty at the very first opportunity. You clearly recognized and took full responsibility for the incident and your actions.
- (b) There is no annotation on your conduct sheet, in fact, I haven't seen any conduct sheet, but clearly there is nothing in relation to any disciplinary incidents or disciplinary matters or an indication of any criminal record that you may have.
- (c) Also, I take from the circumstances that it is isolated and an out-of-character incident. Some people would say that it just proves that you are a human being, sometimes those things happen. We do not want to see those things happen, but it happened, but it is not something that you are used to do. It was probably your first and last time before this court.
- (d) There is also your exceptional career within the Canadian Armed Forces. As expressed by Chief Warrant Officer Legault, it is not a coincidence if you achieve what you have achieved in wearing the rank that you have and I think it must be considered, in all of the circumstances, as a mitigating factor.

[12] Usually as a matter of sentence, in such circumstances, it goes from a severe reprimand and a fine to a reprimand and a fine up to a fine as demonstrated by all of the case law provided to the court by the prosecutor. I would add, as said by the Chief Military Judge, Judge Dutil, in *R. v. Ménard*, 2010 CM 1012, at paragraph 10:

Basic military discipline requires that any service member regardless of his or her rank and responsibilities must handle his or her personal weapon with due care. The potential for the mishandling of weapons is increased tremendously as fatigue and stress also increase. This case sends a clear message that the mishandling of weapons by the failure to follow the proper safety measures is treated rigorously regardless of the status and rank of the offender.

[13] In consequence, the Court will accept the joint submission made by counsel to sentence you to a fine in the amount of \$2,000 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:**

[14] **FINDS** Major-General Rouleau guilty of neglect to the prejudice of good order and discipline contrary to section 129 of the *National Defence Act*.

**[15] SENTENCES** Major-General Rouleau to a fine in the amount of \$2,000 payable immediately.

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**Counsel:**

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

Major J.L.P.L. Boutin, Defence Counsel Services, Counsel for Major-General M.N. Rouleau