



## COURT MARTIAL

**Citation:** *R. v. Leadbetter*, 2017 CM 4007

**Date:** 20170405

**Docket:** 201625

Standing Court Martial

3rd Canadian Division Support Base Edmonton  
Edmonton, Alberta, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Master Corporal C.L.J. Leadbetter, Offender**

**Before:** Commander J.B.M. Pelletier, M.J.

---

### REASONS FOR SENTENCE

(Orally)

#### ***Introduction***

[1] Master Corporal Leadbetter, after two witnesses had been heard in your trial before this court martial, you expressed the desire to plead guilty to two of the charges on the charge sheet. Consequent to an agreement with your counsel, the prosecutor obtained my permission to withdraw charges one and three. I have accepted and recorded your guilty plea in respect of charges two and four. The Court now finds you guilty of those charges under sections 97 and 129 of the *National Defence Act (NDA)* for drunkenness and conduct to the prejudice of good order and discipline, in relation to your actions on the early hours of 8 February 2016, when, while intoxicated on an overnight stop in Chicago, United States of America on duty travel to Louisiana with members of your unit, you behaved in a disorderly manner and challenged your platoon commander to fight.

***A joint submission is being proposed***

[2] I now need to impose the sentence. This is a case where a joint submission is made to the Court. Both prosecution and defence counsel recommended that I impose a sentence composed of the punishments of a reprimand and a fine of \$3,000.

[3] The joint submission of counsel severely limits my discretion in the determination of an appropriate sentence. I am not obliged to go along with what is being proposed. However, as any other trial judge, I may depart from a joint submission only if the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest, as promulgated by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43.

[4] While it is my duty to assess the acceptability of the sentence jointly proposed, the threshold to depart from it is high as joint submissions respond to important public interest considerations. The most important gain to all participants is the certainty a joint submission brings, of course, to the accused, but also to the prosecution who wishes to obtain what a military prosecutor concludes is an appropriate resolution of the case in the public interest.

[5] Yet, certainty of outcome is not the ultimate goal of the sentencing process. I must also keep in mind the disciplinary purpose of the Code of Service Discipline and military tribunals in performing the sentencing function attributed to me as military judge. As noted by the Supreme Court in *R. v. Généreux*, [1992] 1 S.C.R. 259, the Code of Service Discipline is primarily concerned with maintaining discipline and integrity in the Canadian Armed Forces (CAF). Courts martial allow the military to enforce internal discipline effectively and efficiently. Punishment is the ultimate outcome once a breach of the Code of Service Discipline has been recognized. The sentencing takes place on a military establishment, in public, in the presence of members of the offender's unit.

[6] The imposition of a sentence at a court martial, therefore, performs a disciplinary function. Article 112.48 of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O) provides that a military judge shall impose a sentence commensurate with the gravity of the offence and the previous character of the offender. When a joint submission is made, the military judge imposing punishment should ensure, at a minimum, that the circumstances of the offence, the offender and the joint submission are not only considered but also adequately laid out in the sentencing decision. This requirement of sentencing at courts martial does not detract from the guidance provided by the Supreme Court on joint submissions, as laid out at paragraph 54 of *R. v. Anthony-Cook*.

***Matters considered***

[7] In this case, the prosecutor provided the documents required by QR&O 112.51 and read a statement reflecting the circumstances of the offences which counsel agreed

should be considered by the Court on sentencing, completing the evidence heard from the first two witnesses called by the prosecution in the trial. An agreed statement of facts and admissions was also introduced on consent to inform the Court as to facts pertaining to Master Corporal Leadbetter's personal circumstances and career. I have also received in evidence a copy of a Recorded Warning imposed following the incident.

[8] For its part, the defence produced, with the consent of the prosecution, two certificates of distinguished service and a Personnel Development Review attesting to the performance of Master Corporal Leadbetter.

[9] In addition to this evidence, the Court also benefitted from the submissions of counsel that support their joint position on sentence on the basis of the facts and considerations relevant to this case, as well as by comparison with judicial precedents in other cases. These submissions and the evidence allow me to be sufficiently informed to impose a sentence adapted to the individual offender and the offences committed.

### *Circumstances of the offender*

[10] Master Corporal Leadbetter is a 33-year-old infantryman who joined the CAF at the age of 26 in April 2010, after obtaining a Bachelor degree in Political Science. Upon joining the 3rd Battalion of the Princess Patricia's Canadian Light Infantry (3 PPCLI), he was quickly assessed as a keen soldier who successfully completed a number of demanding courses to qualify and serve as a parachutist, jumpmaster and infantry section commander. Prior to the incidents which led to the charges, Master Corporal Leadbetter had been an outstanding soldier, as evidenced by the increased responsibilities he has been entrusted with at the Battalion, including promotion to his current rank in 2015 and an impressive performance during the Close Quarter Combat Instructor Course, for which he was awarded a Regimental Achievement Award as Top Candidate in May 2015.

[11] Following the incident, Master Corporal Leadbetter was returned to Canada within hours of the completion of his travel to Louisiana. This prompt return was noticed by others at his unit and caused him personal embarrassment. He felt remorse over letting his unit down and losing a training opportunity. Master Corporal Leadbetter realized that he had drunk to excess during the trip and has taken steps to address the behaviour, determined not to allow himself to become so intoxicated again. The chain of command assessed Master Corporal Leadbetter's conduct as a serious breach of trust and personal discipline, critical attributes in a light infantry battalion conducting many operations at the platoon and section levels. His superiors lost confidence in his ability to work as a jumpmaster, dispatching paratroopers from an aircraft.

[12] Master Corporal Leadbetter was placed on Recorded Warning, completing the monitoring period on 15 September 2016. He was also moved out of B Company for a period of four months, during which he was no longer in a designated parachute position and could not wear a maroon beret, a point of pride for members of parachute

subunits. He regained this privilege upon being moved to the Aerial Delivery Cell, where his highly valued skills could be put to use. The Commanding Officer of 3 PPCLI believes that Master Corporal Leadbetter has the potential to overcome the shortcomings demonstrated by his conduct in this incident, and to regain the trust of his chain of command and his fellow soldiers.

[13] Master Corporal Leadbetter is currently in a relationship with a woman who is a paramedic. She has two children, aged 2 and 9 years old, with which Master Corporal Leadbetter has a good relationship. He also has a 13-year-old son who lives in Nova Scotia and for whom he pays monthly child support as well as travel costs to come to Edmonton to spend the summer.

### *Circumstances of the offences*

[14] To assess the acceptability of the joint submission, the Court has considered the objective seriousness of the offences as illustrated by the maximum punishment that can be imposed. Offences under section 97 of the *NDA* for drunkenness while on active service are punishable by imprisonment for less than two years while offences under section 129 are punishable by the more severe maximum punishment of dismissal with disgrace from Her Majesty's service.

[15] The facts surrounding the commission of the offences in this case are disclosed in the Statement of Circumstances read by the prosecutor and formally admitted as accurate by Master Corporal Leadbetter. These circumstances can be summarized as follows:

- (a) At the time of the offences Master Corporal Leadbetter was employed as a section commander assigned to 4 Platoon, B Company in 3 PPCLI. On 7 February 2016, 4 Platoon had to travel by commercial air to the United States to take part in training exercises at Fort Polk, Louisiana. Master Corporal Leadbetter travelled with a group of soldiers to Chicago, Illinois, for an overnight layover on their way to Louisiana the following day.
- (b) Once at their Marriott hotel, all members of the platoon were briefed in the lobby as to the need to muster in the same location early on the morning of 8 February 2016 to board a shuttle bus to the airport. They were otherwise free to go for the evening.
- (c) As members of 4 Platoon were assembling in the hotel lobby at about 0220 hours on 8 February, it was noticed that Master Corporal Leadbetter and Sergeant Hoekstra were absent. Master Corporal Leadbetter was contacted by cell phone. He had gone to a casino nearby with Sergeant Hoekstra but he could not find his partner at the time of the call. Master Corporal Leadbetter was then tasked to find the sergeant and return to the hotel.

- (d) The platoon commander, Captain Prowse, directed that the members of the platoon proceed to the airport with the shuttle bus. He hoped to find both missing members and proceed with them to the airport. Soon after, a taxi pulled up with the sergeant on board, clearly intoxicated. Captain Prowse advised Master Corporal Leadbetter by phone that the sergeant had just arrived, then proceeded to clear Master Corporal Leadbetter, Sergeant Hoekstra and himself out of the hotel. He then contacted Master Corporal Leadbetter once again to determine his whereabouts. Master Corporal Leadbetter angrily indicated that he was in the hotel lobby. However, he was in fact at a different Marriott hotel. Captain Prowse and Sergeant Hoekstra travelled to that hotel by taxi.
- (e) Upon arriving at the second hotel, Captain Prowse met with Master Corporal Leadbetter, who displayed signs of intoxication. Master Corporal Leadbetter walked straight past Captain Prowse aggressively and forcefully opened the sliding door of the taxi, slamming it and causing damage. Master Corporal Leadbetter yelled at Sergeant Hoekstra and at Captain Prowse as he got into the taxi. When the driver complained and threatened to call the police, Captain Prowse negotiated with him. The driver originally wanted thousands of dollars in compensation for the damage to the door. Captain Prowse advised Master Corporal Leadbetter that he needed to pay for the damage to avoid having the police called.
- (f) Captain Prowse and the driver got the damaged taxi door closed and began travelling to the airport. Captain Prowse was trying to calm the taxi driver and the situation generally, and encouraged Master Corporal Leadbetter to provide a credit card to pay for the damage, which by then had been negotiated down to a few hundred dollars. The driver stopped the taxi on the way to the airport and indicated that he would call the police unless he was paid for the damage. Master Corporal Leadbetter continued being patronizing. When requested to calm down by Captain Prowse, he stated words to the effect of "I don't have to do shit." Captain Prowse addressed him directly as a master corporal and told him clearly to calm down and to stop challenging him. Master Corporal Leadbetter replied, "I'll fucking challenge you. I'll fight you right here."
- (g) Eventually Master Corporal Leadbetter did provide his credit card to the driver who successfully put a charge through. The taxi then continued on its way to the airport. When Master Corporal Leadbetter heard the taxi driver speaking in a foreign language on his cell phone, he muttered words to the effect of "fucking terrorist". This was loud enough that Captain Prowse heard it in the front seat, but the driver did not appear to notice.

- (h) Once at the airport, Master Corporal Leadbetter assisted with moving Sergeant Hoekstra into the terminal and through security. He began to calm down as he was himself assisted from the security gate to the waiting area by another sergeant. He was observed being wobbly and smelling of alcohol. Present in the departure lounge were Master Corporal Leadbetter's direct subordinates and the other privates and corporals of 4 Platoon.

### ***Aggravating Factors***

[16] The circumstances of the offences in this case demonstrate a lack of self-discipline from a relatively experienced soldier. It was unwise for Master Corporal Leadbetter to engage in excessive drinking after having been briefed on the requirement to be ready for transfer to the airport essentially in the middle of the night, while in transit to an important exercise outside of Canada. He got intoxicated to the point of not recognizing that he was not in the same hotel he had checked into hours before. Worse, once in presence of his platoon commander who had joined him in a cab, he engaged in disorderly behaviour, damaging the door of the vehicle, using offensive language towards those present, including his own platoon commander which he addressed in a manner sufficiently inappropriate to constitute conduct to the prejudice of good order and discipline in the circumstances.

[17] Specifically, the conduct of Master Corporal Leadbetter reveals the following aggravating factors:

- (a) The fact that the offences were committed during duty travel in a foreign country to attend a training exercise. Members of the CAF on duty outside of Canada are implicitly entrusted with a duty to be ambassadors for their country towards foreign forces and citizens of the host country. The misbehaviour in this case constitutes a breach of that trust.
- (b) The extent of the misbehaviour, both in terms of its duration and in terms of the level of disrespect that it represents, especially the words used by Master Corporal Leadbetter. Despite the continued efforts of Captain Prowes to defuse the situation, Master Corporal Leadbetter continued to vent his anger by verbally abusing those present, going as far as to formulate an invitation to fight directed at his platoon commander, the very person who represented the military authority to whom he owed obedience and respect.
- (c) The rank of the offender and his level of responsibility towards subordinates as a section commander. I recognize that Master Corporal Leadbetter was junior in his rank at the time of the offences but he did wear that rank and, as such, was duty-bound to lead by example. He did the opposite by his absence from the bus at the set departure time for the

airport and by his late arrival in the departure lounge in a state of intoxication.

[18] The prosecution proposed in submissions a number of other factors as aggravating, which I do not accept as such either because they are part of the elements of the offences or are not direct consequences of the offender's behaviour nor within his control. Such is the case, for instance, with the fact that as a result of the decision made to repatriate Master Corporal Leadbetter to Canada, his platoon had to compensate for his loss in the course of the exercise. Yet, such repatriation was not mandatory in the circumstances of this case. The consequential shortage of personnel for the exercise was a result of the choice made by the chain of command and cannot constitute an aggravating factor as it relates to punishment of the offender.

[19] Indeed, the court must be cautious in assessing what constitutes aggravating circumstances in a given case as the impact of aggravating factors is to increase the sentence that would otherwise be warranted. The law, in my view, supports this cautious approach. For instance, QR&O 112.53 (b) provides that aggravating facts must be proven on the highest standard of proof beyond a reasonable doubt where there is any dispute.

### *Mitigating factors*

[20] The Court also considered the following as mitigating factors arising either from the circumstances of the offences or the offender in this case:

- (a) First, Master Corporal Leadbetter's guilty plea, which I consider as a clear indication that the offender is taking full responsibility for his actions, in this public trial in the presence of members of his unit and of the broader military community. In this case, this factor has a reduced impact given that the plea came in the course of the trial, after witnesses had been heard, including Captain Prowse who was deployed in Iraq and travelled to Edmonton for his testimony;
- (b) Second, the fact that Master Corporal Leadbetter has no criminal or disciplinary record and is therefore considered a first-time offender;
- (c) Third, Master Corporal Leadbetter's performance in his service with the CAF, both before and since the incident giving rise to the charges, which has been assessed as excellent, in a demanding area that requires specialist skills;
- (d) Finally, the efforts invested by Master Corporal Leadbetter since the offences to address his shortcomings, specifically his excessive alcohol consumption on that occasion. This reveals his potential to continue making a significant contribution to the CAF in the future, as evidenced by the successful completion of remedial measures and the confidence

expressed on behalf of the chain of command to the effect that Master Corporal Leadbetter is well on his way to regaining the confidence of superiors and subordinates alike.

***Objectives of sentencing to be emphasized in this case***

[21] I agree with counsel that the circumstances of this case require that the focus be placed on the objectives of denunciation, as well as specific and general deterrence in sentencing the offender. At the same time, any sentence imposed should not compromise the rehabilitation of Master Corporal Leadbetter. I note, as highlighted by defence counsel, that the administrative measures imposed on Master Corporal Leadbetter, especially his repatriation and his temporary move to another company in the Battalion, measures which were both known to his colleagues, went some way to provide for measures of general and specific deterrence that the sentence must simply enhance.

***Assessing the joint submission***

[22] The first thing I need to do is to assess the joint submission and determine if it is acceptable. The prosecutor and defence counsel both recommended that I impose a sentence composed of the punishments of reprimand and a fine of \$3,000. I may depart from the joint submission only if I consider that this proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[23] As a military judge, the issue for me to assess is not whether I like the sentence being jointly proposed or whether I would have come up with something better. Indeed, any opinion I might have on an appropriate sentence is not sufficient for me to reverse the joint submission that was made.

[24] The high threshold imposed on trial judges to reverse joint submissions is necessary to allow all of their benefits to be obtained. Prosecution and defence counsel are well placed to arrive at a joint submission that reflects the interests of both the public and the accused. They are knowledgeable about the circumstances of the offender and the offences, as with the strengths and weaknesses of their respective positions. The prosecutor who proposes the sentence is in contact with the chain of command. He or she is aware of the needs of the military and civilian communities and is charged with representing those interests in seeing that justice be done. Defence counsel is required to act in the accused's best interests, including ensuring that the accused's plea is voluntary and informed. Both counsel are professionally and ethically bound not to mislead the court. In short, they are entirely capable of arriving at resolutions that are fair and consistent with the public interest.

[25] In determining whether a jointly proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest, I must ask myself whether, despite the public interest considerations that support imposing it, the joint submission is so markedly out of line with the expectations of



reasonable persons aware of the circumstances of the case that they would view it as a breakdown in the proper functioning of the military justice system. Indeed, I have to avoid rendering a decision that causes an informed and reasonable public, including members of the CAF, to lose confidence in the institution of the courts.

[26] I do believe that an informed and reasonable person aware of the circumstances of this case would expect that the offender would receive a sentence composed of punishments that both express disapprobation for the failure in discipline involved and have a personal impact on the offender. A sentence composed of the punishments of a reprimand and a fine is aligned with these expectations. From the cases brought to my attention, it would appear that punishments of a reprimand and fines have been imposed in the past for similar behaviour. The proposed sentence, including the quantum of the proposed fine, is within the range of sentences previously imposed in similar circumstances.

[27] Considering all of these factors, as well as the circumstances of the offences and of the offender, the applicable sentencing principles and the aggravating and the mitigating factors mentioned previously, I am unable to conclude that the sentence jointly proposed by counsel would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. The Court will, therefore, accept it.

[28] Under section 145(2) of the *NDA*, the terms of payment of a fine are in the discretion of the service tribunal that imposes it. At the sentencing hearing, the parties united in submitting that the fine be paid in 12 monthly instalments of \$250.

[29] Master Corporal Leadbetter, the circumstances of the charges you pleaded guilty to are not insignificant as they reveal a marked disconnect between your actions and the expectations of the leadership as it pertains to representing Canada abroad and the respect that is expected from all members of the CAF towards others, including civilians, peers and especially superiors. I hope you realize that the anger you displayed could have had much more serious consequences. That being said, I am endorsing the joint submission made to me, confident that you have learned something from your unfortunate experience in the United States last year and that you are determined not to repeat your mistakes.

**FOR THESE REASONS, THE COURT:**

[30] **SENTENCES** you to a reprimand and a fine of \$3,000 payable in 12 monthly instalments of \$250, commencing no later than 1 May 2017. In the event that you are released from the CAF for any reason before the fine is paid in full, then any outstanding unpaid balance will be due the day prior to your release.

---

**Counsel:**

The Director of Military Prosecutions as represented by Captain G.J. Moorehead

Lieutenant-Colonel D. Berntsen, Defence Counsel Services, Counsel for Master  
Corporal C.L.J. Leadbetter