**COURT MARTIAL**

**Citation:** *R. v. Smith*, 2022 CM 4013

**Date:** 20220926
**Docket:** 202228

Standing Court Martial

Canadian Forces Base Halifax
Halifax, Nova Scotia, Canada

**Between:**

**His Majesty the King**

- and -

**Cpl T.N. Smith, Offender**

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

---

## REASONS FOR SENTENCE

(Orally)

### ***Introduction***

[1] Having accepted and recorded the guilty plea of Corporal (Cpl) Smith in respect of the second charge on the charge sheet, the Court now finds him guilty of that charge for accessing the Canadian Police Information Centre database for an unauthorized purpose, an act to the prejudice of good order and discipline, contrary to section 129 of the *National Defence Act*.

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

[2] I now need to impose the sentence. This is a case where a joint submission was made to the Court. Both prosecution and defence counsel recommended that I impose a sentence constituted of a fine of $1500.

[3] This recommendation of counsel severely limits my discretion in the determination of an appropriate sentence. 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. This is the test promulgated by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43.

[4] Indeed, the threshold to depart from the joint submission being made is high as joint submissions respond to important public interest considerations. The prosecution agrees to recommend a sentence that the accused is prepared to accept, avoiding the stress and expense of a trial and allowing efforts to be channelled into other matters. Furthermore, offenders who are remorseful may take advantage of a guilty plea to begin making amends. The most important benefit of joint submissions is the certainty they bring to all participants in the administration of justice.

[5] Yet, even if certainty of outcome is important for the parties, it 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 a military judge. As recognized by the Supreme Court of Canada, 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 following either a trial or a guilty plea. It is the only opportunity for the Court to deal with the disciplinary requirements brought about by the conduct of the offender, on a military establishment, in public and in the presence of members of the offender's unit.

[6] The imposition of a sentence at court martial proceedings, therefore, performs an important disciplinary function, making this process different from the sentencing usually performed in civilian criminal justice courts. Even 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 to an extent that may not always be necessary in other courts.

[7] The fundamental principle of sentencing found at section 203.2 of the *National Defence Act* provides that a military judge shall impose a sentence commensurate with the gravity of the offence and the degree of responsibility of the offender.

***Matters considered***

[8] In this case, the prosecutor read a Statement of Circumstances which was formally admitted as accurate by Cpl Smith. It was entered in evidence as an exhibit, along with other documents provided by the prosecution as required at *Queen's Regulations and Orders for the Canadian Forces* (QR&O) article 112.51.

[9] For its part, the defence produced a Statement of Facts, agreed to by the prosecution, which sheds some light on the particular circumstances of Cpl Smith

before, at the time and since the commission of the offence. Importantly, Cpl Smith offered an apology, in court, for his actions.

[10] In addition to this evidence, counsel made submissions to support their position on sentence on the basis of the facts and considerations relevant to this case and of precedents in other cases, in order to assist the Court to adequately apply the purposes and principles of sentencing to the circumstances of both the individual offender and the offence committed.

[11] The Statement of Circumstances, the Statement of Facts, the submissions of counsel and the information on the documents entered as exhibits reveal the following circumstances relevant to the offence and the offender.

***The offence***

[12] The Statement of Circumstances reveals the following information as it pertains to the offence:

(a) at the material time, the offender was a member of the regular force posted to the Military Police (MP) Unit Halifax since June 2021;

(b) on 26 August 2021, Cpl Smith was conducting a patrol with Cpl McPherson, his Field Training Officer at the time. Cpl McPherson was logged into the MP cruiser's Mobile Data Terminal (MDT), the cruiser's computer used to access police databases including the Security and Military Police Information System (SAMPIS) and the Canadian Police Information Centre (CPIC);

(c) Cpl McPherson stopped at a corner store, leaving Cpl Smith alone in the vehicle. While Cpl McPherson was inside the store, Cpl Smith ran a CPIC query on the MDT, searching the name of an ex-girlfriend. There was no official purpose for this use of CPIC;

(d) when Cpl McPherson returned to the vehicle, he confronted Cpl Smith about his activity on the MDT. Cpl Smith's response was evasive, and indicated he was using the terminal to practice running queries;

(e) use of CPIC for anything other than for official purposes is forbidden by Canadian Forces Military Police (CFMP) Group Order 2-640; and

(f) on 16 August 2021, Cpl Smith had signed a Canadian Forces Military CPIC User Acknowledgment form acknowledging that he understood the contents of CFMP Group Order 2-640, and that any unauthorized use of CPIC could result in lawful sanctions including charges and/or dismissal from employment.

***The offender***

[13] Cpl Smith is a forty-two year old military policeman who first joined the Canadian Armed Forces (CAF) in December 2005 as a vehicle technician with the reserve force. He left the military in 2010 but re-joined in the regular force in 2019 to become a member of the military police. Obtaining basic military qualifications in 2019, he completed initial military police training at the Canadian Forces Military Police Academy at Canadian Forces Base (CFB) Borden. He was then posted with the MP Unit in Halifax in June 2021, his first posting to a patrol position following his initial MP training.

[14] The Statement of Facts, complemented by submissions of counsel, reveals the following:

(a) Cpl Smith received limited training on CPIC at the Canadian Forces Military Police Academy. Candidates have to complete an online course on how to navigate through the MDT while carrying on with other training. As the content of the online course is limited, candidates are informed that exposure to, and familiarization with the MDT will be completed through their Field Training Officers once at a MP detachment;

(b) on 22 June 2021, Cpl Smith started patrols on shift with an experienced Cpl, who was assigned as his Field Training Officer for coaching purposes. In early July, that person was moved to another section and not replaced. Following a month's leave, Cpl Smith returned to patrol duties on 16 August 2021. Cpl Smith had different Field Training Officers until the day of the offence on 26 August 2021;

(c) during that time, Cpl Smith had to use his Field Training Officer's CPIC and SAMPIS accounts on the MDT. Having been informed that he would soon start patrolling alone, Cpl Smith still felt uncomfortable using the MDT;

(d) during his patrol with Cpl McPherson on 26 August 2021, Cpl Smith looked up four vehicles, including his own, for training purposes. He also, without authority, queried the name of a former girlfriend on the system while using Cpl McPherson's account on the MDT;

(e) in September 2021 an investigation was started and Cpl Smith was removed from patrol duties and assigned for duties with Support Services of Military Police Unit Halifax. His CPIC and SAMPIS access were removed;

(f) on 17 March 2022, Cpl Smith's military police credentials were temporarily suspended. As a consequence of the suspension, Cpl Smith

is barred from the performance of policing duties or functions and is prohibited from using military police intermediate weapons. Cpl Smith can be, and has been, employed in the performance of military duties which do not require the appointment as peace officer for the enforcement of the Code of Service Discipline under Section 156 of the *National Defence Act*; and

(g) following the disciplinary proceedings, the re-instatement of Cpl Smith's credentials is not automatic. In accordance with regulations, a panel assigned by the Military Police Credentials Review Board will make recommendations to the Provost Marshal which could include the permanent revocation, the suspension for up to 180 days or the re-instatement of the military police credentials of Cpl Smith.

***Seriousness of the offence***

[15] The Court has considered the objective gravity of the offence in this case. The offence in section 129 of the *National Defence Act* attracts a maximum punishment of dismissal with disgrace from Her Majesty's service. It is therefore an objectively serious offence going to the core of the need to maintain a disciplined armed force.

[16] Of course, a broad range of circumstances can lead to offences under section 129. This case illustrates a lack of judgement. It lead a promising member of the military police to misuse an information system reserved for official duties, in direct contraventions of applicable orders. This failure to adhere to orders and instructions was admittedly prejudicial to good order and discipline and could not be tolerated. Cpl Smith admitted as much in his apology.

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

[17] The circumstances of this case require that the focus be placed on the objectives of denunciation and deterrence in sentencing the offender. The sentence proposed must be sufficient not only to deter Cpl Smith from reoffending, but must also denounce his conduct in the community, especially the military police, acting as a deterrent to others who may be tempted to engage in the same type of unacceptable behaviour.

[18] The sentence must show that misbehaviour has consequences. In arriving at an appropriate sentence in this case however, I must take into consideration the fact that there have already been consequences imposed on Cpl Smith since August 2021, when the offence occurred. The changes in his duties and the revocation of military police credentials are administrative consequences which reduce the need for specific deterrence and have no doubt had a denunciating effect in the military police community. The same can be said for the fact that a prosecution by court martial is likely to have a significant deterrent effect on a member of the military police which may not be present for other members of the CAF not involved in the administration of military justice. These factors do mitigate the need for specific and general deterrence in

the circumstances of this case, even if they cannot be classified as mitigating or aggravating per se.

[19] The circumstances of this case also reveal the need to keep in mind the objective of rehabilitation. As highlighted by counsel, the sentence proposed must not compromise the efforts that Cpl Smith still has to make to rehabilitate himself as a member of the military police, efforts which he has displayed already given his satisfactory performance since the offence, as agreed by both counsel.

***Aggravating factors***

[20] The prosecution submits a number of aggravating factors which I believe can be included into one basic concern, namely the breach of trust that the offence reveals. Indeed, Cpl Smith was entrusted with access to CPIC by virtue of his duties as a member of the military police. Those entrusted by the public to have access to sensitive information are expected to adhere to a high standard of conduct, including strict adherence to measures in place for the protection of that information. Even if there was no evidence of any use or specific purpose for which a CPIC query was made in this case, except to satisfy curiosity, it remains that the conduct breached the trust given to Cpl Smith to protect the information he has access to as a peace officer. It constitutes a breach of his obligations to use this privileged access strictly in accordance with applicable orders which he was aware of, having acknowledged these orders a short time prior to the offence. Regardless, the offence here is not technical in nature. The circumstances reveal a breach of a fundamental obligation to access police information strictly for the purposes of upholding the law.

***Mitigating factors***

[21] That said, the Court acknowledges the following mitigating factors:

(a) Cpl Smith's guilty plea today, which avoided the expense and energy of running a trial and demonstrates that he is taking responsibility for his actions in this public trial in the presence of members of his unit and of members of the broader community;

(b) the fact that Cpl Smith has no record and must be considered a first-time offender;

(c) the genuine acknowledgement by Cpl Smith in court that he has made a mistake and his apology to those involved in the incident, especially his fellow officers and the chain of command; and

(d) the fact that Cpl Smith appears to be well-engaged in rehabilitating himself hence is deserving of a sentence which will not compromise this rehabilitation and have minimal consequences for his potential to contribute to the CAF and to society in the future.

[22] In stating this, the Court also acknowledges that the future contribution that Cpl Smith will be allowed to make as a member of the military police is subject to a review process by other authorities.

***Assessing the joint submission***

[23] In the context of arguments to demonstrate that their joint submission was within a range of similar sentences for similar offences, counsel brought three cases to my attention, giving some indications as to the applicable range of sentence. The first case which is particularly on point as it is specific to misuse of CPIC to satisfy curiosity is the case of *R. v. Shokouhi*, 2015 CM 1007, where a member of the military police in the same rank as the offender in this case admitted to making about seventy unauthorized queries in CPIC over a period of a year and a half. He pleaded guilty to two charges under section 129 and was sentenced to a fine of $2000 following a joint submission. Two other cases were mentioned: a member of health services accessing medical information about a CAF member he was in a legal conflict with (*R. v. Laporte*, 2015 CM 3016); and another member of the military police conducting searches on the Department of Motor Vehicle database located at the CFB Gagetown guardroom to obtain information at the request of his father-in-law who was in a in the business of repossessing vehicles in New Brunswick (*R v Hunter,* 2012 CM 4002). I do not find these two cases to be entirely useful considering that they deal with obtaining info for purpose and, in the case of *Hunter*, the sentence having been determined in consideration of exceptional circumstances, notably the fact that the offender was affected in a negative manner by the lengthy delay, resulting in a particularly lenient sentence which constitutes an anomaly.

[24] I do believe that the outcome in *Shokouhi* is more in-line with circumstances here, although it involved significantly more occurrences of unauthorized access over a long period of time and the offender was found guilty of two charges.

[25] Having considered these other cases, I do agree with counsel that the proposed sentence is within the range of sentences imposed for similar behaviour in the past. In any event, the issue for me to assess as military judge is not whether I like the sentence being jointly proposed or whether I would have come up with something better. As stated earlier, I may depart from the joint submission of counsel only if I consider that the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

[26] In determining whether that is the case, I must ask myself whether 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. In this case, I do believe that a reasonable person aware of the circumstances would expect the offender to receive a punishment which expresses disapprobation for the failure in discipline involved and have a direct impact on the offender. The fine being proposed is aligned with these expectations.

Specifically, I am satisfied that it is a punishment suited to meet the objectives of denunciation and deterrence, without having a lasting effect detrimental to rehabilitation of the offender in the circumstances of this case.

[27] As recognized by the Supreme Court of Canada, trial judges must refrain from tinkering with joint submissions if their benefit can be maximized. Indeed, prosecution and defence counsel are well placed to arrive at joint submissions that reflect the interests of both the public and the accused. They are highly knowledgeable about the circumstances of the offender and the offence, as they are with the strengths and weaknesses of their respective positions. The prosecutor who proposes the sentence is in contact with the chain of command and victims. He or she is aware of the needs of the military and civilian communities, and is charged with representing the community's interest 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 bound professionally and ethically not to mislead the Court. In short, they are entirely capable of arriving at resolutions that are fair and consistent with the public interest, as they have demonstrated in this case.

[28] Considering the circumstances of the offence and of the offender, the applicable sentencing principles, and the aggravating and mitigating factors mentioned previously, I conclude that the sentence being jointly proposed would not bring the administration of justice into disrepute nor would otherwise be contrary to the public interest. I will, therefore, accept it.

[29] Cpl Smith, I accept the submission of your counsel essentially to the effect that your conduct of August 2021 reveals a lack of judgement on the part of an otherwise exemplary member of the military police. I trust you have learned a lesson and that you are determined to do much better in the future. From there, I hope you will be able to move on and be allowed to contribute positively to the important task of law enforcement within and in relation to the CAF and its members.

**FOR THESE REASONS, THE COURT:**

[30] **SENTENCES** Cpl Smith to fine of $1500 payable forthwith.

---

**Counsel:**

The Director of Military Prosecutions as represented by Major M. Reede

Major É. Carrier, Defence Counsel Services counsel for the Offender, Cpl T.N Smith