COURT MARTIAL

Citation: *R. v. Tseng*, 2025 CM 6007

Date: 20251015
Docket: 202516

Standing Court Martial

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

Between:

His Majesty the King

- and -

Captain A. Tseng, Offender

Before: Colonel N.K. Isenor, M.J.

REASONS FOR SENTENCE

(Orally)

I. Overview

[1] Captain (Capt) Tseng, you were facing one charge of having absented himself without leave contrary to section 90 of the *National Defence Act* (*NDA*) in relation to a lengthy period of allegedly unauthorized absence from 20 May to 27 July 2025 from your unit 1 Military Police (MP) Regiment, Edmonton. The Court has accepted and recorded your plea of guilty in respect of the charge. As part of the sentencing hearing, counsel proposed a joint submission, recommending that I impose a punishment of a severe reprimand and a fine in the amount of $8,000.

[2] The Court must therefore determine whether imposing the sentence jointly recommended by counsel is contrary to the public interest in the circumstances of this case. For the reasons that follow, the Court accepts and will impose the sentence recommended by counsel.

Context

[3] The relevant facts surrounding the commission of the offence were summarized in the Statement of Circumstances, to which Capt Tseng admitted as true, and read as follows:

"**STATEMENT OF CIRCUMSTANCES (QR&O 112.51(3))**

Background

1. At all material times, Capt Tseng was a member of the Regular Force with 1 MP Squadron at CFB Cold Lake, Alberta.

2. At the time of the incident, Capt Tseng was employed as a military police officer.

Incident

3. On 6 May 2025, Capt Tseng was granted compassionate leave from 7 May until 19 May 2025 inclusively by his chain of command, so that he could address personal family issues.

4. On 20 May 2025, Capt Tseng failed to report for duty. Capt Tseng did not seek any leave extension or attempt to communicate with his chain of command. Capt Tseng's failure to return to duty after his leave ended triggered a search.

5. The search initially involved military police, then CFNIS, and eventually expanded to include the RCMP.

6. Police sought and obtained multiple warrants to track cellphones, vehicles, obtain CCTV footage, and banking transactions, all with the aim of locating Capt Tseng.

7. Capt Tseng avoided detection by switching cellphones and vehicles.

8. On 28 June 2025, Capt Tseng left a voicemail with Sgt Burton of the CFNIS where he stated the following:

   a. He knew that military police were concerned about his disappearance;

   b. He admitted he had gone into hiding; and

c. He stated that he would not contact CFNIS any further and that any further contact with CFNIS would be done through a national security lawyer.

9. On 28 July 2025, at 1237hrs (EST), Capt Tseng's Porsche vehicle was located near Richmond Hill, where MPs were able to locate and arrest Capt Tseng.

10. Capt Tseng was held in military custody at CFB Borden from 28 July 2025 until he was released by a military judge on 31 July 2025.

11. Capt Tseng has since been posted to 1 MP Regt in Edmonton, but is unable to be assigned any policing duties as a result of his release conditions and the charges against him.

12. Between 20 May and 27 July 2025, Capt Tseng completed no CAF-related duties whatsoever."

II. Whether imposing a severe reprimand and a fine in the amount of $8,000 would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

Positions of the parties

Prosecution

[4] The prosecution contends that a severe reprimand and an $8,000 fine, jointly recommended by counsel, is the appropriate punishment in the circumstances of this case.

[5] The prosecution considered the fact that the offence was committed over a significant period of time aggravating, as well as the rank and position of the member being a military police officer.

[6] The prosecution considered the fact that the offender used a level of premeditation and planning to remain absent for over two months aggravating. Also aggravating was the negative impact on the unit both from a staffing and tasking perspective, as well as from a discipline and morale of the military police point of view.

[7] The prosecution considered mitigating the offender's lack of a conduct sheet, as well as his early guilty plea. As a result of these factors, the prosecution contends that denunciation, general deterrence, and maintenance of public trust should be the most important objectives for this case.

[8] The prosecution is of the view that a sentence of a severe reprimand and a fine in the amount of $8,000 will denounce and deter the conduct. Both the prosecution and

defence counsel agree that should part of Capt Tseng's sentence include a fine, terms directing Capt Tseng to pay the fine forthwith within the week would be appropriate.

Defence

[9] Counsel for the defence provided additional information in relation to the personal situation of the offender, as well as three character references and three CAF performance appraisal reports, all highlighting the strong performance of Capt Tseng, as well as the trust and respect he held amongst his peers.

[10] Defence counsel highlighted the fact that Capt Tseng took responsibility for his actions immediately and indicated his intention to plead guilty at the earliest possible opportunity.

[11] Defence contends that these actions are completely out of character for Capt Tseng and he found himself in an unexpected situation that had turned his life upside down.

[12] Defence counsel submits that Capt Tseng is committed to doing better and has taken positive steps to correct his behaviour.

[13] Defence counsel submits that the jointly proposed sentence of a severe reprimand and an $8,000 fine is the appropriate sentence in the circumstances.

Sentencing Principles

[14] When determining a sentence, the Court must be guided by the sentencing principles contained in the *NDA*. In this context, subsection 203.1(1) of the *NDA* provides that "the fundamental purpose of sentencing is to maintain the discipline, efficiency and morale of the Canadian Forces."

[15] This is to be achieved by imposing punishments that have one or more of the objectives outlined at subsection 203.1(2) of the *NDA*. These objectives include such things as "to promote a habit of obedience to lawful commands and orders", "to maintain public trust in the Canadian Forces as a disciplined armed force" and "to denounce unlawful conduct and the harm done to victims or to the community that is caused by the unlawful conduct".

[16] The fundamental principle of sentencing is found at section 203.2 of the *NDA*. It states, "A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender."

[17] There are a number of other sentencing principles outlined at section 203.3 of the *NDA* that a sentencing judge must also take into consideration when imposing a sentence. They include that "a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances", and that "a

sentence should be the least severe sentence required to maintain the discipline, efficiency and morale of the Canadian Forces".

[18] One or more of these objectives will inevitably predominate in the crafting of a fit sentence in an individual case, yet it must be kept in mind that each of these goals calls for the attention of the sentencing court, and a fit sentence should reflect an appropriate blending of these goals, tailored to the particular circumstances of the case.

[19] As recognized by the Supreme Court of Canada (SCC), courts martial allow the military to enforce internal discipline effectively and efficiently.

[20] 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 and 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.

[21] 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.

[22] Even when a joint submission is made, the military judge imposing punishment should ensure, at a minimum, that the circumstances of the offence and the offender 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.

[23] As this Court informed you when you entered your plea of guilty, section 139 of the *NDA* prescribes the possible punishments that may be imposed at courts martial. Those possible punishments are limited by the provision of the law which creates the offence and provides for a maximum punishment.

[24] Only one sentence is imposed upon an offender whether the offender is found guilty of one or more different offences, but the sentence may consist of more than one punishment.

The public interest test

[25] The Supreme Court of Canada in the case of *R. v. Anthony-Cook*, 2016 SCC 43 at paragraph 32 has stated that "a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest."

[26] The public interest test requires that the joint submission be rejected only when it is so unhinged from the circumstances of the offence and the offender, that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution

discussions, to believe that the proper functioning of the justice system had broken down. This means that a sentencing judge may only depart from a joint submission where the joint submission is so lenient, or so severe, as the case may be, when viewed in light of the circumstances of the case and the offender, that accepting it would bring the administration of the military justice system into disrepute. Consequently, this recommendation severely limits my discretion in the determination of an appropriate sentence.

[27] 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 channeled 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.

Circumstances of the offender

[28] As for the offender's personal situation, the documentary evidence listed at article 111.17 of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O), as well as the Agreed Statement of Facts, the three character reference letters and CAF Performance Appraisal Reports for the last three years admitted into evidence reveals the following:

(a) Capt Tseng is twenty-eight years old. Capt Tseng is married and has no children;

(b) after completing a university degree in linguistics, he enrolled in the CAF in 2019 as a military police officer. Upon completion of Basic Military Officer Qualification (BMOQ) in July 2019, he was posted to Canadian Forces Base (CFB) Esquimalt and began his training. While employed at CFB Esquimalt, he received a commanding officer's (CO) coin for his performance;

(c) Capt Tseng was posted to the Canadian Forces Military Police Academy (CFMPA) between January and August of 2022. Upon graduation from CFMPA, he was posted to 1 MP Squadron based out of Cold Lake, Alberta, where he took on the role of squadron operations officer;

(d) between April 2024 and September 2024, he was also the acting deputy commanding officer of 1 MP Squadron. For his performance in these roles, he received another CO's coin and was nominated to succeed the outgoing Detachment Commander in Cold Lake;

(e) he assumed the role of detachment commander in Cold Lake in September 2024;

(f) on 5 May 2025, Capt Tseng was provided disturbing information by Major Nehme, his supervisor, and Cold Lake Royal Canadian Mounted Police (RCMP) about his spouse. This information came to light following a fraud complaint from Capt Tseng's family to the RCMP;

(g) this fraud complaint originated due to a mortgage being registered against an income property condominium in Vancouver. This income property was owned by Capt Tseng until 29 September 2025 and had been originally purchased by his family;

(h) the mortgage funds were used to finance the purchase a residence in Cold Lake for the use of Capt Tseng and his spouse;

(i) Capt Tseng was visibly upset by the information provided by the RCMP and was seriously concerned about the potential impact of this information on his career and his relationship with his spouse and his family;

(j) upon Capt Tseng's release from custody on 31 July 2025, he flew back to Edmonton on 1 August 2025 where he reported for duty at his new position as plans officer for 1 MP Regiment;

(k) since his release, he has complied with all the conditions imposed at the Custody Review Hearing;

(l) character references and CAF performance appraisal reports reveal that up to the occurrence of the offence, and in fact after returning to duty with his new unit, Capt Tseng has shown himself to be a strong performer and has been of dependable character;

(m) Capt Tseng has requested release from the Canadian Armed Forces (CAF). His release date has not yet been approved; however, it is tentatively set for January 2026; and

(n) Capt Tseng has no conduct sheet or civilian criminal record.

Circumstances of the offence - Aggravating and mitigating factors

[29] As part of my analysis to decide whether I would accept the joint submission, I have considered the objective gravity of the offence. The offence in section 90 of the *NDA* attracts a maximum punishment of imprisonment for less than two years or to less punishment. It is therefore objectively one of the least serious offences under the Code of Service Discipline.

[30] The Court must also consider aggravating and mitigating factors that may justify a higher or lower punishment. The Court considered the following factors to be aggravating in this case:

(a) first, the extended period of time over which the offence was committed. The offender was absent without leave for a total period of sixty-nine days;

(b) second, the sheer amount of resources that had to be dedicated to finding Capt Tseng, including military police, Canadian Forces National Investigation Service (CFNIS), and the RCMP, involving multiple warrants, all while he was actively evading being located by deliberately changing phones and vehicles. It is not lost on the Court that these valuable resources were not being dedicated to other policing matters while they were diverted to dealing with Capt Tseng's deliberate actions. The Military Impact Statement reveals that in addition to all this, Capt Tseng's actions had a negative impact on morale and discipline of the military police as well;

(c) third, the fact that the offender had to be apprehended by other members of the military police. This is not a case where the offender turned himself in or returned to work despite being aware that the military police were actively searching for him; and

(d) fourth, the fact that the offender was an officer of the rank of captain, and a member of the military police— the very military occupation that the CAF depends on to ensure adherence and respect for the law.

[31] As stated in *R. v. Doering*, 2020 ONSC 5618 at paragraph 27:

> [B]reach of trust can arise even where there is no deliberate exploitation of authority. Police criminality is, on its face, a violation of the general trust reposed in police to uphold and enforce the law. It is an implicit condition of that trust that police will obey the laws that they are enforcing. Viewed in this light, it is difficult to imagine an offence by a police officer that does not in some way, breach the public's trust.

[32] However, the Court also identified the following mitigating factors:

(a) first, the absence of a conduct sheet or criminal record, showing that Capt Tseng is a first-time offender;

(b) second, the positive CAF Performance Appraisal Reports and character references provided in support of Capt Tseng. It is clear that he was performing strongly in his career prior to this incident and enjoyed the trust and respect of his peers and co-workers. It is also clear from the evidence that this offence is completely out of character. It also

demonstrates a positive performance since the offence, and the Court finds this very positive; and

(c) third, Capt Tseng's early guilty plea and apology in court, 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 former unit and the military community. There is no doubt that this had a significant deterrent effect on Capt Tseng and on the members of his unit/the military community. The message is that this kind of conduct will not be tolerated in any way and will be dealt with accordingly.

Parity

[33] To determine the appropriate sentence for Capt Tseng, I must first identify the objective range of sentences for similar offences. This assessment considers typical offence characteristics, assuming the offender has good character and no criminal record. The sentencing process requires military judges to closely examine past precedents and compare the facts of the case with similar situations. Treating similar conduct with parity is crucial for maintaining discipline in the military context.

[34] In terms of assessing the joint submission, in the context of arguments to demonstrate that the joint submission was within a range of similar sentences for similar offences, the prosecution brought six cases to my attention, and defence counsel added an additional two.

[35] The cases referred to by the prosecution include:

(a) *R. v Letkeman*, 2021 MBCA 68, where the Manitoba Court of Appeal confirmed that police officers hold a duty of high level of public trust by the community because they have statutory powers to act beyond what would normally be considered reasonable by civilians, and that this trust comes with the concept that police officers who commit acts beyond the special powers accorded to them that amount to criminal actions will be dealt with harshly by the courts as a way of maintaining public confidence through deterrence and denunciation. As such, the standard is to hold them to a higher standard than would be expected of an ordinary citizen and that the sentencing principles of denunciation and deterrence are paramount, and are the guiding principles in such cases;

(b) *R. v Schertzer*, 2015 ONCA 259, where the Ontario Court of Appeal confirmed that sentences for police offenders should be more severe than those for civilians who commit the same crime, because of the public trust that police officers hold at the time of their offence and their knowledge of the consequences of committing the offence;

(c) *R. c. Lavoie*, 2023 CM 4013, where a member of the military police of the rank of corporal pled guilty to one charge under section 90 of the *NDA* for travelling by air from Cold Lake, Alberta to Halifax, Nova Scotia to see his pregnant fiancée instead of isolating at home after testing positive for COVID-19. After a contested sentencing hearing, the offender was sentenced to a reprimand and a fine in the amount of $2,000;

(d) *R. v Weldam-Lemire*, 2011 CM 4019, an ordinary seaman was found guilty of one charge of having disobeyed the lawful command of a superior officer and two charges under section 90 of the *NDA*, for failing to attend his superior's office, as well as being absent from duty watch. The offender had eight convictions on his conduct sheet, including four convictions for being absent without authority, and at the time of sentencing had been released under QR&O subparagraph 15.01(5)(f) being unsuitable for further service. After a joint submission, the offender was sentenced to ten days of imprisonment (suspended) and a fine in the amount of $1,000;

(e) *R. v. ex-Private J.M. Vautier*, 2005 CM 3, an ex-private who pled guilty to one charge of stealing a bank card and withdrawing funds, and three charges under section 90 of the *NDA*, for failing to attend his place of duty for twenty-six hours, twenty-four hours and eight hours respectively. The offender was also sentenced for failing to appear when summoned to do so before a service tribunal. The offender was released from the CAF as being unsuitable for further service prior to sentencing. After a jointly recommended sentence of one day of imprisonment (suspended) was rejected by the military judge, the offender was sentenced to thirty days' imprisonment, with six days of pre-sentence custody being credited at a rate of two days credit for each day spent in custody, resulting in the offender being sentenced to serve eighteen days imprisonment (suspended);

(f) *R. v. Dahmani*, 2014 CM 3027, a sapper who pled guilty to five charges under section 90 of the *NDA*, and one charge of failing to comply with a condition. Absences included half days, full days and culminated in a forty-four-day absence and then a forty-seven-day absence. The offender was seeking treatment for addiction to drugs and alcohol. The offender had served twenty-one days of pre-trial custody. After a joint submission, the offender was sentenced to twenty-one days' imprisonment (suspended) and dismissal from Her Majesty's service.

[36] The cases referred to by defence counsel include:

(a) *R. v. Poirier*, 2016 CM 1012, a private pled guilty to one charge under section 90 of the *NDA* for being absent without authority from 31 August

2015 until 16 December 2015 (a total of 106 days) after serving only one month in the regular force and having his request for voluntary release denied by his chain of command. After a joint recommendation, the offender was sentenced to a fine in the amount of $800; and

(b) *R. v. Lee*, 2022 CM 3004, a corporal who pled guilty to one charge under section 90 of the *NDA* for being absent without authority from 19 December 2020 until 27 January 2021 (a total of forty days), and one charge under section 129 of the *NDA* for travelling to Florida between 19 December 2020 and 12 January 21 without prior authorization. After a joint submission, the offender was sentenced to a fine in the amount of $2,500 and fourteen days' confinement to barracks.

[37] With respect, the Court did not find the majority of the cases submitted by counsel particularly helpful, with the majority of cases having far more serious facts, with a few being less serious than the case before the Court. I am not in any way blaming counsel for this; the Court also found an extremely wide range of sentences and very few with similar facts or dealing with an officer as the offender. The Court reviewed the following two cases in addition to those submitted by counsel to conduct its parity assessment:

(a) *R. v. Daly*, 2023 CM 3015, a corporal who pled guilty to one charge under section 88 of the *NDA* for desertion, for being absent without authority from 11 October 22 until 23 June 2023 when he was apprehended after being released from civilian custody on an unrelated matter. The offender had been released by the CAF during the period of unauthorized absence. After a joint submission, the offender was sentenced to imprisonment for seven days, and a severe reprimand. The pre-trial custody time served was credited one for one; and

(b) *R. v. Edmonstone*, 2021 CM 4010, a corporal who pled guilty to one charge under section 90 of the *NDA* and one charge of mischief under section 130 *NDA* for mischief (section 430(3) of the *Criminal Code*), for leaving a fake improvised explosive device at CFB Wainwright and for travelling to Edmonton without authorization. After a contested sentencing, the offender was sentenced to a reduction in rank to the rank of private and a fine in the amount of $3,000.

[38] Understanding that one of these cases involved desertion, which is a much more serious offence, these cases show that there is a very wide range of sentences for this type of offence. They also confirm that the sentence jointly proposed by the prosecution and defence counsel in this case, of a severe reprimand and a fine in the amount of $8,000, falls within the range of sentences imposed for similar conduct in the past.

Principles of sentencing deserving greatest emphasis/Priority of objectives

[39] Regarding the objectives of sentencing to be emphasized in this case, in the Court's view, the circumstances of this case require that the focus be placed on the objectives of denunciation, general deterrence and the maintenance of public trust in sentencing the offender.

[40] In terms of the main purpose of sentencing in section 203.1 of the *NDA*, namely "to maintain the discipline, efficiency and morale of the Canadian Forces", the sentence proposed must be sufficient to denounce Capt Tseng's conduct in the military community, and to act as a deterrent to others who may be tempted to absent themselves without leave.

Sentence to impose

[41] In arriving at the sentence in this case, I have considered the direct and indirect consequences for the offender of the finding of guilt and the sentence I am about to pronounce.

[42] Ultimately, 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.

[43] 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.

[44] In determining whether that is so, I must ask myself whether the joint submission is so markedly out of line with the expectations of reasonable persons aware of the circumstances that they would view it as a breakdown in the proper functioning of the military justice system.

[45] Having said this, 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 has a direct impact on the offender.

[46] The proposed sentence of a severe reprimand and a fine in the amount of $8,000 is aligned with these expectations. It meets the objectives of denunciation and deterrence, and maintenance of public confidence, without having a lasting effect detrimental to the rehabilitation of the offender.

[47] As recognized by the SCC, trial judges must refrain from tinkering with joint submissions if their benefits can be maximized.

[48] Prosecution and defence counsel are well placed to arrive at joint submissions that reflect the interests of both the public and the offender. 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.

[49] The prosecutor who proposes the sentence is in contact with the chain of command and victims. They are 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.

[50] Defence counsel is required to act in the accused's best interests, including ensuring that the accused's plea is voluntary and informed.

[51] 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.

[52] Considering all the circumstances of the case, the circumstances of the offence and of the offender, the applicable sentencing principles, and the aggravating and mitigating factors mentioned previously, I cannot conclude that the sentence being jointly proposed would bring the administration of justice into disrepute or would otherwise be contrary to the public interest and I therefore accept the joint submission.

[53] As an aside, counsel have jointly requested that it be made clear in this judgement that the Court will not be including an order of forfeiture or restitution to this sentence. However, section 208.30 of the QR&O is triggered by this conviction for absence without authority between the dates of 20 May and 27 July 2025 inclusively, and the unit must therefore act accordingly.

III. Conclusion

[54] Capt Tseng, the scenario that has been described is deeply concerning. Unfortunately, the Court has only been provided with vague details regarding the catalyst to this situation, and therefore no explanation to justify or help the Court understand the deliberate choices you made. The Court finds this particularly concerning given the fact that you are a military police officer, who is equipped with all the necessary training, skills and tools required to handle serious and even life-threatening situations. The CAF depends on us all to step up and show up when we are needed most, and in this situation, you failed in your responsibility to do so.

[55] Having said this, it is clear that whatever information was provided to you on 5 May 2025 by the RCMP has affected you deeply and caused significant disturbance in both your professional and personal life, and the Court is sympathetic to the fact that this was not something you expected or wanted for yourself.

[56] You have demonstrated that you accept responsibility for your offence with your guilty plea today and apology in court and I accept your counsel's submissions that your actions were completely out of character, and that you regret your actions.

[57] It is clear that you have performed strongly in the past and have the ability to do so again in the future. In this next chapter of your life, whether it be in service of the CAF or in a new civilian capacity, you have an opportunity to turn the page, learn from this experience and regain the trust you previously held as a reliable member of the community and to do better in the future. I wish you good luck for what will come next for you.

FOR THESE REASONS, THE COURT:

[58] **SENTENCES** Capt Tseng to a severe reprimand and a fine in the amount of $8,000. The fine must be fully paid on 22 October 2025, or on the day prior to release from the regular force of the CAF, whichever comes first.

Counsel:

The Director of Military Prosecutions as represented by Major B. Richard

Lieutenant-Commander F. Bélanger, Defence Counsel Services, Counsel for Captain A. Tseng