

**Citation:** *R. v. Corporal C.L.W. McDougall*, 2009 CM 2017

**Docket:** 200944

**STANDING COURT MARTIAL  
CANADA  
ALBERTA  
CANADIAN FORCES BASE COLD LAKE**

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**Date:** 28 October 2009

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**PRESIDING: COMMANDER P.J. LAMONT, M.J.**

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**HER MAJESTY THE QUEEN**

**v.**

**CORPORAL C.L.W. McDOUGALL  
(Offender)**

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**SENTENCE**

**(Rendered orally)**

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[1] Corporal McDougall, having accepted and recorded your plea of guilty to the second charge in the charge sheet, a charge of neglect to the prejudice of good order and discipline, this court now finds you guilty of the second charge.

[2] It now falls to me to determine and to pass a sentence upon you. In so doing I have considered the principles of sentencing that apply in the ordinary courts of criminal jurisdiction in Canada and at courts martial. I have as well considered the facts of the case as described in the statement of circumstances, Exhibit 6, and the evidence, and other materials submitted during the course of this hearing as well as the submissions of counsel, both for the prosecution and for the defence.

[3] The principles of sentencing guide the court in the exercise of its discretion in determining a fit and proper sentence in an individual case. The sentence should be broadly commensurate with the gravity of the offence and the blameworthiness or degree of responsibility and character of the offender. The court is guided by the sentences imposed by other courts in previous similar cases, not out of a slavish inherence to precedent, but because it appeals to our common sense of justice that like cases should be treated in similar ways. Nevertheless, the court takes account of the many factors that distinguish the particular case it is dealing with, both the aggravating factors that may call for a more severe punishment and the mitigating circumstances that may reduce a sentence.

[4] The goals and objectives of sentencing have been expressed in different ways in many previous cases. Generally, they relate to the protection of society which includes, of course, the Canadian Forces by fostering and maintaining a just, a peaceful, a safe and a law abiding community. Importantly, in the context of the Canadian Forces, these objectives include the maintenance of discipline, that habit of obedience which is so vital to the effectiveness of an armed force. The goals and objectives also include deterrence of an individual so that the conduct of the offender is not repeated, and general deterrence so that others will not be led to follow the example of the offender. Other goals include the rehabilitation of the offender, the promotion of a sense of responsibility in the offender and the denunciation of unlawful behaviour. One or more of these objectives will inevitably predominate in crafting a fit and just sentence in an individual case. Yet, it should not be lost sight of that each of these goals calls for the attention of the sentencing court, and a fit and just sentence should reflect a wise blending of these goals tailored to the particular circumstances of the case.

[5] As I told you when you tendered your plea of guilty, section 139 of the *National Defence Act* prescribes the possible punishments that may be imposed at court martial. Those possible punishments are limited by the provision of the law that creates the offence and provides for a maximum punishment. 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. It is an important principle that the court should impose the least severe punishment that will maintain discipline.

[6] 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 impose.

[7] The facts in this case are not complicated. Corporal McDougall was tasked as a sentry at an open portion of a fence surrounding a high security zone at CFB Cold Lake starting at 0600 on the date alleged in the charge. He had been specifically trained for this duty. At about 0700, he was discovered by the Alert Force Commander to be by himself in a truck near the fence apparently asleep. He had nodded off a matter of some seconds.

[8] Counsel for the prosecution recommends a sentence of a reprimand and a fine in the amount of 500 dollars. Counsel for the offender recommends a fine of 200 dollars that, he says, is sufficient in the circumstances. The offender is 25 years of age and single. He has served over seven years in the CF without previous disciplinary infractions and he's a trained Avionics Technician. He performs his duty to a high standard according to the evidence before me. He promptly admitted his responsibility for the offence both to the police investigators in the course of his statement to them and to the court by his prompt plea of guilty. I conclude that the lack of self-discipline he demonstrated on the occasion of the offence is an isolated incident that is unlikely to be repeated.

[9] Stand up, Corporal McDougall. You are sentenced to a fine in the amount of 300 dollars. The fine is to be paid forthwith. You may be seated.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Major B.J.A. McMahon, Regional Military Prosecutions Western Area  
Counsel for Her Majesty The Queen

Lieutenant-Commander B.G. Walden, Directorate Defence Counsel Services  
Counsel for Corporal C.L.W. McDougall