



## COURT MARTIAL

**Citation:** R v McManus, 2012 CM 3019

**Date:** 20121029

**Docket:** 201246

Standing Court Martial

Minto Armoury  
Winnipeg, Manitoba, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Lieutenant-Colonel B. C. McManus, Offender**

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

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### REASONS FOR SENTENCE

(Orally)

[1] Lieutenant-Colonel McManus, having accepted and recorded a plea of guilty in respect of the second charge on the charge sheet, the court now finds you guilty of this charge. Considering that the first charge is alternative to the second charge, then in accordance with subparagraph 112.05(8)(a) of the Queen's Regulations and Orders for the Canadian Forces, the QR&Os, the court directs that the proceedings be stayed on the first charge.

[2] It is now my duty as the military judge who is presiding at this Standing Court Martial to determine sentence.

[3] The military justice system constitutes the ultimate means to enforce discipline in the Canadian Forces, which is a fundamental element of the military activity. The purpose of this system is to prevent misconduct or, in a more positive way, see the promotion of good conduct. It is through discipline that an armed force ensures that its members will accomplish, in a trusting and reliable manner, successful missions. It also ensures that the public order is maintained and that those who are subject to the Code of Service Discipline are punished in the same way as any other person living in Canada.

[4] It has long been recognized that the purpose of a separate system of military justice or tribunal is to allow the armed forces to deal with matters that pertain to the re-

spect of the Code of Service Discipline and the maintenance of efficiency of the morale among the Canadian Forces (see *R v Généreux* [1992] 1 SCR 259 at 293). That being said, the punishment imposed by any tribunal, military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances.

[5] 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 of \$1,500 in order to meet justice requirements. 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 be contrary to the public interest (see *R v Taylor* 2008 CMAC 1 at para 21).

[6] Imposing a sentence is one of the most difficult tasks for a judge. As the Supreme Court of Canada recognized in *Généreux* (see *R v Généreux* [1992] 1 SCR 259 at 293), in order "to maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently." It emphasized that in the particular context of military justice, "breaches of military discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct." 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.

[7] The fundamental purpose of sentencing in a court martial is to ensure respect for the law and maintenance of discipline by imposing sanctions that have one or more of the following objectives:

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

[8] When imposing sentences, a military court must also take into consideration the following principles:

- (a) a sentence must be proportionate to the gravity of the offence;

- (b) a sentence must be proportionate to the responsibility and previous character of the offender;
- (c) a 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, all sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[9] I came to the conclusion that in the particular circumstances of this case, sentencing should place the focus on the objectives of denunciation and general deterrence.

[10] Here the court is dealing with a military offence about omitting to properly handling a firearm. On 15 November 2011, a convoy carrying sixteen Canadian Forces personnel, including Lieutenant-Colonel McManus, arrived at Kabul International Airport. Lieutenant-Colonel McManus was carrying a C7A2 rifle, with the serial number 88AA05398, that was loaded with a magazine containing bullets. She entered the East Gate of Kabul International Airport and headed to a clearing barrel to unload her rifle

[11] When Lieutenant-Colonel McManus attempted to unload her C7A2 rifle, she did not remove the magazine prior to pulling the trigger. This caused one round to fire. Lieutenant-Colonel McManus' rifle was not completely inside the clearing barrel, which caused the round to ricochet. No one was injured but the round did ricochet past another Canadian Forces member, Petty Officer Second Class Dill.

[12] This type of offence is directly related to some Canadian Forces members' ethical obligations such as responsibility. For an officer, as it is for a non commissioned member, being reliable at all times is more than essential for the accomplishment of any task or mission in an armed force, whatever is the function or the role you have to perform, especially while handling a weapon.

[13] 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 considers as aggravating the objective seriousness of the offence. The offence you were charged with was laid in accordance with paragraph 129 of the *National Defence Act*, which

is punishable by dismissal with disgrace from Her Majesty's service or to less punishment.

- (b) Secondly, the subjective seriousness of the offence. Your rank and experience, specifically, should have told you better. Unfortunately, on your very last day in theatre, you didn't make sure that your rifle was completely inserted into the clearing barrel, which resulted, in combination with not removing properly your magazine, in a round fired and a ricochet that passed another CF member
- (c) It is true that weapons awareness is more important on an operational theatre such as the one in Afghanistan and it makes the location of this incident as an aggravating factor.

[14] There are also mitigating factors that I considered:

- (a) There is your guilty plea. Through the facts presented to this court, the court must consider your guilty plea as a clear, genuine sign of remorse and that you are very sincere in your pursuit of staying a valued asset to the Canadian Forces, and it also disclosed the fact that you are taking full responsibility for what you did.
- (b) The absence of any annotation on your conduct sheet. So there is no indication of the commission of any similar offence, military offence or criminal offence, in relation or not to what happened.
- (c) Your outstanding performance in your military service. Clearly you deserve great respect for what you did in your military career so far. Your records of service and your personnel evaluation reports for the last five years clearly reflect that, and it is something that a court must consider.
- (d) The fact that you had to face this court martial. And I am sure it has already had some deterring effect on you, but also on others.
- (e) The fact that it is an isolated incident, out of character from somebody like you and that it did not have any other consequences.

[15] The court must also recognize that, as a matter of parity on sentence as suggested by the prosecutor, case law indicates clearly that such an offence calls for a sentence that goes from a severe reprimand to a reprimand and a fine or only a fine. In these circumstances, the joint submission clearly falls in that range.

[16] Also, if the court accepts the suggestion by counsel, this punishment will remain on your conduct sheet unless you get a pardon for the criminal record you are getting today. The reality is that your conviction will carry out a consequence that is often overlooked which is that you will now have a criminal record and it is not insignificant.

[17] In consequence, the court will accept the joint submission made by counsel to sentence you to a reprimand and a fine in amount of \$1,500, 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:**

[18] **FINDS** you guilty of second charge for an offence under paragraph 129 of the *National Defence Act*.

[19] **DIRECTS** that the proceedings be stayed on the first charge.

[20] **SENTENCES** you to a fine in the amount of \$1,500 payable immediately.

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**Counsel:**

Lieutenant-Colonel S. Richards, Canadian Military Prosecutions Service  
Counsel for Her Majesty the Queen

Major S. Collins, Directorate of Defence Counsel Services  
Counsel for Lieutenant Colonel McManus