



COURT MARTIAL

Citation: *R v Fortin*, 2014 CM 3005

Date: 20140414

Docket: 2013101

Standing Court Martial

Canadian Forces Base Petawawa
Petawawa, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Master Corporal J.D.R. Fortin, Offender

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

OFFICIAL ENGLISH TRANSLATION

REASONS FOR SENTENCE

Orally

[1] Master Corporal Fortin, the Court Martial having accepted and recorded your plea of guilty to the second and fourth counts, the Court now finds you guilty of both counts. Accordingly, the Court orders a stay of proceedings with regard to the third count, and whereas the prosecution has withdrawn the first count, there are no other charges for the Court to consider.

[2] As the military judge presiding at this Standing Court Martial, it now falls to me to determine the sentence.

[3] You will understand that in the special context of an armed force, the military justice system constitutes the ultimate means of enforcing discipline, which is a fundamental element of military activity in the Canadian Forces. The purpose of this system is to prevent misconduct or, in a more positive way, see to the promotion of good

conduct. It is through discipline that armed forces ensure that their members will perform their missions successfully, confidently and reliably. The military justice system also ensures that public order is maintained and that persons charged under the Code of Service Discipline are punished in the same way as any other person living in Canada.

[4] I would note that the Supreme Court of Canada recognized in *R v Généreux*, [1992] 1 SCR 259 that,

[t]o maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently.

It also noted in that same decision that, in the particular context of military justice,

[b]reaches 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.

[5] However, it is important to understand that the law does not allow a military court to impose a sentence that would be beyond what is required in the circumstances of a case. In other words, any sentence imposed by a court, whether civilian or military, 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.

[6] In the case now before us, counsel for the prosecution suggested that the Court sentence the offender to a reprimand and fine ranging from \$3,000 to \$5,000. Counsel for the defence, on the other hand, also recommended a reprimand and a fine, but for a different amount, namely, \$1,000. As I previously explained, I am assuming that the parties are making a joint submission to the Court as to imposing a reprimand and a fine and that it will remain up to the Court to determine the appropriate amount for the fine in the circumstances. Therefore, I take this as a joint submission.

[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 the offender from society, where necessary; and
- e. to rehabilitate and reform the offender.

[8] When imposing sentences, a military court may 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 less restrictive penalties may be appropriate in the circumstances. In short, the Court should impose a sentence of imprisonment or detention only as a last resort; and
- e. lastly, all penalties making up a sentence should be adapted to any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[9] The Court is of the opinion that sentencing in this case should focus on the objective related to that of denunciation and general and specific deterrence. It is important to remember that the principle of general deterrence means that the sentence imposed should deter not only the offender from re-offending, but also others in similar situations from engaging in the same prohibited conduct.

[10] When he committed the offences, Master Corporal Fortin was a member of the Joint Personnel Support Unit at Canadian Forces Base Petawawa. He was on medical leave for a long period. On 3 October 2012, he went to the base's pharmacy to pick up his medications. There was, of course, an interaction with the pharmacist on duty, who was a major in rank. Master Corporal Fortin's tone and words became inappropriate at a certain point in the exchange of information that took place, such that the major had to warn Master Corporal Fortin to behave himself. Despite this warning, he persisted in his behaviour, and the major warned him a second time, using a much sterner tone. The major advised him that the chain of command would be notified of the offender's behaviour. He then took an opportunity to invade the major's personal space and became verbally and physically violent, without attacking anybody around him; however, he had to be physically restrained before things went any further.

[11] In arriving at what it considers to be a fair and appropriate sentence, the Court considered the following aggravating and mitigating factors that emerged from the facts of this case.

[12] The Court finds the following to be aggravating factors:

- a. First, the objective seriousness of the offences. You have been found guilty of two service offences, namely, one under section 85 of the

National Defence Act and the other under section 129 of the *National Defence Act*, both offences being punishable by a maximum sentence of dismissal with disgrace from Her Majesty's service.

- b. The Court also takes into account the subjective seriousness of the offences and considered four factors:
 - i. First, there is respect. This is one of the fundamental principles regarding the ethical values of Canadian Forces members. It includes respect for the law and respect for others, which are important factors for those who wear the uniform. Indeed, it is part of the values of Canadian Forces members, as well as a question of moral principle. Quite simply, respect for others for the sake of the smooth functioning of a society, which becomes even more important in a society as small as the military world; but there is also respect as a hierarchical principle. Respect towards a superior, and all these factors, which you are familiar with, given your experience and rank, must be considered. It is something that you know and did not apply in the circumstances and that could have helped you to act differently. The Court can understand your having a disagreement with a superior or any other person working for the Canadian Forces, but as I have said repeatedly in situations similar to yours, to people facing similar kinds of charges, there are always some ways of expressing yourself that are better than others, and the way in which you chose to express your disagreement or, more precisely, your dissatisfaction with the service provided, not with regard to the individual but to the service in general, was totally inappropriate in the circumstances, and I am sure that you know that. I am just repeating things that you probably already know, but what I consider as an aggravating factor is that these are things that you knew when this happened and that could normally have helped you to avoid such a situation. Since this was something that you knew, it becomes an aggravating factor in the circumstances.
 - ii. In addition, of course, I referred to it a little, but there is your experience in the Canadian Forces, as well as your rank, in fact, which is an appointment. What you have as a master corporal is more than a rank; it makes you the corporal of corporals. It is you among all the corporals who has the experience to show how to behave in terms of leadership, and this comes with extra responsibilities for which the Canadian Forces have determined that you could have the privilege of holding it, and you have everything necessary for having this designation. Therefore, in the circumstances, you will understand, at the time the incident or incidents happened, this is another factor you were aware of. Your

experience, as well as the privilege of holding the designation of Master Corporal, should have come into play so that such an incident should not happen, or if it does, should unfold differently.

- iii. There is also the actions you took. It is important to understand that, in the circumstances, you were violent not only in terms of the words and tone you used but also in terms of using physical force; you therefore expressed your dissatisfaction well beyond what people would have expected from you, which in the short term clearly had a psychological impact on the individuals present and on some who asked themselves how they could have found themselves in such a situation. I understand that there were no long-term consequences, but in the short term, some people not only lost sleep or asked themselves serious questions about the work they do and how they do it, but also asked questions about the workplace, the way of doing their work and what consequences this had too. The base had to reconsider the physical layout of the place to prevent a situation of this sort in the future. Therefore, your actions had consequences well beyond what should have happened. I must consider this too as an aggravating factor.
- iv. I must also take into account, but to a lesser extent, your previous convictions. As I told your counsel during his oral arguments, what this reveals, and I take it just for that, is that sometimes you show a lack of respect for authority, which is central to the charges; however, I must say that this was a long time ago, and in this regard, the weight that I give it is much less than for the other factors that I consider to be aggravating factors in the circumstances.

[13] There are also mitigating factors that I have taken into account:

- a. First, there is your guilty plea. Your guilty plea here is, in the Court's view, a clear, genuine sign of remorse testifying to your sincere desire to remain a valued asset to the Canadian Forces and to Canadian society. This also shows the Court that you take full responsibility for your actions in the circumstances, and the Court takes this into account and gives it great weight.
- b. There is also the publicity that was given to this case. You had to face this Court today, at a hearing that was announced in advance, was public and took place in the presence of some of your peers. This effect is a deterrent to a certain extent and achieves one of these objectives you heard me talk about, deterrence. And the fact that this is a public matter and that you are before this Court today

makes this what I consider to be a mitigating factor in the circumstances.

- c. Of course, even if I do not know the exact nature, it is clear that your illness had a major effect in the circumstances. There was a psychological effect that explains your mood that day, when you committed the offences, which explains your actions, the loss of control for which you are criticized, and this puts everything in its context. It must be said that there is no evidence before this Court that this is your usual way of reacting when something happens that you do not like. This reaction is unusual and is explained in large part by your condition with regard to your diagnosis or the illness that caused you to be off work, as you were on leave at that time.
- d. I also took into account the financial situation and the evidence that was submitted to me concerning this issue, and although it is not a major factor, the fact remains that the passage of time, the time since the commission must be considered in terms of mitigating factors. You will understand that in a disciplinary system, in a military context, the more serious the case is, the greater the expectation is that it be handled somewhat quickly. These are, however, incidents that happened some time ago, a year and a half ago, and much has happened since then. As I understand it, you have retaken control of your life, have discussed this issue with the appropriate people, have yourself probably realized the magnitude of your actions and have considered that should such a situation ever occur again, this would perhaps not be the appropriate way to react in the circumstances, and you probably have alternative means of ensuring that this does not happen again. In fact, I have no indication that this has happened again, in one way or another, since the incident, since October 2012. Time has passed. I understand that the chain of command was hesitant in handling the case for nearly a year, since the charges were brought in November. It was not until October the following year that any action was taken, and this tells the Court that to the chain of command this is of the least importance in terms of discipline. I do not want to tell people that it is less serious, but for the chain of command, it was not the most serious or urgent case in the world; otherwise, I would have expected to have different facts before me, and this is something that I must take into account in the circumstances.
- e. Even though you already have one, this sentence will add to your criminal record that you already have and therefore prolong the period until you can request a pardon, and this is a factor that the

Court also considers in the circumstances. This is no trifling matter, and the Court takes this into account.

[14] Therefore, in the circumstances, the Court accepts the joint recommendation made by the parties to sentence you to a reprimand and a fine. The only question that remains to be determined by the Court is the amount of the fine. After much reflection, I conclude that the circumstances do not warrant imposing a much more substantial fine, as suggested by the prosecution. There was no intention, on your part, to attack anybody at all physically; this is clear. However, verbally, it is also clear that your words were directed at the pharmacist and the other people who were there, and it is true that you used extreme means to express your disagreement. In my view, this does not warrant imposing a much more substantial fine than what is indicated by the cases that were filed by counsel as such.

[15] Therefore, in my opinion, a fair and just punishment should recognize the gravity of the offence and the responsibility of the offender in the context of the particular case. Consequently, a sentence that includes a reprimand and a fine in the amount of \$1,200 is the minimum sentence that is appropriate and that fits the offences before this Court.

[16] As I mentioned earlier in my decision, I am fully aware that since that time, you have surely made progress in how you act and react. There certainly is a medical factor; you will have to pay attention and follow all the recommendations prescribed by professionals, including taking medication. I also understand that you have remedied an entirely physical problem that influenced your mood, namely, the tumour in question. These are conditions that are not easy. You have many worries. You have not only the Canadian Forces: you have your future, what is happening to you, and a medical release. Many things are happening at the same time, and it is not necessarily easy to manage. However, there is also the fact that there are professionals who are with you and who are trying to do what they can to assist you, and I would be tempted to say that, unfortunately, you are not the only person in that situation. They are doing what they can, and I do not think that they necessarily deserve to be told that everything is inappropriate. Maybe they are not doing that. Nobody is perfect. We can start from this principle, but that will not help them if you yell at them, insult them and try to frighten them. You have probably gathered that the best way is perhaps to tell them what is not working, because sometimes it does not work and they will appreciate it.

[17] How you deal with things is truly important, and I am sure that if there is one thing that you will remember, even once you leave the Canadian Forces, because it goes beyond military discipline, as I told you, it is not just in terms of ethics but in terms of morale that you have to think about that. It is about the relationship to society in general, but you will understand that in the military world, we emphasize it more because cohesion and morale are essential to

accomplishing the mission, and I am certain that you understood that. And for the time that you remain in the Canadian Forces, I hope that you will be able to continue to reflect on this ethical principle in your relations with your peers.

[18] I would have imposed a more severe sentence than what I am going to impose on you were it not for the actions of the sergeant on 21 October 2009 and the long pre-charge delay. Considering the particular facts of this case, I am of the opinion that the sentence I will now impose adequately incorporates sentencing principles and is the appropriate sentence for ensuring the protection of the public and the maintenance of discipline in the circumstances. Both the denunciation of the act and general deterrence must be considered.

FOR THESE REASONS, THE COURT:

[19] **FINDS** Master Corporal Fortin guilty on the second and fourth counts.

[20] **ORDERS** a stay of proceedings with regard to the third count.

[21] **SENTENCES** Master Corporal Fortin to a reprimand and to a fine in the amount of \$1,200.

Counsel:

Major A.-C. Samson, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Lieutenant-Commander P. Desbiens, Defence Counsel Services
Counsel for Master Corporal Fortin