



## COURT MARTIAL

**Citation:** R v *Menard*, 2012 CM 3016

**Date:** 20120913

**Docket:** 201220

Standing Court Martial

Canadian Forces Base Gagetown  
Oromocto, New Brunswick, Canada

**Between:**

**Her Majesty the Queen**

- and -

**ex-Corporal J.P. Menard, Offender**

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

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### REASONS FOR SENTENCE

(Orally)

[1] Corporal Menard, having accepted and recorded a plea of guilty in respect of the first and second charges on the charge sheet, the court now finds you guilty of these charges. Considering that the third charge was withdrawn by the prosecution at the beginning of this trial, then the court has no other charges to deal with.

[2] It is now my duty as the military judge who is presiding at this Standing Court Martial to determine the 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, to see the promotion of good conduct.

[4] It is through discipline that an armed force ensures that its members will accomplish, in a trusting, reliable manner, successful missions. It also ensures that 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.

[5] 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 respect of the Code of Service Discipline and the maintenance of efficiency and the morale among the Canadian Forces: *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.

[6] 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 severe reprimand and a fine in the amount of \$2,400 in order to meet the 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: *R v Taylor*, 2008 CMAC 1, at paragraph 21.

[7] As the Supreme Court of Canada recognized at *Généreux* at page 293:

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 emphasised that in the particular context of military justice:

Breaches of military justice must be dealt with speedily and, frequently, punished more severely than would be the case in a civilian engaged in such conduct.

[8] However, 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 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.

[9] 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) 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.

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

- (a) The sentence must be proportionate to the gravity of the offence;
- (b) The sentence must be proportionate to the responsibility and previous character of the offender;
- (c) The sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; and
- (d) Offenders 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 Supreme Court of Canada decisions.
- (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.

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

[12] Here the court is dealing with two military offences for behaving with contempt towards a superior officer, contrary to section 85 of the *National Defence Act*. The purpose of this offence is to ensure minimal respect that shall exist in a military context between subordinates and superiors, in front of military members or not, with the idea of avoiding any kind of behaviour that would lead, ultimately, a subordinate to a state of disobedience that would affect cohesion and morale among Canadian Forces members at any level.

[13] Essentially, Corporal Menard adopted, for those two different incidents, an aggressive language and a behaviour that would have led to potential physical confrontation. In both cases, he didn't hesitate to demonstrate his dissatisfaction in a loud manner towards those superiors, using any possible means to make others pay attention to his anger.

[14] Now, 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 section 85 of the National Defence Act, for having behaved with contempt toward a superior officer, which is punishable by dismissal with disgrace from Her Majesty's Service or to less punishment.
- (b) Secondly, the subjective seriousness of the offence and that, for the court, covers three aspects.
  - (i) Respect: fundamental principles of ethical values of CF members mention respect of the law and respect of others as something very important for those who are wearing the uniform. The manner you expressed your disagreement about your personal issues was inappropriate in the circumstances. Respect involves the fact that you may disagree with people but also there is a way to express the fact that you disagree with people, which you're allowed to do. There's no problem with that. The problem was with the way you expressed it and I have to consider this as an aggravating factor;
  - (ii) Also, your experience in rank. You were not a recruit at the time both incidents occurred. In fact, you had previous experience in the military in the Reserve Force and in the Regular Force for at least seven years. You have been described as a good performer in your PER and you should have known that expressing your anger about decisions made or comments made by others was inappropriate in the circumstances;
  - (iii) Also, I have to consider a previous conviction in this matter. The fact that there is a similar offence for which you were found guilty a year before, demonstrates that it was not an isolated incident but it was something that you have to work with, you were warned about, and you decided to adopt the exact same conduct.

[15] There are also some mitigating factors that I have to consider:

- (a) First, there is your guilty plea. Through the facts presented to this court, the court must consider a guilty plea as a clear, genuine sign of remorse and that you are very sincere in your pursuit of staying a valid asset to the Canadian society.

- (b) Second, there is also your age and your career potential in the community. Being 36 years old, you still have many years ahead to contribute positively to the Canadian society.
- (c) There is the fact that you had to face this court martial. Despite the fact that this type of offence occurred some time ago, you had to come here and be present at this court that was announced and accessible to the public and which took place in the presence of some of your peers. It has, no doubt, had a very significant deterrent effect on you, but especially on them. It sends the message to others that the kind of conduct you displayed at the time regarding superiors will not be tolerated in any way and will be dealt with accordingly.
- (d) I also considered your financial situation as mentioned by your counsel. Knowing that the impact would be limited by the fact that you are in a position to pay immediately the fine is something that I consider as a mitigating factor.
- (e) The other factor is your release from the Canadian Forces. The very reason why you were released from the Canadian Forces is about the type of behaviour you decided to adopt. Your commanding officer at the time recommended your release because of your attitude and inability to control your anger and express your dissatisfaction to others, especially superiors. It is not a sentence by itself for what happened, but considering the impact it had on you, meaning by this that you are not part of the Canadian Forces any more, I have to consider this as a mitigating factor.
- (f) Finally, there is what I would qualify as the passage of time which we call, legally speaking, the "delay to proceed" with this matter. The court does not want to blame anybody in this case but the quicker a serious disciplinary matter is dealt with, the more relevant and effective the punishment is with respect to objectives considered by the court and the effect on the morale and cohesion of the unit's members.

[16] Today you also are getting a criminal record. The reality is that your conviction would 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 severe reprimand and a fine in the amount of \$2,400 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 the first and second charge on the charge sheet for two offences under section 85 of the *National Defence Act* for behaving with contempt toward a superior officer.

[19] **SENTENCES** you to a severe reprimand and a fine in the amount of \$2,400, payable immediately.

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**Counsel:**

Lieutenant-Commander D.T. Reeves, Canadian Military Prosecution Services  
Captain R.J. Eng, Assistant Judge Advocate General Atlantic  
Counsel for Her Majesty the Queen

Major S.L. Collins, Directorate of Defence Counsel Services  
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