

**Citation:** *R. v. Corporal J.M.R. Hutchison*, 2007 CM 1015

**Docket:** 200733

**STANDING COURT MARTIAL  
CANADA  
ALBERTA  
CANADIAN FORCES BASE EDMONTON**

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**Date:** 13 July 2007

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**PRESIDING: COLONEL M. DUTIL, C.M.J.**

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**HER MAJESTY THE QUEEN**

**v.**

**CORPORAL J.M.R. HUTCHISON  
(Offender)**

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**SENTENCE**

**(Rendered orally)**

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[1] Corporal Hutchison, having accepted and recorded a plea of guilty in respect of the first charge, the court finds you now guilty of that charge.

[2] Of course, this is a case where the prosecution and counsel for the defence have made a joint submission on sentence. They have recommended that this court sentence you to a reprimand and a fine in the amount of \$400. Although this court is not bound by the joint recommendation, it is generally accepted that a joint submission should be departed from only where to accept it would be contrary to public interest and would bring the administration of justice into disrepute. Although I consider your case as being one at the extreme limit of acceptance of a joint submission, I would still accept it, as I do not consider that this is a case that is outside of the range.

[3] It has been long recognized that the purpose of a separate system of military justice or tribunals is to allow the Armed Forces to deal with matters that pertain directly to discipline, efficiency, and morale of the military. It is also recognized that the military context may, in appropriate circumstances, justify and, at times, dictate a sentence that is more severe than if the crime would be committed in a purely civilian context in order to promote military objectives. That being said, the punishment imposed by any tribunal, military or civil, should constitute the minimum necessary intervention that is adequate in the particular circumstances.

[4] While in determining the sentence today, I have considered the totality of the circumstances surrounding the commission of the offence that was presented during the sentencing procedure, as well the documentary evidence filed with the court. I have also considered, for the purposes of sentencing, representations that were made by both counsel and the case law provided to the court. I must add that the cases of *Keller* and *Stevenson* are also appropriate in this case. And, finally, the court has considered any direct and indirect consequences that the finding and the sentence will have on you.

[5] The principles to be used in considering what should be an appropriate sentence generally relate to the following: Firstly, the protection of the public, and, of course, the public includes the Canadian Forces; secondly, the punishment of the offender; thirdly, the deterrent effect of the punishment, not only on the offender, but also upon others who might be tempted to commit similar offences; fourthly, the reformation and rehabilitation of the offender; and fifthly, in this case, of course, denunciation. There is other factors as well, but for the purposes of this case, I think those will suffice.

[6] The prime principle is the protection of the public, and it is the court's duty to determine if that protection would be best achieved by deterrence, rehabilitation, or punishment and denunciation or, of course, a combination of all those with different degrees. The prosecution referred to *R. v. St-Jean*, [2000] C.M.A.J. No. 2, where Justice Létourneau, speaking for the court, did put in perspective the impact of fraudulent acts in a public organization such as the Canadian Forces at paragraph 22. And I will not repeat that quote. We just have to refer to the prosecution's submission on that citation.

[7] It is true that although this case does not involve the offence of fraud, it is nonetheless an offence in relation to property, in particular, public property, and the offence of stealing in this context must be punished with a particular emphasis on the principle of general deterrence and denunciation.

[8] As I told you earlier this morning, this is a very serious offence, irrelevant of what is stolen or the amount that is stolen. By completing the offence of stealing in the context of this case you have breached the trust vested in you by your unit, your comrades, the Canadian Forces, and the Canadian Government. Do you understand that?

ACCUSED: Yes, Your Honour.

[9] So in arriving at what the court considers to be a fair and appropriate sentence, the court has considered the following factors:

The objective gravity of the offence. A person found

guilty of that offence is at least liable to imprisonment for a term not exceeding 7 years or to less punishment. And I repeat again, this very serious offence deals with a breach of trust that was vested in you, where you acted dishonestly.

Second, the particular context of this as revealed by the Statement of Circumstances. Unlike *Keller* and *Stevenson* that stole property that had been abandoned in the truck, they thought, or they tried to think that way; this offence took place in your own workplace; that is, the Company Quartermaster's Store of Land Forces Western Training Area Centre, Field Training Element.

But, on the other hand, you have acknowledged responsibility for your actions by pleading guilty before this court, and I consider that this is a genuine sign of remorse, especially in the context that you admitted to the police in the earlier stages of the investigation of your unlawful actions. And also on that issue, I still consider that a very good mitigating factor in your case, despite the fact that you had to return a couple of weeks after to finally admit that, of course, you had lied in your first interview, in admitting to the theft of one element; that is, the stealth suit. So the court is satisfied that it is a genuine sign of remorse by pleading guilty today in front of this court martial.

I also accept as a mitigating factor the fact that you have returned the material, so that means there is no loss for the Canadian Forces.

And the combination of all those elements, I consider that your admission of guilt is a genuine acknowledgment of your misconduct and it is certainly a factor that I consider essential in the reformation and rehabilitation of any offender, in particular, when the offender is of a particularly young age like you are.

Finally, I have considered the rank that you held at the time, your age, as well as your current financial, economic, social and family situation. Pursuing your education; you are soon to get a degree, and I certainly

would not give a sentence that would prevent you from completing that degree. That is why I consider the sentence recommended by the prosecution and defence is a fit sentence.

I've also considered the fact that you are considered to be a good young soldier and that your unit authorities are willing to continue to trust you. But be assured that it is certainly not a blind trust.

Finally, I consider as a mitigating factor the lengthy delay to bring this matter to trial, which prevented your Commanding Officer to try this offence summarily if you could have elected that mode of service tribunal, but for the application of paragraph 69(b) of the *National Defence Act*. And I think in this case, it is a mitigating factor.

[10] So for all these reasons, the court sentences you to a reprimand and a fine in the amount of \$400 payable immediately.

[11] March out Corporal Hutchison. That concludes the proceedings of this court martial in respect of Corporal Hutchison and therefore the proceedings of this court martial are terminated.

COLONEL M. DUTIL, C.M.J.

Counsel:

Captain R.J. Henderson, Regional Military Prosecutions Western  
Counsel for Her Majesty The Queen  
Lieutenant(N) M.P. Létourneau, Directorate of Defence Counsel Services  
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