

Citation: *R. v. Lieutenant D. Mahaney*, 2010 CM 2003

Docket: 200934

**STANDING COURT MARTIAL
CANADA
NOVA SCOTIA
CANADIAN FORCES BASE HALIFAX**

Date: 8 February 2010

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

HER MAJESTY THE QUEEN

v.

**LIEUTENANT D.P. MAHANEY
(Offender)**

**SENTENCE
(Rendered Orally)**

[1] Lieutenant Mahaney, having accepted and recorded your plea of guilty to charge number four, a charge that you behaved in a disgraceful manner, this court now finds you guilty on the fourth charge, not guilty on the first and second charges, and orders a stay of proceedings on the third 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 3, and the 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 adherence 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 the 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 pronounce.

[7] The facts of the offence are set out in detail in Exhibit 3. In brief, the offender, a member of the Reserve Force, was employed as a duty officer at the cadet camp held at CFB Greenwood in the summer of 2008. In that role he supervised male and female cadets during the evening in their living quarters on the base. On several occasions over the month of July the offender had inappropriate contact with one of the female cadets in his charge. The contact extended to inappropriate physical touching of a sexual nature and sexually suggestive or personal comments directed to the young cadet, then aged 17. As a result of rumour within the camp, the allegations came to light. When the complainant was interviewed, the offender was immediately returned to his unit in Shelburne, Nova Scotia.

[8] I agree with the submission of both counsel that the facts of this offence require the court to give great weight to the sentencing objectives of general deterrence and denunciation. An effective cadet training programme requires that the Canadian Forces repose a special trust in the officers of the Cadet Instructor List whose role is to be a model of behaviour and example for the young people in their charge. The parents of young cadets are also entitled to be confident that members of the Canadian Forces who are involved in the cadet programme are above reproach. And, of course, the cadets themselves are entitled to be confident that their supervisors will always be mindful of their welfare. I regard the betrayal of these important trusts as a serious matter, especially where the issues of sexual misconduct between cadets and cadet leaders have been brought home to the offender in the course of his training as a course leader.

[9] The Court Martial Appeal Court in the case of *Captain Paquette* had occasion to deal with an appeal from a sentence of five months imposed at trial upon a cadet instructor for charges arising out of his misbehaviour in connection with the young cadets in his charge. On appeal, the court reduced the five month sentence to a sentence of three months' imprisonment. There are, of course, many distinguishing factors between the case of *Captain Paquette* and the case before this court, but I refer to the case only to point out that the conduct in question in this case is regarded as very serious by the courts and it is not unheard of that conduct of this nature may attract a sentence of a custodial nature.

[10] A fit sentence in this case should also take into account the effect of the offender's conduct upon the complainant and others in the community who have been adversely affected by the offender's behaviour and its consequences.

[11] I'm also mindful of the personal circumstances of the offender. He was 23 years of age at the time of the offence and has been involved himself in the cadet programme from the age of 12 years. He is presently engaged to be married and will soon take on parenting responsibilities. In civilian life he is working in carpentry and intends to apprentice as a carpenter. He was commissioned in June of 2006 and has no record of disciplinary infractions. He promptly admitted his responsibility for the offence by making a written apology, and has pleaded guilty at the first possible opportunity. I consider both these factors to be a genuine indication of his personal remorse. He is most unlikely to repeat the behaviour that brings him to court.

[12] I have already referred to the importance of general deterrence in a case of this kind, but as the Court Martial Appeal Court has repeatedly observed, the principle of general deterrence can be properly vindicated in many cases without imposing a custodial sentence, especially when dealing with a first offender. In my view, this is one of those cases.

[13] Considering all the circumstances, both of the offence and of the offender, I cannot say that the disposition jointly recommended by counsel would either bring the administration of justice into disrepute or is otherwise contrary to the public interest. The Court Martial Appeal Court in the case of *Private Chadwick Taylor*, was clear that unless either or both of those circumstances are met, the sentencing court should accede to the joint submission of counsel. I therefore accept the joint submission

[14] Lieutenant Mahaney, you are sentenced to a severe reprimand and a fine in the amount of \$2,000 payable in monthly installments of \$200 each, commencing 15 March 2010 and continuing for the following nine months. In the event you are released from the Canadian Forces for any reason before the fine is paid in full, the outstanding unpaid balance is payable the day prior to your release.

COMMANDER P.J. LAMONT, M.J.

COUNSEL:

Captain T.E.K. Fitzgerald, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Lieutenant-Commander J. McMunagle, Directorate of Defence Counsel Services
Counsel for Lieutenant Mahaney