Citation: *R. v. Officer Cadet J.P.S. Maheu*, 2008 CM 1014

Docket: 200725

STANDING COURT MARTIAL
FORT SAINT-JEAN
SAINT-JEAN-SUR-RICHELIEU
QUEBEC

Date: February 5, 2008

PRESIDING: COLONEL MARIO DUTIL, CHIEF MILITARY JUDGE

HER MAJESTY THE QUEEN
(Prosecutor)
v.
OFFICER CADET J.P.S. MAHEU
(Accused)

SENTENCE
(Rendered orally)

[1] Officer Cadet Maheu, the Court having accepted and recorded your admission of guilt in respect of the 1st charge for an act to the prejudice of good order and discipline contrary to section 129 of the *National Defence Act*, the Court finds you guilty of this charge. The offence was committed when you contravened the Canadian Forces Drug Control Program by consuming a cannabis (marijuana) joint on or about July 30, 2006, in the area of Thetford Mines in the presence of civilian friends during a weekend leave. This is a direct contravention of section 20.04 of the *Queen's Regulations and Orders for the Canadian Forces.*

[2] The Supreme Court of Canada recognized in *R.* v. *Généreux* 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." The Supreme Court said that in the particular context of military discipline, breaches of discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian had engaged in such conduct. But even if those words are elevated to the level of principles, the instructions given by the Supreme Court do not mean that a military court may impose a sentence composed of a punishment or punishments 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 always represent the minimum action required.

[3] In determining what it considers to be the appropriate and minimum sentence in the circumstances, the Court has considered the circumstances surrounding the commission of the offence as set out in the summary of circumstances, the truth of which you have acknowledged, the documentary evidence presented to the Court and the testimony heard.

[4] The circumstances of this case are straightforward. On July 30, 2006, while you were on weekend leave, you smoked a cannabis (marijuana) joint in the presence of civilian friends at Thetford Mines. The next morning when you returned to work, you immediately reported to your commanding officer and admitted to your misconduct. According to the evidence, you were very upset and concerned about the consequences that might result from your action. There is no doubt that you were aware of the Canadian Forces drug policy at that time and that you already knew you had contravened it, even though at the time the offence was committed you were not on duty, in the presence of other military members or on a defence establishment.

[5] The evidence also indicates that after your initial expression of remorse, you made clear your intention to enter a guilty plea and to recognize your error as soon as charges were laid. Moreover, you were subject to counselling and probation under the Drug Control Program in May 2007, in fact on June 18, 2007. This administrative measure had the effect of delaying your promotion to the rank of second lieutenant, which should have occurred around May 1, 2007, after you had completed your university studies with a bachelors degree in law. The evidence also shows that the direct financial impact of this administrative measure was about $27,000, which represents the difference between the salary of an officer cadet and that of a second lieutenant. The counselling and probation will come to an end in June 2008, at which time you should be promoted.

[6] The prosecution argues that the sentence should emphasize denunciation of the conduct and general deterrence. It recommends a sentence composed of a reprimand and a fine of $600 to $800. The defence recommends the lightest possible sentence under the legislation, namely, a warning, on the grounds that your error has already cost you dearly and that your post-offence conduct has been exemplary for more than 18 months.

[7] It is recognized that in imposing an appropriate sentence on an accused for the wrongful acts he has committed and in relation to the offences of which he is guilty, there are certain objectives, having regard to the principles applicable to

sentencing, although they vary slightly from one case to another. However, the weight assigned to them must always be adapted to the circumstances of the case and to the individual offender. In order to contribute to one of the essential objectives of military discipline, those objectives may be stated as follows:

> first, the protection of the public, which includes the Canadian Forces;
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> second, the punishment and denunciation of the offender;
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> third, the deterrence of the offender and anyone else from committing the same offences;
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> fourth, the separation of the offender from society, including members of the Canadian Forces, where appropriate;
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> fifth, the rehabilitation and reform of the offender;
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> sixth, the proportionality and seriousness of the offences and the degree of responsibility of the offender;
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> seventh, consistency in sentencing;
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> eighth, the imposition of a custodial sentence only where the Court is satisfied that it is necessary as a last resort; and
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> finally, the Court will take into account aggravating and mitigating circumstances relating to the circumstances of a case and also relating to the offender's situation.

[8] In this case, the Court is satisfied that this type of offence must be denounced and that general deterrence is very important. The Canadian Forces drug policy is a cornerstone in managing a disciplined, operational and professional armed force. All candidates are made aware of it from their earliest encounters with military life. Its purpose is to maintain the operational readiness of the Canadian Forces, the safety of members and of the public, the security of defence establishments, the security of information in the national interest, the discipline and reliability of members and cohesion and morale within the Canadian Forces. Any contravention of the policy is objectively very serious, particularly for officers, including officer cadets.

[9] In considering what sentence would be appropriate, the Court must take into account the objective seriousness of the offence and the offender's degree of responsibility in light of the aggravating and mitigating factors related to the

commission of the offence and/or the situation of the offender. The offence of which you have admitted your guilt is objectively serious. It is punishable by dismissal with disgrace from Her Majesty's service. I consider this to be the sole aggravating circumstance in this case.

[10] The Court considers the following factors to be mitigating circumstances:

1. The offender's conduct after the commission of the offence: The Court recognizes your admission of guilt before it as the sincere and logical extension of the remorse you expressed on the day following your misconduct.

2. The administrative consequences of your misconduct following your counselling and probation: The evidence shows that you have suffered a loss of $27,000 for having smoked a cannabis joint as a result of the decision taken by your commanding officer, a decision entirely justified in the circumstances, not to promote you to the rank of second lieutenant in May 2007.

3. Your performance since the incident at issue in this Court Martial: Your commanding officer has testified in the document filed as Exhibit 3 that your performance has been excellent and your conduct exemplary.

4. The time elapsed since the commission of the offence and your desire to proceed with the case since September 2007: More than 18 months have elapsed between the commission of the offence and the beginning of the proceedings before the Court Martial. Moreover, this is a case with very straightforward facts, the investigation of which posed no particular difficulty. I agree that this case should have been settled much earlier.

5. The lack of a criminal or disciplinary record: This is your first encounter with the justice system, and I hope that I am correct in believing that it will be your last.

6. Your age: You were 20 years old and one month when you committed the offence. Accordingly, the Court should not impose a sentence that could have a negative impact on the rehabilitation of a young adult for an incident that

> resulted from an error in judgment and a lack of maturity with respect to the nature of the reprehensible act and its consequences. I am satisfied that from now on you will think about your conduct and that you have already learned your lesson.

[11] The Court paid particular attention to defence counsel's recommendation regarding the imposition of a warning. Despite the eloquence of counsel for the defence, I cannot accept such an approach, even though the particular circumstances of Officer Cadet Maheu's case militate in favour of a very light sentence from the range of punishments normally imposed for such offences. The use of narcotics in contravention of the Canadian Forces drug control policy objectively constitutes too serious a misconduct among the myriad of acts or omissions to the prejudice of good order and discipline.

[12] However, the Court is of the opinion that the prosecution of your conduct, the decision not to promote you to the rank of second lieutenant and the direct financial impact of about $27,000 following your counselling and probation are sufficient to denounce the conduct and to achieve the objective of general deterrence in the particular circumstances of this case. A minimal sentence should allow you look to the future with confidence and determination, since it can be struck from your conduct sheet as soon as possible, namely, upon completion of a period of 12 months during which no conviction has been entered or when an officer cadet attains commissioned rank, under DAOD 7006-1 *Preparation and Maintenance of Conduct Sheets*.

[13] Accordingly, the Court sentences you to a fine of $200. Had it not been for the particular circumstances related to the direct and indirect consequences that you have already suffered from your conduct and your exemplary conduct since the incident, a sentence consisting of a reprimand and a fine of $400 would have been appropriate.

COLONEL M. DUTIL, C.M.J.

Counsel:

Major J. Caron, Regional Military Prosecutor, Eastern Region
Counsel for the Prosecution
Lieutenant(N) M.P. Létourneau, Director Defence Counsel Services
Counsel for Officer Cadet Maheu