

Citation: *R. c. Corporal J.A.M. Charest*, 2005CM17

Docket: S200517

**STANDING COURT MARTIAL
CANADA
QUEBEC
AREA SUPPORT UNIT VALCARTIER
COURCELETTE, QUEBEC**

Date: June 1, 2005

PRESIDING: COLONEL K.S. CARTER, J.M.

**HER MAJESTY THE QUEEN
v.
CORPORAL J.A.M. CHAREST
(Accused)**

**SENTENCE
(Pronounced Orally)**

OFFICIAL ENGLISH TRANSLATION

[1] Before pronouncing its sentence, Corporal Charest, the Court having accepted and registered your plea of guilty to the second, fourth and sixth counts, the Court finds you guilty of said counts and orders that the hearing be suspended on the first, third and fifth counts.

[2] As former Chief Justice of Canada, the Right Honourable Justice Lamer pointed out in *R. v. Généreux*, [1992] 1 S.C.R., 259:

To maintain the Armed forces in a state of readiness, the military must be in a position to internal discipline effectively and efficiently. Breaches 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.

[3] That said, the sentence imposed by a court martial, as that of a civilian court sitting in criminal and penal matters, must be the minimum sentence required in light of all of the circumstances of the matter and of the circumstances of the offender. In determining a fair and equitable sentence, the court must find the delicate balance between ensuring the safety of the public, while also maintaining discipline within the Canadian Forces.

[4] Counsel before the Court filed a joint submission regarding the sentence that this Court should impose. Counsel recommends imposing a \$500 fine.

[5] As stated by counsel, it is well established in the case law that imposing an appropriate sentence is the obligation of the court, which has the right to reject counsel's joint submission. A corollary of this rule is that the court cannot reject the joint recommendation submitted to it unless there are compelling reasons enabling it to disregard it. Therefore, the judge must accept the submission made by counsel unless it is deemed inadequate or unreasonable, contrary to public order or it would bring the administration of justice into disrepute. For example, if it fell outside the spectrum of sentences previously imposed for similar offences and was deemed unduly lenient.

[6] When it is a matter of imposing an appropriate sentence on an accused for the wrongs he has committed and for the offences of which he is guilty, certain objectives are targeted in light of sentencing principles, even though they vary somewhat from one case to the other. Their importance must not only be adapted to the circumstances of the matter, but also to the offender. To contribute to one of the primary objectives of military discipline, namely maintaining professional and disciplined armed forces, operational and effective in a free and democratic society, these objectives and principles can be set out as follows:

first, protecting the public, and the public in this case includes the Canadian Forces;

second, punishing and denouncing the offender;

third, dissuading the offender, and everybody else, from committing the same offences;

fourth, rehabilitating and reforming the offender;

fifth, proportionality with the gravity of the offence and the degree of responsibility of the offender;

sixth, harmonizing sentences; and

finally, the Court will take into consideration the aggravating circumstances that mitigate the sentence in relation to the offender's situation by taking into account all of the circumstances of the matter.

[7] In this case, the public's protection will be achieved by a sentence which emphasizes: deterrence, both individually and collectively, punishing the offender as well as denouncing the act, proportionality with the gravity of the offence and the degree of responsibility of its author. The sentence which this Court will impose should not however hinder your rehabilitation, Corporal Charest. The joint submission by counsel must allow these objectives and principles to be achieved.

[8] In considering what sentence would be appropriate, the Court considered the following factors as aggravating:

First, the nature of the offences and the sentence provided by Parliament. Every person who is guilty of the offence, conduct to the prejudice of good order and discipline, is punishable by dismissal with disgrace from Her Majesty's service. These offences are objectively serious. The offence of drunkenness is objectively less serious.

Secondly, the context of this case and the circumstances surrounding the commission of the offences for which you have admitted your guilt. The summary of the circumstances showed you had the opportunity, many times, to avoid the problems, to stop your actions, but you did not take this opportunity. You refused to help the military personnel who were doing their job that evening. In fact, you laughed and made fun of these military personnel at work. At the same time, through your attitude and words, you questioned the authority of the chain of command, namely Lieutenant Rioux. There is only one chain of command. There is not one chain of command for members of the regular forces and another for members of the reserve forces.

Thirdly, the fact that you have many years of experience. You were not a young serviceman, but one who knew how the Canadian Forces work.

[9] As for the mitigating factors, the Court has considered that you admitted your guilt. This admission of guilt shows an ability to accept responsibility. The Court also considered your state of drunkenness. Of course, it is an offence, but also an explanation for your attitude, actions and lack of judgment during the night of July 15, 2004. It is very significant to this court martial that you do not have a conduct sheet. Finally, the Court considered your specific situation, namely, that the Citadelle was, at

the time, your residence as well as your place or work or a military establishment. Your counsel stated that there are advantages and disadvantages to such living situations.

[10] The Court read excerpts from the cases of *Serviceman Mercredi*, *Corporal Mosher* and *Warrant Officer Lavoie*. They are similar to this case, but the Court accepted your counsel's submissions that they are, in general, more serious situations according to the facts.

[11] For these reasons, the Court accepts the joint submission of counsel and sentences you to a reprimand and a \$500 fine. The fine will be paid in the amount of \$100 a month.

[12] I would like to thank counsel for the case law and also for their relevant and useful submissions.

[13] This sentence was pronounced at 4:00 p.m., June 1, 2005.

COLONEL K.S. CARTER, J.M.

Counsel:

Major G. Roy, Regional Prosecutor, Eastern Region
Counsel for the prosecution
Major L. Boutin, Directorate of Defence Counsel Services
Counsel for Master Corporal Bourgoïn