



COURT MARTIAL

Citation: *R v Lamoureux*, 2011 CM 1006

Date: 20110823

Docket: 201138

Standing Court Martial

Canadian Forces Base Valcartier
Courcelette, Quebec, Canada

BETWEEN:

HER MAJESTY THE QUEEN

- and -

Master Corporal R.L. Lamoureux, Offender

Before: Colonel M. Dutil, C.M.J.

OFFICIAL ENGLISH TRANSLATION

REASONS FOR SENTENCE

(Orally)

[1] Master Corporal Lamoureux stood charged with five counts before this standing court martial. He admitted his guilt on the second count, namely conduct to the prejudice of good order and discipline under section 129 of the *National Defence Act*. Master Corporal Lamoureux also admitted his guilt on the third count, namely having disobeyed a command of a superior officer under section 83 of the Act. The details of these two counts are intertwined and are part of a series of events that occurred after Master Corporal Lamoureux's refusal to fill up a generator and jerrycans with gas following an instruction issued on or about 12 June 2010, at Camp Mario Mercier, Operations Coordination Centre (OCC-P), Kandahar, Islamic Republic of Afghanistan, by a corporal and co-worker to whom he was subordinate. This initial refusal was followed by a subsequent one to carry out the same task when he was ordered to do so by Chief Warrant Officer Trépanier. The Court has accepted and recorded these admissions of guilt and ordered a stay of proceedings regarding the first and fourth

counts. The prosecution chose not to present evidence regarding the fifth count, and the Court found Master Corporal Lamoureux not guilty of this count.

[2] It should be recalled that Master Corporal Lamoureux was deployed to Afghanistan in November 2009. At the time, he was assigned to Task Force Kandahar Headquarters and Signal Squadron, for the Joint Task Force Afghanistan. However, on 27 May 2010, Master Corporal Lamoureux was assigned to the OCC-P located in Kandahar to make up for a shortage of operators there. His supervisor notified him the day before of his deployment to the OCC-P. Before Master Corporal Lamoureux arrived there, Lieutenant-Colonel Lavoie, Chief Warrant Officer Trépanier and Master Corporal Pouliot-Champagne discussed the role and duties he would have to carry out. They agreed that Master Corporal Lamoureux would act as operator at the OCC-P's command post. The responsibilities of chief signaller would be taken on by Corporal Mutézintare.

[3] When Master Corporal Lamoureux arrived, Master Corporal Pouliot-Champagne explained to him the work he would have to carry out. Master Corporal Pouliot-Champagne also explained that in his absence, Master Corporal Lamoureux would take orders from the chief signaller. Master Corporal Lamoureux was told that he would be in an operator position in the CP, subordinate to the chief signaller, requiring that he work shifts, maintain the generator and fill the jerrycans with gas at the end of his shifts and take an active part in maintaining and improving the camp.

[4] From 1 to 3 June 2010, the shifts were eight hours long. Corporal Deschesnes was responsible for guiding Master Corporal Lamoureux through his shift and associated duties, including filling the jerrycans and the generator, on his arrival. After Master Corporal Pouliot-Champagne left, on 5 June 2010, the shifts were increased to 12 hours. From then on, Master Corporal stopped filling the jerrycans and the generator, even though the chief signaller asked him to do so. Because of this and Master Corporal Lamoureux's general attitude, Corporal Mutézintare decided to do this associated task, which should have been done by Master Corporal Lamoureux, to avoid complicating the situation further.

[5] On 12 June 2010, shortly after another operator returned from leave, Corporal Mutézintare, seeing an opportunity to reduce the work shifts and being busy with other duties, asked Master Corporal Lamoureux to fill the jerrycans and the generator at the end of his shift. Master Corporal Lamoureux categorically refused to do so. Corporal Mutézintare, exasperated with the situation and not wanting to belabour the matter with Master Corporal Lamoureux, telephoned Master Corporal Pouliot-Champagne to notify him of the situation. Next, he took the matter to Chief Warrant Officer Trépanier, who then called Master Corporal Lamoureux into the company office to remind him, with Corporal Mutézintare present, of the basic principles of teamwork and of the duties assigned to him. Master Corporal Lamoureux stated that he refused to do those duties. Chief Warrant Officer Trépanier then explained the reasons for dividing up the duties in this manner and told him that he had to be more involved and obey orders if the camp was to run smoothly. Master Corporal Lamoureux categorically refused to obey this

order. He said that he wanted to leave the OCC-P and was trying to contact the signal staff at Kandahar Airfield to return there. Chief Warrant Officer Trépanier told him to return to his quarters. After consulting with Lieutenant Colonel Lavoie, Chief Warrant Officer Trépanier informed Master Corporal Lamoureux that he would be leaving for Kandahar Airfield in a few hours. On 12 June 2010, Lieutenant Colonel Lavoie sent a letter stating that he was sending back Master Corporal Lamoureux because of his lack of professionalism and co-operation.

[6] Counsel in attendance presented a joint submission regarding the sentence that this Court should impose. Counsel recommend sentencing Master Corporal Lamoureux to 14 days' detention. Despite this joint submission, it must be understood that the obligation to determine an adequate sentence lies with the Court. The Court has the right to reject a joint submission but may only do so if it has compelling reasons to disregard that recommendation. Therefore, the judge should accept counsel's joint submission unless it is found to be inadequate or unreasonable, contrary to public order or such that it would bring the administration of justice into disrepute, for example, if it were outside the range of sentences previously imposed for similar offences. Correspondingly, counsel are required to present all of the facts in support of this joint submission to the judge. Counsel submit that the proposed sentence is consistent with the case law in similar cases.

[7] In *Généreux*, the Supreme Court of Canada held 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".¹ The Court noted that in the specific context of military discipline, "[b]reaches 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."² These remarks are especially significant in cases raising issues of disobedience in the operational theatre. However, any sentence imposed by a court, be it civilian or military, must be adapted to the individual offender and constitute the minimum necessary intervention, since moderation is the bedrock principle of the modern doctrine of sentencing in Canada.

[8] In imposing an appropriate sentence on an accused for the wrongful acts that he or she has committed in relation to the offences of which he or she is guilty, certain objectives must be aimed for in light of the principles applicable to sentencing, which vary slightly from one case to the next. The fundamental purpose of sentencing in a court martial is to maintain military discipline and build respect for the law by imposing fair sanctions having one or more of the following objectives:

- a. to denounce unlawful conduct;
- b. to deter the offender and other persons from committing offences;
- c. to separate offenders from society where necessary;

¹ See *R. v Généreux*, [1992] 1 S.C.R. 259, at page 293.

² *Ibid.*

- d. to assist in rehabilitating offenders, in order to return them to their environment in the Canadian Forces or to civilian life; and
- e. to promote a sense of responsibility in military members who are offenders.

[9] The sentence must also take into consideration the following principles. It must be proportionate to the gravity of the offence, the previous character of the offender and his or her degree of responsibility. The sentence should also take into consideration the principle of parity in sentencing, that is, a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. Before considering depriving an offender of liberty, the Court has a duty to consider whether less restrictive sanctions may be appropriate in the circumstances. Last, the sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender or for any indirect consequence of the verdict or the sentence on the offender.

[10] Counsel's joint submission must be consistent with the abovementioned objectives and principles that apply in the present case; otherwise, the Court has no choice but to reject it. It should be noted that in justifying its recommendation, the prosecution is primarily relying on—correctly, in my view—the reasons of our colleague Justice Perron in *R v Billard*,³ affirmed by the Court Martial Appeal Court in a unanimous decision penned by the Honourable Chief Justice Blanchard.⁴ *Billard* comments on the importance of absolute respect for authority and of obedience to orders, particularly in the operational environment. I endorse all of the principles set out by my colleague Justice Perron in *Billard* and find that they are fully applicable in the case at bar. I also note the words of Chief Justice Blanchard, which sum up the importance of a Canadian soldier's duty to obey and of the guiding principles for military courts when determining an appropriate sentence for the breach of this duty, at paragraphs 7 to 9 of the Reasons for Judgment:

Upon review of the record and hearing counsel for the Appellant, we are of the view that the sentence imposed is not illegal or demonstrably unfit. In our view, the Military Judge committed no error in principle, did not fail to consider relevant factors and did not over-emphasize the appropriate factors.

This case raises an important principle, namely, “the Soldier first principle”. A member of the Canadian Forces, whatever his or her rank, trade or occupation, is at all times a fighting soldier. The Appellant's offence did not relate to the performance of his routine duties as an intelligence operator; the evidence is that he performs those duties very well as witnessed, amongst other things, by the continuing support and presence of his commanding officer and superiors at the hearing of this appeal. Rather, his offence bore directly on his failure to perform as a member of a fighting unit which was then under attack. It put at risk the lives and safety of himself and his comrades.

³ 2007 CM 4019, 6 July 2007.

⁴ Neutral citation: 2008 CMAAC 4, 25 April 2008.

It is imperative in such circumstances that lawful orders be unquestioningly obeyed.

The principles of denunciation and deterrence assume particular importance in these circumstances. . . .

[11] In light of the evidence adduced in this Court, it is clear to me that Master Corporal Lamoureux refused to carry out the duties assigned to him. He also disobeyed a subsequent order to do so. In my view, this is as serious, if not more serious, than the failing of Master Corporal Billard, even though the operational situation was different. It matters little that Master Corporal Lamoureux acted out of frustration or fatigue. The offender showed a lack of the basic discipline expected of a member of the Armed Forces, and his conduct is highly reprehensible, given that he is a non-commissioned member with such vast experience. In *R v Crockatt*,⁵ our colleague Justice Lamont expressed the same view, reiterating the paramount importance of obeying orders, particularly in the operational theatre. After delivering the verdict in the Disciplinary Court Martial, as it was then known, Justice Lamont made the following remarks on sentencing, at paragraphs 7 to 10, before sentencing Private Crockatt to detention for a term of 15 days:

I should say that I accept the evidence of the witnesses who were heard in the course of the sentencing phase; that is, Master Corporal Dickin and Master Warrant Officer Jeans as to the effect of this particular offence on unit discipline and morale. I consider as a serious aggravating circumstance in this case that the offence was committed in an active theatre of operations. It seems to me that the only circumstance of the offence that might have [been] more severe, more serious, would be if it were committed while actually under fire. While that did not happen in this case, I consider that this is close to one of the most serious offences of its kind.

As well, I've considered the importance to operations of the order that was given and the importance of complying with that order to maintain the security of the other personnel present at the time. A failure to properly man an observation post can have very serious consequences. It is not the role of the private receiving the order to make any kind of judgement as to whether or not the task he is assigned is to be carried out. There is simply no question that when a lawful order is given in theatre, of the importance of this one, it must be complied with immediately and without question.

I also consider the circumstances of the offender, who at the time of this offence had almost four years of service in the Canadian Forces as a private infantryman. He can be taken to be aware, as a result of his training both at home and in preparation for deployment, of the importance of complying with lawful orders.

I consider as one of the mitigating circumstances in this case, the health of the offender at the time of the offence. It is clear from the evidence heard in the course of the trial that in the days prior to the offence being committed he was diagnosed with viral gastro-enteritis, and it is likely that he was suffering the effects of that condition even after the successful treatment of 15 March 2006 some three days prior to the offence. I also consider the arduous conditions of combat under which the offence was committed. There is no doubt on the evidence that the resources that were available to the chain of command to discharge their weighty responsibilities at the time were limited, everyone in the unit was contributing 110 per cent. In this way they distinguished themselves to the honour of themselves and the country they serve. The offender,

⁵ 2008 CM 2004, 16 February 2008.

as well, served under those arduous conditions of combat, but in the same conditions chose on this occasion to advance his individual interests rather than to comply with a lawful order.

[12] In this case, the Court considers the following circumstances to be aggravating:

- a. These offences are objectively very serious. Disobeying a lawful command is punishable by life imprisonment, while conduct to the prejudice of good order and discipline is punishable by dismissal with disgrace from Her Majesty's service. The fact that Master Corporal Lamoureux repeatedly and with premeditation created an unhealthy situation in his work environment is particularly aggravating.
- b. The offences are subjectively just as serious. They are offences that were committed in the Afghan operational theatre where danger, stress and fatigue are exacerbated by a multitude of factors that are often beyond the control of the soldiers risking their lives to carry out their duties.
- c. There is also the fact that this is not Master Corporal Lamoureux's first run in with military justice, even though his conduct sheet shows convictions from 1992 and 1994 respectively. It should be noted that these offences, too, were committed in an operational environment abroad during deployments to Cyprus and Bosnia–Herzegovina.
- d. There are also the offender's actions that placed an additional burden on his overworked colleagues, when his very presence on the team was supposed to bring them much-needed relief. Such conduct demonstrates a profound lack of respect for his comrades and a dereliction of his responsibilities in support of the collective effort required. One cannot help but note that more leadership and integrity is expected of an experienced master corporal.
- e. Finally, there is the fact that Master Corporal Lamoureux defied his chain of command in refusing to obey lawful commands, as clear and simple as they were. In so doing, he became an administrative burden on his unit until he went back to Kandahar Airfield, such a pointless and unacceptable burden in an operational environment where human resources and materiel are stretched to the limit. There can be no doubt that Master Corporal Lamoureux undermined the cohesion, morale and discipline of his team with his selfish, even corrosive, attitude.

[13] The Court nevertheless considers the following factors to have a mitigating effect on the sentence:

- a. First, we have Master Corporal Lamoureux's admissions of guilt. In the circumstances, his admissions of guilt demonstrate that the offender accepts his responsibility in this matter.

- b. Second, there is the fact that Master Corporal Lamoureux's performance vastly improved in the several months following the commission of the offences. This situation illustrates, however, the magnitude of the charges against him. The document filed by the defence as Exhibit 8 shows that Master Corporal Lamoureux mended his ways in the days following his unacceptable conduct. The document's author goes to great pains to note that the offender's performance was flawless but also states that he had previously met him in the company of the commander of the IT troop to explain to him what was expected of him regarding his attitude and work conduct. Furthermore, the following is stated in the middle of paragraph 2: [TRANSLATION] "His commitment and his experience in the Canadian Forces are key factors that encouraged him in his new duties. His interest and involvement in this project has greatly changed his attitude, improving it significantly, which motivated him to complete the mission". The Court therefore agrees that Master Corporal Lamoureux's conduct after the incidents did improve, but two essential facts appear to be at the root of this improvement and cannot be ignored: first, a formal warning from his new supervisors; second, a personal interest in his newly assigned duties. This is very telling of how Master Corporal Lamoureux's ethics, unselfishness and solidarity depended on the moment in time and on his personal interest in carrying out the duty assigned to him. Obedience and duty should not depend on the moods or preferences of a soldier faced with responsibilities that the chain of command deliberately decides to assign to him to support the collective effort, particularly in an operational theatre.
- c. The Court also finds the time elapsed since the commission of the offences to be a mitigating factor, in the context of the prosecution's admissions. The initial charges against Master Corporal Lamoureux were laid in July 2010, with charges being preferred in November 2010. A court martial was scheduled to be convened on 16 May 2011, but the Director of Prosecutions withdrew the charges a few days before the court martial was to begin. New charges against Master Corporal Lamoureux, based on the same facts, were laid on 24 May 2011. The next day, Master Corporal Lamoureux exercised his right to be tried by court martial. Charges were preferred by the Director of Military Prosecutions on 28 July 2011. This court martial was convened on 11 August 2011, and proceedings began on 22 August 2011. The Court finds it unacceptable that the disciplinary proceedings regarding this incident have taken so long, particularly since the evidence is exceptionally straightforward and the events took place in an operational theatre. First, Master Corporal Lamoureux had to wait almost 10 months before new charges were laid against him. Clearly, this situation is the result of an error or omission of a legal nature. Second, this situation in no way furthers the best interests of maintaining discipline or the interests of the accused. It is in the interest of the proper administration

of military justice for the benefit of all parties that charges laid under the Code of Service Discipline be dealt with in a timely manner.

[14] I agree with the prosecution's argument that a fair and appropriate sentence should emphasize the objectives of general deterrence, denunciation of conduct and punishment of the offender. Despite this, specific deterrence cannot be regarded as a trivial factor when the evidence leads us to conclude that, at the time of the incidents in issue, Master Corporal Lamoureux seemed inclined to carry out his responsibilities as he saw fit, depending on his work preferences and personal interests.

[15] Blind obedience of lawful commands does not admit the subjective preferences of a soldier as a variable when he or she is to carry out an assigned duty. Counsel's joint submission is in my view the minimum sentence in the circumstances and will not hinder the rehabilitation of Master Corporal Lamoureux. I would add that recent case law appears to favour a custodial sentence for this type of offence where the offence was committed in an operational theatre. In my view, this is appropriate and fair in the absence of exceptional circumstances.

FOR THESE REASONS, THE COURT:

[16] **FINDS** Master Corporal Lamoureux guilty on the second and third counts;

[17] **UPHOLDS** the stay of proceedings regarding the first and fourth counts;

AND

[18] **SENTENCES** the offender, Master Corporal Lamoureux, to detention for a term of 14 days.

Counsel:

Major J.L.V.G. Roy and Captain N.L. Déry, Canadian Military Prosecution Service
Counsel for the Her Majesty the Queen

Major C.E. Thomas, Directorate of Defence Counsel Services
Counsel for Master Corporal R.L. Lamoureux