

**Citation:** *R. v. ex-Private K.A. Lee*, 2007 CM 4017

**Docket:** 2006-94

**STANDING COURT MARTIAL  
CANADA  
QUEBEC  
ASTICOU CENTRE, GATINEAU**

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**Date:** 5 June 2007

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**PRESIDING: LIEUTENANT-COLONEL J-G PERRON, M.J.**

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**HER MAJESTY THE QUEEN**

**v.**

**EX-PRIVATE K.A. LEE  
(Offender)**

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**SENTENCE**

**(Rendered orally)**

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[1] Ex-Private Lee, having accepted and recorded your plea of guilty to charge number one, the court finds you guilty of this charge of drunkenness.

[2] The statement of circumstances, to which you formally admitted the facts as conclusive evidence of your guilt, provides this court with the circumstances surrounding the commission of this offence.

[3] The principles of sentencing, which are common to both courts martial and civilian criminal trials in Canada, have been expressed in various ways. Generally, they are founded on the need to protect the public, and the public includes the Canadian Forces. The primary principles are the principles of deterrence, that includes specific deterrence in the sense of deterrent effect on you, personally, as well as general deterrence; that is, deterrence for others who might be tempted to commit similar offences. The principles also include the principle of denunciation of the conduct, and last but not least, the principle of reformation and rehabilitation of the offender. The court must determine if protection of the public would best be served by deterrence, rehabilitation, denunciation, or a combination of those factors.

[4] The court has also considered the guidance set out in sections 718 to 718.2 of the *Criminal Code of Canada*. Those purposes are to denounce unlawful

conduct, to deter the offender and other persons from committing offences, to separate the offender from society where necessary, to assist in rehabilitating offenders, to provide reparations for harm done to victims or to the community, and to promote a sense of responsibility in offenders in acknowledgement of the harm done to victims and to the community.

[5] The court is also required, in imposing a sentence, to follow the directions set out in Queen's Regulations and Orders, article 112.48, which obliges it, in determining a sentence, to take into account any indirect consequences of the finding or of the sentence, and impose a sentence commensurate with the gravity of the offence and the previous character of the offender.

[6] The Court Martial Appeal Court decision in *R. v. L.P.* [1998], CMAJ No.8, CMAC 418, stated clearly that a sentencing judge should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute or unless the sentence is otherwise not in the public interest. The prosecution and your defence counsel have jointly proposed a sentence of a fine in the amount of \$1,000.

[7] The court has also given consideration to the fact that sentences of offenders who commit similar offences in similar circumstances should not be disproportionately different. The court must also impose a sentence that should be the minimum necessary sentence to maintain discipline.

[8] The ultimate aim of sentencing is a restoration of discipline in the offender and in military society. Discipline is the quality that every CF member must have, which allows him or her to put the interests of Canada and the interests of the Canadian Forces before personal interests. This is necessary because Canadian Forces members must willingly and promptly obey lawful orders that may have very devastating personal consequences, such as injury and death. Although discipline is a quality that is developed and encouraged by the Canadian Forces through instruction, training, and practice, it is ultimately an internal quality that is one of the fundamental prerequisites that ensures the operational efficiency of any armed force.

[9] I agree with the prosecution that your plea of guilty demonstrates your remorse and that you accept responsibility for your actions. Although this was not included in the statement of circumstances, the prosecution has also made mention that a lieutenant would have provided you with alcohol during this party. I understand from that statement that the prosecutor implies that your drunkenness was, somewhat, partly caused by a superior officer and that the court should consider this as a mitigating factor.

[10] As indicated by your defence counsel, your early guilty plea has ensured that witnesses are not required, and this guilty plea enables potential witnesses to pursue

their normal duties without any negative effect on operations. You were 21 years old at the time of the offence; I consider your age at the time of the offence as a mitigating factor. The documents presented by your counsel indicate that you were considered a good soldier by your superiors, and that you were appreciated as a team player by your immediate superiors and by your peers. The specific circumstances of this offence do not place this offence as serious in the spectrum of drunkenness.

[11] The fact that you are not a first time offender is an aggravating factor. Although your previous conviction for drunkenness occurred in 2004, it does demonstrate that you had a problem consuming alcohol in a reasonable manner. I hope for your sake that you have learned your lesson from this latest incident and that you will better control your consumption of alcohol in the future. Success in your endeavours may well depend on this. Ex-Private Lee, please stand up.

[12] The court believes the sentence must focus primarily on general deterrence and denunciation. Having reviewed the case law presented by the prosecution, and considering the mitigating and aggravating circumstances of this case, and the precise nature of this specific offence, and keeping in mind the direction given by the Court Martial Appeal Court in *R. v. L.P.*, I concur with the joint submission that an appropriate sentence in this matter is a fine in the amount of \$1,000. Therefore, I sentence you to a fine in the amount of \$1,000.

[13] The proceedings of this court martial in respect of ex-Private Lee are terminated.

LIEUTENANT-COLONEL J-G PERRON, M.J.

Counsel:

Major S.A. MacLeod, Military Prosecutions Central  
Counsel for Her Majesty the Queen  
Major S.E. Turner, Directorate of Defence Counsel Services  
Counsel for ex-Private K.A. Lee