



COURT MARTIAL

Citation: *R v Lacharité*, 2011 CM 1002

Date: 20110316

Docket: 201072

Standing Court Martial

Régiment de Maisonneuve
Montréal, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Corporal J.J.M. Lacharité, Offender

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

Restriction on publication: By court order made under section 179 of the *National Defence Act* and section 486.4 of the *Criminal Code*, information that could disclose the identity of the persons described in this judgement as the complainants shall not be published in any document or broadcast or transmitted in any way.

OFFICIAL ENGLISH TRANSLATION

REASONS FOR SENTENCE

(Rendered orally)

[1] Corporal Lacharité was facing five charges: two charges under section 130 of the *National Defence Act*, contrary to section 271 of the *Criminal Code*, for sexual assault; one charge under section 129 of the *National Defence Act*, namely, for conduct to the prejudice of good order and discipline in relation to the harassment of a person in the workplace contrary to DAOD 5012-0; and two charges under section 93 of the *National Defence Act*, namely, disgraceful conduct, for having sexual relations with two female co-workers in the workplace. The prosecution has withdrawn the first charge of sexual assault. Corporal Lacharité has pleaded guilty to the second charge, namely

conduct to the prejudice of good order and discipline, and to the fourth and fifth charges, namely, disgraceful conduct. The Court has accepted and recorded these admissions of guilt and ordered a stay of proceedings regarding the third charge of sexual assault.

[2] Corporal Lacharité has been a medical technician with the Regular Force since December 2007. Regarding the second charge, the facts show that between 28 January 2008, and 22 February 2008, he was a candidate in the first phase of the NQ3 medical technician course at the Canadian Forces Medical Service School in Borden. During that period, he harassed one of his peers, Private V.C. The harassment took the form of sexual innuendo and repeated invitations to Private V.C. to have sexual relations with him, all of which she clearly refused. Corporal Lacharité's harassment of Private V.C. created an unhealthy working relationship between them, which undermined their mutual trust and the respect that they should have had for each other. Indeed, upon her arrival at the Saint-Jean Garrison's medical clinic, knowing that Corporal Lacharité would be transferred there too, she informed her chain of command, through Master Warrant Officer Noël, that she did not want to work with the Corporal. It is useful to point out that Corporal Lacharité received harassment awareness training during his basic training in 2001 and that he was perfectly aware of Canadian Forces policies on harassment while he was a reservist.

[3] Regarding the facts surrounding the fourth and fifth charges, the facts indicate that between 14 November 2009, and 10 January 2010, when Corporal Lacharité was transferred to the Saint-Jean Garrison's medical clinic as a medical technician, he behaved disgracefully on two occasions with a civilian employee of the clinic, Ms. S.S. The first incident occurred in Room 224, Building 150, of the Saint-Jean Garrison's medical clinic in November 2009. While Ms. S.S. was at her desk at the clinic's reception, Corporal Lacharité came to ask for her help in calibrating a machine for eye examinations. They ended up alone in an examination room on the second floor of the clinic. After unsuccessfully attempting to calibrate the machine, Corporal Lacharité sat down in front of Ms. S.S. and started to look at her, asking her to tell him about herself. He told her that he had asked her to come and help him because he was interested in her. The conversation continued, with his asking very personal questions to find out whether she had a spouse and children. Corporal Lacharité came closer to her and pulled down the neckline of her sweater to look at her breasts. He then touched her left breast and, with his left hand, grabbed her right buttock. The touching was interrupted when Corporal Lacharité was called through the clinic's intercom system. The second incident occurred in early January 2010, after Ms. S.S. came back from her Christmas vacation. She saw Corporal Lacharité again during a break in the cafeteria, and he invited her to join him in the treatment room where he would be on duty during the lunch hour. Corporal Lacharité told her that he had really enjoyed their previous encounter. Ms. S.S. went to the treatment room as agreed. They withdrew into a quiet corner of the treatment room, seated out of sight from the room entrance. Corporal Lacharité initiated the conversation by asking how Ms. S.S.'s Christmas holidays had been, but the conversation very quickly turned to very personal matters and took on a sexual undertone. Corporal Lacharité asked Ms. S.S. with how many men

she had had sexual relations and how she liked to be satisfied in bed. Corporal Lacharité then got up from his chair to pull down the neckline of Ms. S.S.'s sweater while complimenting her on the way she was dressed, which, in his words, [TRANSLATION] "turned him on". He lifted up her skirt and slid his hand on her thigh while continuing to compliment her. Corporal Lacharité then pulled down his zipper and took his penis out of his trousers. His penis was erect. With his hands, he had her take his penis in her right hand. She held it for about a minute, masturbating him. Corporal Lacharité then took Ms. S.S.'s head and moved it towards his penis so that she could take his penis in her mouth. She took his penis in her mouth. He asked her to kneel, but she refused. She performed fellatio until Corporal Lacharité ejaculated in her mouth. Afterwards, she felt embarrassed by the situation and left the room a few minutes later. Both incidents involving Ms. S.S. occurred during working hours, and Corporal Lacharité was in uniform.

[4] Between 14 November 2009, and 24 November 2009, while Corporal Lacharité was still working at the Saint-Jean Garrison's medical clinic, he behaved disgracefully toward a second civilian employee of the clinic, Ms. I.D. The incident occurred in Room 128, Building 150, of the Saint-Jean Garrison's medical clinic during working hours, while Corporal Lacharité was in uniform. For some time, Corporal Lacharité had been coming to see Ms. I.D. at her workstation in the medical clinic's records section. He was very charming towards her and chatted her up by complimenting her. He had even asked her whether she was single and since when this was so. After learning that she had been single for three years, he asked her whether she missed having sex. She answered yes. One day, in the late afternoon, Corporal Lacharité invited her to join him in the medical examination room of Phase 1, explaining to her that he would call her to ask her to join him. Ms. I.D. suspected that his motives for the invitation were sexual. After he called her, she went to their meeting place. After she arrived in the room in Phase 1, Corporal Lacharité locked the door so that they would not be disturbed. He then approached Ms. I.D. and kissed her. She responded to his kiss. Corporal Lacharité took her hand and put it on his penis so that she could touch it through his trousers. He then lifted her sweater and pulled away the left cup of her bra to kiss her in the area of her left nipple. She told him to stop, that this was not right and that, moreover, he had a spouse. Corporal Lacharité stopped and asked her whether her refusal to have sex with him had to do with the fact that he had a spouse. He tried to convince her by saying that he was separated but that he had not told anyone and that he had not had relations with his wife for a long time. The encounter lasted about 10 minutes. They went their separate ways after agreeing that they would not tell anyone about their encounter.

[5] In January 2011, Ms. S.S. informed her chain of command of Corporal Lacharité's conduct towards her. A disciplinary and police investigation was launched to shed light on Corporal Lacharité's conduct.

[6] The prosecution summoned Major Pierre Voyer, the accused's commanding officer, as a witness. Major Voyer has been the commanding officer of the 41 Canadian Forces Health Services Centre since 2009. He has extensive experience in the Canadian Forces, and has accumulated almost 28 years of military service. His unit is responsible

for providing health care to the members of the Canadian Forces assigned to Montréal and Saint-Jean-sur-Richelieu and health services at the Montréal and Sherbrooke recruiting centres. The Saint-Jean-sur-Richelieu clinic has about 110 employees, about half of which are civilians, while Longue-Pointe has about 30 employees, two-thirds of which are civilians. In his testimony, Major Voyer gave a brief overview of the role and responsibilities of medical technicians at the corporal rank in the unit who are awaiting training for their NQ5 qualification. These members are responsible for receiving patients and obtaining relevant information, which they then pass on to the physician before his or her initial meeting with a patient. They are also exposed to other related health services activities, such as physiotherapy and the pharmacy. The clients of the Saint-Jean clinic are mainly recruits, most of whom are Anglophone; there are about 3,800 patients a year. Major Voyer testified that medical technicians have to possess core personal and professional skills to do their jobs well. They have to conduct themselves with integrity in addition to being honest, reliable and autonomous. As the first individuals in uniform in contact with the recruits, medical technicians have to project a positive image. As in every Canadian Forces unit made up of members and civilians, mutual respect is essential for the unit to operate properly. Major Voyer was informed of the incidents at the Saint-Jean-sur-Richelieu clinic involving Corporal Lacharité in January 2011. As soon as an investigation was launched and a written harassment complaint against Corporal Lacharité was received, the Commanding Officer assigned the accused to administrative duties at the Longue-Pointe centre. When questioned by the Court, Major Voyer confirmed that a career review board would examine Corporal Lacharité's case in light of the incidents that had led to the proceedings before this Court. When informed of the accused's admissions of guilt, he added that he was not able to specify what recommendation he would make to the chain of command, except for saying that a warning and supervision would be the minimum administrative measure in the circumstances, but that a recommendation for release was not excluded.

[7] In addition to his employment in the Canadian Forces, Corporal Lacharité has been a farmer since 2008. He is a veal, field crop and maple syrup producer. The net annual income of Corporal Lacharité's farm in 2010 was \$23,359.43 (this sum takes into consideration mortgage interest repayments on the farm but not the capital). Additional annual expenses related to the farm include the repayment of the mortgage principal (\$31,884.77) and a bad debt (\$14,692.00); the additional annual expenses therefore amount to \$46,576.77. In short, Corporal Lacharité's farm is in deficit.

[8] Corporal Lacharité has a spouse and three young dependent children, ranging in age from a month to two years. His financial situation seems to be under control, but it is relatively precarious. He has a credit card for current living expenses with a balance of \$4,404.03. He makes varying monthly repayments on a personal credit line, the balance of which is \$25,337.94.

[9] Because of the incidents resulting in the various charges being brought against him, Corporal Lacharité did not participate in the NQ5 career course on 30 July 2010. This qualification is necessary to become eligible for a master-corporal appointment.

[10] Following his return from the paternity leave he took after the birth of his son who was born in January 2010, Corporal Lacharité was sent to the Longue-Pointe Garrison on January 5, 2011, as an archivist; there, he has been performing administrative duties, such as filing documents, because of the current legal proceedings. He will stay there until his next parental leave following the birth of his youngest child last month and pending the decision of the Canadian Forces concerning his future with the Canadian Forces. Corporal Lacharité wishes to remain in the Canadian Forces.

[11] Corporal Lacharité is also involved in his community. He is spearheading a first responder service project in his town, of which he will be the co-ordinator and trainer. This service will provide first responders who can administer first aid in a medical emergency before ambulance attendants arrive.

[12] The prosecution recommends that this Court impose a sentence consisting of a severe reprimand and a \$3,500 fine. It submits that such a sentence falls within the range of sentences for such offences. It particularly relies on *Legault*,¹ *Deschamps*² and *MacDonald*,³ dating from 2004 to 2010. The principles argued in those cases are relevant in the present matter and do not cause significant disagreement between the counsel present. It is useful to emphasize that the offenders in all of these cases were in a position of authority with respect to the complainants or their victims and they were abusing their trust. They were all members with a great deal of experience. In all three cases, the offenders were sentenced to a severe reprimand or a reprimand accompanied by a fine ranging from \$4,000 to \$4,500. The prosecution submits that the sentence should focus on general and specific deterrence and on the denunciation of the offender's conduct. It submits that Corporal Lacharité's actions revealed a complete lack of regard for his responsibilities and that they were planned and premeditated. The prosecution adds that the harassment victim was marked by the incident and that she no longer wanted to work with Corporal Lacharité.

[13] The defence is asking the Court to sentence Corporal Lacharité to a reprimand and a fine ranging between \$2,000 and \$2,500 and payable in monthly instalments of \$200. According to defence counsel, this sentence would serve the ends of military justice. He argues that the significant mitigating factors are the admissions of guilt and the absence of a criminal or disciplinary record. Corporal Lacharité's domestic and financial situation are also essential considerations in determining a fair sentence according to counsel for the defence.

[14] Imposing a sentence is undoubtedly the most difficult task for a judge. 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 theory of sentencing in Canada.

¹ *R v Legault*, 2004 CM 44 (subject to a no-publication order).

² *R v Deschamps*, 2009 CM 1013.

³ *R v MacDonald*, 2010 CM 1018 (subject to a no-publication order).

[15] 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 to build respect for the law and 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;
- (d) to assist in rehabilitating offenders to return to their environment in the Canadian Forces or civilian life; and
- (e) to promote a sense of responsibility in military members who are offenders.

[16] 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, all sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender and to account for any indirect consequence of the verdict or the sentence on the offender.

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

- (a) The fact that Corporal Lacharité repeatedly, and in a premeditated manner, created a poisonous situation in the workplace.
- (b) The fact that some of the complainants have been affected by his conduct, as confirmed by the actions of V.C. and S.S. following the incidents involving them.
- (c) The fact that, first, Corporal Lacharité was well aware of the policies on harassment in the workplace and that, second, his experience and his level of maturity should have prevented him from conducting himself in a disgraceful manner by engaging in sexual activities in the workplace during working hours while he was in uniform.

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

- (a) Corporal Lacharité's admissions of guilt. In the circumstances, his admissions of guilt demonstrate that the offender accepts full responsibility in this matter. The Court accepts that these admissions avoided the complainants having to undergo an embarrassing and humiliating experience by having to testify before the Court on the facts surrounding the commission of the offences in question.
- (b) The absence of a criminal or disciplinary record.
- (c) Corporal Lacharité's domestic and financial situation. In fact, he is his young family's sole financial provider, and his financial situation is precarious.

[19] I share the prosecution's position that a fair and appropriate sentence must focus on general and specific deterrence, denunciation of the behaviour and punishment of the offender. I also agree with the defence's submission that the sentence must not act as a brake on Corporal Lacharité's rehabilitation given his personal and domestic situation and his wish to pursue his career in the Canadian Forces if he is granted that opportunity. In this matter, it is my view that a severe reprimand would be justified if the accused had long, extensive military experience. In the circumstances, this sanction could be considered to be unduly severe and would not be the minimum required punishment. A reprimand combined with a significant fine is sufficient to achieve the objectives of general deterrence and denunciation of the behaviour, to make members of the Canadian Forces understand that this type of offence is harmful to military discipline. The objectives of specific deterrence, and the punishment and rehabilitation of the offender are achieved through the substantial financial costs that the offender will have to bear for the offences committed.

For these reasons, the Court

[20] **FINDS** Corporal Lacharité guilty of the second, fourth and fifth charges;

[21] **UPHOLDS** the stay of proceedings regarding the third charge.

AND

[22] **SENTENCES** Corporal Lacharité to a reprimand and a fine in the amount of \$2,400 payable in equal monthly \$200 instalments as of today. If Corporal Lacharité is released from the Canadian Forces before he has fully paid this fine, the balance will be payable immediately on the date of his release.

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