



## COURT MARTIAL

**Citation:** *R v Alcime*, 2012 CM 3021

**Date:** 20121121

**Docket:** 201247

Standing Court Martial

Canadian Forces Base Shilo  
Shilo, Manitoba, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Bombardier O. J. Alcime, Offender**

**Presiding:** Lieutenant-Colonel L.-V. d'Auteuil, M.J.

---

### OFFICIAL ENGLISH TRANSLATION

#### REASONS FOR SENTENCE

(Rendered orally)

[1] On 21 November 2012, the Standing Court Martial found Bombardier Alcime guilty of behaving with contempt toward a superior officer contrary to section 85 of the *National Defence Act*.

[2] As the military judge presiding at this Standing Court Martial, it now falls to me to determine the sentence.

[3] In the special context of an armed force, the military justice system constitutes the ultimate means of enforcing discipline, which is a fundamental element of military activity in the Canadian Forces. The purpose of this system is to prevent misconduct or, in more positive terms, to promote good conduct. It is through discipline that an armed force ensures that its members perform their missions successfully, confidently and reliably. The military justice system also ensures that public order is maintained and that

persons charged under the Code of Service Discipline are punished in the same way as any other person living in Canada.

[4] Sentencing is one of the most difficult tasks for a judge. In *R v Généreux*, [1992] 1 SCR 259, 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”. It also emphasized that, in the particular context of military justice, “[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”. However, the law does not allow a military court to impose a sentence that would be beyond what is required in the circumstances of a case. In other words, 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.

[5] In the case at bar, the prosecutor suggested that the Court impose on the offender a severe reprimand and a fine in the amount of \$1,500. Counsel for the defence recommended that the Court sentence his client to a fine ranging from \$200 to \$500.

[6] The fundamental purpose of sentencing in a court martial is to ensure respect for the law and the maintenance of discipline by imposing punishments that have one or more of the following objectives:

- a. to protect the public, which includes the Canadian Forces;
- b. to denounce unlawful conduct;
- c. to deter the offender and other persons from committing the same offences;
- d. to separate offenders from society, where necessary; and
- e. to rehabilitate and reform the offender.

[7] When imposing sentences, a military court may also take into consideration the following principles:

- a. The sentence must be proportionate to the gravity of the offence.
- b. The sentence must be proportionate to the degree of responsibility and previous character of the offender.
- c. The sentence must be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

- d. Before depriving an offender of his or her freedom, the Court must consider whether less restrictive sanctions are appropriate in the circumstances. In short, the Court should impose a sentence of imprisonment or detention only as a last resort.
- e. Last, all sentences should be adapted to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[8] The nature of the offence set out at section 85 of the *National Defence Act* is to ensure the minimum level of respect required in a military context between a subordinate and a superior officer, whether or not in presence of other military members, for the purpose of preventing this type of behaviour from leading a subordinate to adopt disobedient conduct and a disobedient attitude that could affect the morale and cohesion of the Canadian Forces at any level.

[9] The Court is of the opinion that sentencing in this case should focus on the objectives of, first, denunciation of unlawful conduct and, second, general deterrence. It is important to remember that the principle of general deterrence means that the sentence imposed should deter not only the offender from re-offending, but also others in similar situations from engaging in the same prohibited conduct.

[10] On 19 May 2011, Master Bombardier Meger entered the 1 RCHA Regimental Duty Centre office to see what his subordinate, Bombardier Alcime, was doing there. The latter was supposed to be returning a key and reporting back to Master Bombardier Meger so that they could go to the unit's transportation section together.

[11] There were three additional military members present. Master Bombardier Meger asked one of them whether Bombardier Alcime could remain there and whether the non-commissioned officer on duty could keep an eye on him, given that a short time earlier, he had left the unit's transportation officer without warning. According to Bombardier Alcime, Master Bombardier Meger also assigned him to act as a replacement for the duty driver, thereby requiring him to remain with the unit's duty staff.

[12] This was what caused Bombardier Alcime to say to Master Bombardier Meger in an exasperated tone, or a contemptuous tone according to some witnesses, while gesticulating with his hands, "Why are you so hard on me? Is it because you are a racist?"

[13] Bombardier Alcime's reaction caused Master Bombardier Meger to put on his beret, stand at attention and order Bombardier Alcime to stand at attention.

[14] Bombardier Alcime allegedly did not respond immediately. Master Bombardier Meger had to repeat the order several times before Bombardier Alcime stood at attention, according to some witnesses, or stopped talking and gesticulating, according to others, and finally sat down.

[15] Master Bombardier Meger then left the office.

[16] In arriving at what it considers to be a fair and appropriate sentence, the Court has therefore considered the aggravating and mitigating factors presented by the facts of this case.

[17] The Court finds the following factors to be aggravating:

- a. The objective seriousness of the offences. You have been found guilty of a service offence under section 85 of the *National Defence Act*, which is liable to dismissal with disgrace from Her Majesty's service or to less punishment.
- b. In terms of objective seriousness, I note four aspects from the evidence presented to me:
  - i. The first aggravating factor is your lack of respect for your superior officer. Respect is one of the principles set out in the Canadian Forces Statement of Defence Ethics: respect for the law, respect among military members, respect for other Canadians, respect for rank and respect for the uniform. In this case, you have failed to apply this principle.
  - ii. Secondly, when you asked your question in the tone that you employed, you did so in the presence of other military members and you did so at the unit, which, in my view, also constitutes one or more aggravating factors. By expressing yourself as you did before your peers and superiors, you tested and defied the authority of those present and also failed to set the example that is expected of you in such circumstances.
  - iii. Thirdly, I note your rank and experience. You will understand that in light of your rank and your years of experience in your field in the Canadian Forces, it is normal that there be certain expectations, including respect for your superior officers; you failed to use your knowledge, experience and rank to understand that it was not appropriate to express yourself as you did, when you did.
  - iv. The final aggravating factor is your conduct sheet, but not each element taken individually. You will understand that the offences relating to weapons handling do not resemble the offences of which this Court has found you guilty. That said, the offence of disobeying an order is much more similar, although the circumstances that led to a finding of guilt for that offence of disobedience are not directly related to the circumstances of the case at bar. The fact remains that over the course of, I would say,

the past five years, you have been convicted three times by a military court, and this is the fourth time in five years. Even if they are not similar, taken collectively, these offences indicate too many encounters with the military justice system, and it is this collective effect that I am considering as an aggravating factor with respect to sentencing.

[18] Now for the mitigating factors:

- a. First there is your work performance. I have inferred from the testimony of the witnesses, including your superior officer, that you are an excellent mechanic. You are also an excellent driver; at least, you have several qualifications in that area, in addition to being a gunner, and you have often been employed in that capacity. Your last annual performance report makes reference to this, as I understand that you were employed as often on the gun line as you were for maintenance and transportation in 2011/2012, the year under evaluation. The comments about you are excellent and indicate a high level of performance and the potential to go further. I also read that you have perhaps not had a great deal of exposure to leadership positions. Perhaps you need to use today's experience of the related events to reflect on what you wish to accomplish in the Canadian Forces. You have leadership potential. You need decision-making and supervisory experience, and this experience should make you reflect on what you want to be doing in the Canadian Forces after all these years. I consider your performance a highly mitigating factor in the circumstances. Despite what happened, you were at that level, and I believe that you need to benefit from that in the sentencing context.
- b. There is also your age, 36. There is your knowledge and experience, which, as I said earlier, in one sense did not benefit you when the offence was committed, but, on the other hand, I believe you are capable of drawing the necessary lessons from this incident to conduct yourself better in the future. When I look at your overall performance over the past year, apart from that incident, I believe that everything went well, since you even briefly occupied supervisory positions, and things went well in that respect.
- c. Another factor that the Court must take into account is that fact that you have had to face this court martial. The court martial is public and therefore accessible to people who are interested in knowing what is going on in this case. It is a part of military justice. The fact that this court martial is public also formalizes the court proceedings. It is clear to me that having to appear before a court martial will have a deterrent effect on you and also on others who might be tempted to engage in similar conduct.

- d. There is also the lack of premeditation. This is something that happened spontaneously; it is not something you planned. You were clear in your testimony during the hearing. In one sense, you wanted to know why you were being treated as you were, but, at the same time, you wished to express your exasperation and perhaps redirect the conduct of your superior officer. Therefore it is clear that there was no premeditation, and the Court must take that into account.
- e. It is also an isolated incident. As your counsel has said, this is not representative of your personality, your character with respect to your attitude toward your superiors, toward the chain of command. In that sense, I am taking this factor into account as well.
- f. There is also the lack of consequences. Perhaps it would have been possible for you to have taken your actions further in that moment. You were called to order, you reflected, and you decided simply to stand at attention, stop talking and sit down, and then look for another way to resolve the conflict. There were no further consequences, and I must give you credit on that point.
- g. There is also the time frame. As I have said many times before, Parliament has, over the years, decided to add section 162 of the *National Defence Act* to reflect the need for charges laid under the military justice system to be dealt with as expeditiously or as quickly as possible, particularly for minor offences such as the one of which you have been convicted by this Court. It is clear to me that the prosecution has done its job, having to work with facts that were not necessarily straightforward. If discipline is to be promoted within a unit, speed is of the essence. There must be a link between the punishment, for somebody convicted of an offence under the Code of Service Discipline, and the temporal aspect; the length of time that passes between the incident and the corresponding punishment is an important consideration. In this case, with respect to the chain of command, for administrative reasons or other reasons of which the Court is unaware, and this is not a criticism of the prosecution, merely an acknowledgement of a state of affairs, it is a factor that the Court must take into account.
- h. Finally, the criminal record. As a result of your conduct sheet, you have a criminal record, and because of the conviction and sentence being imposed on you today by the Court, the amount of time after which you may seek a pardon in order to have your criminal record sealed will be extended, and this is a factor that the Court must take into account. This may not affect your military life, but it could have consequences for your personal, everyday life. There may be things that you wish to do, and having a criminal record may have certain consequences. This factor must not be neglected; I see it as a mitigating factor.

[19] The appropriate penalties for offences of this nature and in such a context usually range from a severe reprimand to a reprimand and a fine, and to only a fine in some cases. The Court must reiterate that a reprimand is a serious penalty in a military context. On the scale of penalties, it is above a fine regardless of the amount. It reflects the doubt cast on the military member's commitment at the time the offence was committed. It reflects the gravity ascribed to the offence but also the offender's real hope for rehabilitation.

[20] Considering the nature of the offence, the applicable sentencing principles including sentences imposed on similar offenders for similar offences committed in similar circumstances by military tribunals, and the aggravating and the mitigating factors mentioned above, I am of the opinion that a reprimand and a fine would appear as the appropriate and the necessary minimum punishment in this case.

[21] About the amount of the fine, the Court does not consider that imposing an amount as suggested by the prosecution would really reflect a sentence commensurate with the gravity of the offence and the previous character of the offender, especially in a context where there is a combination of a fine with a reprimand. The Court is of the same view regarding the amount suggested by counsel for the defence. The Court concludes that a fine in the amount of \$1,000 would better represent the real meaning of this principle.

[22] A fair and just punishment should recognize the gravity of the offence and the responsibility of the offender in the context of the particular case. The Court does consider as an appropriate minimum and fit punishment to impose a combination of a reprimand with a fine in the amount of \$1,000.

**FOR THESE REASONS, THE COURT:**

[23] **SENTENCES** Bombardier Alcime to a reprimand and a fine in the amount of \$1,000. The fine is to be paid in consecutive monthly instalments of \$250 beginning on 1 December 2012, and continuing for the three following months. In the event you are released from the Canadian Forces for any reason before the fine is paid in full, then the outstanding amount is due and payable prior to your release.

---

**Counsel:**

Captain K. Lacharité, Canadian Military Prosecution Service  
Counsel for Her Majesty the Queen

Major J.L.P.L. Boutin, Defence Counsel Services  
Counsel for Bombardier O.J. Alcime