



COURT MARTIAL

Citation: *R v Ouellet*, 2011 CM 1013

Date: 20111116

Docket: 201132

Standing Court Martial

Valcartier Garrison
Courcelette, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Private K. Ouellet, Offender

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

OFFICIAL ENGLISH TRANSLATION

REASONS FOR SENTENCE

(Orally)

[1] Private Ouellet has pleaded guilty, first, to a charge of assault punishable under section 130 of the *National Defence Act* for a contravention of section 266 of the *Criminal Code* and, second, to the lesser and included offence of assault in respect of a charge of assault causing bodily harm, which is punishable under section 130 of the *National Defence Act* for a contravention of section 267(b) of the *Criminal Code*.

[2] The circumstances surrounding the commission of these offences indicate, to the Court, that the charges result from two separate incidents during which Private Ouellet deliberately chose to use violence against military members to settle personal scores. The first incident took place on 20 April 2010 at Valcartier Garrison. At or about 2230 hours, Private Ouellet and other members of 3 Battalion, Royal 22^e Régiment, entered Building 504. This building houses military members in the holding platoons of the Land Force Quebec Area Training Centre. Upon entering the premises, Private

Ouellet ordered the persons who were in their rooms to come out and stand at attention. One military member in the holding platoon asked Private Ouellet why he was doing this and what he wanted. Private Ouellet said that he was looking for a person in the holding platoon who had [TRANSLATION] “pissed him off” at L’Entre-Nous bar in Val-Bélair. At the end of the building’s hallway, Private Ouellet caught the gaze of Private Roussy, who was standing in the doorway to his room. Private Ouellet asked him, [TRANSLATION] “What are you looking at?” Before Private Roussy could even answer the question, Private Ouellet punched him in the chest. After this, Private Ouellet and his followers quickly left by the door on the north side of the building in the direction of Building 302, shouting insults at the members of the holding platoon. At that moment, the officer on duty arrived on the premises and took the situation in hand. Shortly after the events, the military police reported to Building 504 to intervene. They had been sent to the premises in response to a telephone call made to the 911 centre by a member of the holding platoon to report the incidents then taking place in the platoon’s quarters. Once informed of the situation, the military police did some checking to try to locate the suspects, but their searches yielded no results. The next day, one of the witnesses of the incident identified Private Ouellet as the instigator of the incident that had taken place the night before. A few days later, Private Ouellet was arrested and then released on certain conditions. Private Roussy felt pain in his chest for a number of days.

[3] The second incident took place on 25 August 2010 at Canadian Forces Base Gagetown, in New Brunswick. Private Ouellet was participating in a crowd control instructor course, as a member of the opposing force. He was then housed in Building D-24, which was adjacent to Building D-25. He had spent the evening having fun playing a video game with one of his friends. Around 2200 hours, he decided to go to bed. However, a group of individuals was partying and making a lot of noise outside. Disturbed by the shouts and noise from outside that kept him from sleeping, Private Ouellet opened his window and yelled at the individuals to stop that brouhaha. In turn, a member of the group told him to shut up, insulting him by calling him a “French frog”. Private Ouellet went back to his bed, unhappy with the attitude of the group. Around 2246 hours, Private Ouellet could no longer stand all that noise and decided to go resolve the situation once and for all. He went out in front of the main entrance of Building D-25, to the spot where Corporal Clarke-Burke was. Private Ouellet then asked Corporal Clarke-Burke, “Are you the one crying?” Corporal Clarke-Burke, thinking that he was asking him whether he had just shouted, answered in the affirmative because, indeed, he had just yelled at one of his friends inside the building to go get him some refreshment. Private Ouellet pushed Corporal Clarke-Burke against a wall and gave him three punches to the head. While trying to block the blows, Corporal Clarke-Burke called for help. His friends quickly came to his aid. Private Ouellet promptly left the premises in the direction of Building D-24, not realizing that he had mistaken his target because Corporal Clarke-Burke was not part of the group of individuals that had annoyed Private Ouellet. The military police were sent to the scene following an emergency call. After having obtained a description of the incident and the attacker, they searched Building D-24 for the individual. They quickly located Private

Ouellet, who was identified on the spot by two persons who witnessed the attack. He was arrested and transported to the military police station. The next morning, Private Ouellet was released without conditions. As shown by the photographs filed in evidence at the sentencing hearing (Exhibits 10 and 11), Corporal Clarke-Burke suffered a laceration to his scalp as a result of Private Ouellet's attack. The medical team was sent to the scene and worked to stop the bleeding of the wound. Corporal Clarke-Burke did not receive any special treatment following this incident, but to this day he has a visible scar on his scalp of about four centimetres in length.

[4] Although they did not make a joint submission to the Court, the counsel in attendance are recommending similar types of sentences, that is, a short period of detention and a substantial fine. The prosecution suggests that a sentence of 14 days' detention and a \$3,000 fine would maintain discipline and respect the objectives of specific deterrence, the denunciation of the act and the rehabilitation of Private Ouellet. The defence submits that a slightly shorter term of detention and a fine of approximately \$2,000 would allow those same objectives to be achieved.

[5] Sentencing is adapted to the individual offender. In addition, any sentence imposed by a court, be it civilian or military, must constitute the minimum necessary intervention, since moderation is the bedrock principle of the modern theory of sentencing in Canada.

[6] 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 are 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, which is achieved by imposing fair punishments that have 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, 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.

[7] The sentence must also take the following principles into account. 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. In considering a custodial sentence, the Court must consider whether less restrictive sanctions may be appropriate in the circumstances. Last, the sentence must 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.

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

- (a) Anyone who commits the offence set out at section 266 of the *Criminal Code*, namely assault, is liable to a sentence of imprisonment for a term not exceeding 5 years. This offence is objectively serious even if it is less so than the offence set out at paragraph 267(b) of the *Criminal Code*, for which the sentence is imprisonment for a term not exceeding 10 years;
- (b) The fact that, in the space of a few months, Private Ouellet twice took the law into his own hands by using physical violence against military members. It is clear that he preferred to let his fists do the talking, rather than settle his differences in a civilized and responsible manner. It is all the more deplorable that his first instances of misconduct resulted in his being arrested and released on conditions. The fact of the matter is that he likely failed to grasp both the scope of his actions and the reprehensible nature of his conduct. He behaved like a hooligan during the first incident, when his friends joined him in going to intimidate young military members in the holding platoon. A few months later, he let frustration and impulsiveness drive him to attack another person he mistakenly identified as a member of the group causing the nighttime clamour that was disturbing him who had told him off by making insulting and unacceptable remarks about his first language. When both incidents are considered, it must be recognized that there was an escalation in the degree of force used and the consequences for the second victim. There is no doubt that such conduct must be denounced and the offender deterred from and severely punished for engaging in it;
- (c) The fact that both incidents resulted from premeditated actions, even though, in the case of the second incident, Private Ouellet had every reason to be frustrated and angry; and
- (d) The fact that Private Ouellet's actions had consequences for the victims, particularly in the case of Corporal Clarke-Burke, who must now live with a scar on his scalp.

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

- (a) Private Ouellet's guilty pleas show that he accepts full responsibility in this matter. By so doing, Private Ouellet has avoided a long trial and spared a number of people from having to travel to give testimony and to take leave from work in another province;
- (b) The fact that he does not have a criminal record or conduct sheet;
- (c) The fact that Private Ouellet is a young, 24-year-old military member who is perceived by his chain of command as a positive element within his unit. The evidence filed with the Court shows that, despite his rank and limited experience in the Canadian Forces, that is, four years' worth, he has already shown qualities and aptitudes that speak for themselves. Private Ouellet is a young military member who is appreciated for his initiative and efficiency. He is appreciated for his team spirit, sense of responsibility and commitment. In brief, within a short amount of time he has succeeded in showing excellent potential (see exhibits 7 and 9); and
- (d) The fact that Private Ouellet has a demanding family and financial situation. He is the father of a young girl of 10 months of whom he has joint custody. Private Ouellet also makes support payments of \$500 a month to the child's mother. His financial situation shows that he pays a car loan of \$165 twice a month (see Exhibit 8).

[10] Both the case law submitted by the parties and that consulted by the Court show that counsel's recommendations fall within the range of sentences normally imposed in this type of case. The sentences imposed usually consist of a reprimand with a significant fine up to a term of imprisonment of less than six months. This wide range evidently takes into account the specific circumstances of the offenders and the circumstances of each case. I agree with the prosecution's submissions that the sentence in this case must emphasize the objectives of specific deterrence, rehabilitation, denunciation of the behaviour and punishment of the offender. However, the Court believes that general deterrence is also an important objective, given that the offender resorted to using physical violence to resolve his problems twice in the space of two months. This type of attitude must be vigorously denounced. This is not a case where these acts were carried out on utter, sudden impulse or an isolated act resulted from a mere error in judgment. As I emphasized recently in *R v Boudreault*, 2011 CM 1011, on 19 October 2011, anyone who is considering resorting to violence to take justice into their own hands may be deterred from doing so if they know that they will have to answer for their actions in a court of law. This case is to be distinguished from those minor cases in that there was a pattern in Private Ouellet's use of violence and that it was trivialized by the offender, who seemed to see it as a normal way of

resolving differences in society. Professional military members are rigorously trained to manage violence and its use. They know or should know better than anyone when they may resort to it for legitimate purposes and within the applicable parameters. The situations described before this Court are certainly not of that nature. Private Ouellet showed some fine qualities up to that day, but this episode will have to serve as a serious warning to him if he wishes to pursue a long career in the Canadian Forces. Those who, like him, think that fists can resolve everything should give some serious thought to such a way of living in society. Anger, frustration and even provocation cannot constantly serve as excuses for committing crimes of violence. If it was within this Court's power to do so, it would have ordered Private Ouellet to successfully complete training on anger management and on dealing with situations of conflict. The Court would have also ordered him to apologize to his victims. I strongly encourage him to do so. If he is sincere in the steps he has taken to accept his responsibilities and in the remorse he feels towards his victims, as counsel for the defence has emphasized, he will take the initiative in that regard. The Court does not accept that the circumstances of Private Ouellet's guilty plea equate to indirect apologies, as his counsel submits. Private Ouellet has demonstrated some very fine qualities up to now. He should seize the opportunity he is being offered and show everyone that he has reached the maturity and has the degree of humility that will be required of him if he wishes to pursue a great career in the Canadian Forces.

FOR THESE REASONS, THE COURT:

[11] **FINDS** the accused guilty on the first charge, namely assault, an offence punishable under section 130 of the *National Defence Act* for a contravention of section 266 of the *Criminal Code*.

[12] **FINDS** the accused guilty on the third charge, but for the lesser and included offence of assault, in respect of this charge laid under section 130 of the *National Defence Act* for the offence of assault causing bodily harm, punishable under paragraph 267(b) of the *Criminal Code*;

AND

[13] **SENTENCES** Private Ouellet to detention for a period of 14 days and a fine of \$2,000. The fine will be payable by consecutive equal monthly payments of \$100 starting on 30 November 2011 until the fine is paid in full.

Counsel:

Major G. Roy, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Lieutenant-Commander P.D. Desbiens, Defence Counsel Services
Counsel for Private K. Ouellet