



## COURT MARTIAL

**Citation:** *R. v. Tait*, 2010 CM 1009

**Date:** 20100419

**Docket:** 201001

Standing Court Martial

17 Wing Winnipeg  
Winnipeg, Manitoba, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Corporal M.D. Tait, Offender**

**Before:** Colonel M. Dutil, CMJ

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### REASONS FOR SENTENCE

(Orally)

[1] Corporal Tait, having accepted and recorded your plea of guilty to the first charge, the court finds you guilty of that charge for an offence under section 85 of the *National Defence Act*, that is, Insubordinate behaviour.

[2] Prosecution and counsel for the defence have made a joint submission on sentence. They recommend that this court sentence Corporal Tait to a reprimand and a fine in the amount of \$800. They submit that their recommendation is reasonable in the circumstances.

[3] Although it is true that the court is not bound by the joint recommendation on sentence, it should not be departed from unless it is believed that the recommendation is contrary to public interest or it would bring the administration of justice into disrepute. This test is significantly higher than whether the proposed sentence is reasonable. In other words, despite this court reaching a different conclusion than that of counsel as to whether the sentence is reasonable, the court cannot impose a sentence other than the recommended sentence unless it is contrary to public interest or it would bring the ad-

ministration of justice into disrepute. In fact, I consider that the sentence proposed by counsel is the minimum sentence possible before bringing the administration of justice or military justice into disrepute. It is clearly lenient but it cannot be considered outside of the range applicable for similar offences.

[4] It has long been recognized that the purpose of a separate system of military justice is to allow the Armed Forces to deal with matters that pertain directly to discipline, efficiency, and the morale of the military. The objectives and the principles to be used in considering what should be an appropriate punishment or sentence generally relates to one or more of the following: the protection of the public, and the public includes the interest of the Canadian Forces; the denunciation of the unlawful conduct; the deterrence, not only on the offender, but also on others that might be tempted to commit similar offences; to assist in the reformation or the rehabilitation of the offender; the sentence must also be proportionate to the gravity of the offence and the degree of responsibility of the offender; the sentence must also respect the principle of parity, that is that the sentence should be similar to sentences imposed on similar offenders for similar offences committed in mostly similar circumstances. Finally, the court will also look at the relevant aggravating and mitigating circumstances relating to the offender and to the offence. Incarceration and the separation of offenders from society can only be used as the last resort and only where another punishment or a combination of punishments is clearly inappropriate. After looking at all those principles and objectives, the court must consider if the joint submission made by counsel meets these principles and objectives based on the evidence before the court, including the circumstances surrounding the commission of the offence and the character of the offender.

[5] The circumstances surrounding this case are simple. Corporal Tait, then Sergeant Tait, had been involved several years in a common-law relationship with a female service person that had now entered in a relationship with a Captain Schultz. At the time of the offence, they were all posted at Canadian Forces Base Wainwright, although serving in different units. On 23 February 2009, the offender approached Captain Schultz at the base fitness centre and began bringing up past events between him and his former common-law wife. Captain Schultz tried to avoid a confrontation and Sergeant Tait, as he then was, made the following remarks: "If she keeps it up I'll destroy her and if you got a problem with it, I'll destroy you too." He made another unpleasant remark immediately after, which is not relevant to this offence. Apparently not content with the altercation so far, the offender followed Captain Schultz and other words were exchanged. This encounter was witnessed by innocent bystanders on a defence establishment. The offender was aware of Captain Schultz rank at all times.

[6] I agree with counsel for the prosecution that the essential objective of sentencing in this case is to ensure general deterrence, but I would add that specific deterrence should also be emphasized. In the circumstances of this case, it is a very serious offence both objectively and subjectively. First, section 85 of the *National Defence Act* provides a maximum punishment of dismissal with disgrace from Her Majesty's service. That is a very significant punishment; secondly, the offender was a very mature and experienced Senior NCO at the time of the offence. No doubt that these elements are

strong aggravating factors in this case. There is no doubt that Corporal Tait should have controlled his emotions or not put himself into such a vulnerable position. He knew better, and I'm satisfied that he knows better now. However, his previous record is unblemished and he has entered a plea of guilty, thus saving court's time and resources as well as preventing others from having to testify and expose their private lives in public.

[7] In conclusion, I do accept, reluctantly, the joint submission made by counsel and I sentence you, Corporal Tait, to a reprimand and a fine in the amount of \$800 payable immediately.

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**Counsel:**

Major B. McMahon, Canadian Military Prosecution Service  
Counsel for Her Majesty the Queen

Major E. Charland, Directorate of Defence Counsel Services  
Counsel for Corporal M.D. Tait