



COURT MARTIAL

Citation: *R. v. Babcock*, 2010 CM 1001

Date: 20100113

Docket: 200951

Standing Court Martial

Asticou courtroom
Gatineau, Québec, Canada

Between:

Her Majesty the Queen

- and -

Chief Warrant Officer W. Babcock, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Chief Warrant Officer Babcock, having accepted and recorded your plea of guilty in respect to the second charge and directed a stay of proceedings in respect of the first charge, the court finds you guilty of the second charge for a conduct to the prejudice to good order and discipline under s. 129 of the *National Defence Act*. You may be seated.

[2] The prosecution and defence counsel have made a joint submission on sentence. They recommend that the court sentence the offender to a reprimand and a fine in the amount of \$2,000.

[3] Although the court is not bound by the joint recommendation on sentence it is a generally accepted legal principle that the court should accept the said recommendation unless it considers that it would be contrary to public interest or bring the administration of justice into disrepute.

[4] It has long been recognized that the purpose of a separate system of military tribunals is to allow the Armed Forces to deal with matters that pertain directly to discipline, efficiency, and morale of the military. Offences relating to the conduct, such as the impugned conduct of Chief Warrant Officer Babcock, do have a serious impact on general discipline, even more so when the offender is of the rank of chief warrant officer, the highest rank for a non-commissioned member in the Canadian Forces, and seen with the highest regard by the institution and its members for his or her proven outstanding professional and personal attributes such as leadership, discipline, honesty and integrity.

[5] Generally, the objectives and the principles to be used in considering what should be an appropriate sentence relates to one or more of the following:

Firstly, the protection of the public, and that, of course, includes the Canadian Forces;

Secondly, the punishment and the denunciation of the unlawful conduct;

Thirdly, the deterrence of the offender and other persons from committing similar offences;

Fourthly, the separation of offenders from society including from members of the Canadian Forces where it is necessary;

Fifthly, the rehabilitation of offenders;

Sixthly, the proportionality to the gravity of the offence and the degree of responsibility of the offender;

Seventhly, the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

Eighthly, an offender should not be deprived of liberty if less restrictive punishment or a combination of punishments may be appropriate in the circumstances; and

Finally, the court shall consider any relevant aggravating or mitigating circumstance relating to the offence or the offender.

[6] Counsel for the prosecution has advanced that the leading sentencing principle in this case should emphasize the importance of general deterrence. I partly agree. The court strongly believes that a fair and appropriate sentence should also serve to denounce the unlawful conduct and also allow for rehabilitation of the offender as it was mentioned by Counsel for the Defence. It is my view that the joint recommendation of a reprimand and a fine in the amount of \$2,000 shall achieve these goals.

[7] I have reviewed the principles and objectives of sentencing in the context of this case as they were revealed to me by the Statement of Circumstances and the Agreed Statement of Facts (Exhibits 6 and 7.) I have also carefully examined the personal evaluation reports of the offender for the years 2005/2006, 2006/2007 and 2008/2009 (Exhibit 8.)

[8] The relevant facts of this case are the following:

At the time of the offence, Chief Warrant Officer Babcock was the unit Master Warrant Officer for 76 Comm Group;

He was provided with one day a week between 25 September and 1 December 2006, in order to complete a distance learning program or portion for his chief warrant officer qualification course from Ottawa;

In the fall of 2006, Chief Warrant Officer Babcock approached a lady with the name of Natalie McCormick, who had just been hired the previous summer as a summer student as part of the Federal Student Work Employment Program, and offered to pay for her assistance to complete portions of his course. She agreed to assist him and began to write for Chief Warrant Officer Babcock;

After the agreement, Chief Warrant Officer Babcock sent her emails and attached to those emails course material, assignments, lesson plans, and also articles posted by other students. He also attached his assignment report card, as well as other material. Miss McCormick used these materials to produce documents, which she provided in return to Chief Warrant Officer Babcock;

On several occasions during that course, they both met at his home to discuss the course materials and the assignments. Miss McCormick provided six documents for Chief Warrant Officer Babcock, including short articles and commentary on the articles written by other students;

In these assignments, Chief Warrant Officer Babcock did not mention that he had received the assistance of Miss McCormick;

Chief Warrant Officer Babcock completed the Chief Warrant Officer Qualification course with Miss McCormick's assistance. This clearly constituted plagiarism, as it is understood for the purposes of s. 129 of the *National Defence Act*, and to conduct to the prejudice of good order and discipline;

It's also clear from the evidence that once interviewed by the military police, Chief Warrant Officer Babcock immediately admitted his wrongdoing, fully cooperated with the authorities, as well as made apologizes for his actions; and

It's also in evidence that Chief Warrant Officer Babcock advised the prosecution, through his counsel, of his willingness to enter a plea of guilty before the court.

[9] I will quickly review the elements or the factors that I consider to be aggravating in this case:

The first one is the seriousness of these offences in the context of military justice and the particular circumstances of the case. The offence of conduct to the prejudice to good order in discipline is already a serious offence viewed objectively as it is punishable to dismissal with disgrace from Her Majesty's service. It's also subjectively very serious when it is committed by a chosen leader who breached the basic trust vested in him when he is in the process to qualify himself in order to receive the highest rank for a non-commissioned member and ultimately receive the chief warrant officer's scroll, a symbol of trust and excellence in the profession of arms. The warrant or the scroll of the chief warrant officer, like the commission received by officers, is an official recognition by the military institution of outstanding qualities, including the trust and the ability of the individual. Holding the rank of chief warrant officer is both a prestigious and a strong symbol for the special trust and confidence placed on the rank holder by the Government of Canada and the Chief of the Defence Staff. Breaching the trust vested by the institution to achieve the rank must be severely condemned;

The second most aggravating factor in this case is the premeditation and the prolonged period over which the plagiarism took place, that is six assignments over one month; and

The third aggravating factor is that you sought the help of a young summer student who had been under your supervision shortly before, in order to achieve your goals. Your unequivocal plagiarism could and may have discredited the Canadian Forces in the eyes of your former employee and others with whom she may have shared this information. As a senior student, there is no doubt that she was well aware of the sins associated with such conduct. Summer students not only work to make an income, introducing young students in the work place is a means to contribute to their personal and professional development in becoming responsible citizens in Canada. Implicitly, students who are hired in the Federal Student Work Employment Program should receive proper guidance in the workplace and use that opportunity to observe competent persons who may, at times, become role models for them in the future.

[10] However, the mitigating factors are also significant in this case. There's no doubt that, firstly, your plea of guilty is considered by this court as a genuine expression of your remorse and the acceptance of responsibilities in relation to your misconduct.

You made it known at the earliest stage that you sincerely regretted your actions and that you intended to enter this plea. Secondly, your work performance has been highly praised by your chain of command, as you know, after reading your personnel evaluation reports. However, your conduct constitutes a severe lack of judgement, a severe lack of leadership, integrity, loyalty, honesty and courage. Looking at your past evaluations, I am convinced that you did not need to use illicit methods to achieve the rank of chief warrant officer. It is just unfortunate that your judgment collapsed so abruptly in October 2006. As a mitigating factor, I have also considered the fact that you have no previous disciplinary record.

[11] As it was raised or expressed by counsel, there is not too many similar cases that are subject of courts martial, certainly not in recent years. However, this prosecution sends this message: There will be no hesitation to engage the judicial process for those involved in this type of conduct because plagiarism is not tolerated in the Canadian Forces, even more so for those who try to use shortcuts to achieve the higher echelons in the Canadian Forces. I am convinced that your presence in court today and the stigma associated with the conviction pronounced in such a public forum should be sufficient to ensure that you will not be tempted to commit similar offences in the future, or any other offence for that matter. I am also satisfied that the sentence recommended by both counsel will serve the principles of general deterrence, denunciation and rehabilitation. Therefore, for these reasons, I accept their joint recommendation.

[12] Chief Warrant Officer Babcock, please stand up. The court sentences you to a reprimand and a fine in the amount of \$2,000 payable immediately. You may be seated.

[13] The court martial proceedings with regard to Chief Warrant Officer Babcock are terminated.

Counsel:

Major S. MacLeod, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Major J.A.E. Charland, Directorate of Defence Counsel Services
Counsel for Chief Warrant Officer W. Babcock