



## COURT MARTIAL

**Citation:** *R v Desrochers*, 2011 CM 4025

**Date:** 20111031

**Docket:** 201129

Standing Court Martial

Canadian Forces Base Trenton  
Trenton, Ontario, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Corporal J.S.M. Desrochers, Offender**

**Before:** Lieutenant-Colonel J.-G. Perron, M.J.

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### OFFICIAL ENGLISH TRANSLATION

#### REASONS FOR SENTENCE

(Orally)

[1] Corporal Desrochers, having accepted and recorded your admission of guilt in respect of the second charge, I now find you guilty of the second charge. The Court therefore orders a stay of proceedings on the first charge.

[2] The military prosecutor and your defence counsel have presented a joint submission on sentencing and recommend that I impose a reduction of rank and a \$2,000 fine. The final decision in arriving at an adequate sentence lies with the judge, who has the right to reject the joint submission by counsel. However, I must accept the joint submission unless it is found to be inadequate or unreasonable, contrary to public order or such that it would bring the administration of justice into disrepute.

[3] I must punish you only in respect of the offence of which you have been convicted. You have pleaded guilty and been convicted of having behaved in a

disgraceful manner, contrary to section 93 of the *Code of Service Discipline*, set out in the *National Defence Act*. The *Code of Service Discipline* underscores the importance of good order, discipline and morale. The *Criminal Code* contains no offence similar to the offence set out at section 93 of the *National Defence Act*.

[4] You were stationed at CFB North Bay during the period from January 2007 to July 2010. Your spouse, who had not accompanied you when you were posted to North Bay, visited you on 19 August 2009, and found two computer disks in your room. She turned the disks over to police authorities. These disks contained pornographic images. One of the disks contained three images of adolescents showing their sexual organs or anal region. On 14 October 2010, you voluntarily met with a military police officer from the Canadian Forces National Investigation Service. During this meeting, you admitted having known these three images were on the computer disk.

[5] Having summarized the main facts of this case, I will now focus on sentencing. As emphasized by the Court Martial Appeal Court, sentencing is a fundamentally subjective and individualized process in which the trial judge has the advantage of having seen and heard all of the witnesses, if there are witnesses; it is certainly one of the hardest tasks confronting a trial judge (see *R v Tupper*, 2009 CMAC 5). The Court Martial Appeal Court also stated in *Tupper* that the fundamental purposes and goals of sentencing, as set out in Canada's *Criminal Code*, apply in the context of the military justice system, and that a military judge must consider those purposes and goals when crafting a sentence. Section 718 of the *Criminal Code* provides that the fundamental purpose of sentencing is to promote "respect for the law and the maintenance of a just, peaceful and safe society" by imposing just 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;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and to the community.

[6] The *Criminal Code* provisions related to sentencing, that is, sections 718 to 718.2, provide for an individualized process in accordance with which the Court must take into account not only the circumstances of the offence, but also the specific circumstances of the offender (see *R v Angelillo*, 2006 SCC 55). A sentence must also respect the principle of parity in sentencing (see *R v L.M.*, 2008 SCC 31). The principle of proportionality is central to the sentencing process (see *R v Nasogaluak*, 2010 SCC

6). In *Nasogaluak*, at paragraph 42, the Supreme Court of Canada states that the principle of proportionality means that the sentence must not exceed what is just and appropriate, given the moral blameworthiness of the offender and the gravity of the offence. However, sentencing is also a “form of judicial and social censure”. To a certain extent, a proportionate sentence expresses the legitimate values and concerns shared by all Canadians.

[7] A judge must weigh the sentencing objectives that reflect the specific circumstances of the case. It is up to the sentencing judge to decide which objective or objectives deserve the greatest weight. The importance given to mitigating or aggravating factors will move the sentence along the scale of appropriate sentences for similar offences.

[8] Before considering depriving an offender of liberty, the judge has a duty to consider whether less restrictive punishments may be appropriate in the circumstances. This general rule of sentencing, created by Canadian case law, is now found in section 718.2 of the *Criminal Code*. However, the Court Martial Appeal Court has also indicated that the particular context of military justice may, in the appropriate circumstances, justify and, at times, require a sentence which will promote military objectives.

[9] Even so, one must remember that the essential aim of sentencing in the military context is the restoration of discipline in the offender and in the ranks of military society. The court must impose a sentence that is the minimum necessary sentence to maintain discipline.

[10] The military prosecutor suggests that the following sentencing principles apply in this case: denunciation and general and specific deterrence. He states that the sentence must send a clear message that this behaviour will not be tolerated in the Canadian Forces.

[11] Therefore, in considering which sentence would be appropriate, I considered the following mitigating factors:

- (a) You have no conduct sheet. You have pleaded guilty to an offence, that is, disgraceful conduct. You voluntarily met with military police and admitted to having been in possession of those disks and images of child pornography. An admission of guilt is normally a demonstration of some remorse. Moreover, this plea allows the Crown to save large sums of money and makes it unnecessary to call numerous witnesses.
- (b) A review of your Military Personnel Record Résumé, found at Exhibit 3, shows a 25-year career in the Regular Force. You have participated in three tours of duty, that is, two in Bosnia (UNPROFOR in 1994-95 and SFOR in 1998-99) and one in Afghanistan in 2009-10. Exhibit 8, that is, five personnel evaluation reports, shows me that you have been

considered a good worker and that note has been made of your potential for promotion in your occupation.

- (c) These are three images of child pornography, not hundreds or thousands of images or films, as is often the case in the vast majority of files involving child pornography possession. These images were described to me by your counsel as images showing nude adolescents. These images do not show adolescents engaging in sexual activities, and the adolescents are not shown together with adults. Therefore, although these images do constitute child pornography, they are not the worst examples of this repulsive crime. These comments aside, I will return to this subject in my review of the aggravating factors.
- (d) There were some rather lengthy delays between the time of your spouse's finding these disks and turning them over to police authorities on 27 August 2009, your interview with a member of the Canadian Forces National Investigation Service in October 2010, the preferment of charges on 28 October 2011, and the trial held today. The Court has not received any explanation as to the reasons for these delays. Such delays are seldom productive and, especially, contribute nothing to discipline or the administration of justice. I will therefore take these delays into account as a significant mitigating factor in this case.
- (e) You did not use Canadian Forces equipment, and you did not commit this offence in a workplace or a public place.
- (f) There have already been articles written about the child pornography possession charges, and these articles have appeared on various Internet sites. It therefore stands to reason that this conviction will also receive media attention. This media coverage is sure to cause problems for you in the future. Canadian society takes a very negative view of any person associated with child pornography. Furthermore, your counsel has informed me that administrative action was taken against you. This is most certainly administrative action taken under the Defence Administrative Order and Directive 5019-5, *Sexual Misconduct and Sexual Disorders*. It therefore appears that this disgraceful conduct will also be examined by the appropriate authorities identified in this directive and that decisions regarding Corporal Desrochers' future in the Canadian Forces will be made in the near future.

[12] I consider the following factors to be aggravating:

- (a) The nature of the offence and the punishment provided for by Parliament. You are guilty of disgraceful conduct, for which the maximum sentence is five years' imprisonment. As such, this offence may be characterized as objectively serious. That being said, 23 of the

60 service offences set out at sections 73 to 129 of the *National Defence Act* provide for punishments more severe than five years' imprisonment.

- (b) Having said that, I am of the opinion that this offence is subjectively serious. You were in possession of child pornography. I have already mentioned the media coverage surrounding the charge of child pornography possession. Through your conduct, you have not only disgraced yourself, but you have also brought disgrace upon the Canadian Forces. This conduct is considered appalling, even if you are not guilty of the criminal offence of possession of child pornography.

[13] Counsel in this case, that is, the military prosecutor and your counsel, are much better acquainted with this file than I, since I have nothing before me but the evidence with which I have been presented. I asked questions and made comments regarding the evidence presented to me, the state of Canadian law regarding the joint submission on sentencing and the submissions of counsel as to the nature of the offence to which you have plead guilty. I must make particular note of the answers given and comments made by your counsel in response to my questions and concerns. Your counsel's involvement greatly assisted me in reaching a better understanding of this case and of the basis for this joint submission.

[14] Corporal Desrochers, rise. Reduction in rank to private is a relatively severe punishment. In your case, it means that your pay will be reduced by approximately \$1,000 a month. From a purely military standpoint, you are retaining your employment, although with a reduction in wages, but losing your rank. We place great importance on rank. Rank is often an indicator of the level of responsibility conferred on and of the extent of the privileges given to an individual by our organization. Your personnel evaluation reports indicate that you were on the right path towards appointment as master corporal. A reduction in rank will lengthen that path considerably, if the appropriate authorities decide to keep you in the Canadian Forces.

[15] Having closely examined the parties' joint submission, I am of the opinion that, given the particular facts of this case, it adequately incorporates the sentencing principles and that the choice of punishments is the lightest possible sentence to ensure protection of the public and maintenance of discipline in the circumstances. The Court concludes that a sentence of imprisonment is not necessary in light of the moral blameworthiness of the offender and the seriousness of the offence. The Court has concluded that the just and appropriate sentence is as follows.

**FOR THESE REASONS, THE COURT:**

[16] **SENTENCES** Corporal Desrochers to a reduction in rank to private and a \$2,000 fine. This fine will be paid in 10 instalments of \$200 each, beginning on 15 December 2011. This fine must be paid in full before your release date if you are released from the Canadian Forces.

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**Counsel:**

Major E. Carrier, Canadian Military Prosecution Service  
Counsel for Her Majesty the Queen

Lieutenant-Commander P. Desbiens, Defence Counsel Services  
Counsel for Corporal J.S.M. Desrochers