**Citation:** *R. v. ex-Private D. St-Onge,* 2008 CM 3012

**Docket:** 200777

**DISCIPLINARY COURT MARTIAL**
**CANADA**
**QUEBEC**
**VALCARTIER GARRISON**

---

**Date:** 29 May 2008

---

**PRESIDING: LIEUTENANT-COLONEL L.-V. D'AUTEUIL, M . J.**

---

**HER MAJESTY THE QUEEN**
**(Prosecutor)**
**v.**
**EX-PRIVATE D. ST-ONGE**
**(Offender)**

---

**SENTENCE**
**(Rendered orally)**

---

[1] Ex-Private St-Onge, the Court Martial having accepted and recorded your admission of guilt in respect of the second, third, fourth, sixth and seventh charges, the Court now finds you guilty of these charges. Accordingly, the Court directs a stay of proceedings on the fifth charge, which is an alternate one to the sixth charge, for which the Court has just accepted and recorded your admission of guilt. Regarding the first charge, it is important to note that counsel for the prosecution has decided to withdraw this charge, and consequently, the Court Martial need not rule on this charge since it was not before the Court.

[2] As the military judge presiding at this Court Martial, it is my duty to determine the sentence in accordance with section 193 of the *National Defence Act*.

[3] The military justice system constitutes the ultimate means to enforce discipline in the Canadian Forces, which is a fundamental element of military activity. The purpose of this system is to prevent misconduct, or, in a more positive way, to promote good conduct. It is through discipline that an armed force ensures that its members will accomplish, in a trustworthy and reliable manner, successful missions.

[4] As stated by Major Jean-Bruno Cloutier in his thesis *L'utilisation de l'article 129 de la Loi sur la défense nationale dans le système de justice militaire canadien*,

> [TRANSLATION]
> Ultimately, to maximize the chances of success of the mission, the chain of command must be able to enforce discipline to deal with any misconduct that threatens military order and effectiveness, not to mention national security, the organization's raison d'être.

[5] The military justice system also ensures that public order is maintained, and that those who are subject to the Code of Service Discipline are punished in the same way as any other person living in Canada.

[6] It has long been recognized that the purpose of a separate system of military justice or courts is to allow the Canadian Forces to deal with matters that pertain to the Code of Service Discipline and the maintenance of the effectiveness and morale of the troops. That being said, the punishment imposed by any court, military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances. It also goes directly to the duty imposed on the Court to impose a sentence commensurate with the gravity of the offence and the previous character of the offender, as stated at subparagraph 112.48(2)*(b)* of the QR&O.

[7] The Court has considered the submissions of counsel in light of the facts presented at this trial and of their significance. It has also considered the submissions in light of the relevant sentencing principles, including those set out in sections 718, 718.1 and 718.2 of the *Criminal Code,* when those principles are not incompatible with the sentencing regime provided under the *National Defence Act*. These principles are the following:

> firstly, the protection of the public, and the public in this case includes the interests of the Canadian Forces;
>
> secondly, the punishment of the offender;
>
> thirdly, the deterrent effect of the punishment, not only on the offender, but also upon others who might be tempted to commit such offences;
>
> fourthly, the separation, where necessary, of offenders from society, including from members of the Canadian Forces;
>
> fifthly, the imposition of sentences similar to those imposed on offenders who commit similar offences in similar circumstances; and

> sixthly, the rehabilitation and reintegration of the offender. The Court has also considered the representations made by counsel, including the case law submitted to the Court, the witnesses heard and the documentation introduced.

[8] Regarding the possession and use of drugs, and owing to the nature of the other charges for the unauthorized possession of ammunition and insubordination, the Court is of the opinion that the protection of the public requires a sentence that emphasizes first general deterrence, followed by specific deterrence, denunciation and punishment of the offender. 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.

[9] Here, the Court is dealing with an offence of possession of cannabis over a period of 16 months, contrary to the *Controlled Drugs and Substances Act*; two offences of acts to the prejudice of good order and discipline for the unauthorized use of a drug, namely, cannabis and methamphetamine, over a period of 28 months, contrary to article 20.04 of the QR&O; an offence of an act to the prejudice of good order and discipline for the unauthorized possession of ammunition belonging to the Canadian Forces; and, finally, an offence of insubordination for using threatening language to a superior officer. These are serious offences, but the Court will impose what it considers to be the minimum punishment applicable in the circumstances.

[10] Moreover, to fully understand the seriousness and the gravity of offences related to drug use and possession in a military context, it is important to note the reasons expressed on this issue by the Court Martial Appeal Court in *MacEachern v. J.,* 4 C.M.A.R. 447, in which Justice Addy stated:

> Because of the particularly important and perilous tasks which the military may at any time, on short notice, be called upon to perform and because of the teamwork required in carrying out those tasks, which frequently involve the employment of highly technical and potentially dangerous instruments and weapons, there can be no doubt that military authorities are fully justified in attaching very great importance to the total elimination of the presence of and the use of any drugs in all military establishments or formations and aboard all naval vessels or aircraft. Their concern and interest in seeing that no member of the forces uses or distributes drugs and in ultimately eliminating its use may be more pressing than that of civil authorities.

[11] In arriving at what it considers to be a fair and appropriate sentence, the Court has also considered the following aggravating and mitigating factors.

[12] The Court considers that the following factors aggravate the sentence:

a. Firstly, the objective seriousness of the offences. You have been found guilty of an offence under section 130 of the *National Defence Act* for possession of up to 30 grams of cannabis, contrary to subsection 4(1) of the *Controlled Drugs and Substances Act*. This offence is liable to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both, or to a lesser sentence, by application of subsection 4(5) of the *Controlled Drugs and Substances Act*. It is an objectively serious offence. You have also been found guilty of three offences under section 129 of the *National Defence Act*, for acts to the prejudice of good order and discipline for the unauthorized use of a drug, namely, cannabis and methamphetamine, contrary to article 20.04 of the QR&O, and for the unauthorized possession of ammunition belonging to the Canadian Forces. Finally, you have been found guilty of an offence under section 85 of the *National Defence Act* for insubordination, for using threatening language to a superior officer. These offences are punishable by dismissal with disgrace from Her Majesty's service or less punishment. These are objectively serious offences;

b. Secondly, the subjective seriousness of the offences. Regarding drug use and possession:

> *i*. The duration of the drug use and possession. In the case of the cannabis, it appears that the offender had this drug in his possession over a 16-month period and used it regularly over a 28-month period. The offender was a member of the Canadian Forces for a period of 58 months, and considering the fact that he used drugs prior to the period for which he is being charged, the Court cannot help but note that he used a drug for at least half of his career in the Canadian Forces. It is obvious that the Court is dealing not with a soldier's insignificant, occasional use of a drug, but rather with someone who has clearly decided to make a habit of it. In the case of the methamphetamine, it is evident that the offender used the drug occasionally, but that it was done throughout the entire 28-month period relevant to the charge. Once again, although this probably represents a less frequent use, it was nevertheless a habit for the offender, and he may at times have been under the influence of more than one drug;
>
> *ii*. The large quantity of cannabis that the accused had in his possession. Based on the Statement of Circumstances, it appears that the offender had, at one time or another, approximately 28 grams (one ounce) of cannabis that he obtained approximately every two months to meet his personal needs. This amount could

have been more or less. The evidence fails to establish a quantity that exceeds 30 grams, but it establishes that it was a very large amount, being close to this statutory limit for the distinction to be made in determining the sentence that can be imposed. Obviously, this amount decreased each time ex-Private St-Onge used the drug;

*iii*. The context in which drug use occurred. It seems clear to the Court that the offender's drug use took place outside of work, that is, as described by the offender, in a social context: in the presence of other members of the military, while he socialized with them at his home or elsewhere. It is obvious that a member of the military who deliberately uses a drug in the presence of other members over a continuous period, even if not at work, is inherently not a good role model. Transgressing the Canadian Forces' directives and policies on drugs in the presence of other members of the Canadian Forces, regardless of where it occurs, constitutes in and of itself an aggravating factor, since it sends a very negative message from a disciplinary point of view to the other members;

*iv*. The offender has been subject to several administrative measures, but the Court notes the following one in particular: the offender was removed from his Soldier Qualification course in fall of 2003 or early winter of 2004, owing to his admission of drug use. Therefore, he was given a first warning on this matter, and on 16 February 2004, he was placed on counselling and probation for one year, specifically for this issue. Thus, he was advised that, were he to begin using drugs again, his commanding officer would recommend his release from the Canadian Forces. He once again began the Soldier Qualification course, completed his Basic Infantry Qualification course, DP1, and was officially transferred to his unit at the end of June 2004. Despite the formal warning he had received, the offender admitted to the police in November 2006 that he used drugs throughout his first 28 months in his unit, that is, between July 2004 and November 2006. Therefore, he knowingly regularly used and even possessed drugs. Consequently, this case involves a sort of premeditation, since what he did was entirely planned out and not the result of a decision made on the spur of the moment, without having been thought out beforehand; and

*v*. Ex-Private St-Onge demonstrated total recklessness in the acts that he committed, through the fact that he continually put in jeopardy his capacity and ability to carry out his tasks at any time

and on short notice because of his drug use, and through the example he provided to other members of the military in his complete disregard of the zero tolerance policy regarding drug use by members of the Canadian Forces. The culpable recklessness demonstrated by the offender in the circumstances of this case constitutes, in and of itself, an aggravating factor that the Court must take into consideration.

c. Aggravating factors regarding the unauthorized possession of ammunition:

*i*. The nature of the ammunition: three out of the four types of ammunition in the offender's possession are live cartridges. Although the quantity of each was extremely limited, all had the capacity to injure or kill if fired. In and of themselves, they constituted a danger. Regarding the 200 blank 5.56-mm cartridges, even though they are only casings and do not involve bullets, they contain an explosive substance that also represents a certain danger if this type of bullet were fired;

*ii*. It is obvious that, for whatever reason, the offender had no intention whatsoever of returning this ammunition. During his testimony, he clearly told the Court that he wished to keep the ammunition as a trophy and had stored it accordingly; and

*iii*. To acquire and keep this ammunition, the offender did not hesitate to declare to military authorities before leaving training sites that he was not in possession of any ammunition, whereas this was completely false.

d. Regarding the insubordination:

*i*. The nature of the words constitutes an aggravating factor, since what ex-Private St-Onge said was meant not only to express his lack of respect for the authority to whom he spoke, but also to instill fear concerning the physical integrity of this authority; and

*ii*. The rank of the superior officer in question. Here, the offender was addressing a Warrant Officer, who is an authority far superior to him in rank and experience among non-commissioned members and to whom he showed a complete lack of respect.

[13] The Court considers that the following factors mitigate the sentence:

a. Your plea of guilty is clearly a sign of remorse and that you are sincere in your intention to remain a valid asset to Canadian society. The Court does not wish in any way to hinder your chances of success, since rehabilitation is always a key factor in sentencing;

b. The absence of a conduct sheet or criminal record related to similar offences;

c. The fact that your conduct regarding drugs, ammunition and your insubordination did not result in any concrete and adverse consequences for others:

> *i.* Without excusing your conduct or downplaying its gravity, the Court is nevertheless taking into account the fact that you consciously made the decision never to use drugs on a defence establishment or during your work, owing to the impact it could have on your ability to perform in this context;
>
> *ii*. Moreover, it has not been established that unauthorized possession of ammunition is a blight on or a problem in the Canadian Forces. The Court considers as a mitigating factor the fact that you did not leave the ammunition that was in your possession in full view of everyone, thus showing that you were aware to a certain point of the danger it represented if it were to fall into the wrong hands; and
>
> *iii*. Finally, regarding the insubordination, the Court notes from the context presented that a particular dynamic existed between you and Warrant Officer Lapalme that was not unconnected to what happened, meaning that the Warrant Officer may not have helped to stop the situation before it worsened, up until the moment you spoke the words for which you are being charged; the Court also notes the fact that you were in an emotional and physical state that may have spurred you to act and speak as you did.

d. Your age and your career potential as a member of the Canadian community; being 23 years old, you have many years ahead to contribute positively to Canadian society;

e. The fact that you had to face this court martial, which was announced and accessible to the public and which took place in the presence of some of your colleagues, has no doubt had a very significant deterrent effect on you and on them. It means that this kind of conduct that you

> displayed regarding drugs and ammunition, and towards a superior officer will not be tolerated in any way and will be dealt with accordingly;
>
> f. The delay in handling this matter. The Court does not want to blame anybody in this case, but as defence counsel stated, the quicker the disciplinary matter is dealt with, the more relevant and effective the punishment will be with respect to the morale and cohesion of the unit members. The time elapsed since the incident occurred is one of the factors making it less relevant to give consideration to a more severe punishment with some deterrent effect. Nevertheless, it should be noted that 19 months have elapsed since the searches that led to the discovery of the accused's objects and behaviour resulting in the current charges before this Court, and 13 months since the first significant charges were laid, that is, those regarding drug use and possession. It appears that the case ran its course, without taking an inordinate amount of time to the point that the Court should attribute greater weight to this mitigating factor than any other. In the opinion of the Court, it must be considered but to the degree that is appropriate in the circumstances; and
>
> g. The fact that your military career was brought to an end owing to the commission of drug-related offences combined with all the other offences that are the subject of this trial, to the extent that your career was subject to an administrative review and was terminated when the Canadian Forces released you under item 5(*f*) because you were considered unsuitable for further service, constitutes a mitigating factor that must be taken into account. The Court cannot consider this administrative action in and of itself to be punishment for the incidents related to the charges before this Court; rather, the Court must see it as a consequence of your conduct underlying these same charges and must consider it when determining the appropriate sentence in this case.

[14] The Court must consider the accused's attitude regarding the offences he has committed. As I mentioned earlier, it is true that, through his guilty plea, the offender acknowledges that he has violated the rules and expresses remorse on this issue. However, based on both Major Arsenault's testimony on the subject of the offender's attitude and the offender's own testimony on his position regarding the offences to which he has pleaded guilty, it is clear that ex-Private St-Onge nonetheless feels very little remorse or regret for what happened.

[15] Major Arsenault testified in a clear and coherent manner. He gave a thorough explanation of how he knew the offender and how he came to want to help and support him. He clearly explained how ex-Private St-Onge had difficulty respecting certain leadership styles in his company and that his mood and behaviour had been

unstable throughout the entire time Major Arsenault knew him, approximately 12 months or so. His testimony is reliable and credible.

[16] Ex-Private St-Onge testified in a forthright and straightforward manner. He did not hesitate to speak his mind when answering defence counsel's questions. His testimony was tainted by being slightly–not to say at times even highly–emotional; the Court was made well aware of his frustration at having to give his testimony according to certain rules of evidence applicable in this Court, and he was not shy about expressing his opinion on this issue. His testimony also revealed that he had a firmly entrenched point of view regarding the acts that he committed and that his was the only one that should be considered. This attitude is consistent with what was described by Major Arsenault in his testimony and the circumstances of the offences as disclosed by the Statement of Circumstances.

[17] It is clear that ex-Private St-Onge understands and acknowledges that he has violated important rules on drug use and possession, but he does not believe that he acted improperly since, in his opinion, there is nothing wrong with using drugs in a military context, even if it is prohibited by law or regulations, as long as he ensures that he takes measures to eliminate any effect of his use on the performance of his duties. Thus, in his opinion, the recreational use of cannabis and methamphetamine meets the requirements of the Canadian Forces policy, or, at the very least, limits the impact of such use under the application of this policy.

[18] Unfortunately, as I explained earlier, this is not at all the view that has been adopted on the issue of drug use by a member of the Canadian Forces subject at all times to the Code of Service Discipline. It has been decided by military authorities that drug use would be strictly forbidden, except in three specific cases set out in article 20.04 of the QR&O, owing to the danger associated with the instruments and tools used, as well as the speed and types of interventions and missions that the Canadian Forces are called upon to perform. Moreover, this approach has been confirmed by the courts martial, including those over which I have presided, and especially by the Court Martial Appeal Court in the case of *MacEachern* that I cited earlier. Thus, contrary to what the offender claims, when one is a member of the Canadian Forces, the context in which drug use occurs cannot in and of itself excuse the commission of this act. It is true that the law makes a distinction regarding the sentence to be imposed based on the type of drug in possession, and therefore being used, but this distinction alone cannot justify the acts committed.

[19] Even more surprising is the fact that the offender has indicated that he is currently still using drugs. Despite the fact that he pleaded guilty to a drug possession charge, it seems obvious that the offender believes that his point of view on this issue of drug use and possession must take precedence over the application of the law and judicial decisions on this matter. Such remarks clearly show ex-Private St-Onge's

complete lack of understanding of the values our society upholds through its drug laws and regulations.

[20] Moreover, such an attitude is a clear reflection of the one that has always guided ex-Private St-Onge throughout his entire military career: his point of view and opinion on matters must take precedence, particularly if any authority should ever disagree. This attitude explains many things, beginning with his lack of respect for laws and directives and for the authorities enforcing them, his unstable and moody personality, and his difficulty in controlling his emotions whenever contradicted, as was revealed in part through his own testimony before this Court and as mentioned by his own counsel.

[21] Incidentally, this aspect of his personality was also made plain when he alluded to the fact that he kept ammunition as trophies without authorization. His disregard of the rules and the danger of possessing such objects clearly stems from the same attitude.

[22] The Court would like to add that explaining the offender's attitude through his use of certain medications and his state of mind in August 2006 does not shed much light on the matter for the Court, insofar as no explanation was given regarding the nature of the medications, of which a list was filed as evidence, and considering that effects related to the drug use may represent an equally valid explanation for the causes that may have contributed to the accused's attitude during the commission of the offences.

[23] Counsel for the prosecution has suggested that the Court sentence the offender to 30 days' imprisonment, believing this to be the minimum punishment applicable in the circumstances. As for counsel for the defence representing the offender, he has indicated to the Court that any form of incarceration should be rejected by the Court since the circumstances do not demonstrate that it is a case of last resort. On the contrary, imposing a severe reprimand and a fine in the amount of $3,000 would serve the ends of justice in this case.

[24] Regarding the imposition of a sentence of imprisonment by this Court on ex-Private St-Onge, it was established through the Supreme Court of Canada's decision in *R. v. Gladue*, [1999] 1 S. C. R. 688, at paragraphs 38 and 40, that imprisonment should be the penal sanction of last resort. The Supreme Court noted that incarceration in the form of imprisonment is appropriate only where no other sanction or combination of sanctions is appropriate for the offence and the offender. This Court feels that these principles are relevant in the context of military justice, taking into account, nonetheless, the important differences between the sentencing rules that apply to a civilian court hearing a criminal or penal case and the rules that apply to a military court whose powers of punishment are set out in the *National Defence Act.*

[25] Moreover, this approach was reaffirmed by the Court Martial Appeal Court's decision in *R. v. Baptista*, 2006 CMAC 1, at paragraphs 5 and 6, that imprisonment should only be imposed as a last resort.

[26] The civilian criminal justice system has its own unique features, such as a conditional sentence, which differs from probationary measures but is nonetheless a genuine prison sentence, is applied according to different terms, and allows the offender to serve his or her custodial sentence in the community, where it is possible to combine the punitive and corrective objectives, as indicated by the Supreme Court in *Proulx.* The military justice system, however, has disciplinary tools such as detention, which seeks to rehabilitate service detainees and re-instill in them the habit of obedience in a military framework organized around the values and skills unique to members of the Canadian Forces. Detention can have a significant effect in terms of denunciation and deterrence, while at the same time not stigmatizing service detainees to the same degree as members of the military who are sentenced to imprisonment, as stated in the Notes added to articles 104.04 and 104.09 of the QR&O.

[27] However, in the case of a member of the Canadian Forces who has already been released, the objectives of a sentence of detention are no longer relevant, and only the remaining form of incarceration specified in the scale of punishments, which is imprisonment, must be considered.

[28] In addition, when the act as charged goes beyond the disciplinary framework and constitutes a strictly criminal activity, it is necessary to examine the offence not only in light of the particular values and skills of members of the Canadian Forces, but also from the perspective of the exercise of concurrent criminal jurisdiction.

[29] In this case, four of the offences for which the offender has pleaded guilty are of a disciplinary nature, and one other, for cannabis possession, constitutes a strictly criminal activity. As I have stated in other courts martial such as that of Private Noah and that of Bombardier Kettle, in and of itself, this offence does not automatically lead to a sentence of incarceration in the form of imprisonment. However, when combined with these other disciplinary offences, and when the Court considers all of the related mitigating and aggravating circumstances that were previously listed, as well as the offender's mindset regarding the commission of all these offences, both at the time they occurred and during this sentencing, it seems clear to the Court that incarceration in the form of imprisonment is the only adequate sanction and that no other sanction or combination of sanctions is appropriate for the offences and the offender.

[30] Therefore, the Court considers that a sentence of imprisonment is necessary to protect the public and maintain discipline.

[31] The question now is what the duration of such a sentence of imprisonment should be to protect the public and maintain discipline.

[32] If not for all of the mitigating circumstances given in evidence in this Court in this case, the Court would not at all have hesitated to sentence you to imprisonment for a period of at least 60 days. However, with a view to allowing you to quickly turn a new page once and for all, and to limit the impact on the life that you have been trying to rebuild for yourself in society since your release from the Canadian Forces, the Court is willing to consider a shorter period.

[33] A fair and equitable sentence should take into account the seriousness of the offence and the offender's degree of responsibility in the particular circumstances of the case. Consequently, the Court is of the opinion that imposing a sentence of imprisonment is consistent with the application of these principles, given all of the circumstances and the aggravating and mitigating factors identified by this Court.

[34] I have also considered whether this is an appropriate case for a weapons prohibition order, as stipulated under section 147.1 of the *National Defence Act.* In my view, such an order is not necessary or desirable in the interests of the safety of any persons or of the offender in the circumstances of this trial, and I will make no such order.

[35] Ex-Private St-Onge, stand up. The Court sentences you to imprisonment for a term of 30 days. The Court makes no order under section 147.1 of the *National Defence Act*.

[36] The proceedings regarding the disciplinary court martial of ex-Private St-Onge are now over.

LIEUTENANT-COLONEL L.-V. D'AUTEUIL, M. J.

Counsel:

Lieutenant-Commander M. Raymond, Director of Military Prosecutions, Eastern Region
Counsel for Her Majesty the Queen

Major L. D'Urbano, Director of Defence Counsel Services
Counsel for ex-Private D. St-Onge