

Citation: *R. v. Corporal M.J.M.G. Carreau-Lapointe*, 2008 CM 3023

Docket: 200843

**STANDING COURT MARTIAL
3 WING BAGOTVILLE
QUEBEC
CANADA**

Date: 30 September 2008

**PRESIDING: LIEUTENANT-COLONEL L.-V. D'AUTEUIL, MILITARY
JUDGE**

HER MAJESTY THE QUEEN

v.

**CORPORAL M.J.M.G. CARREAU-LAPOINTE
(Offender)**

SENTENCE

Rendered orally

OFFICIAL ENGLISH TRANSLATION

[1] Corporal Carreau-Lapointe, please stand up. The Court Martial having accepted and recorded your admission of guilt in respect of the three charges appearing on the charge sheet, the Court now finds you guilty of these charges. Thank you very much. Please sit down.

[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*. 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. As stated by Lieutenant-Colonel 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*, and I quote:

[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*.

[3] 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. 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.

[4] In this case, the prosecution and defence counsel have presented a joint submission on sentencing. They have recommended that the Court sentence you to a severe reprimand and a fine in the amount of \$1,000. The Court Martial is not bound by this recommendation. However, it is well established in case law that there must be compelling reasons to enable the Court to disregard it. It is also generally recognized that the Court should accept the recommendation unless doing so would be contrary to the public interest or bring the administration of justice into disrepute.

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

first, the protection of the public, and the public in this case includes the interests of the Canadian Forces;

second, the punishment of the offender;

third, the deterrent effect of the punishment, not only on the offender, but also upon others who might be tempted to commit such offences;

fourth, the separation, where necessary, of offenders from society, including from members of the Canadian Forces;

fifth, the imposition of sentences similar to those imposed on offenders who commit similar offences in similar circumstances; and

sixth, the rehabilitation and reintegration of the offender.

[6] The Court has also considered the representations made by counsel, case law filed, documents introduced in evidence and admissions made. The Court is of the opinion that the protection of the public requires a sentence that emphasizes first general deterrence, followed by specific deterrence 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.

[7] Here, the Court is dealing with three offences of negligent performance of a military duty, all of which refer to section 124 of the *National Defence Act*. These are serious offences, but the Court will impose what it considers to be the minimum sentence applicable in the circumstances.

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

First, the objective seriousness of the offences. You have been found guilty of an offence under section 124 of the *National Defence Act* for negligent performance of a military duty. This offence is punishable by dismissal with disgrace from Her Majesty's service. This is an objectively serious offence, as it involves obligations of integrity and responsibility that every member of the Canadian Forces must honour.

Second, the subjective seriousness of the offences. Your job was to control access to an alert zone located at the base and allow authorized persons to enter and leave. To do so, you were in possession of a weapon loaded with live ammunition to ensure the security of this zone. Moreover, there were CF-18 aircraft in this zone. All signs pointed towards the importance of your responsibilities. Further, despite the fact that your conduct was not at all premeditated, you nonetheless committed the same offence on three occasions. The repetitive nature of the offence constitutes in and of itself an aggravating factor. If the Canadian Forces entrusted you with such a job, it is obviously because they believed that you had the training and experience required to perform it, including a high level of discipline. This type of job indeed calls for discipline owing to its routine nature, although this in no way diminishes its importance. We must remember that discipline involves the ability to set aside

personal interests and concerns to perform the duty that has been asked of us, especially in a military setting. Clearly, you displayed a lack of discipline, and despite your military training or experience, you failed to deal effectively with the circumstances that distracted you from your task.

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

Your plea of guilty. You clearly show remorse, and you are sincere in your intention to remain a valid asset to the Canadian Forces and to Canadian society in general. The Court does not wish in any way to hinder your chances of success, since rehabilitation is always a key factor in sentencing. That you have not ceased worrying over the consequences of your actions since the charges were made in January 2008 and that you have long been feeling remorse.

The absence of a conduct sheet or criminal record for similar offences.

The fact that your conduct did not result in any concrete and adverse consequences for others or for the Canadian Forces.

Your age and your career potential as a member of the Canadian community; at 21 years of age, you have many years ahead to contribute positively to the Canadian Forces and to society in general.

The fact that you had to face this Court Martial, which is announced and accessible to the public and takes place in the presence of some of your colleagues and peers, has no doubt had a very significant deterrent effect on you and on them. The message is that the kind of conduct that you displayed will not be tolerated in any way and will be dealt with accordingly.

[10] Lastly, Corporal Carreau-Lapointe, I must remind you that when you enter the building that we occupy and that the Base Military Police occupy in part, you can read the unit's motto on the wall at the bottom of the stairs: "Discipline By Example." I would like to remind you that this principle will remain fundamental to your military career and any other civilian career that seems to await you. I am sure that you now understand the role discipline must play in your personal and professional life and that you will be able to learn from your mistakes.

[11] The Court believes that the joint submission is not unreasonable in these circumstances. Consequently, the Court accepts the joint submission made by counsel and sentences you to a severe reprimand and a fine in the amount of \$1,000, given that it

would not be contrary to the public interest and would not bring the administration of justice into disrepute.

[12] Corporal Carreau-Lapointe, please stand up. The Court therefore sentences you to a severe reprimand and a fine of \$1,000. The fine is to be paid in consecutive monthly installments of \$100 beginning on 1 October 2008, and continuing for the following nine months. In the event you are released from the Canadian Forces for any reason before the fine is paid in full, the then outstanding unpaid amount is due and payable prior to your release. Please sit down.

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

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