

Citation: *R. v. Ex-Private M. Ostrowski*, 2004CM53

Docket: S200453

**STANDING COURT MARTIAL
CANADA
NEW BRUNSWICK
CANADIAN FORCES BASE GAGETOWN**

Date: 20 April 2004

PRESIDING: LIEUTENANT-COLONEL M. DUTIL, M.J.

HER MAJESTY THE QUEEN

v.

**EX-PRIVATE M. OSTROWSKI
(Accused)**

SENTENCE

(Rendered orally)

[1] Ex-Private Ostrowski, please stand up. Having accepted and recorded a plea of guilty with respect to the second charge, the court now finds you guilty of that charge.

[2] Now turning to the sentence, the court has considered the circumstances surrounding the commission of the offence as described in the details in the statement of circumstances provided to the court by the prosecution as well as the mitigating and aggravating evidence presented during the sentencing hearing that is comprised of documentary evidence but also of your testimony. The court has considered the representations made by counsel, relevant case law provided to the court, and also the applicable principles of sentencing which generally relate to the following: the protection of the public, and that includes the Canadian Forces; the punishment of the offender; the deterrent effect of the punishment, not only on the offender but also upon others who might be tempted to commit similar offences; the reformation and rehabilitation of the offender; and finally, the proportionality.

[3] This is a case where the protection of the public can be fostered by a sentence that will emphasize general deterrence while leaving room for rehabilitation. The factor of proportionality is also of significance in this case. In making their recommendation as to a fit sentence, counsel for the prosecution and counsel for the defence

are not far apart. They both recommend that this court imposes a fine. The prosecution submits that the fine should range between \$800 and \$1000, but not to exceed \$1000. The defence submits that a fine should be imposed but in the range starting at \$500 and up to \$800. This recommendation is indicative that in the context, this offence is not the most serious nor was it committed in extreme circumstances. But I agree with the prosecution, that the Canadian Forces must be protected from the consequences arising from it members' excessive consumption of alcohol, specially where security and safety of persons are put at risk and material is damaged. So this behaviour should not be encouraged nor tolerated.

[4] In matters of drunkenness of the nature and of the circumstances put before this court, a sentence which will emphasize general deterrence is therefore appropriate, but the court must also encourage rehabilitation of the offender who has since been released from the Canadian Forces and has gained full-time employment, moved with his mother and taken life seriously in paying his debts and indicated that he intends to go back to school once his debts are paid.

[5] The court has also given consideration to the factors of proportionality of the sentence in relation to the offender and the accountability for his actions. While the offender should be accountable for his action, the sentence shall not, on the other hand, be disproportionate in relation to the offence and the circumstances in which that offence was committed. It seems here that only the offender was charged for his actions. This is not an observation to be interpreted as an inference to support that others should have been charged, but to put in context that the actions of the offender were part of a broader series of events where the conduct of others directly contributed to the accused losing his control where his intoxication level contributed to his actions.

[6] In determining the sentence the court has specifically considered the following factors. First, the mitigating factors. The fact that you have acknowledged responsibility for your actions in pleading guilty to the charge of drunkenness. Also your age as well as your financial, economic, social and family situation. You're now 22 years old and have had full-time employment in Edmonton for approximately five months now. Although your financial situation is fragile, it seems that you are taking every step to pay your debts, including the fact that you're now living with your mother and you're helping her as well in contributing to the living expenses. The fact that you also spent two days in pre-trial custody as a result of this incident. The lengthy delay since the commission of the offence in light of the nature of the charge and its surrounding circumstances. And finally, the fact that you have no conduct sheet or criminal convictions.

[7] With regard to the aggravating factors, the court retains mostly the fact that you caused damage to public property and that someone was accidentally but

slightly injured by our reckless actions in using a bayonet as described in the statement of circumstances.

[8] In sentencing you today, the court is confident that your rehabilitation is well underway and also that the sentence, the court is about to impose, should be sufficiently deterrent for you but also on others. It is certainly a sad way to finish a very short career in the Canadian Forces and let's hope that this will be of some assistance to you in the future.

[9] Ex-Private Ostrowski, the court sentences you to a fine in the amount of \$800 to be paid in the following manner: \$400 to be paid immediately, \$200 on 20 May 2004 and \$200 on 20 June 2004. The prosecutor will provide your counsel with the details as to whom and where these payments ought to be made. You may be seated.

[10] I would like to thank the officer of the court and the staff for their support this morning and also thank the three counsel this morning for their work. It was a very efficient and effective way to proceed this morning, thank you very much.

[11] The proceedings of this court martial are terminated.

LIEUTENANT-COLONEL M. DUTIL, M.J..

Counsel:

Lieutenant-Commander C.J. Deschênes, Regional Military Prosecutor Atlantic
Counsel for Her Majesty the Queen
Lieutenant-Commander R.W. Fetterly, Directorate of Military Prosecutions
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