

Citation: *R. v. Lieutenant J. Richard*, 2004CM57

Docket: S200457

**STANDING COURT MARTIAL
CANADA
QUEBEC
VOLTIGEURS DE QUÉBEC ARMOURY**

Date: June 15, 2004

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

HER MAJESTY THE QUEEN

Prosecutor

v.

LIEUTENANT J. RICHARD

(Accused)

SENTENCE

(Delivered from the bench)

OFFICIAL ENGLISH TRANSLATION

[1] Lieutenant Richard, the Court has accepted and entered your guilty plea on the second count, and the Court now finds you guilty on that second count and directs a stay of proceedings on the first count.

[2] Go back and sit with your counsel.

[3] Counsel present have made a joint submission to the Court regarding the sentence that the Court should impose. The obligation to determine an appropriate sentence rests with the Court, which is entitled to reject the joint proposal made by counsel. It is settled law, however, that the Court may reject it only for compelling reasons, and accordingly the judge should accept the joint submission of counsel unless it finds it to be inappropriate or unreasonable, contrary to the public interest or likely to bring the administration of justice into disrepute, for example, if it fell outside the range of sentences previously imposed for similar offences. However, counsel are required to provide the judge with all of the facts on which the joint submission is based.

[4] In imposing an appropriate sentence on an accused for the wrongful acts he has committed and in relation to the offences of which he is guilty, certain principles are followed, and those principles may be stated as follows: first, protection of the public, which includes the Canadian Forces; second, punishment of the offender; third, deterrence, not only of the offender but also of others who might be tempted to commit similar offences; fourth, rehabilitation and reform of the offender; and fifth, denunciation of the offender.

[5] The first principle is protection of the public and the Court must determine whether that protection will be achieved by a sentence that is designed to punish, denounce, rehabilitate or deter. How much stress is to be placed on any of those principles will of course depend on the circumstances, which vary from case to case.

[6] In some cases, the primary concern, if not the sole concern, will be deterrence of the accused or others. In those circumstances, little or no weight will be placed on rehabilitation or reform of the offender. In other cases, the emphasis will instead be placed on the rehabilitation or reform of the offender.

[7] In this case, the Court is of the view that the emphasis must rather be placed on general deterrence and deterrence of the offender, to protect the public and maintain discipline, and to denounce the offender, particularly because it involves an officer.

[8] In considering what sentence would be appropriate, the Court has taken the following aggravating and mitigating factors into consideration; I will begin with the factors that mitigate sentence.

[9] First, the fact that you have pleaded guilty and that you acknowledged relatively early in the investigation process, in a statement to your chain of command, that you had illegally appropriated property that did not belong to you. In the opinion of the Court, a guilty plea is a serious and positive indication of the fact that you admit your mistakes. This admission is a first step in the process of rehabilitation. By taking it, you averted a lengthy trial, which by counsel's admission would have involved lengthy argument and required at least five or six witnesses to be called.

[10] In the same vein, the Court also notes that you have publicly apologized for what you did, today in this Court. Second, the Court notes that you have no conduct sheets or previous criminal record. Third, the fact that the property has been returned to its owner. Fourth, your age, your rank at the time and your service record in the Canadian Forces. Fifth, your financial, social and family situation. Sixth, the time that has passed since the commission of the offences. Seventh, the direct and indirect consequences this sentence will have on you, and in particular the administrative action that could be taken by the military authorities as a result of your conviction, but also the

consequences that the conviction could have for you in civilian life, in particular on the question of whether you keep your job as administrator of a computer network for an airline. Eighth and last, the fact that you were having personal problems at the time the acts were committed and that it seems you were acting out of frustration at seeing your office left in a mess by people who were apparently using it.

[11] As aggravating factors, the Court considers the nature of the offence and the sentence provided by Parliament. The offence to which you have pleaded guilty is punishable by dismissal with disgrace from Her Majesty's service. It is an objectively serious offence. Second, the court finds the fact that you are an officer who has been given the trust and privileges associated with that rank but which, in return, demand loyalty, integrity and honesty of those who hold the rank of officer that is beyond reproach, to be an aggravating factor. And last, the Court finds the fact that you betrayed that very trust to be an aggravating factor.

[12] In sentencing you today, the Court has taken careful note of the evidence before this Court, including the summary of circumstances read by counsel for the prosecution and your own testimony. The Court has also had regard to counsel's argument and the case law submitted.

[13] Had it not been for your testimony, in which you said that a conviction by this Court would very probably mean the loss of your civilian employment, the Court would have found it very difficult to accept the joint proposal made by counsel.

[14] Whereas a conviction for an offence of this nature is not only an offence under a federal statute to which the *Criminal Records Act* applies, but also one for which you will have a conduct sheet, and whereas under subsection 4(b) of the *Criminal Records Act* you will not be able to apply to the National Parole Board until three years have elapsed after the expiration of your sentence to make an application for rehabilitation or pardon; whereas a sentence composed of a punishment of reprimand with a fine of \$750 is more severe than the sentences contemplated in DAOD 7006-1 which, in certain circumstances, allows certain sentences to be removed from the conduct sheet before rehabilitation or pardon is granted under the *Criminal Records Act*; whereas the Court is satisfied that the chances that you will reoffend, whether in the civilian or military community, are extremely slim, having regard to your guilty plea and the circumstances of this case; the Court therefore accepts the joint submission by counsel, which it considers to be the minimum sentence needed to protect the public and maintain discipline in the circumstances.

[15] Lieutenant Richard, please rise.

[16] This Court sentences you to a reprimand and a fine in the amount of \$750. You acted out of frustration and to get revenge, but you also lacked judgment,

honesty and integrity as an officer. Your ill-considered action could have extremely serious consequences for your civilian and military life. You mentioned this morning that you had not informed your employer of the charges pending against you until now, and that is your decision. Today, however, you are going to have to face the music, because you have been convicted by a court of competent jurisdiction of a service offence to which the *Criminal Records Act* applies.

[17] Take Lieutenant Richard out.

[18] I would like to acknowledge the work done by counsel on the information submitted to the court, and by the court officer and his staff for the administrative support provided this morning.

[19] The proceedings of this Standing Court Martial regarding Lieutenant Richard are concluded.

LIEUTENANT-COLONEL M. DUTIL, M.J.

Counsel:

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Counsel for the prosecutor
Lieutenant (Navy) M. Marceau, Military Justice Directorate
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