

Citation: *R. v. Commander J.J. Agnew*, 2006 CM 70

Docket: S200670

**STANDING COURT MARTIAL
CANADA
QUEBEC
ASTICOU CENTRE, GATINEAU**

Date: 19 October 2006

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

HER MAJESTY THE QUEEN

v.

**COMMANDER J. J. AGNEW
(Offender)**

SENTENCE

(Rendered orally)

[1] Commander Agnew, having accepted and recorded a plea of guilty in respect of the second charge, the court finds you now guilty of this charge. Consequently, the court directs that the proceedings be stayed on the first charge.

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

[3] 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*¹, the military justice system, and I translate, "has the purpose to control and influence the behaviour and ensure maintenance of discipline, with the ultimate objective to create favorable conditions for the success of the military mission". The

¹Jean-Bruno CLOUTIER, *L'utilisation de l'article 129 de la Loi sur la défense nationale dans le système de justice militaire canadien*, thèse de maîtrise, Ottawa, Faculté des études supérieures, Université d'Ottawa, 2003, p. 17

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.

[4] It has been long recognized that the purpose of a separate system of military justice or tribunals is to allow the Armed Forces to deal with matters that pertain to the respect of the Code of Service Discipline and the maintenance of efficiency and morale among the Canadian Forces. That being said, the punishment imposed by any tribunal, military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances. It also goes directly to the duty imposed to the court to impose a sentence commensurate with the gravity of the offences and the previous character of the offender, as stated at QR&O article 112.48 (2)(b). Here, in this case, the prosecutor and the counsel for the defence have made a joint submission on sentence. They have recommended that this court sentence you to a fine in the amount of \$800.

[5] Although this court is not bound by this joint recommendation, it is generally accepted that a joint submission should be departed from only where to accept it would be contrary to public interest and would bring the administration of justice into disrepute.

[6] The court has considered the joint submission in light of the relevant facts set out in the Statement of Circumstances and their significance, and I've also considered the joint submission 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 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; and fourthly, the reformation and rehabilitation of the offender. The court has also considered the representations made by counsel, including the case law provided to the court and the documentation introduced.

[7] I must say that I agree with the prosecutor when he expressed the view that the protection of the public must be ensured by a sentence that would emphasize general deterrence. It is important to say that general deterrence means that the sentence imposed should deter not simply the offender from re-offending, but also others in similar situations from engaging, for whatever reason, in the same prohibited conduct. Here, the court is dealing with an offence involving the basic security rules for safe handling of a weapon by military members of the Canadian Forces in an operational theatre. It is a serious offence; however, the court will impose what it considers to be the necessary minimum punishment in the circumstances.

[8] In arriving at what the court considers a fair and appropriate sentence, the court has considered the following mitigating and aggravating factors. The court considers as aggravating:

- a) firstly, the objective seriousness of the offence. The offence you were charged with was laid in accordance with section 129 of the *National Defence Act*, for an act to the prejudice of good order and discipline. This offence is punishable by dismissal with disgrace from Her Majesty's service or to less punishment.
- b) secondly, the subjective seriousness of the offence. In the circumstances, you had to act, in all times, in a safe manner while securing your weapon. Also, this offence happened in an operational theatre where the security of each Canadian Forces member relies on the competence and the personal discipline of others.

[9] The court considers that the following circumstances mitigate the sentence:

- a) through the facts presented to this court, the court considers that this early plea of guilty by Commander Agnew is a clear sign of remorse and that he is very sincere in his pursuit to continue to be a very solid asset to the Canadian Forces and the Canadian community. The court would not want to jeopardize in any way his chances of success, because rehabilitation is always a key element when sentencing a person. Moreover, the very cooperative attitude of Commander Agnew during the investigation process demonstrates a clear state of mind to accept full responsibility for what he did;
- b) the facts and the circumstances of this case, including the fact that your act did not result in any regrettable consequences;
- c). your excellent record of service in the Canadian Forces and your career potential as a member of the Canadian Forces;
- d) the fact that you did not have a conduct sheet or criminal record related to similar offences;
- e) except for this incident, your service in the Canadian Forces has been excellent as supported by Exhibits 7 and 8. It looks like you are accepting clearly the consequences of your act. As it appears from Exhibits 9 and 10, it is clear that this incident did not stop you to perform at an outstanding level during your deployment;

- f) the fact that this incident occurred in a controlled and secured environment before getting in a military air plane, as a usual security routine weapons check procedure is set for.

[10] The court believes that the joint submission is not unreasonable in the circumstances. In consequence, the court will accept the joint submission made by counsel to sentence you to the punishment of a fine in the amount of \$800, considering that it would not be contrary to the public interest and would not bring the administration of justice into disrepute.

[11] Therefore, the court sentences you to a fine in the amount of \$800, payable in two monthly installments of \$400 each, commencing on 1 November 2006. 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 the day prior to your release.

[12] The proceedings of this standing court martial in respect of Commander Agnew are terminated.

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

Counsel:

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