COURT MARTIAL

Citation: *R. v. Galbraith*, 2010 CM 3007

Date: 20100427
Docket: 2010-12

Standing Court Martial

Canadian Forces Base Kingston
Kingston, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Sergeant S.A. Galbraith, Offender

Before: Lieutenant-Colonel L-V d'Auteuil, M.J.

REASONS FOR SENTENCE

[1] Sergeant Galbraith, having accepted and recorded a plea of guilty in respect of the first and only charge on the charge sheet, the court finds you now guilty of this charge.

[2] It is now my duty as the military judge who is presiding at this Standing Court Martial to determine the sentence.

[3] 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. It 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 offence and the previous character of the offender" as stated at QR&O article 112.48(2)(*b*).

[5] Here, in this case, the prosecutor and offender's defence counsel made a joint submission on the sentence to be imposed by the court. They recommended that this court sentence you to a fine to the amount of $300 in order to meet the justice requirements.

[6] Although this court is not bound by this joint recommendation, it is generally accepted, as mentioned by the Court Martial Appeal Court at paragraph 21 in its decision of *Private Taylor v. R.*, 2008 CMAC 1, quoting the decision of *R. v. Sinclair* at paragraph 17, that:

> The sentencing judge should depart from the joint submission only when there are cogent reasons for doing so. Cogent reasons may include, among others, where the sentence is unfit, unreasonable, would bring the administration of justice into disrepute or be contrary to the public interest.

[7] 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 have 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:

a. Firstly, the protection of the public, and the public includes the interests of the Canadian Forces;

b. Secondly, the punishment of the offender;

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

d. Fourthly, the reformation and rehabilitation of the offender;

e. Fifthly, the proportionality to the gravity of the offence and the degree of responsibility of the offender; and

f. Sixthly, the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

The court has also considered the representations made by counsel, the agreed statement of facts and the documentation introduced.

[8] I must say that the protection of the public must be ensured by a sentence that would emphasize on principle of general and specific 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 reasons, in the same prohibited conduct.

[9] Here, the court is dealing with a specific military offence, which is an act to the prejudice of good order and discipline for having fraternized without authorization with Canadian Forces School of Communications and Electronics students contrary to the CFSCE standing orders. This offence involved Canadian Forces's principles, such as, obey and support lawful authority, and rely on Canadian Forces's ethic obligation such as integrity and responsibility. Considering the position and your rank at the time of the commission of the offence, you had to be an example for the course candidates, and the failure to do so make this offence a serious one. However, the court will impose what it considers to be the necessary minimum punishment in the circumstances.

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

[11] The court considers as aggravating the objective seriousness of the offence. The offence you were charged with was laid in accordance with subsection 129(2) of the *National Defence Act* and it is punishable by dismissal with disgrace from Her Majesty's service or to less punishment.

[12] About the subjective seriousness of the offence, the court considers two things as aggravating factors:

> First, the context of the commission of the offence. As a training institution, the Canadian Forces School of Communications and Electronics (CFSCE) is a training organization where a respectful relationship between instructors and students is strictly enforced for maintaining good order and discipline. In such context, a specific order has been created on the very specific issue of fraternization and measures were taken in order to make it known to both students and instructors, which include you. Despite your awareness of the applicable principles on that very topic, you did not consider obtaining authorization prior to the improvised social event you organized with some CFSCE students at your PMQ located on a defence establishment. For a short moment you forgot about your status among the training world you were in and how such gathering could be seen by the students you were responsible for.
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> Second, considering your rank and your position at the time, you failed to disclose the leadership expected from you in such situations, and you incited, in some way, the students present at the time of the incident and another instructor to infringe the school orders.

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

a. through the facts presented to this court, the court also considers that your plea of guilty is a clear genuine sign of remorse and that you are vey sincere in your pursuit of staying a valid asset to the Canadian Forces and the Canadian community. It disclosed the fact that you're taking full responsibility for what you did;

b. your excellent record of service in the Canadian Forces and your career potential as a member of the Canadian Forces. Except for this incident, your service in the Canadian Forces has been excellent. It looks like you're accepting clearly the consequences of your acts. As it appears from Exhibit 12, it is clear that this incident did not stop you to perform at an outstanding level during your time on your QL6A;

c. the fact that you did not have a conduct sheet or criminal record related to similar offences;

d. the fact that it is an isolated and short incident, and that no such similar conduct occurred after the commission of the offence;

e. the fact that you were removed from the instructor position and required to perform duties different than the one you were as an instructor immediately further to the incident. I recognize clearly that this administrative measure do not constitute a disciplinary sanction in itself, however, it has some specific deterrence on you and may have limited general deterrence on others. It also reflects some kind of denunciation in relation to your conduct; and

f. the fact that you had to face this court martial. It has had already some deterrent effect on you and also on others. The court is satisfied that you will not appear before a court for a similar offence or any offence in the future.

[14] In consequence, the court will accept the joint submission made by counsel to sentence you to a fine, considering that it is not contrary to the public interest and would not bring the administration of justice into disrepute.

[15] Concerning the amount of the fine, which is $300, the court considers that the amount suggested by both counsel would meet the required sentencing principles and objectives, such as parity on sentence, general and specific deterrence, as well as maintaining discipline and confidence in the administration of military justice.

[16] Sergeant Galbraith, I am pretty sure that the aim you were achieving by organizing an event at your place was motivated by your desire to improve and maintain morale and cohesion among some members of the PAT platoon you were part of. However, there is always a thin fine line that cannot be crossed in a context of a student/instructor relationship. Unfortunately you learned this the hard way, but I am pret-

ty sure that this unfortunate experience will reinforce your leadership skills for the future. I wish you best luck in your career.

[17] Sergeant Galbraith, therefore, the court sentences you to a fine to the amount of $300. The fine is to be paid in full immediately.

Counsel:

Lieutenant-Colonel M.M.M. Trudel and Captain E. Carrier, Canadian Military Prosecution Services
Counsel for Her Majesty the Queen

Major J.A.E. Charland, Directorate of Defence Counsel Services
Counsel for Sergeant S.A. Galbraith