

Citation: *R. v. Officer Cadet A.D. Sullivan*, 2006 CM 72

Docket:S200672

**STANDING COURT MARTIAL
CANADA
HALIFAX
NOVA SCOTIA**

Date: 21 November 2006

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

HER MAJESTY THE QUEEN

v.

**OFFICER-CADET A.D. SULLIVAN
(Offender)**

SENTENCE

(Rendered orally)

[1] [1] Officer Cadet Sullivan, having accepted and recorded a plea of guilty

in respect of the charges number 2 and 3, the court finds you, now, guilty of these charges. Consequently, the court directs that the proceedings be stayed on the first charge.

[2] [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] [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, the military justice system, and I translate, "has for purpose to control and

influence the behaviour and ensure maintenance of discipline, with the ultimate objective to create favourable conditions for the success of the military mission.” 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.

[4] [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 made a joint submission on sentence. They recommended that this court sentence you to a severe reprimand and a fine to the amount of \$2,000.

[5] [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] [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] [7] I must say that I agree with the prosecutor when he expressed the view

that the protection of the public 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 reasons, in the same prohibited conduct. As stated by Judge Létourneau at paragraph 22 of the Court Martial Appeal Court decision in *Private St. Jean, and Her Majesty the Queen*, CMAC 429:

... Military offenders convicted of fraud, and other military personnel who might be tempted to imitate them, should know that they expose themselves to a sanction that will unequivocally denounce their behaviour and their abuse of the faith and confidence vested in them by their employer as well as the public and that will discourage them from embarking upon this kind of conduct.

[8] [8] It is important to say that some consideration must also be given to specific deterrence and rehabilitation in this case. Here, the court is dealing with offences linked to the process of fraud, i.e., the forgery of a document and a false statement in another document. They are very serious offences; however, the court will impose what it considers to be the necessary minimum punishment in the circumstances.

[9] [9] In arriving at what the court considers a fair and appropriate sentence,

the court has considered the following mitigating and aggravating factors.

[10] The court considers as aggravating:

a. Firstly, the objective seriousness of the offences. The offences you were charged with were laid in accordance with section 125(a) of the National Defence Act, for wilfully making a false statement in a document, and with section 130 of the *National Defence Act* for the forgery of a document, contrary to section 367 of the *Criminal Code*. These offences are punishable by three and ten years of imprisonment or to less punishment; secondly

b. Secondly, the subjective seriousness of the offences. These kind of offences require, very often, some sort of premeditation. For committing the offences for which you pleaded guilty today, it was necessary to do so. Moreover, it was done for an important amount, above \$5,000, and this money was entrusted to you. You decided, conscientiously, that instead of using this advance

given to you for its specific purpose, this money would be more useful for your own needs. You demonstrated a clear lack of integrity and reliability.

[10] [11] The court considers that the following circumstances mitigate the

sentence:

a.

Through the facts presented to this court, including the extract from the letter of apology, the court also considers that this plea of guilty by Officer Cadet Sullivan is a genuine sign of remorse, and that she's very sincere in her pursuit of becoming, again, a valid asset to the Canadian Forces and the Canadian community. The court would not want to jeopardize her chances of success because rehabilitation is always a key element when sentencing a person. Moreover, the cooperative attitude of Officer Cadet Sullivan during the investigation process demonstrates a clear state of mind to accept responsibility for what she did; the

b. court considers as a mitigating factor your Your record of service in the Canadian Forces, your age, and your career potential as a member of the Canadian Forces. Being 21 years old, you have many years ahead to contribute positively to the society in general, as well as in the Canadian Forces; the

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

d. The restitution process you are in for reimbursing, in full, the Canadian Forces.;

e.

[11] Except for this incident, your service in the Canadian Forces has been good. It looks like you're accepting the consequences of your acts, and that you are trying to turn yourself and starting, finally, your career in the Canadian Forces. The steps you have taken in order to deal with your personal and financial problems show to the court that you recognized the problems you were in, and that you decided to deal with them in an appropriate manner. I encourage you to continue to do so. Also, as a Canadian Forces officer, I suggest to you that you need to demonstrate a better sense of leadership and integrity in the future;

[12] f. Article 112.48(2)(a), QR&O, imposes to the court the duty to consider any indirect consequences of the sentence. The fact that your career has been put on hold while you were waiting the result of the court martial has to be considered in these circumstances.

[12] Considering that imprisonment should be imposed as a last resort, as established by the Court Martial Appeal Court in the decision of *Second Lieutenant D. Baptista and her Majesty the Queen*, CMAC 485, the court believes that the joint submission is not unreasonable in the circumstances.

[13] In consequence, the court will accept the joint submission made by counsel to sentence you to the punishment of a severe reprimand and a fine to the amount of \$2,000, considering that it would not be contrary to the public interest and would not bring the administration of justice into disrepute.

[14] Officer Cadet Sullivan, please stand up. Therefore, the court sentences you to a severe reprimand and a fine to the amount of \$2,000. The fine is to be paid in monthly installments of \$100 each, commencing on 1st December, 2006, and continuing for the following 19 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 the day prior to your release.

[15] The proceedings of this Standing Court Martial in respect of Officer Cadet Sullivan are terminated.

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

Counsel:

Major J.J. Samson, Regional Military Prosecutor Atlantic

Counsel for Her Majesty the Queen

Lieutenant-Commander M. Reesink, Directorate of Defence Counsel Services

Counsel for Officer Cadet A.D. Sullivan