



## COURT MARTIAL

**Citation:** *R. v. Louis*, 2010 CM 3016

**Date:** 20100721

**Docket:** 201031

Standing Court Martial

Asticou Centre  
Gatineau, Quebec, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Master Corporal L. Louis, Offender**

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

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OFFICIAL ENGLISH TRANSLATION

### REASONS FOR SENTENCE

(Rendered orally)

[1] Master Corporal Louis, the Court Martial having accepted and recorded your admission of guilt on the second count, the Court now finds you guilty of this count. As the prosecution has accepted your admission of guilt on an objectively lesser charge, the Court directs a stay of proceedings on the first count.

[2] As the military judge presiding at this standing court martial, it now falls to me to determine the sentence. In the particular context of an armed force, the military justice system constitutes the ultimate means of enforcing discipline, which is a fundamental element of military activity in the Canadian Forces. The purpose of this system is to prevent misconduct, or, in a more positive way, promote good conduct. It is through discipline that an armed force ensures that its members will perform their missions successfully, confidently and reliably.

[3] The military justice system also ensures that public order is maintained and that those subject to the *Code of Service Discipline* are punished in the same way as any

other person living in Canada. It has long been recognized that the purpose of a separate system of military justice or courts is to allow the Canadian Forces to deal with matters that pertain to the *Code of Service Discipline* and the maintenance of the effectiveness and morale of the troops. That said, the punishment imposed by any court, military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances of the case. It also goes directly to the duty imposed on the Court to impose a sentence commensurate with the gravity of the offence and the previous character of the offender, as stated at subparagraph 112.48(2)(b) of the QR&O.

[4] In this case, counsel have presented a joint submission. They have recommended that the Court sentence you to a severe reprimand and \$2000 fine. The Court Martial is not bound by this recommendation. However, it is well established in case law that there must be compelling reasons for the Court to disregard it. It is also generally recognized that the Court should accept the recommendation unless doing so would be contrary to the public interest or bring the administration of justice into disrepute.

[5] Imposing a sentence is the most difficult task for a judge. As the Supreme Court of Canada recognized in *R. v. Généreux*,<sup>1</sup> “To maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently”. It emphasized that, in the particular context of military justice, breaches of military discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct. However, the law does not allow a military court to impose a sentence that would be beyond what is required in the circumstances of a case. In other words, any sentence imposed by a court must be adapted to the individual offender and constitute the minimum necessary intervention, since moderation is the bedrock principle of the modern theory of sentencing in Canada.

[6] The fundamental purpose of sentencing in a Court Martial is to ensure respect for the law and maintenance of discipline by imposing sanctions that have one or more of the following objectives:

- a. to protect the public, which includes the Canadian Forces;
- b. to denounce unlawful conduct;
- c. to deter the offender and other persons from committing the same offences;
- d. to separate offenders from society, if need be; and
- e. to rehabilitate and reform the offender.

[7] When imposing sentences, a military court must also take into consideration the following principles:

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<sup>1</sup> [1992] 1 S.C.R. 259

- a. A sentence must be proportionate to the gravity of the offence.
- b. A sentence must be proportionate to the degree of responsibility and previous character of the offender.
- c. A sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.
- d. An offender should not be deprived of liberty, if applicable in the circumstances, if less restrictive sanctions may be appropriate in the circumstances. In short, the Court should impose a sentence of imprisonment or detention only as a last resort, as was established by the Court Martial Appeal Court and the Supreme Court.
- e. Lastly, all sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[8] Personally, I have concluded that sentencing should focus on two objectives: first, denunciation; then, general deterrence. Here, I would like to quote a passage from a decision of the Court Martial Appeal Court, *The Queen v. St Jean*, CMAC 429, dated February 8, 2000, by Justice Létourneau, dealing specifically with fraud and discussing the application of the objective of deterrence at paragraph 22:

In a large and complex public organization such as the Canadian Forces which possesses a very substantial budget, manages an enormous quantity of material and Crown assets and operates a multiplicity of diversified programs, the management must inevitably rely upon the assistance and integrity of its employees. No control system, however efficient it may be, can be a valid substitute for the integrity of the staff in which the management puts its faith and confidence. A breach of that faith by way of fraud is often very difficult to detect and costly to investigate. It undermines public respect for the institution and results in losses of public funds. 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. Deterrence in such cases does not necessarily entail imprisonment, but it does not *per se* rule out that possibility even for a first offender. There is no hard and fast rule in this Court that a fraud committed by a member of the Armed Forces against his employer requires a mandatory jail term or cannot automatically deserve imprisonment. Every case depends on its facts and circumstances.

[9] Master Corporal Louis, when you committed the offences, you were a resource management support clerk under the Director General Land Equipment Program Management, at the National Defence Headquarters in Ottawa. In August and October 2007, you apparently submitted \$2782.88 and \$4114.77 in claims for temporary duty, whereas you had not performed any temporary duty. Essentially, you took advantage of special circumstances and information that you had been given during that period, which is alleged in the charges, between July and October 2007, to serve your own purposes and cash the claims money.

[10] Thus, you obtained the entire amount. However, by sheer coincidence, one of your supervisors decided to check your work and saw that some things were not right. There were inconsistencies, and, on making a closer inspection, this person realized that you had indeed obtained certain amounts dishonestly, using a procedure that is well known in the Canadian Forces, by all those who go on temporary duty.

[11] All sentences should be adapted to the aggravating or mitigating circumstances. I will begin by listing what I consider to be the aggravating circumstances or factors.

[12] Regarding the objective factors, I note that you have pleaded guilty, and the Court has recorded and accepted your plea of guilty on the second count, which is an offence charged under section 117 of the *National Defence Act* and which provides for imprisonment for less than two years or to less punishment. When the offence is considered in and of itself, the sentence reveals that, throughout the entire the *Code of Service Discipline*, Parliament takes a stern view of this offence. It is a fairly serious offence.

[13] As regards the subjective, aggravating factors, the Court notes three factors. First, obviously, there is a breach of trust. I touched on this point earlier by quoting a Court Martial Appeal Court decision. In my opinion, Justice Létourneau aptly summarized your situation in that quotation, and I know that you understand perfectly. At some point in the performance of one's duties, whatever they may be, one must rely on others. In your case, others relied on you, in that they entrusted you with a number of responsibilities for carrying out certain procedures, and you were also given the keys to ensure that payments could be made: you were entrusted with a password. Consequently, you used this to serve your own ends. You understand that members of the Canadian Forces must adhere to certain key principles such as responsibility, honesty and integrity. In this case, when you decided to take that money for yourself, you committed a breach of trust. I think that you realized the gravity of your actions immediately after the second claim, but it was nevertheless a breach of trust.

[14] As a second subjective, aggravating factor, I note the amount of the claims. I understand that it was around \$2000 the first time. Apparently, since the process had worked once, you doubled the amount, totalling approximately \$6000, which is relatively serious in terms of value. I have just mentioned it in passing, but there was a form of premeditation. You were not faced with a particular situation where, by chance, you merely had to bend over and pick up the money; it required forethought. You had to think about everything and make a decision. Therefore, you thought it out and prepared documentation, and you did this twice. Thus, the second time, you knew what you were doing, as you had already done it once. There was some premeditation, which I note as being an aggravating factor.

[15] As regards the mitigating factors, there is obviously your plea of guilty—counsel spoke very little of this, but it is the first factor that comes to my mind. By pleading guilty at the first opportunity, you demonstrated your remorse and sincere intention to remain a valid asset to the Canadian Forces and to society.

[16] Another mitigating factor is your remorse, the remorse that you have shown. Even though, in the beginning, you were questioned following the second claim, there came a point in October when you simply decided to confess, to admit to what you had done. From that moment on, you have continually showed remorse by saying, “Look, I have realized the gravity of what I have done, and I regret it; I deeply regret it”. You also clearly expressed this remorse in your testimony today before the Court. In fact, for over two years, nearly three years, you have told all those closely or distantly connected with this affair that you regret what you did because you have realized the gravity of your actions. Another sign of this remorse is the fact that you returned, almost immediately, all of the money. You did so on your own initiative, which is something that the courts very rarely see, I can tell you. People will often wait for the outcome of the case, which is also fine in and of itself, but you decided right away to reimburse the money, and it is a compelling, mitigating factor that illustrates and supports your remorse for your actions.

[17] There is also the fact that you have no criminal record. I think that this is an important factor that the Court must take into consideration. In your case, this is your first offence.

[18] Another factor is your performance at work since you committed the offence. I have no information on how you performed prior to the commission of the offence but, clearly—I do not know whether you have tried to demonstrate your remorse, but you have at least tried to show your supervisors that you were trustworthy nevertheless and that this incident was an isolated one, a moment of poor judgment that was circumstantial and that therefore did not affect your performance at work. You have continued to improve and, in a way, I believe the chain of command has indicated that it still trusted you—I hope that this is a message—by giving you a positive performance review. You have tried to be as close to perfect as possible, and, as I noted earlier, one very rarely hears a member described as being [TRANSLATION] “impeccable”. You have therefore tried to attain perfection in your work, and this is another factor that I must take into consideration.

[19] There is also the fact that you had to face this Court Martial, which has been a long time in coming—and I will return to this point a little further on. This Court Martial is accessible to the public and took place in the presence of certain people, be it your colleagues or your supervisors, whom you probably meet in your work or at the very least encounter at Headquarters. This no doubt has a very significant deterrent effect on you and on them. Essentially, the message is that the kind of conduct that you displayed will not be tolerated in any way and will always be dealt with accordingly.

[20] There are also the administrative measures, which I do not deem to be a sentence and cannot consider to be a substitute as such for the sentence that the Court must impose. However, it is a mitigating factor that carries weight. To begin with, you received a written warning, accompanied by a monitoring period, which seems to have gone well. It ends in 10 days, and the letters seem to indicate that all is well. Therefore, this is another way for you to rebuild the relationship of trust with the chain of command. These administrative measures will apparently yield results in a way, and

this is also an indication for the chain of command in its approach to the situation. This is a kind of denunciation. It is also a form, a means of deterrence as such. Those who might act as you did will know that they may be subject to not just disciplinary measures, but administrative ones as well.

[21] There is the fact, as your counsel mentioned, that this is an isolated incident. There is nothing to show that, in the past, before or after the incident, you had done anything similar, that there has been any misconduct on your part—quite the contrary.

[22] Another point that the Court takes into account is the fact that your conviction will lead to a criminal record. This is a serious measure, as it may restrict you in some ways, not in your work as a member, but in other things. You may not apply for a pardon to have your criminal record removed before three years or within three years after—that is, the end of the three years, once the sentence has been served in full.

[23] I agree with the prosecution that, in normal circumstances, imprisonment might be something to consider, as it may still be the one and only sentence that can be imposed, depending on the circumstances. Recently, in the past year, the judges presiding over courts martial have become very sensitive to the issue of abuse of authority. In this case, had it not been for a series of mitigating factors, including the delay, which I will address, the Court most likely could have considered it. I am not saying that it is something that would have been automatically imposed—nothing is automatic—but the long list of mitigating factors, including the delay, means that this case is unique in terms of sentencing.

[24] I now turn to the delay. My intention is not necessarily to decry the delay by any means. I think that those involved within the military justice system, at the very least the actors here today, be it the prosecution, the defence or the judge, are fully aware of the importance, particularly in disciplinary matters, of proceeding expeditiously, that is, acting promptly to quickly send out the message. It is now three years after the fact. I do not want to point the finger at anyone at all. I asked questions to ensure that, at the level of the chain of command, a message was sent out. I do not believe that there is a double standard in military justice in the Canadian Forces. There is not one justice system for Headquarters and another for the troops within the Canadian Forces. There is one single *Code of Service Discipline*, and we cannot have a two-tiered military justice system, especially at the National Defence Headquarters in Ottawa, where important decisions are made, where messages originate, where policies are adopted. On the contrary, Headquarters should set the example. Without blaming anyone, it is now incontestably three years after the fact. The fact that it took two years before any action was taken, between the start of the investigation and the laying of the charge, has an impact. It has an impact on discipline. The evidence shows that, today, a submission has been made in terms of a mitigated sentence. This affects the message that can be sent out, and it affects the offender. Master Corporal Louis is a perfect example. The chain of command simply decided not to act as long as the Court Martial had not taken place. Therefore, be it as regards transfers, possible transfers or possible missions, it was decided that Master Corporal Louis' career would simply be put on the back burner, without knowing anything, and even though he is presumed innocent until a court has

ruled on his case. This choice was made. I am not necessarily in a position to comment on this choice, but it has an impact on sentencing. I made sure at least that the chain of command got the message to change its ways. I agree with counsel for the prosecution that, at this stage, there is no indication that it is a systemic problem, and I hope that it will never happen again. I was counsel in the trilogy to which you referred. I am very familiar with those three cases, having acted as both counsel for the prosecution and counsel representing the Canadian Forces and the Government in appeal. I am aware of this, maybe because I have been there, and I fully understand that Master Corporal Louis has had to wait. I hope that a decision will be made once this Court Martial has concluded and once he has completed his—the administrative measures will be over on July 31. Everyone will have the opportunity to turn the page and go on to other things, never forgetting what happened, all the same. I hope that the chain of command—that the chain of command will get the message, and I hope that Master Corporal Louis too will have learned his lesson, because I understand that this has affected his career and been stressful psychologically. In and of itself, the delay is without a doubt a mitigating factor that the Court takes into account, for both counsel clearly indicated that it was an important factor in the discussions on the joint submission to this Court. In that regard, I think that you have done an excellent job evaluating the impact of all of this. I hope that the chain of command will try to learn from this. Accordingly, this is a factor that I am taking into consideration.

[25] Therefore, Master Corporal Louis, I hope that, once this Court Martial is over, you will be able to truly turn the page and continue performing as you have done up to date, and that you will be able to put your personal life in order and adjust psychologically as well. In this case, I believe that counsel's joint submission is not unreasonable under the circumstances. Consequently, the Court accepts the joint submission and sentences you to a severe reprimand and a \$2000 fine, given that this recommendation is not contrary to the public interest and will not bring the administration of justice into disrepute.

[26] Master Corporal Louis, stand up. The Court therefore sentences you to a severe reprimand and a \$2000 fine, payable immediately. Please sit down. The proceedings relating to the Standing Court Martial of Master Corporal Louis are now concluded.

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**Counsel:**

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