



COURT MARTIAL

Citation: *R. v. Beaulieu*, 2010 CM 3012

Date: 20100601

Docket: 201019

Standing Court Martial

Asticou Centre
Gatineau, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Corporal M. Beaulieu, Offender

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

OFFICIAL ENGLISH TRANSLATION

REASONS FOR SENTENCING

- [1] Corporal Beaulieu, the Court Martial having accepted and recorded your admission of guilt on the first and second counts, the Court now finds you guilty of these two counts.
- [2] As the military judge presiding at this Standing Court Martial, it now falls to me to determine the sentence.
- [3] In the special 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, to promote good conduct. It is through discipline that an armed force ensures that its members perform their missions successfully, confidently and reliably.
- [4] 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.

[5] Imposing a sentence is the most difficult task for a judge. As the Supreme Court of Canada recognized in *R. v. Généreux*,¹ “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, whether civilian or military, 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] In this case, the prosecution and defence counsel have presented a joint submission on sentencing. They have recommended that the Court sentence you to a reprimand and a \$1500 fine.

[7] 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.

[8] 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, where necessary; and
- e. to rehabilitate and reform the offender.

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

- a. a sentence must be proportionate to the gravity of the offence, and to the degree of responsibility and previous character of the offender;
- b. a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

¹ [1992] 1 S.C.R. 259

- c. an offender should not be deprived of liberty 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; and,
- d. lastly, all sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[10] The Court is of the opinion that sentencing in this case should focus on the objectives of general deterrence, then denunciation and rehabilitation. It is important to remember that the principle of general deterrence means that the sentence imposed should deter not only the offender from re-offending, but also others in similar situations from engaging in the same prohibited conduct.

[11] Here, the Court is dealing with two offences of acts to the prejudice of good order and discipline. The offender is accused of having intimidated Haitian security officers who were reporting to him, and of having broken down and damaged a door of his residence in the presence of a cleaning lady whom he had hired, both incidents having occurred while he was in Haiti in March 2009. These are purely disciplinary offences that are serious in a military context, but the Court will impose what it considers to be the minimum punishment applicable in the circumstances.

[12] Courts feel strongly about these kinds of offences. In a military context, such offences have an impact on unit cohesion and morale, as they involve principles of respect for people, integrity and responsibility that all members of the Canadian Forces must adhere to, be it in Canada or abroad. To ensure the success of a mission, an armed force must be able to count on a crucial element: soldiers' reliability and trustworthiness, in all circumstances and at all times.

[13] In arriving at what it considers to be a fair and appropriate sentence, the Court has also considered the following aggravating and mitigating factors.

- a. First, the objective seriousness of the offence. You have been found guilty of two offences under section 129 of the *National Defence Act* and are therefore liable to dismissal with disgrace from Her Majesty's service or to less punishment.
- b. Second, the subjective seriousness of the offence. Your special training as a military police officer, your experience and above all your position relative to those who report to you are fundamental elements that should have enabled you to avoid resorting to this violence, which far exceeded what was necessary in the circumstances, in order to be understood and respected. By abusing your authority, you demonstrated a blatant lack of judgment in dealing with your feelings of powerlessness and frustration at the time of each of the incidents.

- c. Moreover, despite the first incident and your regret for having done what you did, you re-offended nine days later by displaying once again, for a very short time, a lack of judgment in resorting to violence to gain respect. Thus, the recurring aspect of the offence must be considered to be an aggravating factor.
- d. In my opinion, your status as a military police officer in and of itself is not an extremely aggravating factor in the particular circumstances of this case. Your duties, as they were security-related, did not require the application of section 156 of the *National Defence Act*. However, as a police officer, you were specifically trained in the application and enforcement of the law, and more was expected of you on this point as regards your conduct. Nothing justified the acts that you committed in the presence of those people.
- e. However, in the context of members of the Canadian Forces with responsibilities towards civilians abroad in the operational theatre, your actions undoubtedly affect the image and reputation of members of the Canadian Forces and may reduce their ability to perform their duties. In that sense, the Court must consider this to be an aggravating factor.

[14] The Court considers the following to be mitigating factors:

- a. Your plea of guilty is clearly a sign that you are remorseful and are sincere in your intention to remain a valid asset to Canadian society. Furthermore, in your testimony before the Court, you clearly showed remorse for the consequences of your actions and the fact that you had felt this way immediately after committing the offences.
- b. Your age and your career potential as a member of the Canadian community. At 35 years old, you have many years ahead to contribute positively to the Canadian Forces and to society in general;
- c. The absence of a criminal record or conduct sheet for similar offences.
- d. The fact that your conduct did not result in any concrete and adverse consequences for witnesses and that it was rather unusual behaviour for you.
- e. Your sincere desire and continued efforts to control your temper. Immediately after returning to Canada, you contacted medical authorities and thus have been in constant consultation with a psychologist for help in recognizing, understanding and successfully managing your outbursts of anger. You are also actively pursuing training for that, and I encourage you to continue.

- f. The consequences of administrative decisions made concerning you with regard to these incidents, including the fact that you were removed from your duties in Haiti and repatriated to Canada earlier than expected, that your powers under section 156 of the *National Defence Act* and your privilege to carry a weapon were suspended, and that you were assigned to duties unrelated to your particular status as a military police officer. Even though they are not in and of themselves a sentence, they no doubt had a deterrent effect on you and on all military police officers.
- g. The fact that you had to face this Court Martial, which was announced and accessible to the public and which took place in the presence of some of your colleagues, has no doubt had a very significant deterrent effect on you and on them. The message is that the kind of conduct that you displayed will not be tolerated in any way and will be dealt with accordingly.

[15] I have also considered whether this is an appropriate case for a weapons prohibition order, as stipulated under section 147.1 of the *National Defence Act*. In my view, such an order is neither desirable nor necessary in the interests of the safety of others or the offender in the circumstances of this trial, and I will make no such order.

[16] A just and equitable sentence should take into account the seriousness of the offence and the offender's degree of responsibility in the particular circumstances of the case. Accordingly, the Court will accept the recommendation made by counsel to sentence you to a reprimand and a \$1500 fine, considering that this sentence is not contrary to the public interest and would not bring the administration of justice into disrepute.

[17] Corporal Beaulieu, stand up. The Court sentences you to a reprimand and a \$1500 fine, payable immediately. The Court makes no order under section 147.1 of the *National Defence Act*.

[18] The proceedings relating to the Standing Court Martial of Corporal Beaulieu are now concluded.

Counsel:

Lieutenant-Colonel M. Trudel, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Lieutenant(N) M. Létourneau, Directorate of Defence Counsel Services
Defence counsel for Corporal M. Beaulieu