

**Citation:** *R. v. Private R.C. Dehmel*, 2006 CM 65

**Docket:**S200665

**STANDING COURT MARTIAL  
CANADA  
HALIFAX  
NOVA SCOTIA**

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**Date:** 23 November 2006

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

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**HER MAJESTY THE QUEEN**

**v.**

**PRIVATE R.C. DEHMEL**

**(Offender)**

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**SENTENCE**

**(Rendered orally)**

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[1] Private Dehmel, 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*, 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] 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 has suggested that the minimum intervention by the court would be reflected by imposing a fine between \$201 and \$600, having in mind that the conviction would stay on the conduct sheet of Private Dehmel. To the other end, the defence counsel suggested that something between a caution and a \$200 fine would fill the need of this minimum intervention by the court.

[5] When a court must sentence an offender for offences that he has committed, certain objectives must be pursued in light of the applicable sentencing principles. It is recognized that these principles and objectives would slightly vary from case to case, but they must always be adapted to the circumstances and to the offender.

[6] In order to contribute to one of the essential objectives of military discipline, that is the maintenance of a professional and disciplined armed force that is operational, effective, and efficient, the sentencing principles and objectives could be listed as: Firstly, the protection of the public, and this, of course, includes the Canadian Forces; secondly, the punishment and the denunciation of the unlawful conduct; thirdly, the deterrence of the offender, and any other persons, from committing similar offences; fourthly, the rehabilitation of offenders; fifthly, the proportionality to the gravity of the offence and the degree of responsibility of the offender; and finally, the court shall consider any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[7] In this case, the protection of the public must be achieved by a sentence that will emphasize specific deterrence and rehabilitation. Also, some consideration has to be given to general deterrence and denunciation. 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.

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

[9] The court considers as aggravating:

a. 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 a neglect 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. The subjective seriousness of the offence, disclosed through the circumstances surrounding the commission of the offence, for which you pleaded guilty. It has been demonstrated, on that specific morning that the offence occurred, that you showed a lack of integrity and responsibility by failing to meet the expectations put in you. As Warrant Officer Rogers indicated in his testimony, the confidence in soldiers has to be there to allow an armed forces of any size to perform its job, in garrison or in an operational theatre.

[10] However, the court disagrees with the prosecutor that the fact that you proceeded to some assessment of the situation before committing the offence must be considered as an aggravating factor or an aggravated fact. As mentioned by the court earlier, in its decision on the disputed fact issue, the court is dealing with a different context from the disobedience to a lawful command. This assessment you made while committing the offence goes directly to the issue of the essential element of the offence of neglect to the prejudice of good order and discipline, and no more consideration must be given to it.

[11] Also, at the time the offence was committed, your chain of command had some issue with your conduct, and, more obviously, with your attitude towards discipline and the chain of command itself.

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

a. Through the facts presented to this court, the court considers that your plea of guilty is a genuine sign of remorse and that you are sincere in your pursuit of becoming again a valid asset to the Canadian Forces and the Canadian community;

b. Your cooperative attitude during the investigation process demonstrates a state of mind to accept responsibility for what you did;

c. Also, as mitigating factors, the court considers your record of service in the Canadian Forces, your age, and your career potential as a member of the Canadian Forces. Being 22 years old, you have many years ahead to

contribute positively to the society in general as well as in the Canadian Forces;

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

e. The delay since the laying of the charges.

[13] The court disagrees with the suggestion made on sentence by both prosecution and defence counsel. This court agrees with your counsel when he asks the court to be more lenient in order to avoid permanent consequences on your conduct sheet; however, at this stage of your career, a sentence that would be only a fine over or less than \$200 would not serve the interest of military discipline, a way or another, especially at your rank level and level of experience, and also considering the very nature of the offence; that is to say, a pure military disciplinary offence in itself. In order to reflect the sentencing principals of specific deterrence and rehabilitation, and, to some degree, general deterrence and denunciation, the court believes that you need to go back to the basics of military discipline without carrying the consequences of this offence for your entire career in the military. You must not only understand, but also accept, that CF members shall treat the chain of command, and what it asks you to do, with great respect. A fair and just punishment should recognize the gravity of the offence and the responsibility of the offender in the context of this particular case.

[14] Private Dehmel, stand up. This court sentences you to a fine of \$200, and to the punishment of confinement to barracks for a period of seven days. 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 Private Dehmel are terminated.

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

Counsel:

Major S.D. Richards, Regional Military Prosecutor Atlantic  
Counsel for Her Majesty the Queen

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

Counsel for Private R.C. Dehmel