



## COURT MARTIAL

**Citation:** *R. v. Seifi*, 2009 CM 3018

**Date:** 20091009

**Docket:** 200948

Standing Court Martial

Moss Park Armoury  
Toronto, Ontario, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Ex-Private S. Seifi, Offender**

**Restriction on publication:** By court order made under section 179 of the *National Defence Act* and section 486.4 of the *Criminal Code*, information that could disclose the identity of the person described in this judgment as the complainant shall not be published in any document or broadcast or transmitted in any way.

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

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### **REASONS FOR SENTENCE**

[1] The purpose of a separate system of military tribunals is to allow the Armed Forces to deal with matters that pertain directly to the discipline, efficiency, and morale of the military. The Supreme Court of Canada has recognized that breaches of military discipline must be dealt with speedily, and frequently punished more severely, than would be the case of a civilian engaged in a similar conduct. However, the punishment imposed by any tribunal, military or civil, should constitute the minimum necessary intervention that is adequate in the particular circumstances. The primary interest of a court martial is still the maintenance or restoration of discipline.

[2] In determining sentence, the court has considered the circumstances surrounding the commission of the offence, as revealed by the evidence heard during the trial, and the applicable principles of sentencing, 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*. The court also considered

the representations made by counsel including the case law mentioned to the court and the documentation introduced.

[3] Private Seifi was found guilty of one charge under the *National Defence Act*. The charge relates to an offence punishable under section 130 of the *National Defence Act* for assault on G.L.E.C. contrary to section 266 of the *Criminal Code*.

[4] Here, in this case, the prosecutor suggests that the court imposes to the offender a reprimand and a fine in the amount of \$1,000. On the other end, the offender's defence counsel recommended to the court to impose a fine in the amount of \$300.

[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 will slightly vary from case to case, but they must always be adapted to the circumstances and to the offender. 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:

- a. Firstly, the protection of the public, and this, of course, includes the Canadian Forces;
- b. Secondly, the punishment and the denunciation of the unlawful conduct;
- c. Thirdly, the deterrence of the offender and any other persons from committing similar offences;
- d. Fourthly, the rehabilitation of offenders;
- e. Fifthly, the proportionality to the gravity of the offence and the degree of responsibility of the offender;
- f. Sixthly, the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; and
- g. Finally, the court shall consider any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[6] In this case, the protection of the public must be achieved by a sentence that will emphasize the principles of general and specific deterrence, and, in at a lower degree, the denunciation of Private Seifi's conduct. 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.

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

[8] The court considers as aggravating:

- a. Firstly, the objective seriousness of the offence. The offence you were found guilty of by this court refers to section 130 of the *National Defence Act* for an assault contrary to section 266 of the *Criminal Code*. This offence is punishable by an imprisonment for a term not exceeding five years or to less punishment;
- b. Secondly, the subjective seriousness of the offence. The offence you were found guilty of occurred before your course mates, on a military establishment, during a Canadian Forces Med Tech course on which you and the victim were candidates, and while you were on duty and in uniform. It constitutes a serious breach of trust toward a colleague and your peers. If nobody has confidence in each other, how could the CF mission be achieved;
- c. Considering the trade you were training for, you should have known better. Trust is essential for the success of the mission, but also for dealing appropriately with patients in the medical world;
- d. The fact that the victim was in a vulnerable position at the time of the incident and that you took advantage of this situation without having any consideration to her physical and psychological integrity. Reality is, that despite the fact that the application of force by you without her consent was short, the psychological impact on the victim was a bit longer.

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

- a. The fact that you did not have a conduct sheet or criminal record related to similar offences;
- b. The absence of any impact on discipline on the course and on the unit you were with at the time of the offence;
- c. The fact that it is a very short and isolated incident and that it had a limited impact on the victim;
- d. Your age and your career potential as a member of the Canadian society. Being 25 years old, you still have many years ahead to contribute positively to the society in general;
- e. 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 or any offence in the future.

[10] 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.

[11] Private Seifi, stand up, please. This court sentences you to a reprimand and a fine of \$500.

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**Counsel:**

Captain Z. Drebot, Directorate International Operations Law  
Major S. MacLeod, Canadian Military Prosecution Service  
Counsel for Her Majesty the Queen

Lieutenant-Commander J. McMunagle, Directorate of Defence Counsel Services  
Counsel for ex-Private S. Seifi