

Citation: *R. v. Leeworthy*, 2006 CM 52

Docket: S200652

**STANDING COURT MARTIAL
CANADA
ONTARIO
CANADIAN FORCES BASE TRENTON**

Date: 7 November 2006

PRESIDING: LIEUTENANT-COLONEL J-G PERRON, M.J.

HER MAJESTY THE QUEEN

v.

**Private D.G. Leeworthy
(Accused)**

SENTENCE

(Rendered orally)

[1] Private Leeworthy, having accepted and recorded your plea of guilty to charge number 2, the court now finds you guilty of this charge. The prosecution having withdrawn charge number 1, the court does not have to make any finding pertaining to charge number 1.

[2] The statement of circumstances, to which you formally admitted the facts as conclusive evidence of your guilt, provides this court with the circumstances surrounding the commission of the offence. While you were responsible for your squadron's kit shop cash box float fund, you deprived the kit shop and by extension, your fellow squadron members of the sum of \$98.28 and tried to conceal this by creating a false receipt.

[3] The principles of sentencing which are common to both courts martial and civilian criminal trials in Canada have been expressed in various ways. Generally, they are founded on the need to protect the public and the public, of course, in this case includes the Canadian Forces. The primary principles are the principles of deterrence that includes specific deterrence in the sense of deterrent effect on you personally as well as general deterrence; that is deterrence for others who might be tempted to commit similar offences. The principles also include the principle of denunciation of the conduct and last but not least the principle of reformation and rehabilitation of the offender.

[4] The court must determine if protection of the public would best be served by deterrence, rehabilitation, denunciation, or a combination of those factors.

[5] The court has also considered the guidance and it is only guidance as it is not binding upon the court for the purposes of sentencing, the guidance as set out in section 718 of the *Criminal Code of Canada*. Those purposes are to denounce unlawful conduct, to deter the offender and other persons from committing offences, to separate the offender from society where necessary, to assist in rehabilitating offenders, to provide reparations for harm done to victims or to the community and to promote a sense of responsibility in offenders and acknowledgement of the harm done to victims and to the community.

[6] The court is also required, in imposing a sentence, to follow the directions set out in QR&O article 112.48 which obliges the court in determining a sentence to take into account any indirect consequences of the finding or of the sentence and impose a sentence commensurate with the gravity of the offence and the previous character of the offender.

[7] The court has also given consideration to the fact that sentences of offenders who commit similar offences in similar circumstances should not be disproportionately different. The court must also impose a sentence that should be the minimum necessary sentence to maintain discipline.

[8] The Court Martial Appeal Court decision in *R. v. Paquette* 1998 CMAC 148 stated clearly that a sentencing judge should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute or unless the sentence is otherwise not in the public interest. The prosecution and your defence counsel have proposed a joint submission for a sentence of a reprimand and a fine of 700 dollars.

[9] The court must also remember that the ultimate aim of sentencing is the restoration of discipline in the offender and in military society. Discipline is that quality that every CF member must have which allows him or her to put the interests of Canada and the interests of the Canadian Forces before personal interests. This is necessary because Canadian Forces members must willingly and promptly obey lawful orders that may have very devastating personal consequences such as injury and death. I describe discipline as a quality because ultimately, although it is something which is developed and encouraged by the Canadian Forces through instruction training and practice; it is an internal quality that is one of the fundamental prerequisites to operational efficiency of any armed force.

[10] I will now quote from a landmark Supreme Court of Canada decision. This decision, *R. v. Genereux*, was decided in 1992 but it is still quite relevant to your case. The Supreme Court of Canada commented extensively on the military justice system and the Code of Service Discipline. Amongst numerous important comments, is the following and I quote:

Many offences which are punishable under civil law take on a much more serious connotation as a service offence and as such warrant more severe punishment. Examples of such are manifold such as theft from a comrade. In the service that is more reprehensible since it detracts from the essential esprit de corps, mutual respect and trust in comrades and the exigencies of the barrack room life style. Again for a citizen to strike another a blow is assault punishable as such but for a soldier to strike a superior officer is much more serious detracting from discipline and in some circumstances may amount to mutiny. The converse, that is for an officer to strike a soldier is also a serious service offence.

I've just quoted this from the Supreme Court of Canada decisions to demonstrate to you that the Supreme Court of Canada realizes that certain offences within our Code of Service Discipline represent consequences that are quite different from offences contained in the *Criminal Code*.

[11] Private Leeworthy, this court strongly recommends that you seriously ponder these words and their significance. You have been a member of the Canadian Force since 2002. You have much to learn and you, and only you, can make the decision to have a fruitful career in the Canadian Forces. But this is more than a job, it is a profession, the profession of arms. You must realize that we must all abide by certain fundamental principles if we are to become a sailor, soldier or air person that contributes to the operational effectiveness of the Canadian Forces. Trust amongst fellow soldiers, sailors and air persons is a fundamental ingredient to any successful mission. By your deceitful actions, you breached this trust. Your deceitful action was to cover the fact that you had deprived your fellow squadron members of money from the squadron fund. This breach goes beyond your duties as an RMS clerk. It attacks the very core values that we must all cherish and protect.

[12] The prosecution has commented favourably on your willingness to accept responsibility for your actions. Your guilty plea is a tangible reflection of the acceptance of responsibility. Hopefully, it demonstrates that you realize that such actions are not to be repeated. We, in the Canadian Forces, live in exciting, fulfilling but dangerous times. You may be sent to Afghanistan or some other dangerous location to support other CF members in perilous missions. Every person must be a full part of the team and be relied upon in every type of situation. Simply put, discipline and trust can make the difference between life and death. I dearly hope that today's court martial has assisted you in your path to a fruitful and challenging career.

[13] The court agrees that this sentence must focus primarily on general deterrence and denunciation. Considering the mitigating circumstances of this case and the small amount involved, \$98.28, and keeping in mind the direction given by the Court Martial Appeal Court in *Paquette*, I concur with the joint submission that an appropriate sentence in this matter is a reprimand and a fine in the amount of 700 dollars. The fine shall be paid in monthly instalments of 100 dollars commencing on the 1st day of December

2006. If you are released from the Canadian Forces, the entire amount then outstanding shall become due and payable the day before your effective date of release from the Canadian Forces.

LIEUTENANT-COLONEL J-G PERRON, M.J.

COUNSEL

Major S. MacLeod, Directorate of Military Prosecution
Counsel for Her Majesty The Queen
Lieutenant-Commander M. Reesink, Directorate of Defence Counsel Services
Counsel for Private D.G. Leeworthy