



## COURT MARTIAL

**Citation:** *R v Tofflemire*, 2011 CM 2021

**Date:** 20111121

**Docket:** 201146

Standing Court Martial

Canadian Forces Base Kingston  
Kingston, Ontario, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Corporal M.E. Tofflemire, Offender**

**Before:** Commander P.J. Lamont, M.J.

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### REASONS FOR SENTENCE

(Orally)

[1] Corporal Tofflemire, having accepted and recorded your pleas of guilty to two charges, a charge of stealing contrary to section 114 of the *National Defence Act*, and a charge of an act to the prejudice of good order and discipline contrary to section 129, and having considered the facts alleged by the prosecutor and admitted by your counsel on your behalf, this court now finds you guilty of the second charge and the third charge in the charge sheet.

[2] It now falls to me to determine and to pass a sentence upon you. In so doing I consider the principles of sentencing that apply in the ordinary courts of criminal jurisdiction in Canada and at courts martial. I have as well considered the facts of the case as described in the Statement of Circumstances, Exhibit 6, and the other materials submitted in the course of this hearing, as well as the submissions of counsel, both for the prosecution and for the defence.

[3] The principles of sentencing guide the court in the exercise of its discretion in determining a fit and proper sentence in an individual case. The sentence should be broadly commensurate with the gravity of the offence and the blameworthiness or degree of responsibility and character of the offender. The court is guided by the sentences imposed by other courts in previous similar cases, not out of a slavish adherence to precedent, but because it appeals to our common sense of justice that similar cases should be treated in similar ways. But nevertheless, in imposing sentence the court takes account of the many factors that distinguish the particular case it is dealing with, both the aggravating circumstances that may call for a more severe punishment and the mitigating circumstances that may reduce a sentence.

[4] The goals and objectives of sentencing have been expressed in different ways in many previous cases. Generally, they relate to the protection of society, of which, of course, the Canadian Forces is a part, by fostering and maintaining a just, a peaceful, a safe, and a law-abiding community. Importantly, in the context of the Canadian Forces, these objectives include the maintenance of discipline, that habit of obedience which is absolutely essential to the effectiveness of an armed force.

[5] The goals and objectives also include deterrence of the individual so that the conduct of the offender is not repeated and general deterrence so that others will not be led to follow the example of the offender. Other goals include the rehabilitation of the offender, the promotion of a sense of responsibility in the offender, and the denunciation of unlawful behaviour. One or more of these objectives will inevitably predominate in crafting a fit sentence in an individual case, yet it should not be lost sight of that each of these goals calls for the attention of the sentencing court, and a fit sentence should reflect a proper blending of these goals tailored to the particular circumstances of the case.

[6] As I told you when you tendered your pleas of guilty, section 139 of the *National Defence Act* prescribes the possible punishments that may be imposed at court martial. Those possible punishments are limited by the provision of the law which creates the offence and provides for a maximum punishment. Only one sentence is imposed upon an offender whether the offender is found guilty of one or more different offences, but the sentence may consist of more than one punishment. It is an important principle that the court should impose the least severe punishment that will maintain discipline.

[7] In arriving at the sentence in this case I have considered the direct and indirect consequences for the offender of the findings of guilt and the sentence I am about to pronounce.

[8] The facts of these offences are not complicated, they're set out in the Statement of Circumstances, Exhibit 6. In brief, as a member of the Regular Force serving as a member of the Canadian Forces Joint Signal Regiment here in Kingston, Ontario, the offender was apparently provided with a BlackBerry cellphone device, no doubt for the proper performance of his duties as a member of the Canadian Forces. In March of 2010, he disregarded the express instructions of his superior, Sergeant Lane, and con-

verted the BlackBerry device for his own use by removing the Subscriber Identification Module card; that is, the SIM card, from the device for a period of time extending between January and September of 2010. The SIM card was used to obtain telecommunication services for which Her Majesty in right of Canada was charged in the amount of \$1,392.12. These charges were not authorized; they were incurred in a fraudulent manner, and I am satisfied that the offence of stealing was committed. The third charge relates to the violation of an order or instruction referred to in the charge; that is, CFJSR Order 8.8-0, entitled "Cellular Telephones, Pagers, and Blackberries," which clearly provides, if there were any doubt on the point, that users of these issued devices shall not modify the configuration thereof and specifically says that removing the SIM card is a modification.

[9] I am told and I accept that Corporal Tofflemire was aware of the terms of this order at the time of his making unauthorized use of the SIM card. The violation of this provision is deemed by the *National Defence Act* to be conduct or an act to the prejudice of good order and discipline and I am so satisfied beyond a reasonable doubt.

[10] In this case counsel before me jointly recommend a sentence of a reprimand and a fine in the amount of \$700. Counsel have referred to the case of *Private Chadwick Taylor* from the Court Martial Appeal Court reported at 2008 CMAC 1. In that case the Court Martial Appeal Court held agreeing with many other criminal appeal courts across Canada that the joint submission of counsel as to sentence should be accepted by the sentencing court unless the recommended sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[11] I have considered the aggravating and mitigating circumstances referred to by counsel in their addresses to me. I give full value to the early plea of guilty made by the offender as a genuine demonstration of remorse on his part for his conduct, which I find to have been premeditated. I am mindful that the offender has made full restitution of the money defrauded from Her Majesty in the amount of just under \$1400. I am mindful also that he appears before this court as a first offender without either disciplinary or criminal entries on a conduct sheet, and has served something approaching nine years of service in total in the Canadian Forces, apparently, on the information provided to me, with distinction.

[12] On all the circumstances of which I am aware; that is, the circumstances of the offences and of the offender, I cannot say that the disposition proposed jointly by counsel would either bring the administration of justice into disrepute or is otherwise contrary to the public interest, and I, therefore, accept the joint submission.

#### **FOR THESE REASONS, THE COURT:**

[13] **SENTENCES** the offender, Corporal Tofflemire, to a reprimand and a fine in the amount of \$700. The fine is to be paid in equal monthly instalments of \$100 each, commencing 15 December 2011 and continuing for the following six months. In the event you are released from the Canadian Forces for any reason before the fine is paid

in full, the then outstanding unpaid balance is due and payable the day prior to your release.

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**Counsel:**

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Counsel for Her Majesty the Queen

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Assistant counsel for Her Majesty the Queen

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