**Citation:** *R. v. ex-Private C. Bordeleau*, 2005cm2019

**Docket:** 200542

**STANDING COURT MARTIAL**
**CANADA**
**QUEBEC**
**AREA SUPPORT UNIT VALCARTIER**

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**Date:** September 1, 2005

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**PRESIDING: LIEUTENANT-COLONEL M. DUTIL, M.J.**

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**HER MAJESTY THE QUEEN**
**v.**
**Ex-Private C. BORDELEAU**
**(Accused)**

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**SENTENCE**
**(Rendered orally)**

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**OFFICIAL ENGLISH TRANSLATION**

[1] Ex-Private Bordeleau, the Court having accepted and entered your plea of guilty to the 1st, 2nd and 4th counts, the Court now finds you guilty of the 1st, 2nd and 4th counts and it orders a stay of proceeding on the 3rd count.

[2] Ex-Private Bordeleau pleaded guilty to three charges laid under section 129 of the *National Defence Act* for acts to the prejudice of good order and discipline, namely:

> first, on or about January 13, 2004, at Québec, province of Quebec, wearing insignia without authorization, namely parachuting wings;

second, on or about January 13, 2004, at Québec, province of Quebec, wearing a medal without authorization, namely, a Special Service medal with a NATO ribbon;

third, on or about January 20, 2004, at Québec, province of Quebec, supplying a Certificate of Military Achievement attesting that he had successfully completed the basic parachutist course when the said certificate was false.

[3] In *R. v. Généreux*, the Supreme Court of Canada held that "[t]o maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently." The Supreme Court noted that in the special context of military discipline, breaches of discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct. These guidelines of the Supreme Court, however, do not allow a military tribunal to impose a sentence composed of one or more sentences that would go beyond what is required in the circumstances of the case. In other words, any sentence handed down by a court, whether civilian or military, must always represent the minimum necessary intervention.

[4] Ex-Private Bordeleau, in determining the sentence it considers appropriate and minimum in this case, the Court has weighed the circumstances surrounding the commission of the offences as disclosed by the summary of circumstances, the truthfulness of which you have accepted, the documentary evidence filed with the Court, the witnesses who testified, including Captain Christian Duchesne, the adjutant of your unit at the time of commission of the offences, Ms. Carole Pelletier, and your own testimony. The Court has also considered the submissions by counsel and the cases cited in the course of an analysis of the applicable sentencing principles.

[5] The facts surrounding the commission of the offences disclose that the incidents occurred at the armoury of the 55th Canadian Service Battalion. On January 13, 2004, during a parade, Ex-Private Bordeleau reported in ceremonial dress bearing on his uniform some white parachutist wings and a NATO Special Service medal. Questioned by his superiors about his right to wear this insignia and this military decoration, he was asked to furnish one or more documents that could justify the wearing of these items on his uniform. One week later, on the night of January 20, 2004, Ex-Private Bordeleau supplied a fake certificate of military achievement for his parachuting course and gave it to one of his superior non-commissioned officers, Sergeant Girard. Ex-Private Bordeleau stated in his testimony that he had obtained the medal and the parachutist wings at the Valcartier garrison. He added that he had obtained the fake certificate from a civilian friend who is a computer graphics designer because he was afraid he would be in trouble as a result of the discussion he had with his master warrant officer, who had asked him to supply some supporting certificates for

wearing the items in question. According to Ex-Private Bordeleau, he obtained this fake certificate of achievement because he felt trapped, he was afraid and it was an ill-considered act. An investigation was undertaken shortly afterward, therefore, and charges were laid almost one year later, on January 12, 2005, in relation to the acts by Ex-Private Bordeleau that occurred on January 13 and 20, 2004. On January 25, 2005, the accused's commanding officer applied to the referral authority to dispose of the charge and on March 15, 2005, the referral authority sent the case to the Director of Military Prosecutions. The testimony of Captain Duchesne, the unit's adjutant, reveals that the fundamental reason for the commanding officer's referral of this case directly to the referral authority is based on the unit's decision not to allow the accused to exercise a choice between being tried summarily or by court martial, but in particular by court martial because this was the only choice in fact provided by law, because it was the opinion of the authorities in the unit that there was not enough time left in which to have the case tried summarily since the acts as charged went back to January 13 and 20, 2004. It emerges as well from this testimony that neither the commanding officer nor anyone under his authority designated an officer to assist the accused as soon as possible after the charges were laid, contrary to article 108.14 of the QR&O. It seems that this decision is consistent with the logic of the unit's authorities, who had decided to send the disciplinary case directly to the referral authority. The record indicates, however, that an officer was designated, although the accused was already represented by counsel and awaiting trial by court martial, between 30 days and one and a half months from the commencement of this court martial, or close to 18 months after the filing of the initial charges. The evidence before this Court also demonstrates that the accused was recently released from the Canadian Forces even though he had so requested shortly after the filing of the initial charges. The record also indicates that Ex-Private Bordeleau was awarded corporal's insignia and paid as such soon after the charges were laid, but later they were withdrawn after the charges were laid. Ex-Private Bordeleau testified that he had thought at the time that this "demotion" was linked to the charges. The credible evidence before this Court shows on the contrary that it was instead an administrative error because he had not obtained the requisite qualifications for his rank in his new trade as a military police officer. Although it is credible that some other individuals in his unit may have been in the same situation as that of the accused and that they were treated differently in relation to such a promotion, this fact is not relevant for the purposes of sentencing in the circumstances. Rather, it is an administrative question that could have been grieved and is not within the jurisdiction of this tribunal.

[6] The prosecution is asking the Court to impose a sentence composed of a reprimand and a fine of between 600 and 800 dollars, in order to ensure the maintenance of discipline. It argues that such a sentence would help to satisfy the applicable sentencing principles in this case, namely, the protection of the public and the Canadian Forces, general and specific deterrence and denunciation of the action and the punishment of the offender.

[7] The defence submits that the Court should impose a minor sentence in the form of a warning, but it adds that if the Court rejects this suggestion the Court's sentence should not be greater than the one that might have been imposed by a delegated officer in a summary trial. The major reasons cited by the defence in support of its request have to do in particular with the delays incurred since the charges, the accused's deprivation of a summary trial as a result of errors attributable to the unit, the voluntary request for release in January 2004 by the accused, who, the defence says, was thereby trying to punish himself, the "administrative demotion" suffered by the accused, the rejections experienced by the accused when seeking employment since the events, the effect of a criminal record which, the defence says, constitutes a punishment in itself, and the fact that the accused is unemployed and without income other than the loans and bursaries that he has been given because he is now a full-time student at the University of Montréal. The defence also submits that this Court cannot impose a sentence greater than the one that might have been imposed by a delegated officer in a summary trial, in the circumstances of this case, because that would be contrary to paragraph 11(*i*) of the *Canadian Charter of Rights and Freedoms*.

[8] When giving an accused an appropriate sentence for the misconduct he has committed and in regard to the offences of which he is guilty, certain objectives are addressed in light of the applicable sentencing principles, although these vary slightly from one case to another. The importance assigned to each of the objectives and principles must however be adapted to the circumstances of the case. To contribute to one of the essential objectives of military discipline, the maintenance of a professional, disciplined, operational and effective armed force, these objectives and principles may be set out as follows:

> First, protection of society, including the Canadian Forces;
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> Second, punishment and denunciation of the offender;
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> Third, deterrence of the offender, or of anyone, from committing the same offences;
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> Fourth, rehabilitation and reform of the offender;
>
> Fifth, proportionality to the gravity of the offences and the degree of responsibility of the offender;
>
> Sixth, harmonization of sentences; and
>
> Finally, the Court will take into account the mitigating and aggravating circumstances related to the situation of the offender and the commission of the offences.

[9] In this case, the protection of society will be achieved by a sentence that puts the emphasis primarily on collective deterrence, punishment and denunciation of the offender and the rehabilitation of Ex-Private Bordeleau. In the circumstances of this case, it is not imperative that the sentence put the emphasis on individual deterrence, since the accused has been released from the Canadian Forces and the chances of a repeat offence are extremely slim, if not non-existent.

[10] In considering which sentence would be appropriate, the Court has considered the following aggravating factors and mitigating factors. And I will begin with the factors that aggravate the sentence. The Court considers the following factors to be aggravating:

1. The nature of the offence and the penalty provided by Parliament. The maximum sentence for the offences under section 129 of the National Defence Act is dismissal with disgrace from Her Majesty's service. This is an objectively serious offence.

2. The degree of sophistication, preparation and premeditation demonstrated in the commission of the offences. Although the motivations that pushed the accused into reporting for parade with the parachuting insignia and the NATO medal to which he was not entitled are nebulous, Ex-Private Bordeleau did go to the trouble to procure them himself at the Valcartier garrison. He later stitched the parachuting wings onto his uniform. Although the certificate results from an error in judgment that had not been planned over a long period, it was nevertheless obtained in order to conceal his hoax in response to his questioning by his superiors. Nothing prevented him from stopping this mascarade forthwith or during the week between the 13th and 20th of January 2004. On the contrary, he took advantage of this period to resort to the services of a computer graphics designer friend and become further embroiled in his lie. Ex-Private Bordeleau's conduct was not the reflection of limited and sudden actions. In short, the alleged acts are part of a sequence of planned actions designed to suggest or perpetuate the idea with his peers that he was legitimately wearing this insignia and this decoration.

3. The fact that your acts demonstrate a lack of integrity in regard to the military institution, but also a lack of respect toward the principles governing the award of decorations and insignia and the trivialization of those principles. It should be specified that Her Majesty the Queen of Canada approved the creation of the Special Service Medal to reward the members of the Canadian Forces who

> have served in exceptional circumstances, in a particular place and for a particular period. As for the Canadian Forces parachutist insignia, it may be awarded to a member of the Regular Force or the Reserve who has successfully completed an official program of instruction or a Canadian Forces qualification course for parachutists. The importance of the respect that ought to be given to military insignia and decorations is crucial in the context of an armed force. Military insignia and decorations help to promote some of the qualities essential to military life, such as excellence, the feeling of belonging, devotion and courage. They often represent the achievement of a goal or a mission and they are indicative of recognition by the military or the Sovereign of a soldier or group of soldiers. To misappropriate insignia or decorations is to violate without colour of right the quasi-sacred nature of what they represent.

Turning to the mitigating factors, the Court notes the following aspects:

1. Your admissions of guilt in this Court and the fact that you have to some degree averted a lengthy trial and the calling of numerous witnesses.

2. The fact that the authorities in your unit did not comply with certain procedures during the disciplinary process and the delays incurred since the commission of the offences. There is no doubt that the military authorities in your unit had a duty to appoint a designated officer as soon as possible after the initial charges were laid on January 12, 2004. The testimony of Captain Duchesne also confirms that the only reason for the transfer of your file to the referral authority was based on the belief of the military authorities in your unit that there was not enough time to hold a summary trial or at least to give you the choice of being tried by court martial. This situation of course took you by surprise since it appears from your testimony that you wanted to be tried summarily. The analysis of the facts put in evidence indicates that there was indeed sufficient time to proceed summarily in regard to the offence that is the subject matter of the fourth count. However, that was not the case for the offences that are the subject matter of the first two counts. Indeed, even if the unit authorities had followed the procedure to the letter, including the duty to appoint a designated officer, the charges on the first and second counts could not have been tried summarily according to the facts of this case and the application of subsection

27(2) of the *Interpretation Act* is of no use. Paragraph 69(*b*) of the *National Defence Act* prescribes:

> 69. A person who is subject to the Code of Service Discipline at the time of the alleged commission of a service offence may be charged, dealt with and tried at any time under the Code, subject to the following:
>
> > (*b*) the person may not be tried by summary trial unless the trial begins before the expiry of one year after the day on which the service offence is alleged to have been committed.

In these circumstances, the said offences could not be tried summarily unless the summary trial began before January 13, 2005. That would not have been possible under paragraph 108.17(2) of the QR&O, which provides that where the accused has the right to be tried by court martial, the officer exercising summary trial jurisdiction shall, before commencing a summary trial, cause the accused to be informed of that right and given a reasonable period of time, that shall be in any case not less than 24 hours. In short, the actions of the unit authorities from January 12, 2005 on are not a decisive explanation of why Ex-Private Bordeleau could not be tried summarily. This question must be examined from a more comprehensive perspective. It must be acknowledged that the facts surrounding this case are not very complex and do not explain why such a case could not be settled much more rapidly, even though it involved a unit in the Reserve Force. Such delay is simply not acceptable in the circumstances. The Court is persuaded that all of those involved could have acted with much greater haste.

3. The Court is also of the view that your age and your social and financial situation are mitigating circumstances. While your financial situation is certainly not brilliant, it does not differ from that of many university students who decide to devote themselves to their studies full-time. The sentence that this Court is going to impose should not unduly impede the serious attempts of an intelligent young adult who decides to pursue an education, who appears to be doing well and by all accounts has a fine future before him. The evidence before this Court shows that you are a particularly intelligent young man, confident in his abilities and devoted to his duties. The errors that led you before this Court are unfortunately attributable to pride and the fear of losing face before your peers and your superiors. I would venture to hope that you will have learned from your errors in judgment and that you will henceforth understand that humility is the best policy.

4. Finally, the Court notes that you had no disciplinary or criminal record prior to the commission of these offences. It must be acknowledged that this will no longer be the case. There is a very real possibility that this conviction will have some negative repercussions on your employment or other prospects. The Court is required to take that into account. It must be noted that you are however the only one responsible for this situation. Nevertheless, there is no need to go overboard and grossly exaggerate the consequences that these convictions will have on you in light of the nature of the offences and the circumstances in which they were committed.

[11] Concerning the sentence strictly speaking, the Court rejects at the outset the defence proposal to impose a minor punishment in the form of a warning. On the one hand, the accused's actions are too serious and, on the other hand, such a penalty would trivialize the criticized conduct, as if we were talking about a beret left in an automobile. Such a sentence would not serve the interests of military justice and would be inconsistent with the objective of maintaining discipline.

[12] The proposal that no sentence be imposed greater than what a delegated officer might have imposed does merit some consideration, however, given the circumstances of this case. Although it cannot be reasonably concluded from the factual analysis that the accused would inevitably have been tried summarily by a delegated officer, the Court acknowledges that this file would not have been referred to a court martial in normal times, in light of Captain Duchesne's testimony, and this is an important factor in determining a just sentence in this matter.

[13] Counsel for the defence submitted to the Court that paragraph 11(*i*) of the *Canadian Charter of Rights and Freedoms* does not allow this Court to impose a sentence greater than one that the accused might have had if he had been tried summarily, more specifically by a summary trial before a delegated officer, because the scale of available sentences was altered by the referral of the file on Ex-Private Bordeleau to a court martial. According to this argument, the accused is therefore entitled to a lesser penalty.

[14] There is no legal basis for this submission. Section 129 of the *National Defence Act* has not been amended. The *Charter* right refers strictly to the offence of which the accused has been convicted. Paragraph 11(*i*) purports to insert in the Constitution certain provisions of the interpretation acts granting an accused the right to benefit from the lesser penalty if the applicable legislation is amended while he is being prosecuted. It is true that the mere fact of being tried by a standing court martial rather than summarily exposes the accused to harsher penalties. But that has no effect on the applicability of paragraph 11(*i*) of the *Charter*. Moreover, Parliament would certainly be

surprised to see this paragraph cited when there has been no variation in the statute during the prosecution. This paragraph does not apply to a sliding scale of penalties that varies according to the type of trial or the level of the trial authority.

[15] Mr. Bordeleau, please stand up. For these reasons, the Court imposes on you the sentence that it considers the minimum sentence that will serve the interests of justice and the maintenance of discipline in the circumstances. This Court sentences you to a reprimand and a fine of 300 dollars payable in six equal monthly instalments beginning today. The fine will be payable by certified cheques or money orders in the name of the Receiver General of Canada. I order the prosecutor to provide you with the exact address where you can pay the fine once these proceedings are concluded. You may sit down. Concerning the defence request to enjoin the military authorities to perform their administrative duties in regard to the accused's conduct sheet, such an order is, in the Court's opinion, completely unnecessary in light of article 112.81 of the QR&O.

LIEUTENANT-COLONEL M. DUTIL, M.J.

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Certified true translation

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