



## COURT MARTIAL

**Citation:** *R v Deslauriers* 2013 CM 3007

**Date:** 20130218

**Docket:** 201305

Standing Court Martial

Valcartier Garrison  
Courcelette, Quebec, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Private V. Deslauriers, Offender**

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

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OFFICIAL ENGLISH TRANSLATION

### REASONS FOR SENTENCE

Orally

[1] Private Deslauriers, the Court Martial having accepted and recorded your plea of guilty to the first and sixth counts, the Court now finds you guilty of both charges. The Court makes a special finding and also finds you guilty of the offence set out in the fourth count, on the basis of facts that differ substantially from the alleged facts, that is, the same facts as those described in the particulars of the charge, except for those dealing with the [TRANSLATION] "loudspeakers" and for which the prosecution has confirmed its approval. Since the prosecution has withdrawn the other counts, the Court has no other counts to dispose of.

[2] It now falls to me, as the military justice presiding over this Standing Court Martial, to pass sentence.

[3] In the special context of an armed force, the military justice system constitutes the ultimate means of enforcing discipline, which is a fundamental element of military

activity in the Canadian Forces. The purpose of this system is to prevent misconduct or, in more positive terms, to promote good conduct. It is through discipline that armed forces ensure that their members will perform their missions successfully, confidently and reliably.

[4] The military justice system also ensures that public order is maintained and that persons charged under the Code of Service Discipline are punished in the same way as any other person living in Canada.

[5] Sentencing is a difficult task for a judge. The Supreme Court of Canada recognized in *R v Généreux*, 1992 1 SCR 259, at page 293, 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.

It also noted on that same page that

[b]reaches of military discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct.

[6] However, the law does not allow a military court to impose a sentence that would be beyond what is required in the circumstances of a case. In other words, any sentence imposed by a court, be it civilian or military, must be adapted to the individual offender and constitute the minimum necessary intervention, since moderation is the bedrock principle of the modern theory of sentencing in Canada.

[7] In the case before us, prosecution and defence counsel have presented a joint submission on sentencing. They have recommended that the Court sentence you to a severe reprimand and a fine of \$750. The Court Martial is not bound by that recommendation. However, it is well established in the case law that there must be incontrovertible and compelling reasons for the Court to disregard it. It is also generally recognized that the Court should accept the recommendation unless doing so would be contrary to the public interest or bring the administration of justice into disrepute, as appears from the decisions of the Court Martial Appeal Court on the subject.

[8] The fundamental purpose of sentencing in a court martial is to ensure respect for the law and the maintenance of discipline by imposing punishments that have one or more of the following objectives:

- a. to protect the public, which includes the Canadian Forces;
- b. to denounce unlawful conduct;

- c. to deter the offender and other persons from committing the same offences;
- d. to separate offenders from society, where necessary; and
- e. to rehabilitate and reform the offender.

[9] When imposing sentences, a military court may also take into consideration the following principles:

- a. a sentence must be proportionate to the gravity of the offence;
- b. a sentence must be proportionate to the degree of responsibility and previous character of the offender;
- c. a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances (parity in sentencing);
- d. an offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances—in short, the court should impose a sentence of imprisonment or detention only as a last resort; and
- e. lastly, all sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[10] The Court is of the opinion that sentencing in this case should focus on the objectives of denunciation of unlawful conduct and general deterrence. It is important to remember that the principle of general deterrence means that the sentence imposed should deter not only the offender from re-offending, but also others in similar situations from engaging in the same prohibited conduct. The Court also notes that particular emphasis should be placed on the rehabilitation of the offender, given the circumstances.

[11] The case before this Court concerns three counts of stealing under the Code of Service Discipline. It is important to bear in mind that the offence of stealing speaks to well-known principles in the Canadian Forces in terms of members' ethics, namely, integrity, loyalty, honesty and responsibility.

[12] Private Deslauriers has been a member of the Canadian Forces since October 2008. Around June 2010, he learned that his father was having some health problems, and this caused him some personal problems. He started taking a variety of drugs. His conduct sheet highlights certain offences that were committed during that period, which reflects somewhat his difficulty in overcoming his personal problems at that time.

[13] In July 2010, Master Corporal Ouellet had some doubts about the military equipment that Private Deslauriers had reported stolen. After conducting his own investigation, he forwarded his findings to the Military Police.

[14] In August 2010, Private Deslauriers went to a pawn shop, Instant Comptant, and pawned some military materiel. This materiel was recovered on 23 November 2010 by Master Corporal Ouellet in the company of Private Deslauriers, who had to pay back a certain sum of money to get the materiel back.

[15] Between 1 and 20 September 2010, Private Deslauriers met and befriended Private Blais, who was awaiting release from the Canadian Forces. Private Blais told him that he wanted to go into the room of another Canadian Forces member, Private Santerre, who was on deployment for training at the time. Private Deslauriers and Private Blais took advantage of Private Santerre's absence to enter his room and use his computer. When Private Blais told Private Deslauriers of his intention to take the computer with him to Montréal, Private Deslauriers decided to take possession of Private Santerre's computer, mouse and screen and bring them to his room. However, in order to support his drug habit, Private Deslauriers decided to pawn this equipment at Instant Comptant, which gave him \$200 in exchange. When Private Santerre returned, he obviously noticed that his computer had disappeared. He was able to get it back from Instant Comptant by paying \$256, which sum was reimbursed by Private Deslauriers.

[16] Finally, between 10 September and 10 October 2010, again at Valcartier Garrison, Private Deslauriers entered the car of another Canadian Forces member, Private Gagné-Bernatchez, and stole some items. He took the car radio, an amplifier and a subwoofer speaker. Once again, he stole to get some money by pawning the items at Instant Comptant to be able to buy drugs and take them. The items were not recovered, and Private Deslauriers paid Private Gagné-Bernatchez \$750 in compensation.

[17] Following the Military Police investigation, the investigator asked Master Corporal Ouellet to ask Private Deslauriers to report to the Military Police detachment for questioning. Private Deslauriers reported on 30 November 2010, and admitted all of the facts alleged against him. However, it should be noted that the police investigation also confirmed that the theft of military equipment that Private Deslauriers had returned had indeed taken place in the circumstances.

[18] In arriving at what it considers to be a fair and appropriate sentence, the Court considered the following aggravating and mitigating factors that emerged from the facts of this case.

[19] The Court finds the following factors to be aggravating:

- a. First, the objective seriousness of the offence, namely, three counts of stealing. You have been found guilty of three service offences under section 114 of the *National Defence Act* for stealing, which means you are liable to imprisonment for a term not exceeding seven years or to less punishment.
- b. Regarding the subjective seriousness, the Court notes three aspects:
  - i. First, there has been a breach of trust. In a military context, stealing the property of one's comrades takes on a special significance. Despite the short amount of time you have spent in the Canadian Forces, you must understand from your experience, particularly as an infantryman, that a soldier must be able to trust another soldier when performing various missions which may, among other things, involve putting one's life on the line; you must understand full well, through the experiences you have had in the military, that being able to count on one's comrades in combat or other circumstances is crucial and essential. When one comrade sees another steal his or her personal belongings, this relationship of trust is broken, and there is not only the fact that the trust between two individuals is broken. This introduces a special dimension, because the trust within the group may be put to the test and could ultimately endanger many individuals and not just the person involved. Your comrades trust you. They knew that even if they were deployed for an exercise, they did not have to worry that anything would happen to their belongings, and unfortunately, they were wrong. You took advantage of their absence and thought only about yourself in the circumstances, which constitutes an aggravating factor.
  - ii. I must also take into account your conduct sheet, which shows various offences that were also symptomatic of a more serious and personal problem, and you have already had brushes with the military justice system through summary proceedings that were a kind of warning that you did not heed at the time to a certain extent.
  - iii. I note planning as the third element of this aggravating factor. When you look at the stealing, it was not things that were done spontaneously. These are not very recent events that occurred for which you had to make a snap decision. I note, among other things, the theft in an automobile; you must have thought about it for a while before finding a way to get in the car and then get the items out. There is also the stolen computer equipment. You used it for a certain time, so you planned your heist. There are certain events that caused you to decide to get the equipment and then

dispose of it. This, too, is a very aggravating factor in the circumstances.

[20] I must also consider the mitigating factors:

- a. The first factor is your guilty plea. By pleading guilty to the three counts, you are clearly expressing your remorse and your sincerity in your intention to continue to be a solid and positive element of or asset to Canadian society. It also speaks to regrets, regrets that you also reiterated in your testimony, and to that effect, I must consider this factor to be a mitigating one.
- b. I must also note your co-operation. It is true that you did not go running to the police to tell them that you had stolen; however, when you were confronted after a certain time, probably Master Corporal Ouellet confronted you and asked you certain questions, but when you were confronted by the police, from that moment, you admitted having done what you did. And it should also be noted here that this is 2013, and if I understand correctly, you apparently made these admissions in 2010; so that means about two and a half years ago. Therefore, two and a half years ago, you acknowledged your responsibility and co-operated with the police, and this is another fact I must take into account.
- c. There is also your age. If my understanding of the documents submitted to me is correct, you are currently 26 years old, and in light of your young age, you remain a solid asset and can make a positive contribution to Canadian society.
- d. There is also another factor that encompasses a series of things, a factor that I call your rehabilitation process. First, there is the fact that you have acknowledged your drug problem. It should be pointed out that you met with your chain of command of your own accord to ask for help, which is a very positive point, and this help took the form of therapy, which you have followed and, as I understand it, has ultimately helped you solve your personal problems. This is a step that you have taken on your own initiative, as I understand from your testimony and from the circumstances that were explained to me, and the Court must recognize this factor in the rehabilitation process.
- e. There is also the fact that you were administratively released, albeit not necessarily in connection with the offences at issue here, but this a factor that the Canadian Forces took into account before releasing you. And in this respect, even if it does not constitute a sentence, there is nevertheless a connection, and it certainly has a deterrent effect on others who would be tempted to commit the same type of offence.

- f. Also in relation to the rehabilitation process, it is clear that your testimony showed that you are determined to rebuild your life. You could have let yourself become discouraged by the fact that you still had problems dealing with your personal problem by using drugs, but you decided that despite the fact that you had lost your job in the Canadian Forces, you still had every reason to take the right path. And I think that this is something that the Court must acknowledge.
- g. There is also the fact that you found a job and have decided to make restitution, that is, to reduce the consequences of your actions by paying people back, which is basically a form of an apology that you have made in doing so. Therefore, the Court must take these factors, this process, into account and encourage you to remain on this path.
- h. There is also the fact that you had to face this Court Martial. There was a certain delay, although I did not necessarily inquire into it. All the same, you have been at liberty for two years. I do not know the particular circumstances that caused it to take all that time to get the process under way, but the fact remains that being court-martialled is an ordeal. It is done in public, before your peers, perhaps former colleagues or Forces members, who are currently in the battalion, and this too is a factor that the Court must take into account because that may deter people from coming forward in front of the Court Martial to explain oneself before all of one's peers, one's colleagues and the chain of command.
- i. There is also another effect that the Court must note, that is, the fact that you will have a criminal record. This could affect you in various ways, and you will have to go through the pardon application process. Therefore, you will have to prove that the reputation that you think you should have should be recognized, and the pardon process—if one is granted to you after you have fully served your sentence, because there is a time period that goes with that, as your lawyer will explain to you—is a process by which you can restore your reputation, that is, your good reputation, and the Court takes this into account as well.
- j. Finally, there is the issue of parity in sentencing. You have to understand that I was referred to a series of military court decisions that tell me that in similar circumstances involving similar charges, the sentence usually ranges from a severe reprimand and a fine to a reprimand and a fine. Therefore, the suggestion that was made to me thus demonstrates through the case law that this is something that seems to be reasonable.

[21] I must say, as counsel for the prosecution also noted, that in certain cases, the rehabilitation aspect is nonexistent, but in the case before us, the fact that you made a personal decision to do things differently is a positive contribution, for you foremost and for society too. Your lawyer emphasized that this was exemplary; I am not sure

whether I can say it is exemplary, but at least it puts you on the right track and, above all, leaves you at peace with yourself. And I think that in this respect, in terms of your individual progress, it allows you to look at yourself in the mirror properly and to be able to sleep at night. I think that this is very important. And when you are tempted, because I understand very well what you are going through, you will have other difficulties in life, as we all do, and sometimes it's not easy, which is why I asked you the question about your father, who has not died yet but likely will one day—we lose people close to us, and it is not always the nicest experience—you will also think about the choices you have made in the past that have in a way made you what you are today and you are proud of it. And if you are tempted to cross over to the wrong side and return there, think it over again before doing that because the consequences are disastrous in the short term but even worse in the long term. With the choices you have made, it is true that in the short term, in respect of the Court, that has an influence, but in the long term, I think that this will allow you to be proud of yourself and to be at peace with yourself, which on an individual basis is something that we are all looking for.

[22] Therefore, in the circumstances, it must be remembered that a just and equitable sentence should take into account the seriousness of the offence and the offender's degree of responsibility in the particular circumstances of the case.

[23] The Court will therefore accept counsel's recommendation and sentence you to a severe reprimand and a fine of \$750, given that this sentence is not contrary to the public interest and does not bring the administration of justice into disrepute.

**FOR THESE REASONS, THE COURT:**

[24] **FINDS** Private Deslauriers guilty of the first and sixth counts, and of the fourth count on the basis of facts that differ substantially from the facts alleged, that is, the same facts set out in the statement of particulars except in respect of the loudspeakers and for which the prosecution has confirmed its approval.

[25] **SENTENCES** Private Deslauriers to a severe reprimand and a fine of \$750. The fine is to be paid in an initial instalment of \$150 on 1 March 2013 followed by four monthly instalments of \$150 to be paid on the first of each month. If for any reason you are unable to pay an instalment, the Canadian Forces may claim the total amount from you.

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**Counsel:**

Major G. Roy, Canadian Military Prosecution Service  
Counsel for Her Majesty the Queen

Captain H. Bernatchez, Defence Counsel Services  
Counsel for ex-Private V. Deslauriers