



COURT MARTIAL

Citation: *R v Ouellet*, 2013 CM 3019

Date: 20130822

Docket: 201321

Standing Court Martial

Asticou Centre Hearing Room
Gatineau, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Lieutenant-Colonel J.L.M. Ouellet, Offender

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

(OFFICIAL ENGLISH TRANSLATION)

REASONS FOR SENTENCE

(Orally)

[1] Lieutenant-Colonel Ouellet, the Court accepts and enters your guilty plea on the second count on the charge sheet and thereby now finds you guilty of that offence. As for the first count, which was withdrawn, the Court did not consider it.

[2] It is now my duty as the military judge who is presiding at this Court Martial to determine the sentence.

[3] The military justice system constitutes the ultimate means to enforce discipline in the Canadian Forces, which is a fundamental element of the military activity. The purpose of this system is to prevent misconduct or, in a more positive way, to see the promotion of good conduct. It is through discipline that an armed force ensures that its members will accomplish in a trusting and reliable manner successful missions. It also ensures that the public order is maintained and that those who are subject to the Code of Service Discipline are punished in the same way as any other person living in Canada.

In *R v Généreux*, [1992] 1 SCR 259, at page 293, the Supreme Court of Canada recognized the following:

To 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 that in the particular context of military justice,

[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.

[4] 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 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.

[5] Here, in this case, the prosecutor and the offender's defence counsel made a joint submission on the sentence to be imposed by the Court. They recommended that the Court impose a fine of \$1,000 to meet the requirements of justice. Although the Court is not bound by this joint recommendation, it is generally accepted that the sentencing judge should depart from the joint submission only when there are cogent reasons for doing so. Cogent reasons may include, among others, where the sentence is unfit, unreasonable, would bring the administration of justice into disrepute or be contrary to the public interest. On this point, see *R v Taylor*, 2008 CMAC 1, at paragraph 21.

[6] The fundamental purpose of sentencing in a court martial is to ensure respect for the law and maintenance of discipline by imposing sanctions 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 offenders.

[7] When imposing sentences, a military court must 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;
- d) an offender should not be deprived of liberty, if applicable in the circumstances, 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, as was established by the Court Martial Appeal Court and the Supreme Court of Canada; 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.

[8] I find that in the particular circumstances of this case, sentencing should focus on the objectives of denunciation and general deterrence.

[9] This case concerns a situation in which a firearm was handled inappropriately. On 12 December 2012, Lieutenant-Colonel Ouellet was at Camp Alamo in Kabul, Afghanistan, and he was beginning his deployment to this location. He had gone to do pistol firing exercises that are part of the arrival-in-theatre administrative procedures. A 9-mm pistol had been assigned to Lieutenant-Colonel Ouellet for the duration of his deployment. The morning of 12 December 2012, a group, of which Lieutenant-Colonel Ouellet was a member, received instruction on the handling of 9-mm pistols before proceeding to the firing range for the firing exercise.

[10] Once the exercise was over, the instructors inspected the participants' weapons, including Lieutenant-Colonel Ouellet's weapon, to make sure that they had been unloaded. The participants then returned to a waiting area at the firing range, and they had to readopt safety level AMBER for their personal weapons. AMBER status means that a magazine loaded with live ammunition is inserted in the weapon but no round is chambered in the firearm. To accomplish this, Lieutenant-Colonel Ouellet had to unload his weapon by pulling the pistol slide all the way to the back and inspecting the weapon's chamber to make sure that there was no bullet inside. He then had to slide the parts forward or let the slide return to the front and insert a magazine loaded with live ammunition into the weapon before finally squeezing the trigger so that weapon's hammer returns to its initial position.

[11] Lieutenant-Colonel Ouellet pulled his pistol's slide fully back, but instead of inspecting it and pulling the slide to the front again, he inserted a magazine containing live ammunition and let the slide forward again, thereby loading a round in the weapon's chamber. When he squeezed the trigger, while the pistol was pointed at the ground, this caused a round to be ejected, and a shot was fired. Despite the fact that several people were in the firing range waiting area, no one was wounded by the bullet.

Lieutenant-Colonel Ouellet's 9-mm pistol was inspected by a weapons technician, who determined that the weapon was functioning normally.

[12] It should be noted that this type of offence is directly related to some Canadian Forces members' ethical obligations, such as responsibility. For an officer, as it is for a non-commissioned member, being trustworthy and reliable at all times is more than essential for the accomplishment of any task or mission in the armed forces, whatever the function or the role that he or she has to perform, especially when handling a weapon.

[13] In arriving at what the Court considers a fair and appropriate sentence, the Court has considered the following aggravating factors:

- a) First of all, the objective seriousness of the offence. The offence you were charged with is set out under section 129 of the *National Defence Act* and is punishable, as I previously told you in my explanations, by dismissal with disgrace from Her Majesty's service, or less punishment.
- b) There is also the subjective seriousness of the offence;
 - i. First, I must note that because of your rank and experience, you should not have put yourself in such a situation; obviously, as I am addressing someone with such experience, I think it goes without saying that you realized that this was not something that should normally have happened. Clearly, you did some of the steps backwards, and this is what caused the ejection of the bullet, that is, the shot, and in the circumstances, this was not the first time that you handled this type of weapon during your long career, and that is an aggravating factor, in the sense that it is something that you would normally have to know. That does not mean that mistakes cannot happen, but it is something that you should have known.
 - ii. The second aggravating factor from a subjective standpoint, for the Court, is the fact that you received what is called a refresher just before the incident. You were reminded of the steps to follow, and you got through the firing range successfully, so in the circumstances, this constitutes an aggravating factor. You had been reminded at that time, very recently, of the basic principles regarding the handling of the weapon.

[14] Obviously, the Court also considered the mitigating factors, which are the following:

- a) First, your guilty plea. In light of the facts presented in this case, the Court considers your guilty plea as a clear, genuine sign of remorse testifying to your very sincere desire to remain a valid asset to the Canadian Forces and to society in general. This essentially reveals that you accept full responsibility for what you have done;
- b) There is also the fact that there are no entries of a negative nature or similar nature on your conduct sheet. Nothing indicates that, in the past, you committed a service or criminal offence that was identical in nature, that appears identical or not, and that is related to the events that are before the Court;
- c) The Court also considers as a mitigating factor your performance in the Canadian Forces. You have carried out your military service so far without incident, you have gained a lot of experience, and you command a great deal of respect for what you have done during your military career up to this point. Your service record, evaluation reports, letters of appreciation and the Member's Personal Record Resume (MPRR) clearly demonstrate this, and the Court must take this into account;
- d) There is the fact that you had to face this Court Martial, which in the Court's opinion has already had a certain deterrent effect, not only on you but on the other members of the military community; and
- e) It is also important to note that this was an isolated incident and was totally unusual conduct, when one stops to consider your experience, and this also had no particular consequences.

[15] A review of the case law reminds the Court that an offence of this nature usually demands a sentence ranging from a severe reprimand to a reprimand and a fine or only a fine. In the circumstances of this case, the joint submission by both counsel very clearly falls in that range. In addition, if the Court accepts the suggestion by counsel, this punishment will appear on your conduct sheet, and you will have a criminal record that will continue to exist until you apply for and receive a pardon. The reality is that your conviction will carry with it a consequence that is often overlooked, which is that you will now have a criminal record, and this is not insignificant.

[16] As your counsel pointed out, a court martial is not the happiest of circumstances, particularly in light of the career you have had till now. This is part of the military disciplinary system, and the authorities decided that there will be no exceptions and brought this before the Court. Today, you have decided to plead guilty, which does you credit in the circumstances, but that does not reflect poorly on the career you have had, and I hope you will nevertheless recognize, despite the fact that this could be a blemish on your record, that this cannot erase all the positive aspects from the experience you have had over the years. So, I am completely certain that you will turn this experience

into a life lesson, maybe not particularly for you, but particularly for the others you will meet.

[17] The Court therefore accepts counsel's joint submission on sentencing and sentences you to a fine of \$1,000, considering that it is not contrary to the public interest and will not bring the administration of justice into disrepute.

FOR THESE REASONS, THE COURT:

[18] **FINDS** Lieutenant-Colonel Ouellet guilty of the offence described in the second count, which constitutes an offence under section 129 of the *National Defence Act*.

[19] **SENTENCES** the offender to a fine of \$1,000, payable immediately.

Counsel:

Major E. Carrier, Canadian Military Prosecution Services
Counsel for Her Majesty the Queen

Major E. Thomas, Defence Counsel Services
Counsel for Lieutenant-Colonel J.L.M. Ouellet