

**Citation:** *R. v. Corporal W.F.M. Wolfson*, 2007 CM 1005

**Docket:** 200702

**DISCIPLINARY COURT MARTIAL  
CANADA  
QUÉBEC  
3 FIELD ENGINEER REGIMENT**

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**Date:** 13 February 2007

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**PRESIDING: COLONEL M. DUTIL, C.M.J.**

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**HER MAJESTY THE QUEEN**

**v.**

**CORPORAL W.F.M. WOLFSON  
(Offender)**

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**SENTENCE**

**(Rendered orally)**

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[1] Corporal Wolfson, having accepted and recorded a plea of guilty in respect of the second charge under paragraph 187 (1)(b) of the *National Defence Act*, the court finds you guilty of that charge. The prosecution withdrew the first charge.

[2] As there is no remaining charge, of course, the Act provides that the judge determines sentence and this is a case where the prosecution and defence counsel have made a joint submission on sentence. They recommend that I sentence you to a reprimand and a fine in the amount of \$600; and, that I also issue an order to prohibit you from possessing, for a period of five years, the weapons listed in section 147.1 of the *National Defence Act*. Although the court is not bound by the joint recommendation, it is generally accepted that a joint submission should be departed from only where to accept it would be contrary to public interest, and would bring the administration of justice into disrepute. This is not the case here. And it has long been recognized that the purpose of a separate system of military justice is to allow the armed forces to deal with matters that pertain directly to discipline, efficiency, and morale of the military.

[3] It is also recognized that the military context may, in appropriate circumstances, justify, and at times, require a sentence that will promote military objectives. That being said, the punishment imposed by any tribunal, military or civil,

should constitute the minimum necessary intervention that is adequate in the particular circumstances.

[4] In determining sentence, I have considered the totality of the circumstances surrounding the commission of the offence, as revealed by the statement of circumstances as well as the agreed statement of facts provided by counsel. You also have accepted the statement of circumstances as conclusive evidence.

[5] In a nutshell, the facts and circumstances surrounding the offence are as follows. At the time of the incident, you were a reservist from 3 Field Engineer Regiment, serving in Class C with the Operational Task Force 0406 in Valcartier. You were on training to be deployed with the Task Force. You have now since returned to your unit, and presently serving in Class A in that same unit. At the time of the incident, Corporal Toillon was assigned as your fire team partner early in the training, and it seems that Corporal Toillon and others—not only it seems, but it was a fact that Corporal Toillon and others harassed you during that training. During the week of 4 May 2006, you had been, as well as the members of your platoon, in an environment where there was a lot of stress. On the morning of the incident, it seems that a stress was added to the fact that you could not get on with your patrol according to schedule, for reasons that were beyond your control, and the fact that the batteries of the radio were dead.

[6] The evidence in the agreed statement of facts showed that you were highly frustrated, and that you had an argument with your colleague Toillon, which culminated with the fact that you put your C7 at the "on" position, and fired an automatic burst of five to seven blank rounds towards your teammate Toillon. Of course, Toillon was not injured by your actions. The agreed statement of facts revealed, as well, that you were training to be deployed with the Task Force with the defence and security platoon to be deployed to Kandahar and as a result, you weren't anywhere deployed. The evidence indicates as well that during the training that led to the incident, your relationship with Corporal Vincent and Toillon deteriorated and that, at that time, you started feeling to be harassed by your teammates.

[7] Paragraph 9 of the agreed statement of facts revealed that you felt overwhelmed at the time of the incident, and that you had difficulty to cope with the added pressure. But it also clearly indicates that you are totally remorseful for that incident, that you've shown that remorse and responsibility for your actions at the early stage, that you also fully cooperated with the investigating officer following the incident, and that you notified the prosecution at the first opportunity of your intention to plead guilty to this case or to the charge. It seems also very important to note that your chain of command had indicated in that agreed statement of facts, that they are prepared to keep you gainfully employed in your unit, either as a Class A or as a Class B serving person. They are also prepared to provide you with close supervision, and to

closely monitor you over the following years. They also mentioned that it is highly unlikely that you would be deployed on operations for the next five years, but that if this could be a possibility, then you would be reassessed to see if you are ready to be deployed.

[8] In light of those circumstances, I have also considered the documentary evidence filed before me, and the submissions presented by both counsel. I have reviewed that information in light of the sentencing principles, and with the sentencing objectives. I've also taken into account any indirect consequence that the finding and sentence will have on you.

[9] The objectives and principles to be used in considering what should be an appropriate sentence, generally relate to one or more of the following; and that is, the protection of the public, and that public includes the Canadian Forces; the denunciation of the offender; the punishment of the offender; the deterrent effect of the punishment on the offender, but as well as on others who might be tempted to commit similar offences.

Those factors also relate to the reformation and rehabilitation of the offender. The punishment imposed for a particular offence should also be proportionate to the crime and to the offender, and as well, the principle of parity of sentence; that is, a sentence should be similar to sentences imposed on similar offenders for similar offences, committed in similar circumstances.

[10] The evidence before me is to the effect, or at least there is a joint agreed fact, I guess, that there is no similar or closely similar situation or other cases that are similar to this one in front of me, after the prosecutor and the defence counsel have made their review of the relevant case law. I think, in this context, it is an important factor to consider.

[11] In this context, the primary sentencing principle or objective is the general deterrence, the denunciation of the conduct, and the rehabilitation of the offender. The primary mitigating factors in this case are:

the early admission and the assumed responsibility of the offender for his actions;

his age and lack of maturity at the time of the alleged offence;

the fact that this constitute an isolated incident that, at least, based on the evidence before the court, seems to be out of character for the offender;

the fact that Corporal Wolfson was also the subject, at the time, of harassment by his own colleagues;

the fact that there was no injury that resulted from the act; and, finally, the clear support from the chain of command according to paragraph 12 and 13 of the agreed statement of facts.

However, the following aspects are aggravating:

first, the offender's knowledge of the rules and procedures applicable at the time in the handling of weapons;

the blatant disregard by the offender of these rules in firing his weapon with blank ammunitions at his partner; and, finally,

I certainly consider to be aggravating the lack of judgement displayed by the offender in trying to do himself justice as a result of his colleague's harassment towards him.

[12] However, I see no substantive reason to reject the joint submission made by counsel after a thorough analysis. Therefore, I accept that recommendation, and I sentence you to a reprimand and a fine in the amount of \$600. I also make an order pursuant to section 147.1 of the *National Defence Act* for a period of five years, as such an order is desirable in the interest of the safety of others. This order will be attached to the minutes of proceedings of this court martial. I finally direct the court martial administrator to advise, forthwith, each member of the panel, and each alternate member that appear on the convening order dated 26 January 2007, to the effect that they will not be required to perform their duties as members of the court martial panel in the Disciplinary Court Martial of Corporal W.F. M. Wolfson, as if they had been discharged under QR&O subparagraph 112.05(8)(b). Marched out Corporal Wolfson.

[13] The proceedings of this Disciplinary Court Martial in respect of Corporal Wolfson are terminated.

COLONEL M. DUTIL, C.M.J.

Counsel:

Major J. Caron, Military Prosecutions Eastern Area  
Counsel for Her Majesty the Queen  
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