



## COURT MARTIAL

**Citation:** *R v Pollett*, 2014 CM 4002

**Date:** 20140526

**Docket:** 201401

Standing Court Martial

Canadian Forces Base Halifax  
Halifax, Nova Scotia, Canada

**Between:**

**Master Corporal A.D. Pollett, Offender**

- and -

**Her Majesty the Queen**

**Before:** Commander J.B.M. Pelletier, M.J.

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### REASONS FOR SENTENCE

(Orally)

[1] Master Corporal Pollett, you have been found guilty of the first and only charge on the charge sheet on the basis of admissions that your counsel made following an unsuccessful motion, which was submitted in order to protect possible appeal rights on a systemic legal issue which could be decided by the Supreme Court in the future.

[2] It is now my duty as the military judge 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 military activity. The purpose of this system is the promotion of good conduct by allowing the proper sanction of misconduct. It is through discipline that an armed force ensures that its members will accomplish, in a trusting and reliable manner, successful missions. In doing so, it also ensures that the public interest in promoting respect for the laws of

Canada is served by the punishment of persons subject to the Code of Service Discipline.

[4] It has long been recognized that the purpose of a separate system of military justice or tribunal is to allow the Armed Forces to deal matters that pertain to the respect of the Code of Service Discipline and the maintenance of efficiency and the morale among the Canadian Forces. That being said, punishment imposed by any tribunal, military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances. It also goes directly to the duty imposed to the court to: "impose a sentence commensurate to the gravity of the offence and the previous character of the offender" as stated in Queen's Regulations and Orders (QR&O) 112.48(2)(b).

[5] Here in this case, the prosecutor and your defence counsel have made a joint submission on sentence to be imposed by the court. They recommended that this court sentence you to a severe reprimand and a fine in the amount of \$1,000 in order to meet justice requirements. Although this court is not bound by this joint submission, 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 mean where the sentence is unfit, unreasonable, would bring the administration of justice into disrepute or be contrary to the public interests. That is what the Court Martial Appeal Court decided in *R v Taylor*, 2008 CMAC 1, at paragraph 21.

[6] As the Supreme Court of Canada recognized in *R v Généreux*, [1992] 3 SCC 259, at page 293:

... To maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently.

At the same page, it emphasized that in the particular context of military justice:

... Breaches 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.

However, the law does not allow a military court to impose a sentence that would be beyond what is required in the circumstances of the 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.

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

[8] When imposing sentences, military courts 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 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 Supreme Court of Canada decisions; and
- (e) lastly, all sentences should be increased or reduced to amount for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[9] I came to the conclusion that in the particular circumstances of this case, sentencing should place the focus on the objectives of denunciation and general deterrence.

[10] Here the court is dealing with an offence of possession of cannabis (marihuana), a breach of Canadian law constituting an involvement with drugs subject to the Canadian Forces Drug Control Program, which is found at Chapter 20 of the QR&O. In that sense it is a breach of an important tenant of service the Canadian Forces.

[11] Indeed, on 22 March 2013, Master Corporal Pollett attended a residence in Dartmouth and purchased cannabis from another Canadian Forces member. He had obtained the contact information for the CF member residing there from an acquaintance while at the smoking area in CFB Halifax, Stadacona. Unknown to him, members of the Canadian Forces National Investigative Service National Drug Enforcement Team had been conducting surveillance on that residence since February 2013 as it was suspected as being used by a CF member to sell drugs. Master Corporal Pollett was observed entering the residence and then exiting the residence approximately one minute later. Master Corporal Pollett was observed putting an object

into his right pocket, entering his vehicle, and departing the area. He was stopped by members of the CFNIS approximately 15 minutes later, searched, and a quantity of marihuana was seized from his vehicle.

[12] When interviewed by the CFNIS on 7 August 2013, Master Corporal Pollett stated he had purchased cannabis from the CF member residing at the target residence on two occasions, including on 22 March 2013 when he was arrested by the CFNIS National Drug Enforcement Team members. He stated he paid approximately \$10 per gram and at each time he bought from the CF member residing at the target residence he would arrange the purchase through text messages. He was charged on 11 September 2013.

[13] In arriving at what the court considers a fair and an appropriate sentence, the court has considered the objective seriousness of the offence which, as provided by 4(5) of the *Controlled Drugs and Substances Act*, is punishable on summary conviction by a fine not exceeding \$1,000 or to imprisonment for a term not exceeding six months or to both.

[14] The court also considers the following mitigating and aggravating factors.

[15] Aggravating is the subjective seriousness of the offence manifested in two aspects as it pertains to its circumstances:

- (a) the first aggravating aspect from a subjective perspective is the fact that the offence has a real military link given that cannabis was purchased from a CF member whose contact information had been obtained on base at CFB Halifax; and
- (b) the second aggravating aspect is the premeditation and the fact that the purchase on 22 March 2013 was the second occasion when Master Corporal Pollett had purchased from the same CF member.

[16] Also aggravating is the rank of the offender and his resulting position of responsibility on his ship and as a leader for four other members as evident by the words of his divisional officer in the letter at Exhibit 8.

[17] There are also mitigating factors here that the court considered:

- (a) first and foremost, your admission of facts before this court, which for sentencing purposes are equivalent to a guilty plea. Through the facts presented to this court, the court considers your admission as a genuine sign of remorse and that you are taking full responsibility for what you did and you wish to remain a valid asset in the Canadian Forces;
- (b) the second mitigating factor, the fact that you do not have any annotations on your conduct sheet or a criminal record; and

- (c) your record of service in the Canadian Forces. It appears from the evidence produced before this court that at least since July 2013 you have been a very productive and appreciated member of your ship's company, contributing to elevated morale by your dedication and skills as a chef and a leader. Your planning and organizational skills make you an important asset as your ship transitioned to higher readiness within the fleet. Despite what has happened with the charge, you have been able to maintain a good performance, demonstrating that the poor choice you made in offending may be corrected considering your age and experience in life.

[18] Contrary to the submission of the prosecution, I am unable to state that facing a court martial may never constitute a mitigating circumstance on sentencing. However, in this case Master Corporal Pollett was caught breaking the law in the course of what appears to be an entirely legitimate operation by military police authorities aimed at stopping drug transactions involving CF members. In that sense, the fact that charges were laid and brought to trial before a military tribunal such as this court is an entirely normal outcome. The court gives much more mitigating weight to the fact that Master Corporal Pollett collaborated with police when given the occasion to admit to his participation as a purchaser of drugs as evident through his admissions to this court.

[19] As for the time which elapsed since the commission of the offence, the court does not have sufficient information to qualify the more than 14 months which elapsed since the commission of the offence as possessing the qualities to make it a significant mitigating factor. Indeed, there appears to be no significant delays in the investigation or in processing this file through the military justice system. Of course, the matter could have moved faster, but in the absence of evidence of undue delay or extraordinary prejudice on the part of the offender, this court will not speculate and recognize the delay as mitigating.

[20] In this case, considering the nature of the offence, the circumstances it was committed, the applicable sentencing principles, including sentences imposed on other offenders for similar offences committed in similar circumstances by military tribunals, and the aggravating and mitigating factors I mentioned previously, I conclude that a punishment of a severe reprimand and a fine in the amount of \$1,000 jointly proposed by counsel would appear as an appropriate punishment in this case. The court will accept the joint submission made by counsel, considering that it is not contrary to the public interest and would not bring the administration of justice into disrepute.

[21] Master Corporal Pollett, you are occupying a very important position on your ship, despite all that can be said about weapon systems, it remains that the equipment that you are entrusted to handle and the team that you are leading is relied upon several times a day at sea to fulfil the very basic need for food by the members of your ship's company. As evident by the words of your divisional officer in the letter at Exhibit 8, you can be a role model for the junior cooks onboard; unfortunately on 22 March 2013, you were a lot less than that. Since then, however, you have been able to perform at a

level which has allowed you to benefit once again from the confidence of your chain of command. That's rare. A lot of people facing drug charges at courts martial are dressed in suits because they are no longer members of the Canadian Forces. You are very fortunate to have been given a second chance. I trust you will act to maintain the confidence that you regained from your chain of command and remain a productive member of the Canadian Armed Forces.

**FOR THESE REASONS, THE COURT:**

[22] **SENTENCES** you to a severe reprimand and a fine in the amount of \$1,000, payable forthwith.

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**Counsel:**

Lieutenant-Commander D.T. Reeves, Canadian Military Prosecution Service  
Counsel for Her Majesty the Queen

Major C.E. Thomas, Directorate of Defence Counsel Services  
Counsel for Master Corporal A.D. Pollett