

**Citation:** *R. v. Leading Seaman W.K. Freudenreich*, 2007 CM 3010

**Docket:** 200677

**STANDING COURT MARTIAL  
CANADA  
NOVA SCOTIA  
CANADIAN FORCES BASE HALIFAX**

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**Date:** 16 March 2007

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**PRESIDING: LIEUTENANT-COLONEL L-V d'AUTEUIL, M.J.**

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**HER MAJESTY THE QUEEN**

**v.**

**LEADING SEAMAN W.K. FREUDENREICH  
(Offender)**

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**SENTENCE**

**(Rendered Orally)**

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[1] 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 the 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 trusty and reliable manner, successful missions.

[2] As stated by a legal officer, Major Jean-Bruno Clouthier, in his thesis on the use of section 129 of the *National Defence Act* offences, the military justice system, and I quote and translate, "... has for purpose, to control and influence the behaviours and ensure maintenance of discipline with the ultimate objective to create favourable conditions for the success of the military mission." The military justice system also ensures that 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.

[3] It has been long recognized that the purpose of a separate system of military justice or tribunals is to allow the Armed Forces to deal with matters that pertain to the respect of the code of service discipline and the maintenance of efficiency and morale among the Canadian Forces. That being said, the 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 with the gravity of the offences and the previous character of the offender," as stated at QR&O article 112.48(2)(b).

[4] Here, in this case, the prosecutor and the counsel for the defence have made a joint submission on sentence. They have recommended that this court sentence you to a reprimand and a fine in the amount of \$1500. Although this court is not bound by this 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.

[5] The court has considered the joint submission in light of the relevant facts set out during the trial and the agreed statement of facts and their significance. And it also considered the joint submission in light of the relevant sentencing principles, including those set out in sections 718, 718.1, and 718.2 of the *Criminal Code*, when those principles are not incompatible with the sentencing regime provided under the *National Defence Act*. These principles are the following: Firstly, the protection of the public, and the public includes the interests of the Canadian Forces; secondly, the punishment of the offender; thirdly, the deterrent effect of the punishment, not only on the offender, but also upon others who might be tempted to commit such offences; and fourthly, the reformation and rehabilitation of the offender. The court has also considered the representations of by counsel and the documentation introduced on the sentencing procedure.

[6] I must say that I agree with the prosecutor when he expressed the view that the protection of the public must be ensured by a sentence that would emphasize general and specific deterrence. It is important to say that general deterrence means that the sentence imposed should deter not simply the offender from reoffending, but also others in similar situations from engaging, for whatever reasons, in the same prohibited conduct. Here, the court is dealing with an offence of wilfully damaging public property and with an offence of drunkenness. Consumption of alcohol was involved. They are both relative serious offences, however, the court will still impose what it considers to be the necessary minimum punishment in the circumstances.

[7] In arriving at what the court considers a fair and appropriate sentence, the court has considered the following mitigating and aggravating factors. The court considers as aggravating:

- a. Firstly, the objective seriousness of the offences. The two offences you were charged with were laid in accordance with section 116 and 97 of the *National Defence Act*. These offences are punishable by imprisonment for less than two years, and in the case of a drunkenness offence, by an imprisonment or detention not exceeding 90 days, or to less punishment; secondly, the subjective seriousness of the offence.

- b. The fact that you are an educated and very experienced sailor and clerk on a leadership course, and at the rank of leading seaman for more than 10 years, put on you the additional burden to lead by example, which you failed to do in acting in a disorderly manner the way you did;
- c. Thirdly, the fact that you seriously damaged public property because of your personal state of mind and emotion at the time, which does not constitute a rational and valid reason *per se*.

[8] The court considers that the following circumstances mitigate the sentence:

- a. The court considers that the fact that you had to face this court martial has already had some deterrent affect on you, but also on others. The court is satisfied that you will not appear before a court for a similar or any offence in the future. The court is convinced that you are a good sailor and clerk and that you will have, shortly, an opportunity to apply what you have learned through this trial;
- b. the fact that you did not complete your PLQ course, Primary Leadership Qualification course, and that you were returned to your unit because of this incident;
- c. your record of service in the Canadian Forces as established in various letters, Exhibits 19 to 21, and your last PER, Exhibit 22;
- d. Except for this incident, your service in the Canadian Forces is very good. It appears to the court that you're a knowledgeable sailor and clerk, and that you were involved in an out-of-character incident that has a very low potential to occur again considering your personality;
- e. the fact that you did not have a conduct sheet or criminal record related to similar offences;
- f. the restitution you made today for reimbursing, in full, the Canadian Forces;
- g. the absence of any other consequences on your employment and your career in the Canadian Forces since the incident;
- h. the fact that the mild concussion may have impaired your judgement to some extent. Combined with the consumption of alcohol, this factor

contributed, in some unknown degree, as stated by Dr King, to your difficulty in controlling your anger at the time of the incident.

[9] Having said that, considering the factors and circumstances of this case, the court believes that the joint submission is not unreasonable. In consequence, the court will accept the joint submission made by counsel to sentence you to a reprimand and a fine in the amount of \$1500, considering that it would not be contrary to the public interest and would not bring the administration of justice into disrepute.

[10] Leading Seaman Freudenreich, please, stand up. Therefore, the court sentences you to the punishment of a reprimand and a fine in the amount of \$1500. The fine is to be paid in monthly installments of \$125 each, commencing on 1 April 2007 and continuing for the following 11 months. In the event you are released from the Canadian Forces for any reason before the fine is paid in full, the then outstanding unpaid amount is due and payable the day prior to your release.

[11] Officer of the Court, march out Leading Seaman Freudenreich. The proceedings of this Standing Court Martial in respect of Leading Seaman Freudenreich are terminated.

LIEUTENANT-COLONEL L.-V. D'AUTEUIL, M.J.

Counsel:

Major S.D. Richards, Regional Military Prosecutions Atlantic  
Counsel for Her Majesty the Queen  
Major L. D'Urbano, Directorate of Defence Counsel Services  
Counsel for Leading Seaman W.K. Freudenreich