



## COURT MARTIAL

**Citation:** *R v Leblanc*, 2012 CM 4023

**Date:** 20121203

**Docket:** 201235

Standing Court Martial

Valcartier Garrison  
Courcelette, Quebec, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Ex-Private K. Leblanc, Offender**

**Presiding:** Lieutenant-Colonel J-G Perron, M.J.

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### OFFICIAL ENGLISH TRANSLATION

#### REASONS FOR SENTENCE

(Rendered orally)

[1] Ex-Private Leblanc, having accepted and recorded your plea of guilty to the first, second and fourth charges, I now find you guilty of these three charges of absence without leave. I must now impose an appropriate punishment, which must be the minimum punishment required in the circumstances of the case to ensure that discipline is served.

[2] The Court Martial Appeal Court of Canada (CMAC) tells us at paragraphs 30 to 33 of its decision in *R.J. Tupper v R*, 2009 CMAC 5, that a military judge must consider the fundamental purposes and goals of sentencing set out at sections 718 and following of the *Criminal Code* of Canada. The sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender and should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. An offender should not be deprived of liberty if less restrictive sanctions

may be appropriate in the circumstances. Section 718 of the *Criminal Code* states that the fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and to the community.

[3] Counsel for Her Majesty and your counsel have filed a joint sentencing submission and recommend imposing a sentence of 30 days' imprisonment. They recommend that the Court suspend the execution of the sentence. The final decision in determining an appropriate sentence lies with the judge, who has the right to dismiss counsel's joint submission. However, I must accept the joint submission of counsel unless it is found to be inadequate, unreasonable or contrary to public order or would bring the administration of justice into disrepute.

[4] To determine what constitutes the appropriate sentence in this case, I took into account the circumstances surrounding the commission of the offence as revealed in the statement of circumstances, which you have acknowledged to be true. I also considered the evidence that was filed, the case law and the submissions by counsel. I analysed these various factors in light of the objectives and principles applicable in sentencing. You have pleaded guilty to absence without leave on three occasions: on 29 May 2011, you were absent from the place of your duty at La Citadelle de Québec for a period of 53 days and 7 hours; on 16 September 2011, you were absent from the place of your duty at the 2<sup>nd</sup> Battalion, Royal 22<sup>e</sup> Régiment, for a period of 6 days and 6 hours; and finally, on 7 November 2011, you were absent from your place of duty at the 2<sup>nd</sup> Battalion, Royal 22<sup>e</sup> Régiment, for a period of 23 days and 23 hours. The total duration of these three absences amounts to more than 83 days.

[5] Having summarized the main facts of this case, I will now concentrate on sentencing. Therefore, in considering what sentence would be appropriate, I have taken into consideration the aggravating factors and mitigating factors that follow. The aggravating factors in this case are the following:

- (a) The nature of the offence and the punishment provided for by Parliament. The maximum penalty is imprisonment for less than two

years. As such, this is not an offence I would objectively describe as being of the most serious kind. I say this because the maximum penalty is not among the most serious sentences provided for by the Code of Service Discipline. I consider this a neutral factor rather than an aggravating factor. However, these three offences are subjectively serious because they represent a total period of absence of 83 days;

- (b) You have a conduct sheet listing three offences of absence without leave preceding the charges before the court; this is an aggravating factor. Your conduct sheet also suggests that you have a problem with self-discipline.

[6] I will now discuss the mitigating factors:

- (a) You have admitted your guilt, and an admission of guilt is usually a sign of some remorse. Moreover, this plea allows the Crown to save large sums of money and makes it unnecessary to call numerous witnesses;
- (b) You were only 21 years old at the time of the offences, with less than two years of experience with the army;
- (c) You were waiting for reconstructive knee ligament surgery from January to October 2011; your employment restrictions prevented you from participating in your platoon's activities. Your colleagues' comments were stressful to you, and this situation negatively affected your attitude toward your work and caused you to resume your drug use. It is my understanding that this information has been provided to the Court to explain in part your absences without leave. Your absences without leave seem to be the primary reason for your release in December 2011 under item 5(f), unsuitable for further service;
- (d) Since your release, you have stopped using drugs and are now living with your spouse and her child in the Shawinigan area; and
- (e) You are actively seeking employment. However, your financial situation is still precarious. You would like to return to school as soon as it becomes financially viable.

[7] The prosecutor and your defence counsel agree with this proposal and rely on the decisions in *Tupper* and *St-Onge* of the Court Marital Appeal Court to submit that you cannot be sentenced to detention because you have been released from the Canadian Forces. It is clear that detention would be the most suitable sentence in light of the need for discipline and your personal needs were you still a member of the Canadian Forces. The facts in this case, the nature of the offences and your conduct sheet clearly indicate that a period of detention of 30 days would be appropriate if you were still a member of the Canadian Forces. The prosecutor and your defence counsel

agree that the proposed sentence emphasizes general deterrence and that suspending that sentence would promote your rehabilitation. You have testified that you have been trying to find work and rebuild your life. I encourage you to continue your efforts. That said, I must admit that I doubt that you fully understand what it takes to succeed in life. You had a job in a restaurant kitchen that you left after three weeks. You explained that you were not suited to the work and that you quit before running into problems similar to those that have brought you before this Court Martial. You have been unemployed ever since.

[8] Ex-Private Leblanc, we do not always get to do whatever we want in life. It is important to learn that one must work hard to be successful in life and that a bit of self-discipline goes a long way. I strongly encourage you to think about that.

[9] Having closely examined the parties' joint submission, I am of the opinion that, given the particular facts of this case, it properly incorporates the sentencing principles and that the choice of sentence is the lightest possible sentence to ensure the protection of the public and the maintenance of discipline in the circumstances.

**FOR THESE REASONS, THE COURT:**

[10] **FINDS** the accused guilty of the second, third and fourth charges;

**AND**

[11] **SENTENCES** Ex-Private Leblanc to imprisonment for a period of 30 days;

**AND**

[12] **SUSPENDS** the carrying into effect of the sentence.

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**Counsel:**

Major P. Doucet and Captain M. Ferron, Canadian Military Prosecution Service  
Counsel for Her Majesty the Queen

Major P. Boutin and Captain M.-É. Leblond, Defence Counsel Services  
Counsel for Ex-Private K. Leblanc