

Citation: *R. v. Corporal J.A. Bahadur*, 2007 CM 3023

Docket: 200713

**STANDING COURT MARTIAL
CANADA
NEW BRUNSWICK
CANADIAN FORCES BASE GAGETOWN**

Date: 9 November 2007

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

HER MAJESTY THE QUEEN

v.

**CORPORAL J.A. BAHADUR
(Offender)**

SENTENCE

(Rendered orally)

[1] Corporal Bahadur, having accepted and recorded a plea of guilty in respect of the only charge left on the charge sheet, the third charge, the court finds you, now, guilty of this charge.

[2] 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, 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.

[3] As stated by 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.

[4] 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 offence or offences and the previous character of the offender," as stated at QR&O article 112.48 (2)(b).

[5] Here, in this case, the prosecutor and the counsel for the defence have made a submission on sentence that this court sentence you to a fine; however, they both disagree on what would be the appropriate amount, even though they are not far apart.

[6] The court has considered the submissions in light of the relevant facts set out in the statement of circumstances and their significance, and I have also considered the submissions in light of the relevant sentencing principles, including those set out in section 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*.

[7]. 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 testimony of the witnesses, the documentation introduced, and the representations made by counsel, including the case law provided to the court.

[8] This is a case where the protection of the public must be ensured by a sentence that would emphasize denunciation and general deterrence. It is important to say that general deterrence means that the sentence imposed should deter not simply the offender from re-offending, but also others in similar situations from engaging, for whatever reasons, in the same prohibited conduct.

[9] Here the court is dealing with an offence of drunkenness during an off-duty situation. It is not a serious offence, per se, as defined in the *National Defence Act*. Additionally, it may be considered as a minor offence if it falls in the parameters described at QR&O 108.17(1); however, it's a purely military offence that characterizes well military discipline. Then, the court will still impose what it considers to be the necessary minimum punishment in the circumstances.

[10] 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: the objective seriousness of the offence. The offence you were charged with was laid in accordance with section 97 of the *National Defence Act* for drunkenness. In the circumstances, this offence is punishable by detention or to less

punishment; the subjective seriousness of the offence. Considering your previous conduct in relation to the consumption of alcohol, as disclosed by your conduct sheet, and the fact that you were under counselling and probation warning for that very specific issue, you demonstrated a total disrespect toward authority by acting like you did on the night of the incident; your disorderly conduct that resulted from your behaviour that night; the fact that you decided to challenge the authority of the military police in using abusive and insulting language in a public place with many people around you, including some of your peers, did make this incident as a serious one.

[11] The court considers that the following circumstances mitigate the sentence. Through the facts presented to this court, the court also considers that your plea of guilty is a clear, genuine sign of remorse and that you are very sincere in your pursuit of staying a valid asset to the Canadian Forces and the Canadian community. The court would not want to jeopardize your chances of success because rehabilitation is always a key element when sentencing a person. The facts and the circumstances of this case, including your steps to find support just after the incident in order to go through your alcohol problem, and your behaviour for the last 16 months. The court recognizes that you finally got the message and it encourages you to continue to do so. Your record of service as an infantryman. It is clear for the court, and those who are working with you, that your professionalism in performing your military duties is excellent. However, as expressed by your RSM, you still have to prove that your conduct will be the same outside your work environment. So far you have succeeded, and it appears you have the determination to do so.

[12] The fact that your behaviour already had an impact on your military career. According to Sergeant Buick, because of your conduct, you were not considered for the PLQ course. The confidence that your chain of command has in you despite your conduct. You were allowed to be deployed, and proved that this confidence was justified. You have to continue to do so on and off duty if you expect to become a leader in the Canadian Forces. The delay to deal with this matter. The court does not want to blame anybody in this case, but the closest the disciplinary matter is dealt with, the more relevant and efficient is the punishment on the morale and the cohesion of the unit members. As one of the factors considered here, the time elapsed since the incident occurred may make it less relevant to give consideration to a stronger or higher punishment.

[13] Considering the factors and circumstances of this case, the court believes that the submission made by both counsel on the nature of the sentence is not unreasonable. In consequence, the court will accept the submissions made by counsel to sentence you to the punishment of a fine, considering that it will not be contrary to the public interest and will not bring the administration of justice into disrepute.

[14] Corporal Bahadur, please stand up. Therefore, the court sentences you to a fine in the amount of \$500. The fine is to be paid in two monthly installments of \$250 each commencing on 1 December 2007.

[15] The proceedings of this Standing Court Martial in respect of Corporal Bahadur are terminated. Officer of the Court, march out Corporal Bahadur.

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

COUNSEL

Major S.D. Richards, Regional Military Prosecutions Atlantic
Counsel for Her Majesty the Queen
Lieutenant-Colonel D.T. Sweet, Directorate of Defence Counsel Services
Counsel for Corporal J.A. Bahadur