

Citation: *R. v. Corporal M. Foster*, 2007 CM 3022

Docket: 2007-40

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

Date: November 21, 2007

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

HER MAJESTY THE QUEEN

(Prosecutor)

v.

EX-CORPORAL M. FOSTER

(Offender)

SENTENCE

(Rendered orally)

[1] Corporal Foster, the Court having accepted and recorded your admission of guilt in respect of an offence related to and less serious than the first and only charge on the charge sheet, pursuant to section 136 of the *National Defence Act*, the Court now finds you guilty of the offence punishable under section 130 of the *National Defence Act*, namely, assaulting F70 116 485 Corporal G. Deschamps, on or about May 26, 200-6, at 3 Wing Bagotville, Quebec, contrary to section 266 of the *Criminal Code*. Accordingly, the Court finds you not guilty of the offence of aggravated assault as stated by the first and only charge on the charge sheet.

[2] 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 to prevent misconduct, or, in a more positive way, to promote good conduct. It is through discipline that an armed force ensures that its members will accomplish, in a trustworthy and reliable manner, successful missions.

[3] As stated by Major Jean-Bruno Cloutier in his thesis on the use of section 129 of the *National Defence Act* in Canada's military justice system,

[TRANSLATION]

Ultimately, to maximize the chances of success of the mission, the chain of command must be able to enforce discipline to deal with any misconduct that threatens military order and effectiveness, not to mention national security, the organization's *raison d'être*.

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 long been 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 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 on the Court to impose a sentence commensurate with the gravity of the offence and the previous character of the offender, as stated at QR&O paragraph 112.48(2)(b).

[5] The Court has considered the submissions of counsel in light of the relevant facts set out in the statement of circumstances and of their significance. It has also considered the submissions 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 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 an offence; and

fourthly, the rehabilitation and reintegration of the offender.

The Court has also considered the representations made by counsel, including the case law provided to the Court and the documentation introduced.

[6] The Court agrees with counsel for the prosecution that the protection of the public requires a sentence that emphasizes individual and general deterrence. Note that general deterrence means that the sentence imposed should deter not only the

offender from re-offending, but also others in similar situations from engaging in the same prohibited conduct. Here the Court is dealing with an offence of assault of one of your colleagues in the work environment. This is a serious offence in the circumstances, but the Court will impose what it considers to be the minimum punishment applicable in the circumstances. In arriving at what it considers a fair and appropriate sentence, the Court has considered the following aggravating and mitigating factors.

[7] The Court considers that the following factors aggravate the sentence:

Firstly, the objective seriousness of the offence. Corporal Foster, you have been found guilty of an offence under section 130 of the *National Defence Act*, for assaulting one of your colleagues contrary to section 266 of the *Criminal Code*. This offence is punishable by five years of imprisonment or to a lesser punishment. It is an objectively serious offence.

Secondly, the subjective seriousness of the offence. In the circumstances, you had to conduct yourself at all times with respect for your colleagues. As clearly expressed by your commander, Lieutenant-Colonel Comtois, your work environment demands that there exist a sufficiently strong *esprit de corps*, harmony and trust among the team members that nobody who uses an aircraft need constantly wonder whether his life or safety is at risk.

Thirdly, your experience as both a member of the Forces and a technician should have made it very clear that such conduct in your work environment was entirely inappropriate in the circumstances. In particular, the type of environment in which you were working should have been a dissuasive factor, especially from a safety perspective. You displayed carelessness and a total lack of judgment. Settling disputes with your colleagues by assaulting them while at work is at the very least utterly inappropriate. In a situation of conflict, the first priority is to remain calm, which you clearly failed to do.

[8] The Court considers that the following factors mitigate the sentence:

- a. Your plea of guilty is clearly a sign of remorse and that you are sincere in your intention to remain a valid asset to the Canadian Forces and to Canadian society. The Court does not wish in any way to hinder your chances of success, since rehabilitation is always a key factor in sentencing.
- b. The fact that you did not have a conduct sheet or criminal record related to similar offences.

- c. The fact that your conduct was not premeditated.
- d. The facts and circumstances of this case, particularly the fact that your conduct did not result in any regrettable circumstances for Corporal Deschamps. Let us be clear, your conduct toward him also put the material at risk. However, that is not the issue before the Court today. You have entered a guilty plea to an offence against the physical integrity of another person, and the threat to the aircraft must be dealt with separately, under a different charge, which has not been brought before this Court. Thus the Court has nothing to say about the relevance of the evidence adduced with respect to the potential damage to and treatment of the F-18 stabilizer. That being said, the Court has taken into consideration the fact that your conduct must be in keeping with the need to keep the work environment safe because of the kind of work done there.
- e. The fact that you had to face this court martial in the presence of many of your colleagues has certainly had a very significant deterrent effect on you and on them. It means that this kind of conduct in this environment will not be tolerated and will be dealt with accordingly. Having heard the evidence, the Court is satisfied that you should not appear before a court for a similar, or any, offence in the future.
- f. The fact that your conduct was a contributing factor in the decision to remove you from your position as a technician and reassign you to different tasks. On this point, the Court would like to make it clear that the disciplinary process cannot simply echo the administrative process and is not necessarily required to take into account administrative measures taken by the chain of command in respect of Corporal Foster. In the absence of particulars regarding this aspect of the evidence, the Court cannot presume any direct connection between the administrative measures that have been or will be taken with respect to Corporal Foster and the incident of May 26, 2006. It also appears clearly from the testimony of your commander that the reasons for the administrative measures were not limited to the incident at issue before this Court. However, it is equally clear that despite this incident, your commander is prepared to consider reintegrating you in a position in which you can practise the occupation for which you have been trained, that of airframe technician.

[9]

Finally, Corporal Foster, I would like to add that you must continue

learning to control your temper, particularly at work, if you wish to maintain the trust of your peers and superiors. I am sure that this experience has given you a great deal to consider and that you have taken away from it the appropriate lessons.

[10] A fair sentence should take into account the seriousness of the offence and the offender's degree of responsibility in the particular circumstances of the case. Corporal Foster, please stand. The Court therefore sentences you to a fine of \$500. If, for whatever reason, you are released from the Canadian Forces before the fine is paid in full, the outstanding unpaid amount is due and payable prior to your release.

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

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