



COURT MARTIAL

Citation: *R v Lacroix*, 2013 CM 1008

Date: 20130614

Docket: 201312

Standing Court Martial

Valcartier Garrison
Courcelette, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Captain N. Lacroix, Offender

Before: Colonel M. Dutil, C.M.J.

OFFICIAL ENGLISH TRANSLATION

REASONS FOR SENTENCE

(Orally)

[1] Captain Lacroix, who was released from the Canadian Forces in January 2013, admitted his guilt on two counts: first, conduct to the prejudice of good order and discipline, contrary to section 129 of the *National Defence Act*; and, second, making away with a document issued for a military purpose, with intent to deceive, contrary to subsection 125(c) of the *National Defence Act*.

[2] Following these admissions of guilt, the prosecutors formed a joint submission on the sentence that this court should impose, namely, a severe reprimand and a fine of \$2,000. This joint submission falls within the range of sentences normally imposed for similar offences in relatively similar circumstances.

[3] The facts of this case are relatively simple and stem from the offender's actions between July and October 2011. When the offences were committed, Captain Lacroix

was a member of 2 Battalion, Royal 22e Régiment. Although he was commissioned in 2010, he had some previous Reserve and Regular Force service from earlier in his career, at different times dating back to November 2001. During the incidents that are the subject of this case, Captain Lacroix made away with a document titled Personal Development Review 2010-2011, which concerned his performance while he was the aide-de-camp to the commander of Land Force Quebec Area (LFQA), in Longue-Pointe. On July 27, 2011, he left LFQA Headquarters for an assignment with 2 Royal 22e Régiment in Valcartier. Before Captain Lacroix left, Major Richard, executive assistant for the LFQA, made him sign the Personal Development Review in question, and then gave this document to his administrative assistant or the administrative assistant to the office of the commander to have it sent to 2 Battalion, Royal 22e Régiment as it needed to be sent to the commander of the new unit. However, before leaving LFQA Headquarters, Captain Lacroix sought out the original copy of this document at the office of the administrative assistant on the pretext that he would deliver it personally to his new chain of command. The administrative assistant made him sign a transmission form, a DND 638 or CF 728, because she trusted him. This document was never reviewed and it seems that, on July 27, 2011, Captain Lacroix allegedly tore it up in a fit of anger because it contained unflattering comments about him. When he arrived at 2 Battalion, Royal 22e Régiment, Captain Lacroix did not hand in the document because it no longer existed. A few weeks later, the deputy commander of 2 Battalion asked Captain Lacroix to hand in the document, as the deputy commander did not have it in his file. It was then that the situation became complicated for Captain Lacroix. He created a new Personal Development Review to replace the document that he had destroyed, and he reproduced some parts of the document using text from the original version that he had destroyed. On October 4, 2011, the deputy commander in question demanded that Captain Lacroix give him the Personal Development Review document as soon as possible. A few minutes later, Captain Lacroix gave him a number of documents, including the new document, which was an altered version of the document that he had destroyed, leading the deputy commander to believe that the document was the original one and that it should be treated as such. A few days later, the deputy commander reviewed the document given to him by Captain Lacroix and questioned its authenticity. The document in question was a photocopy, not the original signed version. In addition, the document did not refer to any corrective action that had been taken with regard to Captain Lacroix. Lastly, the document layout led the deputy commander to believe that the document had been altered. On October 12, 2011, the deputy commander contacted an officer, Major Richard, to ask him to send the original document to confirm the authenticity of the document in question. Since no original signed document or even any copies could be found, Major Richard sent him the electronic copy of the original text, obviously before it had been signed. A comparison of the documents by the deputy commander quickly showed that the two were not identical. A number of changes had been made to unfavourable comments about Captain Lacroix's performance, as well as in relation to conduct he needed to improve. On October 24, 2011, Captain Lacroix went to the deputy commander's office to give him a memorandum explaining why he had decided to seek out his Personal Development Review directly from the administrative assistant's office at LFQA Headquarters. This memorandum was written following a

notice of intent by the chain of command to take corrective action. Captain Lacroix tried to explain that he had wanted to show initiative by asking the administrative assistant for this document so he could deliver it personally to his new chain of command, and that he had simply forgotten to give it to the commander of 2 Royal 22e Régiment. This explanation failed to address Captain Lacroix's actions once he had the original document in hand. A few days later, Captain Lacroix went to the deputy commander's office and spontaneously told him what he had done and why he had done it. It was at this time that Captain Lacroix admitted to making away with the document and creating a new one.

[4] The case's statement of circumstances shows that:

- a. The police investigation was completed on July 5, 2012;
- b. On September 10, 2012, charges were laid against Captain Lacroix in a Record of Disciplinary Proceedings;
- c. The Director of Military Prosecutions received the referred file on November 19, 2012.

I will return to these elements a bit later.

[5] In imposing an appropriate sentence on an accused for the wrongful acts that he or she has committed in relation to the offences of which he or she is guilty, certain objectives must be aimed for in light of the principles applicable to sentencing, which vary slightly from one case to the next. The fundamental purpose of sentencing in a Court Martial is to maintain discipline and to build respect for the law by imposing fair sanctions that also have certain objectives, namely, to denounce unlawful conduct. In addition, the sanctions are used to deter the offender and other persons from committing such offences; they assist in rehabilitating offenders to return to their environment in the Canadian Forces or civilian life; and they promote a sense of responsibility with regard to the wrongs that have been committed. The sentence must also take into consideration the following principles.

- a) It must be proportionate to the gravity of the offence, the previous character of the offender and his or her degree of responsibility;
- b) It should take into consideration the principle of parity in sentencing;
- c) The court must increase or reduce the sentence to account for the aggravating or mitigating circumstances relating to the commission of the offence or the situation of the offender;
- d) In addition, the sentence must account for any direct or indirect consequence on the offender.

[6] Counsel submitted to the court that the joint submission would allow for a focus on general deterrence and denunciation of the conduct and, to a lesser extent, specific deterrence and the rehabilitation of the offender. I accept that, in this situation, these principles are respected.

[7] The aggravating circumstances of this matter are based on the fundamental breach of the trust that must exist between members of the Canadian Forces and the chain of command, particularly towards the officers of a unit and its superiors. The charge as such is merely the mechanism that makes it possible to judicialize, if you will, the offending behaviour. However, what appears on the surface here is the breach of trust or the violation of this fundamental relationship between the chain of command and Captain Lacroix, which is Captain Lacroix's main fault in this matter besides his obvious severe lack of judgment throughout the sequence of events that led to the charges being laid against him. It is one thing for a person to tear up a document that he or she does not agree with, that he or she rightfully or wrongfully finds unfair; it is another thing entirely to then hide this irrational and spontaneous act by committing acts that are, or, after examining the sequence of events, that show a certain amount of planning and premeditation. Even if, given the situation, I agree, there is an accumulation of errors in judgment to hide the initial error in judgement.

[8] I agree with the prosecution that Canadian Forces documents of this nature are important and that altering these documents, when they are required for military or official purposes, constitutes an aggravating circumstance. However, my opinion differs from that of counsel for the prosecution in that such a document, when compared with another, such as a CF EXPRES, mentioned previously by the prosecutors in relation to a number of recent court martials in which these documents were altered, the other documents were of lesser importance. I believe that counsel for the defence correctly identified that it is not the document itself, but rather, the circumstances surrounding the use or misuse of a given document that determine the seriousness of the case. However, I note that, in this case it is an aggravating circumstance. I am of the opinion that, although Captain Lacroix was commissioned in 2010, this conduct—committed by a person who had important duties in the sense that, for an officer with the rank of captain, acting as an aide-de-camp is a particularly meritorious responsibility, but it comes with its own burden because this type of assignment is normally given to people who are regarded very highly by the chain of command and who have great potential—is aggravating in this situation because the offence in question was committed by a person who was held in such high esteem.

[9] Conversely, there are important mitigating circumstances. The guilty plea is one. I believe that Captain Lacroix clearly accepts responsibility in this matter and that he is unhappy we had to wait so long before he was able to do so. Even though he has been commissioned for only a few years, his military history cannot be called into question. He served his country for several years at various times, which is also a mitigating factor. The fact that Captain Lacroix does not have any history of discipline or legal problems is also an important mitigating factor.

[10] I now come to the joint submission that, as I stated before, falls within the range of sentences for offences or causes of a similar nature. I accept the parties' joint submission. However, the prosecution submitted to the court that general deterrence was the fundamental objective in this matter, in addition to denunciation. The court accepts that these objectives apply. In this case, we must look at the delay that was required to have this matter heard by a military tribunal. It appears from the statement of circumstances that, in late October 2011, the case was clear and the story behind Captain Lacroix's conduct was known. I am of the opinion that it is completely baffling, even inexplicable, that the police investigation into this matter was not completed until July 5, 2012; that charges were laid quickly afterwards, I agree. Given the nature of the alleged conduct and the facts known by the chain of command since late October 2011, a legitimate question is, why couldn't this matter have been dealt with differently? When referring to time, it is more often than not in the context of the rights protected under subsection 11(b) of the *Canadian Charter of Rights and Freedoms*, which sets out the right of any person charged with an offence to be tried within a reasonable time. The time we are dealing with today is not what is set out in subsection 11(b), but is just as important in the context of the administration of military justice. Allow me to explain. Since one of the fundamental purposes of military justice is to maintain discipline and build respect for the law, this type of offence or conduct cannot or cannot easily be subject to general deterrence based solely on the sentence that will be imposed in such a case close to 18 months or more than 18 months after the commission of the offence, but after the lapse of an identical period in relation to the finalization of the facts surrounding the case. It is true that the sentence must have general deterrence as a principle when it applies; however, for this type of conduct and offence, in light of the surrounding facts, which are particular to each case, I ask, how can the chain of command use the sentence that the court will impose today to maintain discipline, morale and cohesion within the unit?

[11] I believe that, in this type of case—and here, it is not a question of complex fraud that requires a long-winded police investigation, but rather, conduct that the offender admitted to spontaneously in late October 2011—it took maybe two to three months to finalize, but it was resolved in late October 2011. How can procedures of the court martial of mid-June 2013 contribute to maintaining discipline, cohesion and so on within the unit today? I wonder, and I leave it to others to find the answers, but I believe that the military chain of command has the right to try to find a balance.

[12] As I said, it is not a case where the rights of an accused person under subsection 11(b) are at play. However, when discussing general deterrence, we must go beyond what is meant by general deterrence in terms of the sentence imposed by the court. We must also see general deterrence in a context that is much broader than the objective of the military justice system, which is to maintain discipline.

FOR THESE REASONS, THE COURT:

[13] **FINDS** the offender guilty on the second count, namely, conduct to the prejudice of good order and discipline, contrary to section 129 of the *National Defence Act*;

ORDERS a stay of proceedings on the first count, which was laid under section 130 of the *National Defence Act*, and finally,

FINDS the offender guilty on the third count for a charge laid under subsection 125(c) of the *National Defence Act*

AND

[14] **SENTENCES** the offender to the severe reprimand and to the fine of \$2,000.

Counsel:

Major G. Roy, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Second-Lieutenant M.G.G. Bouthillier-Choquette, Canadian Military Prosecution
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