

**Citation:** *R. v. Lieutenant F. Déry*, 2008 CM 4018

**Docket:** 200826

**STANDING COURT MARTIAL  
CANADA  
QUEBEC  
RÉGIMENT DE MAISONNEUVE**

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**Date:** December 9, 2008

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**PRESIDING: LIEUTENANT-COLONEL J-G PERRON, M.J.**

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**HER MAJESTY THE QUEEN**

**v.**

**LIEUTENANT F. DÉRY**

**(Accused)**

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**SENTENCE**

**(Rendered orally)**

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**OFFICIAL ENGLISH TRANSLATION**

[1] Lieutenant Déry, please stand up. Lieutenant Déry, having accepted and recorded your plea of guilty on the first count, the Court now finds you guilty of the first count, namely of having made illicit use of the information systems of the Regional Cadet Support Unit, Eastern Region, 902, Computer Security Within RCSU (Eastern). You may now be seated.

[2] You were employed on class B service and you held the positions of Information Technology Officer and Information Systems Security Officer of the Cap-Chat Cadet Summer Training Centre in the summer of 2005. More specifically, between June 16 and August 19, 2005, you viewed a pornographic video, downloaded music using a software program and connected a laptop to the network in spite of the fact that these actions were prohibited by Order 902. You also invited a corporal, a member of the Reserve Force and not a cadet, to view the pornographic video with you. You were fully aware of the contents of Order 902 at the time of this offence.

[3] Counsel for the prosecution suggests that an appropriate sentence for this offence is a reprimand and a \$1200 fine. He suggests that the most important sentencing

principles are denunciation and general deterrence. As for your counsel, he proposes a \$500 fine.

[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 testimonial evidence from you and Major Gobeil, the documentary evidence and case law filed and the submissions by counsel. I analysed these various factors in light of the objectives and principles applicable in sentencing. As indicated in subsection (2) of section 112.48 of The Queen's Regulations and Orders for the Canadian Forces, I also took into consideration any indirect consequence of the finding or of the sentence and the need to impose a sentence commensurate with the seriousness of the offence and the previous character of the offender.

[5] It is recognized that, in order to contribute to one of the key objectives of military discipline, the sentencing objectives and principles are the following:

first, the protection of the public, and the public includes the Canadian Forces;

second, the punishment and denunciation of the offender;

third, the deterrent effect of the punishment, not only on the offender but also upon others who might be tempted to commit such offences;

fourth, the separation of the offender from society, including from members of the Canadian Forces;

fifth, the rehabilitation and reform of the offender;

sixth, the proportionality and seriousness of the offences and the degree of responsibility of the offender;

seventh, consistency in sentencing;

eighth, the imposition of a custodial sentence, either detention or imprisonment, only once the court is satisfied that this is in fact the sentence of last resort applicable in the circumstances of the case; and

finally, the court shall consider any relevant aggravating or mitigating factors in the circumstances relating to the offence and the personal situation of the offender.

In this case, the protection of the public will be ensured by a sentence that primarily focuses on collective deterrence. It is also important to emphasize the denunciation of the offender's act.

[6] Therefore, in considering what sentence would be appropriate, I took into consideration the aggravating and mitigating factors that follow. I consider the following as aggravating factors:

The nature of the offence and the punishment provided for by Parliament. You are guilty of an act prejudicial to good order and discipline and punishable by dismissal with disgrace from Her Majesty's service. Objectively, this is a serious offence.

In addition, the nature of the directive that was violated, namely the Eastern Region Cadet Order 902, Computer Security Within RCSU (Eastern). This order, just like any other order on the permitted use of computer resources of the Canadian Forces, aims to protect our networks and the data they contain. As administrator of the camp's computer network, you were fully aware of these directives and the possible consequences of violating these directives.

Third, you were an officer at the time of the offence. It appears that you were not concerned with setting a good example when you invited Corporal Casse to view the pornographic video on a Canadian Forces computer in the Informatics Services section during work hours. I trust that you now understand that an officer must set an example to all subordinates, not just to cadets. It is an officer's duty to ensure that the rules are followed by all subordinates, not just cadets. It has been clear for all members of the Canadian Forces for a good many years now that pornography in the workplace is not allowed. The reasons warranting this policy are very clear, but it seems that for you, in 2005, they were not. I recommend strongly that you take note of them if you still wish to have a career in the Canadian Forces.

Your actions demonstrate a lack of maturity, a lack of judgment and a lack of personal discipline. You neglected your duty as Information Systems Security Officer and in doing so, you betrayed the trust of your chain of command.

I do not consider the fact that one of the women in the pornographic video was a former cadet of your army corps to be an aggravating factor.

As for the attenuating factors, I note that:

You have admitted your guilt. That admission of guilt shows your remorse. As well, you have no conduct sheet.

Although I only received a small amount of information on the subject, I consider the delay of more than 36 months since the date of the offence to be a factor that will mitigate your sentence slightly. One cannot strongly plead the expeditiousness of the military justice system and the impact of this trial on discipline without providing the court with the evidence that explains the precise situation of the delay before this Court. Such delays in the absence of good explanations tend to undermine the impact of courts martial on discipline and tarnish the respect owed to the military justice system.

You were a young officer in terms of experience and age. You received your officer certification in 2001 and were 25 years old at the time of the offence.

You have not been employed in the Cadet Organization since February 2006 and that seems to be owing to the investigation concerning this offence. Therefore, the investigation and the disciplinary measures have already had an impact on you in that you have not been able to progress in your career as CIC officer, and you have also lost a source of income since February 2006.

You have good annual performance reports and lead a productive life for yourself and society. Therefore, you show good potential for the future, be it military or civilian.

The situation before this Court is very different from the two cases submitted to me by the prosecution. You were a young officer with little experience who made inappropriate use of computer systems, which is very different from the uses in *Captain(N) Banks* and *Corporal Campbell*. Your personal characteristics are also very different from those of these two other offenders.

[7] Lieutenant Déry, please stand up. I want to remind you that the actions of which you stand accused are not acceptable in the Canadian Forces. I strongly recommend that you reflect on that if you wish to pursue your career with the CIC. You neglected your duty as an officer, flouted the rules and encouraged a corporal to do the same. Understand that.

[8] A fair and appropriate sentence in a case like this of breach of a directive so well known to all members of the Canadian Forces must reflect the seriousness of this type of offence but also the previous character of the offender. Having reviewed the case law and the facts of this case, I am of the opinion that the following sentence adequately incorporates the sentencing principles and is the lightest possible sentence to ensure the protection of the public and the maintenance of discipline in the Canadian Forces. Considering the attenuating factors in this case, I do not believe that a reprimand is a necessary punishment at this time.

[9]Lieutenant Déry, I sentence you to a fine of \$750.

LIEUTENANT-COLONEL J-G PERRON, M.J.

Counsel:

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Counsel for Her Majesty the Queen  
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