Citation: *R. v. Corporal E.J. Haché*,2004 CM 18

Docket: S200418

STANDING COURT MARTIAL
CANADA
NOVA SCOTIA
6080 YOUNG STREET, 5TH FLOOR, SUITE 506, HALIFAX

Date: 16 September 2004

PRESIDING: COMMANDER P.J. LAMONT, M.J.

HER MAJESTY THE QUEEN
v.
CORPORAL E.J. HACHÉ
(Accused)

SENTENCE
(Rendered Orally)

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[1] Corporal Haché, you may break off and be seated beside your defence counsel.

[2] Private Haché, having accepted and recorded your plea of guilty to the first charge, the court now finds you guilty of the first charge.

[3] It now falls to me to determine and to pass a sentence upon you. Before doing so, I wish to speak to a matter of procedure that arose in the course of this sentence hearing. Following the accepting and recording of your plea of guilty, I heard evidence both from the prosecution and from the defence; both parties formally closed their respective cases. Thereupon, I heard an address from the prosecutor, Captain Samson, followed by the address of defence counsel.

[4] In the course of the address of defence counsel and in reply to a question from me, defence counsel alleged that the accused had attempted suicide. At that stage of the proceedings, there was no evidence before the court with respect to this alleged fact. As a general rule, except on peripheral matters of less significance, or perhaps where it is reasonably supposed that the allegation is made with the agreement of counsel and between counsel, the addresses of counsel should be confined to the facts

that are in evidence or that may be reasonably inferred from the evidence that has been heard.

[5] When I heard the allegation of Lieutenant-Colonel Sweet, I was unable to assess the significance of the new allegation or, indeed, whether it had any significance at all. Accordingly, I gave permission to the defence to reopen the case for the defence to deal with the new allegation in evidence if the defence were so advised to pursue that course.

[6] The reopening of a case is not specifically provided for in the Queen's Regulations and Orders. It is something which occurs from time to time in the ordinary courts of criminal, and I dare say, civil jurisdiction in Canada. I refer counsel, for example, to the case of R. v. P(MB), a decision of the Supreme Court of Canada, [1994] 1 S.C.R. 555, for an example of a case in which the Crown sought to reopen the case for the prosecution after having formally closed its case.

[7] As I said, there is, so far as I can determine, no provision of Queen's Regulations and Orders that specifically deals with the authority of the court to reopen a case that has been formally closed.

[8] In his submissions to me this morning, Major Holman referred to Queen's Regulations and Orders article 112.55. That article reads as follows:

> **112.55 ...**
>
> **The court may, on its own motion, and after hearing argument from the prosecutor and the accused, require the production of any evidence or compel the appearance of any person if it would assist the court in determining the appropriate sentence.**

[9] The course of action that I took in permitting the defence to reopen its case on sentencing was not an exercise of the power granted to the court under article 112.55. By its clear terms, that article permits the court to require the production of any evidence or compel the appearance of any person.

[10] My ruling did not require the production of any evidence or compel the appearance of any person. It simply afforded the opportunity to the defence, if so advised, to reopen their case. There being no specific provision in Queen's Regulations and Orders governing the reopening of a case for a party, I refer to Queen's Regulations and Orders article 101.07. It reads as follows:

> **101.07 ...**
>
> **When in any proceedings under the Code of Service Discipline a situation arises that is not provided for in QR&O or in orders or**

instructions issued to the Canadian Forces by the Chief of the Defence Staff, the course that seems best calculated to do justice shall be followed.

[11] In my view, the offering of an opportunity to the defence, if so advised, to reopen their case was and is the course of action best calculated to do justice in the circumstances of this case. It was and is a matter for the exercise of discretion on the part of the court.

[12] In the exercise of that discretion, the court considers, amongst other things, the matters that were referred to by Major Holman in his address to me today. Those matters include the obligation that rests upon both parties when appearing before this court to put their entire case forward at the proper time. There is no room, as Major Holman has correctly pointed out, for one party to lie in the weeds until it has, so to speak, seen the hand of the other party before deciding whether or not to call evidence.

[13] I do not suggest and do not wish to be understood as suggesting that the defence was or is lying in the weeds in this particular case, but it is a caution for all counsel appearing before this court in the future that, in order to ensure that no such imputation may be made upon them, they will consider and take to heart the obligation to put their entire case forward at the appropriate time.

[14] I am satisfied that this was a proper case in which to exercise the discretion I have to reopen the case for the defence provided that the prosecution had full opportunity to reply to any new information. I note that that opportunity was, indeed, taken by the prosecution in this case.

[15] In the course of determining the sentence to be passed in this case, I have considered the principles of sentencing that apply in the ordinary courts of criminal jurisdiction in Canada and at courts martial. I have as well considered the facts of the case as described in the Statement of Circumstances, Exhibit 7; the evidence heard during the mitigation phase; and the submissions of counsel, both for the prosecution and for the defence.

[16] The principles of sentencing guide the court in the exercise of its discretion in determining a fit and proper sentence in an individual case. The sentence should be broadly commensurate with the gravity of the offence and the blameworthiness or degree of responsibility and character of the offender.

[17] The court is guided by the sentences imposed by other courts in previous similar cases, not out of a slavish adherence to precedent, but because it appeals to our common sense of justice that like cases should be treated in similar ways. Nevertheless, in imposing sentence, the court takes account of the many factors that distinguish the

particular case it is dealing with, both the aggravating circumstances that may call for a more severe punishment and the mitigating circumstances that may reduce a sentence.

[18] The goals and objectives of sentencing have been expressed in different ways in many previous cases. Generally, they relate to the protection of society, which includes, of course, the Canadian Forces, by fostering and maintaining a just, a peaceful, a safe, and a law-abiding community.

[19] Importantly, in the context of the Canadian Forces, these objectives include the maintenance of discipline, that habit of obedience which is absolutely indispensable to the effectiveness of an armed force.

[20] The goals and objectives also include deterrence of the individual so that the conduct of the offender is not repeated and general deterrence so that others will not be led to follow the example of the offender. Other goals include the rehabilitation of the offender, the promotion of a sense of responsibility in the offender, and the denunciation of unlawful behaviour.

[21] One or more of these goals and objectives will inevitably predominate in arriving at a fit and just sentence in an individual case. Yet it should not be lost sight of that each of these goals calls for the attention of the sentencing court, and a fit and just sentence should be a wise blending of these goals, tailored to the particular circumstances of the case.

[22] As I explained to you when you tendered your pleas of guilty, section 139 of the National Defence Act prescribes the possible punishments that may be imposed at courts martial. Those possible punishments are limited by the provision of the law which creates the offence and provides for a maximum punishment and is further limited to the jurisdiction that may be exercised by this court. Only one sentence is imposed upon an offender whether the offender is found guilty of one or more different offences, but the sentence may consist of more than one punishment.

[23] It is an important principle that the court should impose the least severe punishment that will maintain discipline.

[24] In arriving at the sentence in this case, I have considered the direct and indirect consequences of the finding of guilt and the sentence I am about to impose.

[25] In summary, the facts of this case disclose that
Corporal Haché was employed as the junior pay writer aboard HMCS IROQUOIS in late July of 2003. In this position, he was responsible for the disbursement of cash to members of the ship's company for various purposes. For this purpose, he sought and

obtained an accountable advance of $15,000 in cash which he stored in a safe that was assigned for his exclusive use.

[26] On 29 July 2003, the ship returned to Halifax from deployment in the Arabian Gulf. From that time until early September of 2003, the ship was in port and most of the crew were on post-deployment leave. Corporal Haché worked alone in the ship's pay office during this period. He withdrew sums of cash from the funds allotted to him. He prepared documentation, called an "acquittance roll" which purported to account for a total of 11 advances of cash to his shipmates when, in fact, no such advances were made.

[27] In order to prepare the falsified documentation, Corporal Haché obtained the service numbers of his shipmates, and forged their signatures on the acquittance roll. Corporal Haché converted the sums involved to his own use by spending the money on gambling.

[28] The offence came to light after the ship's supply officer made repeated requests to Corporal Haché for his assistance to complete a verification of his standing advance. On 21 October 2003, Corporal Haché went to see the supply officer, in company with the ship's chaplain, and admitted that he had taken a lot of the money from his safe and had used it to gamble. An examination of the safe disclosed that but $193.50 in cash remained. False documents purported to account for a total of $9,790 of the missing money. A further $3405 was not accounted for in any way. Thus, the total amount of money stolen was $13,195.

[29] In a statement given to investigators of the Canadian Forces National Investigation Service on 9 December 2003, Corporal Haché again admitted to stealing the funds and advised the investigators that he had a gambling addiction. At the same time he made a written apology to the members of the ship's company.

[30] The prosecution recommends a custodial sentence of between 14 and 30 days together with reduction in rank to private.

[31] As I pointed out in the case of Leading Seaman Clarke, referred to by Captain Samson in his address, the offence of stealing created by section 114 of the National Defence Act is objectively serious. I quote:

> **... Parliament has recognized this by providing a maximum punishment that is well in excess of the maximum punishments available for many military offences under the Code of Service Discipline. As well, Parliament has distinguished less serious kinds of stealing offences from more serious cases by providing a greater maximum punishment when the stealing involves a breach of trust created by the employment relationship such as the present case....**

> **... in most circumstances, stealing public property in the amounts involved in this case in breach of a duty of trust created by the employment relationship will ordinarily be met with a sentence of incarceration....**

[32] In order to commit the offence in this case, the offender took advantage of his special access to large amounts of cash. The offence showed some degree of deliberation as the offender went to some pains to create a paper trail that he, no doubt, thought would serve to hide his offence, or perhaps make it more difficult to investigate.

[33] Counsel on behalf of Corporal Haché submits that a sentence of a severe reprimand and a fine in the order of $2,000 would be a fit disposition. He points out that the offender has 15 years of service in the Canadian Forces. Although his conduct sheet refers to a fine and driving prohibition imposed by the New Brunswick Provincial Court in February of 2000, this matter is somewhat dated. The conduct sheet inaccurately describes an offence, but it is apparent that the offence of which the offender was then convicted was driving having consumed too much alcohol.

[34] In connection with the present offence of stealing, he cooperated fully with the investigators during the investigation of the offence, and he has pleaded guilty at the first possible opportunity. Both his supervisor and his commanding officer testified in mitigation, and it is apparent that the offender will have their support in his efforts to continue his military career despite his medical difficulties and his conviction for this offence.

[35] In late February of this year, he successfully completed a 30-day residential programme to deal with his addictions to alcohol and to gambling, and he is reported to be maintaining a healthy recovery since that time. In addition, he attends weekly psychotherapy sessions with a social worker to deal with post-traumatic stress disorder that resulted from his service in Bosnia, apparently in the mid-1990s. The continuation of these sessions on a regular basis is important to ensure that the offender will recover from post-traumatic stress.

[36] I consider that the apology made by the offender to his shipmates was genuine, and, together with the plea of guilty, indicates genuine remorse on the part of the offender for his actions.

[37] On all the evidence I have heard, I am not persuaded that Corporal Haché's addiction problems substantially contributed to the commission of this offence. Certainly there is no evidence before me that either alcohol or post-traumatic stress contributed to the commission of the offence. I accept the evidence of the psychiatrist, Dr Cooper, that the offender suffered from a pathological gambling addiction at the time of the offence. I accept the submission that his addiction to gambling may have played some role in the commission of the offence, but I am not persuaded that his addiction

was of such a degree as to rob him of the ability to make choices and deal responsibly with his financial obligations.

[38] The offender testified that he has suffered from his addiction to gambling for three years, but there is no evidence that his gambling addiction has interfered with his ability to discharge his financial obligations generally. Indeed, the only evidence of the ability of the offender to meet his recurring financial obligations refers to his obligations to make monthly support payments to a former spouse. In June of 2000, the New Brunswick Court of Queen's Bench garnisheed the pay of the offender to enforce the payment of monthly support payments to his former spouse, and to discharge what were then outstanding arrears of support in the amount of $1675 at a rate of $200 per month. The evidence of the offender is that he has complied with these financial obligations since the order was made despite his evidence of an addiction to gambling.

[39] I accept, however, that the offender's gambling addiction is related to the post-traumatic stress disorder for which he is being successfully treated.

[40] This kind of offence violates the trust reposed in the offender by the Canadian Forces, by his chain of command, and by his shipmates. Yet the evidence I have heard demonstrates that the offender still enjoys the support of his chain of command in his pursuit of a career in the Canadian Forces. Rank is a visible sign to other members of the level of responsibility assigned to a member of the Canadian Forces and of the trust and confidence that the Canadian Forces places in the member to properly discharge that responsibility.

[41] As part of the sentence I am about to impose, the offender will lose his current rank. In the same way as trust can be lost and regained again over time, you, Corporal Haché, will have the opportunity to regain your current rank when you have again demonstrated that you deserve it.

[42] General deterrence is a weighty consideration in arriving at a fit sentence in a case such as this. It is true, of course, that dispositions short of a custodial sentence may adequately address the court's concern for general deterrence. However, in my view, a disposition by way of reprimand and a fine, in this case, is simply insufficient to vindicate the principle of deterrence. When I consider the circumstances of the offence as well as the circumstances of the offender, I conclude that the principles of general and of specific deterrence require a custodial sentence.

[43] Based upon the evidence I have heard, I am satisfied that the sentence I am about to impose will not unduly interfere with the progress the offender is making to deal with his medical challenges.

[44] Stand up, Corporal Haché. You are sentenced to detention for a period of 14 days and reduction in rank to private. The sentence is pronounced at 1427 hours, 16 September 2004. March out Private Haché.

[45] Subject only to any application under section 248.1 of the National Defence Act, the proceedings of this court martial in respect of Private Haché are hereby terminated.

COMMANDER P.J. LAMONT, M.J.

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