

**Citation:** *R. v. Lieutenant-Colonel G. C. Szczerbaniwicz*, 2008 CM 2009

**Docket:** 200807

**STANDING COURT MARTIAL  
CANADA  
ONTARIO  
CANADIAN FORCES COLLEGE TORONTO**

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**Date:** 17 April 2008

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

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**HER MAJESTY THE QUEEN**

**v.**

**LIEUTENANT-COLONEL G.C. SZCZEBANIWICZ  
(Offender)**

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**SENTENCE**

**(Rendered orally)**

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[1] Lieutenant-Colonel Szczerbaniwicz, you have been found guilty of one offence of common assault. It now falls to me to determine and to pass a sentence upon you. In so doing, 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 disclosed by the evidence taken in the course of the trial and the materials received in the course of sentencing phase, as well as the submissions of counsel, both for the prosecution and for the defence.

[2] 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. 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.

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

[4] 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.

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

[6] The facts of this offence were referred to in the course of my reasons for finding, and I do not propose to repeat what I said on that occasion, except to add that it is clear to me that the offence was the result of what I would characterize as a momentary loss of self-control on the part of the offender, perhaps for a period measured in seconds.

[7] I conclude from the terms of the interview conducted by the National Investigation Service officer with the offender that immediately after the offence the offender realized that what he had done was wrong and immediately regretted his actions. I consider on all the material that has been made available to me that this is properly characterized as an isolated event precipitated, no doubt, by the high emotion that was prevailing at the time.

[8] I consider as an aggravating circumstance in this case the fact that the victim of the assaultive behaviour is the spouse of the offender. Section 718.2 of the

*Criminal Code* provides that in circumstances such as this, where the assaultive behaviour involves the spouse of the offender, that that fact, itself, is to be considered as an aggravating circumstance in arriving at a fit sentence. I do not consider that the location of the offence in Brussels, Belgium, is an aggravating circumstance, as submitted by the prosecutor.

[9] With respect to the mitigating circumstances, the offender has enjoyed what can only be described as a distinguished military career across some 30 years. He was 50 years of age at the time of the offence and apart from one entry in his conduct sheet, to which I do not attach much significance at all, he has enjoyed an unblemished career in the Canadian Forces. It is much to be regretted that in the closing years of that distinguished career, he will have incurred this blot on his reputation and record. I have considered whether or not a weapons prohibition order should be made in this case, and in the absence of an application by the prosecution, I decline to make such an order.

[10] Stand up, Lieutenant-Colonel Szczerbaniwicz. You are sentenced to fine in the amount of \$1800. The fine is to be paid in monthly installments of \$200 each commencing 15 May 2008 and continuing for the following eight months. In the event you are released from the Canadian Forces for any reason before the fine is paid in full, the then outstanding unpaid amount is due and payable the day prior to your release.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Major J.J.L.J. Caron, Regional Military Prosecutions Eastern  
Counsel for Her Majesty the Queen  
Lieutenant-Colonel D. Couture, Directorate of Defence Counsel Services  
Counsel for Lieutenant-Colonel Szczerbaniwicz