

**Citation:** *R. v. Sapper P. Chabot*, 2004CM28

**Docket:** S200428

**STANDING COURT MARTIAL  
CANADA  
VALCARTIER GARRISON, QUEBEC  
5th COMBAT ENGINEER REGIMENT**

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**Date:** 21 June 2004

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**PRESIDING: LIEUTENANT-COLONEL M. DUTIL, military judge**

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**HER MAJESTY THE QUEEN**

**Prosecutor**

**v.**

**SAPPER P. CHABOT**

**(Accused)**

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**SENTENCE**

**(Delivered orally)**

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**OFFICIAL ENGLISH TRANSLATION**

[1] Sapper Chabot, in determining the sentence that it considers to be appropriate and the least required in the circumstances, the Court has considered the circumstances surrounding the commission of the offences, as set out in the very complete and detailed Statement of Circumstances submitted by the prosecution, which you have acknowledged to be true. The Court has also considered the evidence introduced at the sentencing hearing, the case law submitted, argument by counsel and the principles that are applicable to sentencing.

[2] When an appropriate sentence is to be imposed on an accused for his wrongdoing and the offences of which he is guilty, certain principles are followed; those principles may be stated as follows: first protection of the public, which in this case includes the Canadian forces; second, punishment and denunciation of the offender; third, deterrence, not only in respect of yourself, but also in respect of others who might be tempted to commit similar offences; fourth, rehabilitation and reform of the offender; and fifth, proportionality, sentencing parity and uniformity.

[3] The first principle, protection of the public, requires that the Court determine whether the public will be protected by a sentence designed to punish, rehabilitate or deter. How much emphasis should be placed on any of these principles depends, of course, on the circumstances, which will vary from one case to another. In some cases, the primary concern, if not the sole concern, will be to deter the accused or to deter other people. In those circumstances, little or no importance will be assigned to the aspect involving the rehabilitation or reform of the offender. In other cases, the emphasis will be more on rehabilitation than on deterrence.

[4] The nature of the offences and the context and circumstances surrounding the commission of the offences are the primary factors based on which this Court is of the opinion that protection of the public and maintenance of discipline will be achieved by a sentence designed to deter and denounce your conduct. It is important to note, however, as I said earlier, that the sentence must be the one that the Court considers to be the least required to achieve the objectives of justice and the maintenance of discipline in the Canadian Forces.

[5] In considering what sentence would be appropriate, the Court has taken the following mitigating and aggravating factors into consideration. I will begin with the aggravating factors for sentencing purposes.

[6] The Court considers the objective nature of the offence and the maximum sentence provided by Parliament, dismissal with disgrace from Her Majesty's service, to be an aggravating factor. An offence under section 85 of the *National Defence Act* is a very serious offence. Second, your conduct sheet, and the fact that you seem not to have learned from your past mistakes relating to insubordination. Having regard to your rank and your experience, you know or should have known that you had other avenues for resolving your differences with your superior that would not have involved undermining the authority of your chain of command. Third, the circumstances surrounding the commission of the offence, as set out in the Statement of Circumstances.

[7] On the question of mitigating factors, I would tell you that the Court sees very few mitigating factors in your case. This is particularly clear when the Court considers the cases that have been submitted to it, and in particular the cases submitted by your counsel. It is quite obvious that each of those cases was very different from yours, and your lawyer was himself involved in a number of those cases. For example, in the case of *Corporal Cadet*, the accused had been seriously provoked and had been harassed by his superior, who had himself been tried by summary trial for his verbal provocation of Corporal Cadet, for which he was sentenced to a reprimand. In the case of *Private Murphy*, the accused was a young private

who had much less experience and whose conduct sheet contained no convictions of the same nature, and whose actions could be explained by his anxiety arising from the problems he was having in properly looking after his pregnant young wife. In the case of *Corporal Harris*, there was a joint submission by counsel regarding sentence, and that is not the case here.

[8] Nonetheless, the Court finds that the effect of the following facts is to mitigate the sentence that the Court is to impose on you: first, the fact that you pleaded guilty to the first and third counts, insubordinate behaviour. By pleading guilty, you have avoided a trial, which would have required at least, if I go by the Statement of Circumstances, that a minimum of two or three witnesses testify; second, the Court takes notice of your age and your records of service up to the time the offences were committed; third, your personal and financial situation. On that point, it is clear that your financial situation is precarious, but it seems that this has not slowed you down, since you went farther into debt by recently purchasing a 2004 Mazda vehicle. Obviously, you are free to make your own choices, but you will have to live with the consequences of those choices.

[9] It is very clear from your previous evaluation reports and from your own testimony that you have devoted yourself to the job and to the Canadian Forces when it suited you to do so. When you did not feel like it, you have exhibited a recalcitrant and negative attitude. In fact, I was particularly surprised by your comments. In reply to the question by counsel for the prosecution regarding your service in the Canadian Forces, you said, and I quote, [TRANSLATION] "I have not been treated well." In the eyes of the Court, this shows your profound immaturity and your failure to comprehend what military service is. The evidence before the Court does not indicate that you have been mistreated or abused by the military authorities or the military institution. The evidence is that you did not get what you wanted when you wanted it from the Canadian Forces, and that is quite a different matter. If we look at it closely, it is true that you will not take away much that is positive from your short time in the Canadian forces, and that is a shame, since it seems that you will be released in a few months, at your request. However, it is fair to say that the opinion of the Canadian Forces regarding your own contribution will not be any different. It must be noted that your vision of military service will have been nothing more than what it is from your own point of view, and that will have been limited to what the Canadian Forces not only could have done for you, but should have done for you. Allow me to say that this is a profoundly incorrect vision, and one about which some of your fellow members and superior officers have something to say to you.

[10] Counsel for the prosecution recommends that the Court impose a sentence of five to six days' detention on you, with a fine of less than \$1,000, payable forthwith.

[11] Your defence counsel submits to the Court that a reprimand, with a fine of \$500 to \$800, payable in instalments of \$50 per month, would be sufficient. When your lawyer told

the Court that you had asked him that you be punished by destitution, that request is entirely consistent with the impression you gave the Court in your testimony and that emerges from the evidence, which is of an intelligent person, focused on his own needs, who places no value on military service, and which indicates that a sentence of dismissal would enable him to get out once and for all with no intention of coming back.

[12] It is settled law that a sentence that involves dismissal is a very severe sentence, but one that, I must admit, would not have the intended effect in cases in which the offenders were trying, by their actions, to get released from the Canadian Forces by committing relatively minor acts. That is why that sentence is one that will, more often than not, be accompanied by a sentence of imprisonment.

[13] I want this to be very clear to you and to anyone else who might be tempted to follow in your footsteps. This kind of behaviour, as I have said before in other cases, is unacceptable and cannot be tolerated or encouraged. Respect for the chain of command is essential to the cohesion and morale of a disciplined army. I can understand that you were unhappy because of your career choices, and that the changes of occupation you requested were difficult, even though you were in part responsible for this, but it is also true that you could have used the avenues available to you to resolve differences when, at that point, you felt aggrieved, and you did not do this. As I said in *Corporal Cadet*, people who cannot accept these elementary rules should think carefully before serving or continuing to serve in the Canadian Forces. The evidence indicates that you have chosen to leave. I sincerely hope, Sapper Chabot, that you will be able to meet the challenges that may exceed your expectations, where, to hear you say it, the Canadian Forces have failed.

[14] Before passing sentence, Sapper Chabot, the Court, having accepted and entered your plea of guilty on the 1st and 3rd counts, finds you guilty on the 1st and 3rd counts, and sentences you to a severe reprimand with a fine of \$1,200. The fine is payable on the following terms: \$300 payable forthwith; \$50 per month thereafter, beginning on July 15, 2004, and each month thereafter until the fine is paid in full. If you are released from the Canadian Forces before payment in full of the fine imposed by the Court, the balance of the fine will become due and payable immediately before the date of your release.

LIEUTENANT-COLONEL M. DUTIL, military judge

Counsel:

Major G. Roy, Regional Military Prosecutor, Eastern Region  
Counsel for the prosecutor

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Counsel for Sapper P. Chabot