

**Citation:** *R. v. Corporal T.D. Ennover*, 2004cm3012

**Docket:** 200433

**STANDING COURT MARTIAL  
CANADA  
ONTARIO  
CANADIAN FORCES BASE KINGSTON**

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**Date:** 7 May 2004

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

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**HER MAJESTY THE QUEEN  
v.  
CORPORAL T.D. ENNOVER  
(Accused)**

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**SENTENCE  
(Rendered verbally)**

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[1] Corporal Ennover, you have been found guilty of charge number one, a charge of assault causing bodily harm. 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 heard both during the trial and during the mitigation phase, and 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 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 or 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 court 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.

[6] 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.

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

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

[9] The facts of the offence were described in my finding and I will not repeat what I said then.

[10] The prosecution recommends a sentence of detention for a period of between 15 to 30 days. In my view the range recommended by the prosecution is on the lower end of the range considering the aggravating factors in this case. The blow inflicted by the offender caused more than a minor injury to the victim who was a member of the same platoon as the offender and was subordinate in rank to the offender.

[11] There are several important mitigating factors relating both to the offender and to the offence. Corporal Ennover has served in the Regular and Reserve Force since 1994 with an unblemished military record. He has a promising future in the Canadian Forces in his new occupation of communications researcher. Although the consequences of the offence were serious for Private Neron-Bilodeau, the offender was surprised at the effect on the victim of the blow. He immediately offered assistance, apologized for his conduct, and demonstrated some concern for the welfare of the victim. The defence recommends a disposition by way of a fine.

[12] There is a disturbing aspect to this case. There is no doubt in my mind that the accused was subjected to verbal abuse, including the use of an especially derogatory racial epithet by members of his unit. I have concluded that the actions of the accused were prompted in part, at least, by the vile insult offered to him by other members of his unit. There is no room in the Canadian Forces for the use of such terms. I have concluded that the sentence I would otherwise impose should be reduced in this case to reflect the court's condemnation of the use of racial epithets and the role their use played in the commission of the offence.

[13] The prosecution has referred me to the case of *Corporal Turgeon*, decided 7 October 2003, also a case of assault causing bodily harm. In that case, I note that the accused was aged 17 at the time of the commission of the offence. In the present case, the accused is a mature man of 37 years of age. In *Turgeon*, the disposition was detention for a period of 30 days. In my view, the age of the accused in *Turgeon* must have been an important factor in arriving at the sentence that was imposed in that case.

[14] In most cases, an offence of violence committed against a subordinate member by a mature offender would attract a sentence of imprisonment, even for a first offence. I do not read the result in the *Turgeon* case as incompatible with this view.

[15] Pursuant to section 196.14(1) of the *National Defence Act* I order the taking of DNA samples from the offender for the purpose of forensic DNA analysis.

[16] I have considered making a weapons prohibition order pursuant to section 147.1 of the *National Defence Act*. In the absence of an application by the prosecution, I decline to make such an order.

[17] The sentencing principles of primary concern in a case such as this are general and specific deterrence. Members of the Canadian Forces cannot resort to personal violence to deal with problems, both small and large, that arise in the workplace. In my view a disposition by way of a fine is wholly insufficient to recognize the important principles of general and specific deterrence required by the facts of this case.

[18] Stand up, please, Corporal Ennover. You are sentenced to detention for 14 days.

COMMANDER P.J. LAMONT, M.J.

Counsel:

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