Citation: *R. v. Ex-Leading Seaman Lasalle*, 2005 CM 46

Docket: S200546

STANDING COURT MARTIAL
CANADA
BRITISH COLUMBIA
ACOUSTIC DATA ANALYSIS CENTRE (PACIFIC)

Date: December 21, 2005

PRESIDING: LIEUTENANT-COLONEL M. DUTIL, M.J.

HER MAJESTY THE QUEEN
v.
EX-LEADING SEAMAN J.R.J. LASALLE
(Offender)

SENTENCE
(Rendered orally)

OFFICIAL ENGLISH TRANSLATION

[1] Ex-Leading Seaman Lasalle has been found guilty of the first, second, third, sixth and ninth counts based on the admissions set out in Exhibit 3. Those charges are purely military and relate to the following acts: using insulting language to a superior officer, contrary to section 85 of the *National Defence Act*; committing an act to the prejudice of good order and discipline, contrary to section 129; disobeying a lawful command of a superior officer, contrary to section 83; using threatening language to a superior officer, contrary to section 85; and behaving with contempt toward a superior officer, also contrary to section 85. The offences involved in the first and second counts were committed while the offender was part of a Canadian detachment at the American naval base on Whidbey Island, while the other offences were committed at Canadian Forces Base Esquimalt, after he was sent home from Whidbey Island because of his very serious financial difficulties and disciplinary problems.

[2] In determining the sentence that it finds to be appropriate and minimum in this case, the Court has taken into account the circumstances surrounding the commission of the offences, as seen in the admissions by the offender set out in Exhibit 3, all of the abundant documentary evidence submitted to the Court for

sentencing purposes, the witnesses heard by the Court, and in particular Leading Seaman Lawrence, Lieutenant Commander (Ret'd) MacLean; Leading Seaman Franklin; Anna Marie Lasalle, the offender's wife; and Ex-Leading Seaman Lasalle. The Court has also considered counsel's argument and the case law cited, in analyzing the principles that apply to sentencing.

[3] In *R. v. Généreux*, the Supreme Court of Canada held that "[t]o maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently". The Supreme said that in the particular context of military discipline, breaches of discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian had engaged in such conduct. Even if those words are elevated to the level of principles, the instructions given by the Supreme Court do not mean that a military court may impose a sentence composed of a punishment or punishments that would be beyond what is required in the circumstances of a case. In other words, any sentence imposed by a court, whether civilian or military, must always represent the minimum action required. That being said, a sentence imposed by a Court Martial, like a sentence imposed by a civilian court hearing a criminal or penal case, must be the minimum sentence required having regard to all the circumstances of the case and all of the offender's circumstances. In determining what is a fair and equitable sentence, the Court must strike a delicate balance that will ensure that the public is protected but also ensure that discipline is maintained within the Canadian Forces.

[4] In imposing an appropriate sentence on an accused for the wrongful acts he has committed and in relation to the offences of which he is guilty, there are certain objectives, having regard to the principles applicable to sentencing, although they vary slightly from one case to another. The weight assigned to them must be adapted not only to the circumstances of the case but also to the individual offender. In order to contribute to one of the essential objectives of military discipline, the maintenance of a professional, disciplined, operational and effective armed force in a free and democratic society, those objectives may be stated as follows:

> First, protection of the public, which includes the Canadian Forces;
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> Second, punishment and denunciation of the offender;
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> Third, deterrence of the offender and anyone else from committing the same offences;
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> Fourth, separation of the offender from society, including members of the Canadian Forces, where appropriate;
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> Fifth, rehabilitation and reform of the offender;

> Sixth, proportionality to the seriousness of the offences and the offender's degree of responsibility;
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> Seventh, consistency in sentencing;
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> Eighth, the imposition of a custodial sentence only where the Court is satisfied that it is necessary as a last resort. In *R. v. Gladue*, the Supreme Court held that imprisonment should be the penal sanction of last resort. In the context of the *Criminal Code*, incarceration in the form of imprisonment is appropriate only where no other sanction or combination of sanctions is appropriate for the offence and the offender. The Court reiterates that this principle is relevant in the context of military justice. However, we must consider the important differences between the rules of sentencing that apply to a civilian court hearing a criminal or penal case and those that apply to a military court whose powers of punishment are set out in the *National Defence Act*. The civilian criminal justice system has its own unique features, for example conditional sentences of imprisonment, which are separate from probationary measures but is nonetheless a real sentence of imprisonment. The military justice system has access to disciplinary tools such as detention, the purpose of which is to rehabilitate military inmates and restore their obedience within a military framework organized around the special values and powers of members of the Canadian Forces. Like a conditional sentence of imprisonment, detention can make a significant contribution to denunciation and deterrence but without stigmatizing military inmates to the same degree as members of the military who are sentenced to imprisonment. In other words, a custodial sentence must be used only where the Court is satisfied that no sanction or combination of sanctions is adequate to serve the interests of justice, including the maintenance of discipline.
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> Last, the Court will take into account aggravating and mitigating circumstances relating to the offender's situation and the commission of the offences.

[5] In this case, protection of the public will be achieved by a sentence that stresses punishment and denunciation of the offender, primarily, and also general deterrence. The Court is of the opinion that specific deterrence is also an important aspect, but less so, because the sixth and ninth counts are offences involving violence toward other people. For example, the fact that the offender was not charged under section 30 of the *National Defence Act* as contrary to section 264.1 of the *Criminal Code* for the kind of threat to which the sixth count relates, and that he has been released from the Canadian Forces since that offence was committed, does not obviate the need for the sentence to be such as will deter him from using violence in future. In

fact, it is useful to recall what was said by former Chief Justice Lamer in *Généreux*, at paragraph 31:

> ... Although the Code of Service Discipline is primarily concerned with maintaining discipline and integrity in the Canadian Armed Forces, it does not serve merely to regulate conduct that undermines such discipline and integrity. The Code serves a public function as well by punishing specific conduct which threatens public order and welfare. Many of the offences with which an accused may be charged under the Code of Service Discipline, which is comprised of Parts IV to IX of the National Defence Act, relate to matters which are of a public nature.

The Court also believes that the sentence should not interfere with rehabilitation of the offender, even though any sentence will necessary have an impact on the offender's life. Unfortunately, sentencing the offender often involves unpleasant consequences for the offender's family, but what must be acknowledged is that he is the one who is ultimately responsible.

[6] In considering what sentence would be appropriate, the Court has taken the following aggravating and mitigating factors into consideration. I will begin with the aggravating factors. The Court considers the following factors to be aggravating:

1. The nature of the offences and the sentences provided for by Parliament:

   i. In the case of the offence under section 83 of the *National Defence Act*, the offender is liable to imprisonment for life. This is an extremely serious offence;

   ii. In the case of the offences under section 85 of the *National Defence Act*, the section provides that the maximum sentence is dismissal with disgrace from Her Majesty's service. In the military justice context, this is a very serious offence;

   iii. In the case of an act to the prejudice of good order and discipline under section 129 of the *National Defence Act*, the offence is also punishable by dismissal with disgrace from Her Majesty's service.

2. The Court finds that the incidents relating to the first, third, sixth and ninth counts clearly show that the offender chose to do whatever he wanted when he used insulting and threatening language and when he behaved with contempt toward his superior officers, on more than one occasion. He was dissatisfied and frustrated with how he had been treated by his chain of command, although the evidence heard and submitted to the Court as a whole shows that there was no basis for his

belief, and he violated the most basic principles of military discipline, despite his age and his many years of experience. This kind of conduct is highly prejudicial to military discipline and is inconsistent with the requirements of military life. Rather than solving his personal problems and using the resources offered to him, he decided that everyone was against him and that he had become a victim in this matter. That was not the case. Mr. Lasalle, your conduct deteriorated to the point, and to such an appalling degree, that your superiors did not hesitate to describe you as a disgrace to the navy, in Exhibit 25. Those words may be exaggerated, but they show how exasperated the military authorities were with you in relation to your performance and your behaviour during the months in which the incidents in question occurred and until you were released from the Canadian Forces;

3. The Court finds that the incidents relating to PM2 Fisher and Jackson were not the result of provocation by them;

4. The fact that the actions against and words spoken to PM2 Jackson were violent in nature;

5. The Court finds your age and experience in the Canadian Forces to be an aggravating factor;

6. The Court finds that you betrayed the trust of the military authorities by using a credit card intended to be used for official purposes only for a very large amount of money.

However, the Court considers the following to be mitigating factors:

1. Your superior performance and all of your years of service up to the beginning of 2004. You were rightly recognized to be a very dedicated, competent and reliable sailor. Your superior officers recognized you as having greater potential than your peers. It is a great shame that, first, you refused to acknowledge your problems and solve them and, second, that you refused to admit that the action taken against you was entirely justified, even though they were going to have a negative impact on your career in the short and medium term. It is unfortunately that you let everything go after that by insulting your superior officers on several occasions;

2. The Court finds the fact that you have already been released from the Canadian Forces, in part as a result of the conduct that is the subject of the charges before this Court, to be a mitigating factor;

3. The Court finds your financial and family situation to be a mitigating factor. It seems that you are now the primary breadwinner for your family. You and your wife already have three small children, and Ms. Lasalle is pregnant with a fourth child. You are still seriously in debt and I have to note that your statements of income and expenses did not satisfy the Court. In particular, you failed to state that your father was still paying for you, in connection with the damage you caused when you were at Whidbey Island, and that you still owed him nearly $6,000. With respect to repayment of the debt on the AMEX card, I must tell you that your explanation did not seem to me to be very credible, but I am giving you the benefit of the doubt. I want to say as well that you are also the only person who is responsible for this financial situation. Your wife described you as a frugal person. The Court understood from the meaning and context of her words that the opposite was true;

4. The Court finds that you seem to be determined to start a new career in electromechanics, by going back to school full-time;

5. The Court finds that you have acknowledged your wrongdoing by the admissions you have made;

6. The Court also finds that you have no criminal or disciplinary record.

[7] The prosecution recommended that this Court sentence you to imprisonment for one to two days because only a custodial sentence is appropriate in the circumstances. Your counsel recommends a sentence that would consist of a reprimand and a $350 fine. To begin with, a sentence composed of a severe reprimand or reprimand together with a fine would not serve the interests of justice in the circumstances of this case. Your repeated conduct and the gravity, both objective and subjective, of the acts of which you have been found guilty call for a sentence that would put the emphasis on denunciation and punishment, as well as on general deterrence. It must be clearly understood that you attacked the cornerstone of military discipline, the chain of command, on several occasions. You are not a young private who is learning the importance and foundations of discipline. The sentence proposed by your counsel would undermine discipline and have the opposite effect. It would be an invitation to disobedience and insubordination.

[8] The Court must take into account the direct and indirect consequences this sentence will have on you. Unfortunately, it will have an impact on the members of your family. It must be proportionate to the gravity of the offences and the offender's degree of responsibility. As counsel for the prosecution put it so well, this Court is limited by the scale of punishments set out in subsection 139(1) of the *National Defence Act,* which lists the punishments in descending order of seriousness. It may be that a

punishment that is more severe, in the scale of punishments, will have lesser consequences than a sentence that consists of punishments lower on the scale of punishments. This does not mean that the punishment that is highest on the scale of punishments may be imposed by a Court Martial. The acts of which you have been found guilty are sufficient for the Court to accept the recommendation by counsel for the prosecution. But imprisonment would not adequately your good service and it is neither the minimum sentence nor appropriate in the circumstances. However, the nature of your offences is an attack on the integrity of the chain of command and the foundations of military discipline. A severe sentence is called for in the circumstances.

[9] For these reasons, the Court sentences you to reduction to the rank of private.

LIEUTENANT-COLONEL M. DUTIL, M.J.

Counsel:

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Counsel for the prosecution
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