

Citation: *R. v. Corporal J.R.P.M. Gendron*, 2005CM15

Docket: S200515

**STANDING COURT MARTIAL
AREA SUPPORT UNIT ST-JEAN
ST-JEAN-SUR-RICHELIEU
(5 GENERAL SUPPORT BATTALION)**

Date: May 19, 2005

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

**THE QUEEN,
(Prosecutor)**

v.

**CORPORAL J.R.P.M. GENDRON,
(Accused)**

**SENTENCE
(Delivered orally)**

OFFICIAL ENGLISH TRANSLATION

[1] For sentencing purposes, the Court has had regard to, among other factors, the whole of the evidence heard during the trial and the circumstances surrounding the commission of the offence of which you have been found guilty. The Court has also had regard to the whole of the evidence presented during the sentencing phase of the trial, that is, the documentary evidence that appears in Exhibits 6, 7 and 8, and any indirect consequence of the verdict or sentence. The Court has also had regard to counsel's submissions on sentence. And the Court has examined the evidence having regard to the principles that are applicable to sentencing, in relation to the mandatory requirements for maintaining a disciplined, operational and effective armed force.

[2] In *R. v. Généreux*, [1992] 1 S.C.R. 259, the Supreme Court of Canada acknowledged that:

To 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 Court 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 engaged in such conduct. The instructions given by the Supreme Court, however, do not mean that a military tribunal may impose a sentence composed of one or more punishments that would be beyond what is required in the circumstances of the case. In other words, any punishment imposed by a tribunal, whether civilian or military, must always represent the minimal action required.

[3] The objectives and principles that 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, may be stated as follows:

First, protection of the public, which includes the Canadian Forces;

Second, punishment and denunciation of the offender;

Third, deterrence of the offender and anyone else from committing the same offences;

Fourth, rehabilitation and reform of the offender;

Fifth, proportionality to the seriousness of the offences and the offender's degree of responsibility;

Sixth, consistency in sentencing; and

Last, the Court will take into account aggravating circumstances relating to the circumstances of the case, which also relate to the offender's situation and the commission of the offences.

[4] In this case, protection of the public will be achieved by a sentence that stresses general deterrence, punishment and denunciation of the offender, and proportionality between the seriousness of the offence and the offender's degree of responsibility.

[5] In considering what sentence would be appropriate, the Court has taken the following aggravating and mitigating factors into consideration. I shall start with the factors that aggravate the sentence. The Court considers the following factors to be aggravating:

1. The nature of the offences and the sentences provided by Parliament. In the case of the first count, “disgraceful conduct” under section 93 of the *National Defence Act*, the offence is subject to imprisonment for a term not exceeding five years. This is an objectively serious offence.
2. The fact that you were a non-commissioned member of mature age who had about 17 years’ experience in the regular force at the time the offence was committed.
3. The fact that you were in a position of control as driver of the vehicle and that Acting Sub-Lieutenant Doddridge was at your mercy for returning to Montréal. Although she was, in theory, in a position of authority over you, the balance of power and dynamics of the situation, as may be seen from the whole of the evidence heard at trial, leave no doubt that you were in effective control over this young woman officer at the time the offence was committed.
4. The fact that you abused the trust and naivety of a young woman officer who was inexperienced, both professionally and personally, by making her believe that you had to masturbate for medical reasons.
5. The nature of the act that comprises the disgraceful conduct. It was not merely a sexual act, masturbation committed in a military vehicle; it must be acknowledged that the act took place while you were on duty and when your job was to return to Montréal from Rouyn-Noranda with a young woman officer of the reserve force.

The Court accepts the following factors as mitigating factors:

1. The fact that you have no conduct sheet or criminal record.
2. The fact that your career, consisting of nearly 20 years of service in the regular force, had been previously unblemished, but also that, as the list of your honours and awards shows, you have shown that the Canadian Forces have been able to count on you.

3. The fact that your disgraceful conduct involved no violence and no physical contact with the complainant, and that she has suffered no lasting effect.
4. Your family and financial situation. The evidence before this Court shows that you have a spouse and are the father of two young teenaged girls. According to your counsel, your employment income is your household's only income.
5. The fact that the verdict of this Court in respect of the commission of a sexual act could have a serious impact on your career in the Canadian Forces. Your counsel told the Court that your case will undoubtedly be submitted to a Career Review Board under the Canadian Forces career policy and procedures applicable to cases of sexual misconduct, OAF 19-36. However, the Court has no reliable information concerning what recommendations might be made by your chain of command if that administrative procedure were to be applied to your case. It is nonetheless important to note that the policy of the Canadian Forces is quite severe in cases of this nature, and it may extend to release.

[6] In these circumstances, the Court is satisfied that a sentence composed of a severe reprimand and a fine in the amount suggested by counsel will be sufficient for the purposes of the administration of justice and the maintenance of discipline.

[7] Corporal Gendron, please rise. Accordingly, this Court sentences you to a severe reprimand and a fine of \$1500 payable in equal monthly instalments of \$100. If you were to be released from the Canadian Forces before that fine is paid in full, the balance would become due and payable immediately after you were released.

LIEUTENANT-COLONEL M. DUTIL, M.J.

Counsel:

Major M. Trudel, Regional Military Prosecutor, Eastern Region
Counsel for the prosecutor
Major L. Boutin, Directorate of Defence Counsel Services
Counsel for Corporal Gendron