

**Court Martial Appeal Court
of Canada**



**Cour d'appel de la cour martiale
du Canada**

Date: 20100422

Docket: CMAC-523

Citation: 2010 CMAC 5

**CORAM: O'REILLY, J.A.
MACTAVISH J.A.
BARNES J.A.**

BETWEEN:

ORDINARY SEAMAN LEE, M.

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Ottawa, Ontario, on March 19, 2010.

Judgment delivered at Ottawa, Ontario, on April 22, 2010.

REASONS FOR JUDGMENT BY:

O'REILLY J.A.

CONCURRED IN BY:

**MACTAVISH J.A.
BARNES J.A.**

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REASONS FOR JUDGMENT

O'REILLY J.A.

I. Overview

[1] The appellant, Ordinary Seaman Lee, was convicted at a General Court Martial of drug trafficking (under s. 130 of the *National Defence Act*, R.S.C. 1985, c. N-5, contrary to s. 5(1) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, relevant provisions are set out in Annex A). The Military Judge sentenced him to five months' imprisonment. OS Lee was convicted as a secondary party to the offence under s. 21(1)(b) of the *Criminal Code*, R.S.C.

1985, c. C-46, whereas a fellow sailor, Ordinary Seaman Ellis, was convicted in separate proceedings as the principal offender (see *Ex-Ordinary Seaman Ellis v. The Queen*, 2010 CMAC 3).

[2] OS Lee appeals his conviction and, on leave, his sentence. At the hearing of the appeal, the Court granted OS Lee leave to appeal his sentence. OS Lee maintains that the Military Judge erred in his instructions to the panel that rendered the guilty verdict, and imposed an excessive sentence. He asks this Court to order a new trial, or to impose a lesser sentence. I can find no grounds on which to overturn the conviction or the sentence and must, therefore, dismiss this appeal.

II. Issues

[3] There are two issues:

1. Did the Military Judge err when instructing the panel on the intent required to convict a person as a party to the offence of trafficking under s. 21(1)(b) of the *Criminal Code*?
2. Did the Military Judge fail to take account of the principle of restraint in sentencing contained in the *Criminal Code*, and the particular circumstances surrounding OS Lee's conduct, when he imposed a sentence of five months' imprisonment?

III. Factual Background

[4] In June 2007, the Canadian Forces National Investigation Service (NIS) was investigating drug offences in Nelles Block Military Barracks at CFB Esquimalt. Two members of the NIS, Master Corporal Oliver and Master Corporal Janes, were assigned to the base to act as undercover investigators. On June 18, 2007, MCpl Janes invited OS Lee into his room. During their

conversation, MCpl Janes asked OS Lee if he would help him obtain some drugs. OS Lee did not answer.

[5] The next day, MCpl Janes again invited OS Lee into his room and repeated his request. According to MCpl Janes' testimony, OS Lee asked him if he was looking for "weed", but MCpl Janes told him he was looking for cocaine. OS Lee replied that he mostly drinks, and "that stuff gets me into trouble." MCpl Janes asked OS Lee if he had any friends who could help him out. OS Lee said he might. A few hours later, MCpl Janes asked OS Lee if he had had a chance to call his friend. OS Lee said that he had not called anyone and that "it didn't look like it was going to work out tonight."

[6] On June 20, 2007, MCpl Janes went to OS Lee's room and again asked if he had spoken to his friend. OS Lee said that his friend would be either at the Fleet Club (the junior mess) or a place called "Soprano's" that night. Later that evening, MCpl Janes and MCpl Oliver arrived at the Fleet Club. OS Lee was there. MCpl Janes testified that OS Ellis arrived shortly afterwards and went to the patio to speak with OS Lee. MCpl Janes further testified that, after this conversation with OS Ellis, OS Lee went to the washroom. MCpl Janes followed him, and again asked him for help buying drugs. OS Lee asked MCpl Janes if he was a cop. MCpl Janes testified that OS Lee told him that there was "a lot of shit on the go in Nelles Block" and that he didn't want to get "pinched". OS Lee also asked MCpl Janes if he wanted to do a "bump" (a dose of cocaine). MCpl Janes declined, and they left the washroom.

[7] Shortly thereafter, OS Lee went back to the patio and met with MCpl Janes. OS Lee told MCpl Janes that MCpl Janes was "cool" and that his friend may be able to help him out. OS Lee

then left to have a conversation with OS Ellis. OS Lee testified that OS Ellis had called him over and asked what MCpl Janes wanted, to which he replied that MCpl Janes was looking for cocaine. OS Lee then returned to MCpl Janes. OS Lee and MCpl Janes gave differing testimony about the conversation that ensued. MCpl Janes testified that OS Lee asked him how Gagetown was, and that he told him he had not been in Gagetown, since he had previously told OS Lee that he was a Reservist in Halifax. MCpl Janes also testified that he thought this was a “heat check” – a way of testing whether MCpl Janes was an investigator. OS Lee testified that he asked MCpl Janes how Borden was, to which MCpl Janes replied that he was not from Borden, he was from Gagetown. OS Lee said he was simply trying to get information about the base.

[8] At that point, OS Lee left and OS Ellis approached MCpl Janes. OS Ellis told MCpl Janes that the only reason he was talking to him was because he was a friend of OS Lee. He offered to sell cocaine to MCpl Janes and they negotiated a price. OS Ellis told MCpl Janes that he would bring the drug to MCpl Janes’ room later that evening. Shortly afterwards, OS Ellis showed up at MCpl Janes’ room with the cocaine and the deal was completed. OS Lee was not present.

A. *Did the military judge err when instructing the panel on the intent required to convict a person as a party to the offence of trafficking under s. 21(1)(b) of the Criminal Code?*

(1) Who is a “party” to an offence?

[9] The *Criminal Code* provides in s. 21(1) that a person is a party to an offence if he or she

(a) actually commits it,

- (b) does or omits to do anything for the purpose of aiding any person to commit it, or
- (c) abets any person in committing it.

[10] The main issue on this appeal is whether the Military Judge properly instructed the panel on the question of whether OS Lee did anything for the purpose of aiding OS Ellis to commit the offence of trafficking and, therefore, was liable as a party under s. 21(1)(b).

[11] There is both a physical and mental element to aiding the commission of an offence. First, the Crown must prove beyond a reasonable doubt that the accused performed some act that facilitated the commission of the offence: *Dunlop and Sylvester v. The Queen*, [1979] 2 S.C.R. 881, at p. 891. Second, the Crown must prove beyond a reasonable doubt that the accused performed that act “for the purpose” of assisting the person who actually committed the offence. In other words, the accused must have intended to help the principal perpetrator: *R. v. Hibbert*, [1995] 2 S.C.R. 973, at para. 36; *R. v. Briscoe*, 2010 SCC 13, at para. 16.

(2) Jurisprudence on parties to the offence of drug trafficking

[12] A person who intentionally assists a seller of drugs is a party to trafficking. However, a person who intentionally assists a buyer of drugs is not (*R. v. Poitras*, [1974] S.C.R. 649).

Trafficking involves, among other things, the sale, delivery or distribution of drugs (*Controlled Drugs and Substances Act*, s. 2). It does not include buying drugs. A buyer does not aid the seller and, therefore, a person who merely assists a buyer does not aid the seller either; rather a person who assists a buyer is a party to possession of drugs, not trafficking. (*R. v. Greyeyes*, [1997] 2

S.C.R. 825). In short, to be convicted as a party to the offence of trafficking under s. 21(1)(b), one must intentionally perform some act that assists the vendor.

[13] Drawing the line between assisting a buyer and assisting a seller can be difficult. The Supreme Court has held that a person who located a seller, brought the buyer to the site, introduced the parties, negotiated a price, passed the buyer's money to the seller, and handed the drugs to the buyer had gone beyond assisting the buyer and could be found liable as a party to trafficking (*Greyeyes*, above). However, I note that in that case the accused had actually passed the drugs from the seller to the buyer and, therefore, could have been convicted of trafficking on the basis that he had actually committed the offence, not merely aided in its commission.

[14] Similarly, a person who obtained money from a prospective buyer, led the buyer to a seller, passed the money to the seller in exchange for drugs, and handed the drugs over to the buyer was found guilty of trafficking. In those circumstances, the Court did not have to be concerned about whom the accused was helping because the accused had carried out one of the acts comprising the substantive offence of trafficking (*i.e.*, delivering drugs). See *R. v. Wood*, 2007 ABCA 65.

[15] On the other hand, a person who acted as a go-between from buyer to seller was found not guilty of trafficking where his intention was solely to assist the buyer, even when he had committed the substantive offence of trafficking by delivering the drugs to the buyer: *R. v. Ahamad*, [2003] O.J. No. 4246 (Ont. S.C.J.). I note, however, that the Alberta Court of Appeal doubted the correctness of *Ahamad* in *Wood*, above (see para. 40).

[16] In my view, a person can be convicted of trafficking either by committing one of the acts constituting trafficking according to the statutory definition (*e.g.*, selling or delivering) or by intentionally committing an act that assists the principal offender. In the latter case, it will be important to consider whether the accused's conduct went beyond merely assisting the purchaser (or recipient, *etc.*) to the point where he or she did something that aided the seller (or deliverer, *etc.*). As I read them, subsequent decisions have not altered the basic principles laid down in *R. v. Poitras*, above.

(3) The Military Judge's instructions to the panel

[17] In respect of OS Lee's liability as a party to the offence of trafficking, the Military Judge stated:

What the prosecutor must prove is that the act of Ordinary Seaman Lee in fact helped or aided Ordinary Seaman Ellis in committing the offence of trafficking in cocaine. You must decide whether the act or acts of Ordinary Seaman Lee aided Ordinary Seaman Ellis in the sense of assisting, helping, facilitating, or making it easier for Ordinary Seaman Ellis to commit the offence of trafficking in cocaine.

...

It is not enough that Ordinary Seaman Lee's acts actually aided or abetted Ordinary Seaman Ellis. It must also be proven that Ordinary Seaman Lee knew or intended that his acts would aid or abet Ordinary Seaman Ellis to commit the offence of trafficking in cocaine.

...

Based on the facts that you accept, do you believe that the actions and intentions of Ordinary Seaman Lee are those of a person merely providing incidental assistance of the sale of cocaine by solely assisting the purchaser?...This belief would in itself cause you to have a reasonable doubt about the theory of the prosecution. You would then reach a verdict of not guilty. If, on the contrary, you find that the prosecution has proven beyond a reasonable doubt all of the essential elements of this offence, more specifically, if the facts that you do accept make you believe beyond a reasonable doubt that Ordinary Seaman Lee's actions and intentions were to aid, abet, counsel or procure Ordinary Seaman Ellis in the trafficking of cocaine, you must find Ordinary Seaman Lee guilty of having trafficked in cocaine by aiding, abetting, counselling, or procuring Ordinary Seaman Ellis.

[18] The Military Judge also referred the panel to the evidence relevant to the questions before it. He noted that:

- MCpl Janes testified that he saw OS Lee have two private conversations with OS Ellis at the Fleet Club;
- MCpl Janes testified that OS Lee had asked him a number of questions to ascertain whether he was a police officer;
- MCpl Janes testified that OS Lee told him that he had a friend who could help him get cocaine;
- OS Lee testified that he told OS Ellis and others about MCpl Janes' desire to purchase cocaine;
- OS Lee testified that he lied when he said he had a friend who could supply cocaine – he was simply trying to get MCpl Janes “off his back”;
- OS Lee testified that his questions of MCpl Janes were the product of innocent curiosity;
- OS Lee testified that he did not know what OS Ellis would do with the information he provided about MCpl Janes' desire to purchase cocaine.

(4) Alleged errors

[19] OS Lee argues that the Military Judge failed to explain adequately the difference between aiding a purchaser and aiding a vendor of drugs and, in particular, the necessary mental element corresponding with each of those scenarios. In other words, OS Lee submits that the instructions to the panel did not explain properly the requirement that the Crown prove beyond a reasonable doubt that the accused intended to aid the vendor, not the purchaser, in order to render a verdict of guilty

of trafficking.

[20] The appellant places particular emphasis on the case of *Ahamad*, above, where the Court found that the accused had intended merely to assist the purchaser even though he had actually committed the substantive offence of trafficking by delivering the drugs to the purchaser. The accused was found not guilty of trafficking.

(5) Conclusion

[21] In my view, *Ahamad* presented a unique set of circumstances. In *Ahamad*, the accused assisted a purchaser who was confined to a wheelchair. The accused testified that he merely wanted to help the purchaser and was concerned about the purchaser's safety. The Court concluded that the accused's conduct was merely incidental to the purchase of the drugs and, therefore, he should not be convicted of trafficking.

[22] The circumstances here are different. There is no suggestion that the purchaser was particularly vulnerable or in any danger. The sole question is whether the panel was properly instructed that the Crown must prove beyond a reasonable doubt that OS Lee intentionally committed some act that aided OS Ellis in achieving the sale of drugs to MCpl Janes.

[23] I can find no error in the Military Judge's instructions to the panel. He correctly described the burden on the Crown in respect of both the physical and mental elements of liability as a party to trafficking under s. 21(1)(b) of the *Criminal Code*. In addition, he made clear the necessary distinction between aiding a purchaser and aiding a vendor. Further, he accurately summarized the

evidence that was relevant to the panel's deliberations on the legal issues to be decided.

Accordingly, I must dismiss the appeal on this ground.

B. Did the Military Judge fail to take account of the principle of restraint in sentencing contained in the Criminal Code, and the particular circumstances surrounding OS Lee's conduct, when he imposed a sentence of five months' imprisonment?

(1) Deference to the Military Judge

[24] In determining sentence, military judges hold a "privileged institutional position" which requires them to weigh many important factors, including the need to maintain discipline within the Canadian Forces. The judge's discretion should not be interfered with lightly (*R. v. St. Jean*, [2000] C.M.A.J No. 2). The Supreme Court has stated:

[V]ariation of a sentence should only be made if an appellate court is convinced that a sentence is "not fit" or "clearly unreasonable". This deferential standard of appellate review must be adhered to as long as the trial judge did not err in principle, fail to consider a relevant factor, or overemphasize the appropriate factors. (*R. v. Stone*, [1999] 2 S.C.R. 290, at para. 230.)

[25] Therefore, this Court will intervene only if the Military Judge rendered an unfit sentence, made an error in principle, or misapplied the relevant factors.

(2) Precedents

[26] It is clear that trafficking in drugs within the military is a serious offence and that convictions usually result in carceral sentences. The main concern in determining the appropriate sentence is to deter others. As the Court stated in *Dominie v. The Queen*, 2002 CMAC 8, "general deterrence requires that the military know that they will be imprisoned if they deal in crack cocaine

on military bases” (para. 5).

[27] The same concern was expressed in a case where the accused was charged with a single offence of trafficking in a small amount of cocaine (*Taylor v. The Queen*, 2008 CMAC 1). The Court upheld the Military Judge’s sentence of 40 days’ imprisonment. The Military Judge justified the sentence by stating that the “use of drugs and the trafficking of drugs are a direct threat to the operational efficiency of our forces and a threat to the security of our personnel and equipment” (para. 27).

(3) The Military Judge’s analysis

[28] In his reasons, the Military Judge summarized the sentencing principles contained in the *Criminal Code*. He mentioned denunciation, deterrence, separation from society, rehabilitation, parity, and promoting in the offender a sense of responsibility. He also noted that the Court should impose the minimum sentence necessary to maintain discipline in the military. In the circumstances, the Military Judge felt the principles of denunciation and deterrence, both specific and general, were paramount.

[29] The Military Judge noted that trafficking is a serious offence carrying a maximum sentence of life imprisonment. He referred to various precedents, including *Dominie* and *Taylor*, above, and observed that some offences are treated even more seriously in the military than in Canadian society as a whole. Drug trafficking is one of them.

[30] From the precedents in court martial proceedings, the Military Judge found that sentences for trafficking generally ranged from 40 days' to 16 months' imprisonment. Exceptions existed only where there were extreme mitigating circumstances.

[31] The Military Judge then reviewed the evidence, noting that the panel must have rejected some of OS Lee's testimony in order to have arrived at a verdict of guilty. He pointed out that OS Lee's conduct furthered the trafficking of drugs on a military establishment. However, he also noted that he was not the principal offender, and did not use cocaine.

[32] Finally, the Military Judge considered aggravating and mitigating factors. The former included previous charges against OS Lee for being absent without leave. The latter amounted to a positive (although brief) work record, and a letter of reference from his commander.

[33] Taking account of all the foregoing factors, the Military Judge arrived at a sentence of five months' imprisonment.

(4) Alleged errors

[34] OS Lee submits that the Military Judge overlooked an important sentencing principle, namely, that "an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances" (*Criminal Code*, s. 718.2(d)). He points to Justice Gilles Létourneau's statement that "[i]mprisonment is a measure of last resort, especially in the case of a first offender" (*Lui v. The Queen*, 2005 CMAC 3, at para. 28).

[35] OS Lee also argues that the circumstances in *Dominie* and *Taylor*, above, are distinguishable from his. In *Dominie*, the accused had committed numerous offences of trafficking, as a principal. In *Taylor*, while the accused had only committed a single offence, again, he had actually handed over drugs to the undercover officer.

[36] OS Lee also argues that the Military Judge failed to consider that the moral blameworthiness associated with his conduct in this case was relatively slight – he never handled any drugs or made any profit. He did not commit any act that falls within the definition of trafficking. At most, he pointed out an eager, and seemingly safe, purchaser to a willing vendor.

(5) Conclusion

[37] Paragraph 21(1)(b) makes a person who aids commission of a crime and the principal offender equally liable. In other words, those who further the commission of offences are as guilty as those who actually carry them out. This principle was recently confirmed by Justice Louise Charron when she said “Canadian criminal law does not distinguish between the principal offender and parties to an offence in determining criminal liability” (*R. v. Briscoe*, above, at para. 13). That is not to say, however, that the actual circumstances of the offence need not be taken into account, along with the applicable principles, in determining an appropriate sentence. As discussed above, the role of the Court is to decide whether the Military Judge overlooked or overemphasized any relevant factors, erred in principle, or imposed an unfit sentence on OS Lee.

[38] I cannot agree with OS Lee’s suggestion that the Military Judge overlooked the principle of restraint in sentencing. While the Military Judge did not mention s. 718.2(d) specifically, he was

clearly aware of the applicable principles. Further, he was guided by a similar principle – that he should impose the minimum sentence necessary to maintain discipline in the military. As for OS Lee’s reliance on *Lui*, above, I note that Justice Létourneau was talking about circumstances where less restrictive sanctions than imprisonment would achieve the desired objectives of deterrence and rehabilitation. Here, the Military Judge specifically found that a term of imprisonment was required in order to denounce and deter the trafficking of drugs.

[39] In terms of the applicability of *Dominie* and *Taylor*, above, I agree with OS Lee that the offenders’ conduct was more serious in those cases. However, those differences do not diminish the applicability of the underlying principle for which the Military Judge cited them – drug trafficking must be taken very seriously within the military. The comparatively light sentence in *Taylor* (40 days) was based on numerous mitigating circumstances not present here.

[40] Finally, with respect to the Military Judge’s consideration of OS Lee’s actual conduct, again, I can find no grounds for this Court’s intervention. The Military Judge was fully aware of the fact that OS Lee was not the principal offender and that his conduct amounted merely to facilitating a single sale of cocaine. Still, he regarded OS Lee’s involvement, consisting as it did of aiding the distribution of drugs on a military base, as meriting a serious punishment. No error arises from the Military Judge’s characterization of the offence.

[41] I note that OS Ellis’ sentence of nine months’ imprisonment on two counts of trafficking and two counts of conduct prejudicial to good order and discipline was recently upheld on appeal: *Ex-Ordinary Seaman Ellis v. The Queen*, above. OS Lee’s sentence is proportionately less severe.

IV. Disposition

[42] In my view, the Military Judge instructed the panel correctly on the mental and physical elements of aiding the offence of trafficking under s. 21(1)(b) of the *Criminal Code*.

[43] In arriving at the sentence of five months' imprisonment, the Military Judge did not make any error of principle or misapply any relevant factors. Nor, in the circumstances, is the sentence unfit. Therefore, I must dismiss OS Lee's appeal.

“James W. O'Reilly”

J.A.

“I agree
A. Mactavish J.A.”

“I agree
R. Barnes J.A.”

Annex “A”

National Defence Act, R.S.C. 1985, c. N-5

Service trial of civil offences

130. (1) An act or omission

(a) that takes place in Canada and is punishable under Part VII, the *Criminal Code* or any other Act of Parliament, or
(b) that takes place outside Canada and would, if it had taken place in Canada, be punishable under Part VII, the *Criminal Code* or any other Act of Parliament,
is an offence under this Division and every person convicted thereof is liable to suffer punishment as provided in subsection (2).

Punishment

(2) Subject to subsection (3), where a service tribunal convicts a person under subsection (1), the service tribunal shall,

(a) if the conviction was in respect of an offence

(i) committed in Canada under Part VII, the *Criminal Code* or any other Act of Parliament and for which a minimum punishment is prescribed, or

(ii) committed outside Canada under section 235 of the *Criminal Code*, impose a punishment in accordance with the enactment prescribing the minimum punishment for the offence; or

(b) in any other case,

(i) impose the punishment prescribed for the offence by Part VII, the *Criminal Code* or that other Act, or
(ii) impose dismissal with disgrace from Her Majesty’s service or less punishment.

Code of Service Discipline applies

(3) All provisions of the Code of Service

Loi sur la défense nationale, L.R.C. 1985, ch. N-5

Procès militaire pour infractions civiles

130. (1) Constitue une infraction à la présente section tout acte ou omission :

a) survenu au Canada et punissable sous le régime de la partie VII de la présente loi, du *Code criminel* ou de toute autre loi fédérale;

b) survenu à l’étranger mais qui serait punissable, au Canada, sous le régime de la partie VII de la présente loi, du *Code criminel* ou de toute autre loi fédérale.

Quiconque en est déclaré coupable encourt la peine prévue au paragraphe (2).

Peine

(2) Sous réserve du paragraphe (3), la peine infligée à quiconque est déclaré coupable aux termes du paragraphe (1) est :

a) la peine minimale prescrite par la disposition législative correspondante, dans le cas d’une infraction :

(i) commise au Canada en violation de la partie VII de la présente loi, du *Code criminel* ou de toute autre loi fédérale et pour laquelle une peine minimale est prescrite,

(ii) commise à l’étranger et prévue à l’article 235 du *Code criminel*;

b) dans tout autre cas :

(i) soit la peine prévue pour l’infraction par la partie VII de la présente loi, le *Code criminel* ou toute autre loi pertinente,

(ii) soit, comme peine maximale, la destitution ignominieuse du service de Sa Majesté.

Application du code de discipline militaire

(3) Toutes les dispositions du code de

Discipline in respect of a punishment of imprisonment for life, for two years or more or for less than two years, and a fine, apply in respect of punishments imposed under paragraph (2)(a) or subparagraph (2)(b)(i).

Saving provision

(4) Nothing in this section is in derogation of the authority conferred by other sections of the Code of Service Discipline to charge, deal with and try a person alleged to have committed any offence set out in sections 73 to 129 and to impose the punishment for that offence described in the section prescribing that offence.

Controlled Drugs and Substances Act, S.C. 1996, c. 19

Definitions

2. (1) In this Act

...

“traffic” means, in respect of a substance included in any of Schedules I to IV,
(a) to sell, administer, give, transfer, transport, send or deliver the substance,
(b) to sell an authorization to obtain the substance, or
(c) to offer to do anything mentioned in paragraph (a) or (b),
otherwise than under the authority of the regulations.

Trafficking in substance

5. (1) No person shall traffic in a substance included in Schedule I, II, III or IV or in any substance represented or held out by that person to be such a substance.

Criminal Code, R.S.C. 1985, c. C-46

Parties to offence

21. (1) Every one is a party to an offence who

discipline militaire visant l’emprisonnement à perpétuité, l’emprisonnement de deux ans ou plus, l’emprisonnement de moins de deux ans et l’amende s’appliquent à l’égard des peines infligées aux termes de l’alinéa (2)a) ou du sous-alinéa (2)b)(i).

Disposition restrictive

(4) Le présent article n’a pas pour effet de porter atteinte aux pouvoirs conférés par d’autres articles du code de discipline militaire en matière de poursuite et de jugement des infractions prévues aux articles 73 à 129.

Loi réglementant certaines drogues et autres substances, L.C. 1996, ch. 19

Définitions

2. (1) Les définitions qui suivent s’appliquent à la présente loi.

[...]

« trafic » Relativement à une substance inscrite à l’une ou l’autre des annexes I à IV, toute opération de vente — y compris la vente d’une autorisation visant son obtention —, d’administration, de don, de cession, de transport, d’expédition ou de livraison portant sur une telle substance — ou toute offre d’effectuer l’une de ces opérations — qui sort du cadre réglementaire.

Trafic de substances

5. (1) Il est interdit de faire le trafic de toute substance inscrite aux annexes I, II, III ou IV ou de toute substance présentée ou tenue pour telle par le trafiquant.

Code criminel, L.R.C. 1985, ch. C-46

Participants à une infraction

21. (1) Participant à une infraction :

...
(b) does or omits to do anything for the purpose of aiding any person to commit it.

[...]
b) quiconque accomplit ou omet d'accomplir quelque chose en vue d'aider quelqu'un à la commettre.

Other sentencing principles

718.2 A court that imposes a sentence shall also take into consideration the following principles:

Principes de détermination de la peine

718.2 Le tribunal détermine la peine à infliger compte tenu également des principes suivants :

...

[...]

(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances;

d) l'obligation, avant d'envisager la privation de liberté, d'examiner la possibilité de sanctions moins contraignantes lorsque les circonstances le justifient;

Court Martial Appeal Court
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Cour d'appel de la cour martiale
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COUR MARTIAL APPEAL COURT OF CANADA

SOLICITORS OF RECORD

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Barnes J. A.

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