Date: 20080115

Docket: CMAC-497

Citation: 2008 CMAC 1

CORAM: **BLANCHARD C.J.**
GOODFELLOW J.A.
ROSCOE J.A.

BETWEEN:

PRIVATE CHADWICK TAYLOR

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Halifax, Nova Scotia, on December 7, 2007

Judgment delivered at Ottawa, Ontario, on January 15, 2008

REASONS FOR JUDGMENT BY: **ROSCOE J.A.**

CONCURRED IN BY: **BLANCHARD C.J.**
GOODFELLOW J.A.

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REASONS FOR JUDGMENT

[1] The appellant, Ex-Private Taylor, appeals the sentence imposed by a Standing Court Martial on January 18, 2007, after he pleaded guilty to one charge of possession of marijuana and one charge of trafficking in cocaine, contrary to the *Controlled Drugs and Substances Act*, ss. 4(1) and 5(1). The sentence imposed by Lieutenant-Colonel Perron, Military Judge, was 40 days imprisonment and a fine of $1,000.

[2] The prosecutor and defence counsel had jointly recommended a sentence of 40 days detention and a fine of $1,000.

[3] On appeal it is submitted that the Military Judge erred by rejecting a reasonable joint recommendation on sentence and in not informing counsel that he was considering rejecting the joint recommendation.

I. Background

[4] The sentencing proceeded on an Agreed Statement of Facts, which stated:

> 1. Pte Taylor is 26 years old. He is scheduled to be released under item 5(f) – for drug related reasons, effective 10 Feb 07. At the time of the offences he was a Canadian Forces member awaiting training at the Post Recruit Education and Training Center at CFB Borden.
>
> 2. Between 1 December 2004 and 24 January 2005, Canadian Forces National Investigation Services - National Drug Enforcement Team Borden, (or CFNIS NDET Borden) became aware that drugs were being circulated throughout the Post Recruit Education Training Center (PRETC) and, in particular, suspected that two Ptes – neither of which was Pte Taylor - were trafficking marijuana and/or cocaine at CFB Borden, Ontario. As a result two NIS Drug detachment investigators were inserted into PRETC as undercover operators. On 30 Mar 05 MCpl Macleod (undercover) attended PRETC as an occupational transfer awaiting training and on 8 Apr 05 MS Holt (undercover)attended PRETC under the same premise. Throughout the course of the investigation, both members befriended several CF members, and purchased either marijuana or cocaine from certain targets in the investigation. Both members also witnessed several other CF members in possession of illicit drugs. On 17 Feb 2005, a seven-page investigation plan listing two Ptes as the main targets in the undercover operation and one target of opportunity. The plan had a risk score of 57, which is low to moderate.
>
> 3. At approximately 16h00 on 5 Apr 2005, MCpl Mcleod was with Pte Taylor outside of MCpl Macleod's room in building A-152 CFB Borden. Pte Taylor asked him if he wanted anything,

> referring to an earlier conversation in which MCpl Macleod had asked Pte Taylor if he could get him some cocaine that evening. Both went into MCpl Macleod's room where he gave Pte Taylor $80. At approximately 17h03, Pte Taylor returned to MCpl Macleod's room and placed a flap of folded paper containing what was held out to be cocaine on the bed beside him. MCpl Macleod took possession of the flap and Pte Taylor left the room. At 22h36 the same day, MCpl Macleod turned the flap over to MCpl Thomas of the NIS at the Days Inn, Barrie, Ontario. A sample from that flap was analysed by Health Canada and returned certified as cocaine. The flap contained approximately 0.8 gram of a mix of cocaine and lidocaine. Attached to the certificate for the above mentioned sample was an analyst report which provided that lidocaine was part of the sample submitted by MCpl Thomas. This was confirmed in a letter from the analyst, Mrs Louis-Jean, dated 8 August 2006, in which she states at paragraph 9 that a quantitative report was not performed on the sample. She indicates that it may be supposed that up to 25 percent of the sample could have been lidocaine that is a non-prohibited substance. The volume seized from Pte Taylor on 5 Apr 05, which was weighed by NIS Investigator Master Corporal Thomas on 6 Apr 06 was 0.8 grams without the paper.
>
> 4. On 19 Apr 05, Pte Taylor was arrested in Toronto, ON. Pte Taylor was on 8-days sick leave at the time of his arrest. At the time of his arrest, he was in possession of 1.7 grams of marihuana. He was interviewed at CFB Borden by MCpl Kennedy on the same day at 16h10 at which point he expressed concern about the consequences of being charged with trafficking in cocaine.

[5] A " Joint Submission of Facts on Sentencing" was entered as an exhibit and read into the record by defence counsel. It was as follows:

> 1. Private Taylor lost his mother at age 12, at a critical time in his childhood development, and his father turned to alcohol after this loss in the family.
>
> 2. On 19 April 05, Pte Taylor was placed on medication because of his mental health.

3. In the summer that followed the offences, Private Taylor was diagnosed with a dependency on cocaine, and other drugs.

4. In the summer of 2005, Pte Taylor's deteriorating mental health was such that Dr. Ewing placed him on weapons restriction.

5. He visited with the Base Addictions Counsellor, Ms. Louise Beard, every week for not less than 15 months, continued to see his psychiatrist Dr. David Ewing, regularly, and made progress to overcome his mental health issues, such that a weapons restriction was lifted.

6. On 15 September 06, the CF recommended -- and Pte Taylor successfully completed -- the Bellwood Health Services program, and his chances for recovery are good, according to Ms. Louise Beard, who was the BAC counsellor at the time, and who has followed Pte Taylor's progress before, during, and after Bellwood.

7. In the fall of 2006, while awaiting trial, Pte Taylor was taken out of PRETC and placed under the direct supervision of CWO Beaulieu. Pte Taylor has since been working at the CFB Borden warehouse under the supervision of MCpl Williams.

8. MCpl Williams has stated that, although Pte Taylor some times has a foul mouth, Pte Taylor is "honest, hard-working, had a good work ethic, and followed directions very well." MCpl Williams has known Pte Taylor for approximately four months and was aware at the time of making his statement of the charges that Pte Taylor is facing.

9. Pte Taylor has no prior convictions, he has no criminal record. Prior to these offences he was a first-time offender. He is also expecting to be a father in June of 2007, the mother being Ms. Laura Brodt.

> 10. Although there is a conduct sheet for Pte Taylor the charges occurred after the offence, when Pte Taylor was trying to re-integrate the CF's.
>
> 11. On 5 October 05 Pte Taylor was photographed & fingerprinted in accordance with the Identification of Criminals Act.

[6] At the sentencing hearing, the prosecutor supported the joint recommendation and indicated to the judge that ..." even if this may seem to be light in view of recent case law, it is the minimum acceptable with regards to the personal circumstances of the accused in this case". The prosecutor then reviewed the principles of sentencing and referred the judge to several cases where members of the military had been sentenced for similar drug offenses. The sentences in those cases ranged from 30 days imprisonment to four months imprisonment. As for the mitigating circumstances of Private Taylor, the prosecutor noted that there was a guilty plea, small quantities of drugs were involved, the cocaine was not pure, Private Taylor would soon be released from the Canadian Forces, there was a delay in bringing the charges to trial and there was no conclusive evidence that Private Taylor made a profit from the transactions.

[7] After the prosecutor's submission, the Military Judge said:

> The only question I have is, all the cases you refer to, they all deal with incarceration, but the sentence is imprisonment. You're asking for detention, your joint submission is on detention. Usually detention incorporates the concept that the individual will come back to the Forces and there is a rehabilitative value to detention, whereas imprisonment doesn't have the same focus. Why are you asking me for detention in this case as opposed to imprisonment?

[8] The prosecutor replied:

> The reason, Your Honour, is because of the fragile state of mind of the accused. And we have information that a prolonged period of imprisonment that would not deal with specific rehabilitation issues would – may be detrimental to his mental health. And that is basically the only – and I'm sure my colleague will address you on that specific point, and I leave that to him to explain. And that is the only reason why we're suggesting detention even though he is not coming back to a military life.

[9] The Military Judge then indicated that he did not appreciate the difference between detention and imprisonment in terms of the effect on Private Taylor's mental health, since it was his understanding that both would be served in the same facility. After further discussion with the prosecutor and defence counsel about the difference between a service prisoner and a service detainee, the Military Judge stated that the case law would support imprisonment for this type of offence. He asked counsel to advise him why the circumstances of Private Taylor indicated he should receive a different sentence. The hearing was adjourned for an hour and a half so that counsel could provide more information to the judge.

[10] After the break the prosecutor provided a case to the judge where the sentence for simple possession of cocaine was a severe reprimand and a fine. He then advised the judge that the main difference between detention and imprisonment is that a detainee is still paid at the rank of Private basic. Another difference he noted was that a detainee receives training which benefits the Forces when the person returns to active service. Defence counsel then provided his remarks on sentencing emphasizing the mitigating circumstances and the lack of aggravating circumstances such as, the fact that the cocaine was not pure and the small amount involved.

II. The Decision Under Appeal

[11] The matter was adjourned to the following day when the Military Judge pronounced the sentence of 40 days imprisonment and the $1,000 fine. The judge indicated that he had regard to the sentencing principles of protection of the public, deterrence and rehabilitation. He also considered sections 718 to 718.2 of the *Criminal Code* and took into account the indirect consequences of the sentence. As for the joint submission the judge stated:

> The Court Martial Appeal Court decision in R. v. L.P., [1998] C.M.A.J. No. 8, CMAC-418, stated clearly that a sentencing judge should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute, or unless the sentence is otherwise not in the public interest. ...

[12] As well, with reference to *R. v. Généreux,* [1982] 1. S.C.R. 259, the judge stated:

> The court must also remember that the ultimate aim of sentencing is the restoration of discipline in the offender and in military society. ...

[13] The judge then reviewed the mitigating circumstances and the seriousness of the offence. He continued:

> I assume that the prosecutor and your defence counsel have taken into account the numerous mitigating and aggravating factors as they have been presented to me in the formulation of their joint submission on sentence. I do not take issue with the period of time of incarceration or with the amount of the fine.
>
> Neither the prosecutor nor your defence counsel has provided me with any evidence convincing me that the punishment of detention is warranted in this case. In his submission the prosecutor alluded to the fact that the treatment afforded someone undergoing a sentence of detention was different from the

> treatment of a sentence of imprisonment. When I asked what was this treatment, neither counsel has provided me with further evidence on this issue. I assume from the evidence presented in mitigation that both counsel are considering the medical needs of the accused during the period of incarceration.
>
> I have reviewed the relevant chapters in Volume I and Volume II, as well as Appendix 1.4 of Volume IV of the Queen's Regulations and Orders for the Canadian Forces. Appendix 1.4 are the regulations for service prisons and detention barracks. I have come to the conclusion that Private Taylor could be sentenced to imprisonment for 40 days instead of detention for 40 days and still receive the same medical treatment while an inmate of the Canadian Forces Service Prisoner Detention Barracks.... the service prisoner shall be segregated from, insofar as practical, the service detainees, I see no other distinction made between service detainees and service prisoners in all the other aspects of life within the Canadian Forces Service Prison and Detention Barracks.

[14] After referring to the principles of parity of sentence and that the purpose of detention is for reintegration into the services, the judge stated that, although the personal circumstances of Private Taylor were unfortunate, he had not been provided with evidence to satisfy him that the less severe punishment of detention was appropriate. He continued:

> The notion of different types of incarceration; that is to say, detention and imprisonment, is a purely military concept that has no equivalent in Canadian criminal law. This distinction exists for the maintenance of discipline. We must ensure that the type of punishment imposed on an offender fits the offence and the offender but also the very nature of the punishment.
>
> I have not been presented with any evidence, nor have I found, in the applicable regulations, any information that would make me conclude that a punishment of imprisonment would cause Private Taylor more hardship than the punishment of detention. To the contrary, I was not presented with the necessary mitigation evidence that

> would cause me to accept a joint submission of the punishment of detention instead of the punishment of imprisonment in the case of trafficking in cocaine. Having reviewed the Court Martial Appeal Court decision in **R. v. L.P.**, I am of the opinion that in the present case the sentence proposed to this Court by the prosecution and by the accused is not in the public interest; this public interest being the interest of the Canadian forces in strongly denouncing the trafficking of serious drugs such as cocaine. [Emphasis added.]

III. Issues on Appeal

[15] The appellant raises the following grounds of appeal:

A. The Military Judge erred by rejecting a reasonable joint submission on sentence;

B. The Military Judge denied the appellant procedural fairness by not informing counsel that he was considering rejecting their joint submission on sentence and giving them the opportunity to make further submissions.

[16] The respondent's position with respect to these grounds is that the Military Judge did err in law by rejecting the joint submission on sentence but that he did comply with procedural fairness requirements prior to rejecting the joint submission.

IV. Analysis

[17] The standard of review in a sentence appeal is as set out by Létourneau, J.A., in *R. v. Lui*, 2005 CMAC 3:

> 14 As for the standard of review applicable to appeals against the severity of sentences, this Court restated it in the following terms in the case of Dixon v. Her Majesty the Queen, [2005] C.M.A.J. No. 2, CMAC-477, February 8, 2005. At paragraph 18, it wrote, subject to any express provision of the Act:
>
> > This Court in R. v. St-Jean, [2000] C.M.A.J. No. 2, and more recently in R. v. Forsyth, [2003] C.M.A.J. No. 9, reasserted the principle enunciated by Lamer C.J. in R. v. M. (C.A.), [1996] 1 S.C.R. 500 that a court of appeal should only intervene if the sentence is illegal or demonstrably unfit. At page 565, the learned Chief Justice wrote:
> >
> > > Put simply, absent an error in principle, failure to consider a relevant factor, or an over-emphasis of the appropriate factors, a court of appeal should only intervene to vary a sentence imposed at trial if the sentence is demonstrably unfit.

[18] With respect to the standard of review in the context of a joint submission, I agree with the statement in *R. v. Fuller*, 2007 BCCA 353:

> [14] The standard of review to be applied by an appellate court on sentence appeals is summarized by Chief Justice Lamer (as he then was) speaking for the court in **R. v. M.(C.A.)**, [1996] 1 S.C.R. 500, at para. 90, as follows:
>
> > Put simply, absent an error in principle, failure to consider a relevant factor, or an overemphasis of the appropriate factors, a court of appeal should only intervene to vary a sentence imposed at trial if the sentence is demonstrably unfit. ...
>
> [15] In applying the standard of review in this case, the Court must take into account the joint submission, the sentencing judge's reasons for departing from the joint submission, and the manner in which that was done.
>
> . . .

> [17] In considering whether the sentencing judge erred in principle as alleged, it is important to start from the proposition that a sentencing judge is the ultimate arbiter of a fit sentence and is not bound to give effect to a joint submission. It is also important to note, however, that where counsel have made a joint submission resulting from a plea bargain, sentencing judges are required to view those submissions with considerable deference. (See, for example, **R. v. Bezdan** (2001), 154 B.C.A.C. 122 at paras. 14-15, and **R. v. T.M.N.** (2002), 172 B.C.A.C. 183, at paras. 13-14).)

[19] Although the appellant advances two grounds of appeal, they are so closely related it is preferable to characterize the issue as whether the Military Judge erred in law in not giving effect to the joint recommendation.

[20] The Military Judge did inquire as to why Private Taylor's circumstances would warrant a sentence different than that supported by the case law and adjourned the hearing for an hour and a half so that counsel could provide further information regarding his concerns. He failed, however, to expressly inform counsel that he was considering departing from the proposed sentence and provide them the opportunity to make further submissions on the joint submission. As noted by Cromwell, J.A. in *R. v. MacIvor,* 2003 NSCA 60, [2003] N.S.J. No. 188, ¶ 31 *et seq*. most Canadian appellate courts have stressed that a joint submission should not be departed from without sound reasons. The obligation was described by Justice Cromwell in the following passage:

> [32] Even where the proposed sentence may appear to the judge to be outside an acceptable range, the judge ought to give it serious consideration, bearing in mind that even with all appropriate disclosure to the Court, there are practical constraints on disclosure

> of important and legitimate factors which may have influenced the joint recommendation.
>
> [33] The tendency in most courts of appeal in recent years has been to emphasize the weight that should generally be given to joint recommendations following a plea agreement. Some courts have gone so far as to adopt the principle that a joint submission should only be rejected if accepting it would be contrary to the public interest and otherwise bring the administration of justice into disrepute: *R. v. Dewald* (2001), 156 C.C.C. (3d) 405 (Ont. C.A.); *R. v. Cerasuolo* (2001), 151 C.C.C. (3d) 445 (Ont. C.A.); *R. v. Dorsey* (1999), 123 O.A.C. 342 (C.A.); *R. v. T.M.N.* (2002), 172 B.C.A.C. 183 (C.A.); *R. v. Hatt* (2002), 163 C.C.C. (3d) 552 (P.E.I.S.C.A.D.) at paras. 15 & 18. Many of the relevant authorities were reviewed by Fish, J.A., writing for the Court, in *R. v. Verdi-Douglas* (2002), 162 C.C.C. (3d) 37 (Que. C.A.):
>
> > [42] Canadian appellate courts have expressed in different ways the standard for determining when trial judges may properly reject joint submissions on sentence accompanied by negotiated admissions of guilt.
> >
> > [43] Whatever the language used, the standard is meant to be an exacting one. Appellate courts, increasingly in recent years, have stated time and again that trial judges should not reject jointly proposed sentences unless they are "unreasonable", "contrary to the public interest", "unfit", or "would bring the administration of justice into disrepute". . . .

[21] In *R. v. Sinclair*, [2004] M.J. No. 144;185 C.C.C. (3d) 569 (C.A.), Steel, J.A. outlined the acceptable procedure when a sentencing judge is presented with a joint recommendation:

> [17] Thus, the law with respect to joint submissions may be summarized as follows:
>
> (1) While the discretion ultimately lies with the court, the proposed sentence should be given very serious consideration.

> (2) The sentencing judge should depart from the joint submission only when there are cogent reasons for doing so. Cogent reasons may include, among others, where the sentence is unfit, unreasonable, would bring the administration of justice into disrepute or be contrary to the public interest.
>
> (3) In determining whether cogent reasons exist (*i.e.*, in weighing the adequacy of the proposed joint submission), the sentencing judge must take into account all the circumstances underlying the joint submission. Where the case falls on the continuum among plea bargain, evidentiary considerations, systemic pressures and joint submissions will affect, perhaps significantly, the weight given the joint submission by the sentencing judge.
>
> (4) The sentencing judge should inform counsel during the sentencing hearing if the court is considering departing from the proposed sentence in order to allow counsel to make submissions justifying the proposal.
>
> (5) The sentencing judge must then provide clear and cogent reasons for departing from the joint submission. Reasons for departing from the proposed sentence must be more than an opinion on the part of the sentencing judge that the sentence would not be enough. The fact that the crime committed could reasonably attract a greater sentence is not alone reason for departing from the proposed sentence. The proposed sentence must meet the standard described in para. 2, considering all of the principles of sentencing, such as deterrence, denunciation, aggravating and mitigating factors, and the like. [Emphasis added.]

[22] In this case it is clear that the Military Judge omitted the fourth step. While he expressed concerns about the proposed sentence, he erred by failing to inform counsel that he was considering departing from the joint submission and providing them the opportunity to justify the proposal. The error, however, as my reasons below will show, is of no consequence to the result in the circumstances.

[23] In *R. v. G. P*, 2004 NSCA 154, the Nova Scotia Court of Appeal dealt with an appeal where the sentencing judge did not accept the joint submission for sentence on charges of sexual exploitation and making child pornography. Bateman, J.A. stated:

> [18] Maintaining the position taken at the sentencing hearing, Crown counsel does not assert on this appeal that the jointly recommended sentence is outside the range. In reviewing the extensive case law provided by Crown counsel on this appeal, we are persuaded, and counsel appear to accept, that the jointly recommended sentence, on the record before the trial judge, appeared to be, if not below an acceptable range, at the very low end of the range. Much would turn upon the application of the totality principle.
>
> [19] In either event, before rejecting the joint recommendation the judge should have advised counsel that he was considering departing from the agreed sentence and afforded them an opportunity to make submissions justifying their proposal (*R. v. Sinclair*, *supra*). There being acknowledged error, it falls to this Court under s. 687 of the *Criminal Code*, to consider the fitness of the sentence appealed against and either vary the sentence or dismiss the appeal.
>
> [20] At the hearing of this appeal we provided counsel with an opportunity to advise us of those factors which would support the joint submission. Neither appellate counsel had appeared at the sentencing, but each consulted with his/her colleague who had appeared in the court below. They advise that there are important and legitimate considerations which influenced this joint recommendation (*R. v. McIvor*, *supra*, at para. 32). These include, Mr. G.P.'s early indication of an intent to enter a guilty plea to spare the witnesses the stress of testifying, thus the avoidance of a preliminary inquiry as well as the trial; the length and complexity of any trial given the computer and technical aspects of the evidence; and, most importantly, the reluctance to testify on the part of a number of Crown witnesses. It is regrettable that this important information was not volunteered by counsel to the sentencing judge. Counsel presenting a joint submission should

> come to the hearing prepared to address all relevant issues supporting the sentence.
>
> [21] In the light of this additional material background, particularly the potential for problems of proof at trial, I am not persuaded that the sentence as proposed is contrary to the public interest or would bring the administration of justice into disrepute.

[24] In a similar manner, at the hearing of this appeal counsel were each asked what they would have told the Military Judge if he had advised them that he was considering departing from the agreed sentence and asked them to justify their recommendation. Neither was able to advise the panel of any additional facts which would justify the lenient proposal, beyond those cited to the trial judge. There was no suggestion, for example, that the Crown was concerned about being able to prove beyond a reasonable doubt that the substance sold by Private Taylor included cocaine, or that there was some risk of a successful defence of entrapment, or that there was any other potential weakness in the Crown's case. The Military Judge had given counsel the opportunity to investigate whether there was a difference between mental health programs in detention and imprisonment and they were unable to clarify that there was any difference. Both at trial and on appeal the emphasis by counsel was that in detention Private Taylor would continue to be paid his salary and the Crown indicates that had they known the judge was going to impose imprisonment, they would not have sought a fine in addition.

[25] In my view, the error in this case, that of not advising counsel that he was considering not accepting the joint recommendation and providing an opportunity to justify the proposal, was a harmless error in the circumstances, because had the error not been made, the result would likely

have been the same. There was no other important information to impart to the sentencing judge such as that provided to the court in *R. v. G.P.* to support and justify the unusually lenient sentence.

[26] As indicated above, in *Sinclair*, a sentencing judge is not required to accept a joint recommendation. The discretion to impose a fit sentence ultimately lies with the judge. In this case, the Military Judge did give the proposed sentence serious consideration but decided to depart from it because he found it was contrary to the public interest and the interest of the Canadian Forces since it did not strongly denounce the trafficking of cocaine. In fact counsel were unable to provide the judge with any previous case where trafficking in cocaine did not result in a sentence of imprisonment. It is also apparent from his discussion with counsel that the Military Judge did not see a sentence of detention in this case as being consistent with the military objectives associated with this kind of sentence, i.e. rehabilitation for the purpose of re-integration in the military, since the Appellant was to be released from the Canadian Forces (CF).

[27] In my view the sentence under appeal is not demonstrably unfit. The statement by the Military Judge in his decision 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" deserves the deference of this court. This opinion is consistent with previous authority of this court. In *R. v. Dominie*, 2002 CMAC 8, where Ewaschuk, J.A. wrote:

> Trafficking in crack cocaine on numerous occasions, even though it is non-commercial in nature, generally requires the imposition of actual imprisonment even for civilian offenders. In respect of

> military offenders, general deterrence requires that the military know that they will be imprisoned if they deal in crack cocaine on military bases. Suspended sentence simply is not available, except in the rare case of extremely mitigating circumstances. This is not one of those rare cases. [Emphasis added.]

[28] Notwithstanding the error noted above, the Military Judge applied the appropriate principles of sentencing and, after careful consideration of the circumstances of the offences and the offender, determined that imprisonment and fine was the appropriate sentence. In my opinion, he did not ignore or overemphasize any factors, and the sentence imposed was not demonstrably unfit. The appeal should therefore be dismissed.

"Elizabeth A. Roscoe"
J.A.

"I agree
Walter R.E. Goodfellow J.A."

"I agree
Edmond P. Blanchard C.J."

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	CMAC-497
STYLE OF CAUSE:	PRIVATE CHADWICK TAYLOR v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Halifax, Nova Scotia
DATE OF HEARING:	December 7, 20907
REASONS FOR JUDGMENT: Concurred by:	The Hon. Madam Justice Roscoe The Hon. Chief Justice The Hon. Mr. Justice Goodfellow
DATED:	January 15, 2008

APPEARANCES:

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Major Marylène Trudel Directorate of Military Prosecutions	FOR THE RESPONDENT

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