



## COURT MARTIAL

**Citation:** *R. v. Scott*, 2015 CM 1005

**Date:** 20150520

**Docket:** 201405

Standing Court Martial

Canadian Forces Base Kingston  
Kingston, Ontario, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Officer Cadet J.C. Scott, Offender**

**Before:** Colonel M. Dutil, C.M.J.

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**Restriction on publication:** By court order made under section 179 of the *National Defence Act* and section 486.4 of the *Criminal Code*, information that could disclose the identity of the person described in this judgement as the complainant shall not be published in any document or broadcast or transmitted in any way.

### REASONS FOR SENTENCE

(Orally)

[1] Officer Cadet Scott has pleaded guilty to one count of assault under section 266 of the *Criminal Code*, an offence punishable under section 130 of the *National Defence Act*, and two counts of conduct to the prejudice of good order and discipline under section 129 of the *National Defence Act*. Counsel for the prosecution and defence have made a joint submission on sentence. They recommend that Officer Cadet Scott be sentenced to a severe reprimand and a fine in the amount of \$2,000 payable in \$200 equal monthly instalments. Although the court is not bound by this joint submission, it can only reject it if the recommendation is contrary to public interest and the sentence would bring the administration of justice into disrepute.

[2] The facts surrounding the commission of the offence are found in the statement of circumstances and they are straightforward. They were filed as Exhibit 6. I will read the key parts of that statement of circumstances for the record:

At all material times, Officer Cadet Scott was a member of the Regular Force, Canadian Forces and posted as a student to the Royal Military College of Canada (RMC) in Kingston.

The complainant was also a member of the Regular Force and was posted as a student to RMC.

On 14 March 2013, Officer Cadet Scott was at the Yeo Hall Officer Cadet's drinking mess. The complainant and a female friend also attended. The complainant and her friend were attempting to avoid and keep their distance from Officer Cadet Scott.

Notwithstanding their best efforts, Officer Cadet Scott was able to sit next to the complainant. This caused her obvious discomfort. Officer Cadet Scott was attempting to wrap his arm around the complainant. He touched her hair as well as her back.

When the complainant went to the bar to purchase a drink he placed some paper currencies into the complainant's shirt. The complainant retrieved the bills and threw the money at Officer Cadet Scott telling him to "fuck off." Officer Cadet Scott retrieved the money and repeated his action with the same response by the complainant. On one of these two exchanges Officer Cadet Scott grazed the complainant's breast.

On 15 March 2013, Officer Cadet Scott arrived uninvited at the complainant's room in the quarters at RMC. The complainant was alone in her room playing a video game on her laptop. Officer Cadet Scott lay down on the complainant's bed. During this time he made sexually suggestive comments to the complainant.

These comments included:

- (a) asking if she wanted to engage in a "three-way" with an unspecified third party;
- (b) whether he could "cum" underneath her;

- (c) whether or not she wanted to have a one-night stand with him; and
- (d) whether or not she wanted to do a "quickie" with him.

On this occasion Officer Cadet Scott touched, without her consent, various parts of the complainant's upper body including her hair and arms.

These actions alarmed the complainant who moved to her door to leave. Officer Cadet Scott, likewise, moved to the door and tried to convince the complainant to stay in the room. The complainant shoved Officer Cadet Scott away from her door and escaped to a fellow female officer cadet's room.

[3] The court martial should guide itself with the appropriate sentencing purposes, principles and objectives, including those enunciated in sections 718.1 and 718.2 of the *Criminal Code*. The fundamental purpose of sentencing at a court martial is to contribute to the respect of the law and the maintenance of military discipline by imposing punishments that meet one or more of the following objectives:

- (a) the protection of the public, including the Canadian Forces and its members;
- (b) the denunciation of the unlawful conduct;
- (c) the deterrent effect of the punishment, not only on the offender but also upon others who might be tempted to commit such offences; and
- (d) the reformation and rehabilitation of the offender.

[4] The sentence must also take into consideration the following principles:

- (a) it must be commensurate with the gravity of the offence, the previous character of the offender and his or her degree of responsibility;
- (b) the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (c) the court must also respect the principle that an offender should not be deprived of liberty if less restrictive punishments may be appropriate in the circumstances; and

- (d) the sentence should or will be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or to the offender. However, the court must act with restraint in determining sentence in imposing such punishment or punishments that constitute the minimum necessary intervention to maintain discipline.

[5] The court finds to be aggravating the fact that the offences took place at the Royal Military College where young officer cadets of both genders spend a very significant part of their early adult years and learning the ethics and values of the Canadian Forces, including the importance of trust and respect. Officer cadets residing at the Royal Military College in Kingston should feel safe and respected at all times in their home, even more so than any other university campus in the country. It shall not be forgotten that the Royal Military College has a crucial and vital role in developing the future leaders of the Canadian Armed Forces.

[6] The mitigating circumstances are the following:

- (a) The guilty plea of the offender at the earliest opportunity. In the circumstances of this case, I accept that they are truly indicative of remorse and full acceptance of his responsibility.
- (b) I have also considered as a mitigating factor in this case the delay in bringing this matter to trial, which relates to systemic issues. They include changes in counsel for both prosecution and defence and also the appointment of a replacement judge to try this case.
- (c) The third element that I consider to be mitigating is the post offence conduct of the offender. In the last 18 months, Officer Cadet Scott completed successfully a period of counselling and probation in relation to these events. Of course, he has used the passage of time to demonstrate his good conduct and the court takes that into serious consideration.
- (d) I have also considered the impact of these proceedings on the offender's personal health. It is agreed that, as a result of the disciplinary proceedings, he has suffered depression. That is not to say that it diminishes his responsibility for his conduct, but it highlights the sincerity of his remorse in pleading guilty today.
- (e) The court also considers to be mitigating the absence of any previous disciplinary or criminal record for this offender as well as his young age; namely, 21 years old; and
- (f) Finally, the court considers to be mitigating the financial situation of the offender with regard to his ability to pay a significant fine.

[7] The court agrees with counsel that the proposed sentence is the minimal sentence in the circumstances and it is so not off the mark that its adoption by this court martial would be contrary to the public interest or bring the administration of military justice into disrepute. The proposed sentence is sufficient to meet the objectives sought; namely, general deterrence, specific deterrence, punishment and denunciation of the conduct. I find also that the sentence would not impair the importance of rehabilitation for a young adult who had no prior disciplinary or criminal issue prior to these incidents.

**FOR THESE REASONS, THE COURT:**

[8] **FINDS** you guilty of the first charge of the included offence of assault contrary to section 266 of the *Criminal Code* and punishable under section 130 of the *National Defence Act*; and guilty of the second and third charges for conduct to the prejudice of good order and discipline under section 129 of the *National Defence Act*.

[9] **SENTENCES** you to a severe reprimand and a fine in the amount of \$2,000 payable in 10 equal monthly instalments of \$200 starting on 31 May 2015.

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The Director of Military Prosecutions as represented by Major E. Carrier

Lieutenant-Commander P. Desbiens, Defence Counsel Services, Counsel for Officer Cadet Scott