



COURT MARTIAL

Citation: *R. v. Klassen*, 2015 CM 1008

Date: 20150608

Docket: 201452

Standing Court Martial

Royal Westminster Regiment
New Westminster, British Columbia, Canada

Between:

Her Majesty the Queen

- and -

Officer Cadet D.M. Klassen, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Officer Cadet Klassen has pleaded guilty to one count of conduct to the prejudice of good order and discipline, contrary to section 129 of the *National Defence Act*. This offence relates to his conduct while on a basic military occupation training course where he lied to course staff and support personnel by falsely claiming the need to cease training and attend a funeral.

[2] The prosecution and defence have made a joint submission on sentence where they recommended that Officer Cadet Klassen be sentenced to a severe reprimand and a fine in the amount of \$1200, payable in six equal monthly instalments of \$200. Although the court is not bound by this joint submission, it can only reject it if the recommendation is contrary to the public interest and the sentence would bring the administration of justice into disrepute. After a review of the case law, this case falls within the range as submitted by counsel and, therefore, I cannot reject it.

[3] The Statement of Circumstances surrounding the commission of the offence states the following:

At all material times, Officer Cadet Klassen was a member of the Reserve Force of the Canadian Armed Forces and a member of the Royal New Westminster Regiment. During the time of the events giving rise to this charge, Officer Cadet Klassen was on Class B Reserve Service attached to 3rd Canadian Division Training Centre as a candidate on the Basic Military Officer Qualification – Land Course. Successful completion of that course is required before an Army Reserve officer cadet can be considered for commissioning as a second lieutenant. The course was conducted at Garrison Edmonton.

Officer Cadet Klassen arrived at the 3rd Canadian Division Training Centre Edmonton Detachment on 20 July 2014 to commence Mod 3 of the Basic Military Officer Qualification Course.

On 22 July 2014, Officer Cadet Klassen informed his course officer, Second Lieutenant Kruk, and his Course Warrant Officer, Warrant Officer Parsons, that he needed to speak to a chaplain. That meeting was facilitated by the course staff. After meeting with the chaplain on 23 July 2014, Officer Cadet Klassen informed the course staff that his friend had died and he needed some time away from training to attend the funeral. The chaplain had informed Officer Cadet Klassen that he was not entitled to compassionate leave to attend the funeral of a friend, but that the chaplains would assist him if he could gain the permission of the course staff to leave the course for the purpose of the funeral. At no time did Officer Cadet Klassen request compassionate leave. The next day, Officer Cadet Klassen collapsed while conducting section attack drills and was taken to the Sturgeon General Hospital by course staff. He was kept in the hospital overnight and assessed by military medical personnel the next day. He was then given a medical chit for five days sick leave. The course staff was concerned that Officer Cadet Klassen would fail the course and devised a plan to permit him to go to the funeral and his training would be adjusted by means of the course staff putting in extra hours to provide individual attention to assist Officer Cadet Klassen in meeting the course standards.

Meanwhile, two chaplains were attempting to verify the funeral details based on information provided to them by Officer Cadet Klassen. The chaplains contacted the person who Officer Cadet Klassen had said was the minister to officiate at the funeral. It came to light that that person was not a member of any clergy and was, in fact, a friend of Officer Cadet Klassen and was lying to the CF Chaplains at the request of Officer Cadet Klassen.

Warrant Officer Parsons questioned Officer Cadet Klassen, who stated that it was a coincidence that he had a friend with the same name as the person he identified to the chaplains as being the minister. When pressed, Officer Cadet Klassen admitted to Warrant Officer Parsons that he had lied to the course staff

and two CF Chaplains about the death of a friend, the funeral arrangements and the identity of the minister. He admitted that he concocted the story in order to be removed from the course for compassionate reasons rather than as a training failure.

The summer of 2014 was Officer Cadet Klassen's third attempt at completing the course. In the summer of 2012, he was returned to his unit after completing four weeks of the ten week course. He had reported that his mother was ill and was granted a compassionate Returned to Unit (RTU) on that representation. In the summer of 2013, he was RTU for failing performance objectives and for ethical lapses. In 2014, he failed the course and was returned to his unit. His course report contained the recommendation that he be released from the Canadian Armed Forces due to failing to qualify at the basic level for three years and for failing to meet the ethical standard required of an Army officer.

[4] The fundamental purpose of sentencing at courts martial is to contribute to the maintenance of military discipline and the respect of the law by imposing punishments that meet one or more of the following objectives:

- (a) the protection of the public, including the Canadian Forces;
- (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.

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

- (a) 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; and
- (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. Of course, this case is not concerned with that principle in these circumstances; however, the court must act with restraint in determining its sentence and imposing punishment or punishments that constitute the minimum necessary intervention to maintain discipline. As mentioned by counsel for the defence, this case sits at the lower end of the spectrum for similar offences.

[6] I agree with the prosecution that the predominant objectives of sentencing here are denunciation of the conduct and general deterrence. Officers must abide by the core values of trust and integrity. These types of conduct clearly undermine these basic values, and this applies to officer cadets as well.

[7] In this case, I would consider aggravating the pattern of conduct that led to the charge, that means the repetition and the premeditation of the conduct, and I think that is the main aggravating factor in this case.

[8] There are some mitigating circumstances:

- (a) the plea of guilty by the offender at the first opportunity. As the prosecution stated, it saves the court from a long hearing, calling various witnesses who may be scattered across the country, and, of course, it saves a lot of financial resources to the court with having the accused pleading guilty this morning. So this is the most significant factor. I accept it as a true indication of remorse, but also as a full acceptance of responsibility;
- (b) the inexperience of the offender. Of course, he should have known better, but he was still a relatively inexperienced officer as an officer cadet; and
- (c) the absence of any service or criminal record.

[9] The court accepts that the proposed sentence is the minimal sentence in the circumstances to achieve general deterrence and denunciation of the conduct. It is also the minimal sentence that would achieve the maintenance of military discipline. It is not contrary to public interest and it would not bring the administration of military justice into disrepute. Therefore, I will accept the joint submission.

FOR THESE REASONS, THE COURT:

[10] **FINDS** you guilty of the second charge for conduct to the prejudice of good order and discipline under section 129 of the *National Defence Act*.

[11] **DIRECTS** a stay of proceedings for the first charge under section 117(f) of the *National Defence Act* for an act of a fraudulent nature not particularly specified in sections 73 to 128 of the *National Defence Act*.

[12] **SENTENCES** you to a severe reprimand and a fine in the amount of \$1200, payable in six monthly instalments of \$200, beginning 15 June 2015. Should you be released from the Canadian Forces prior to the full payment of the fine, the remainder shall be paid in its entirety on the date of your release.

Counsel:

The Director of Military Prosecutions as represented by Major R.J. Rooney

Major S.L. Collins, Defence Counsel Services, Counsel for Officer Cadet D.M. Klassen