



## COURT MARTIAL

**Citation:** *R. v. Bernier*, 2015 CM 3015

**Date:** 20151014

**Docket:** 201558

Standing Court Martial

2nd Canadian Division Support Base Valcartier  
Valcartier, Québec, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Lieutenant-Colonel M.C. Bernier, Offender**

**Before:** Lieutenant-Colonel L.-V. d'Auteuil, M.J.

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**Restriction on publication by a 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Code*, information that could disclose the identity of the persons described in this judgment as the complainants shall not be published in any document or broadcast or transmitted in any way.**

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[OFFICIAL ENGLISH TRANSLATION]

### **REASONS FOR SENTENCE**

(Orally)

[1] Lieutenant-Colonel Bernier, having accepted and recorded your plea of guilty with respect to the second and fourth charges on the charge sheet, the Court now hereby finds you guilty of these two offences. As for the first and third charges to which you have pleaded not guilty, given that they are alternate charges to the two other charges, the Court orders a stay of proceedings.

[2] It is now my duty as the military judge presiding at this Court Martial to determine the punishment to be imposed on Lieutenant-Colonel Bernier.

[3] The military justice system constitutes the ultimate means to enforce discipline which is a fundamental element of the military activity in the Canadian Forces. The purpose of this system is to prevent misconduct or in a more positive way, promote good conduct. It is through discipline that an armed force ensures that its members will accomplish successful missions, in a trusting and reliable manner. The military justice system also ensures that public order is maintained and that those subject to the Code of Service Discipline are punished in the same way as any other person living in Canada.

[4] In *R. v. Généreux*, [1992] 1 SCR 259, at page 293, the Supreme Court of Canada stated as follows:

To maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently.

[5] It is important to note that the law does not allow a military court to impose a sentence that would be beyond what is required in the circumstances of the case. In other words, any punishment imposed by the Court must be individualized and constitute the minimum necessary intervention since moderation is the bedrock principle of the modern theory of sentencing in Canada.

[6] The prosecutor suggested to this Court to sentence the offender to a reduction in rank. The defence counsel, on the other hand, suggested that justice would be served by imposing a punishment consisting of a reprimand and a fine of \$2,000.

[7] The fundamental purpose of sentencing in a court martial is to ensure respect for the law and maintenance of discipline by imposing sanctions that have one or more of the following objectives:

- (a) to protect the public, which includes the Canadian Forces;
- (b) to denounce unlawful conduct;
- (c) to deter the offender and other persons from committing the same offences;
- (d) to separate offenders from the society where necessary;
- (e) to rehabilitate and reform offenders.

[8] When imposing a sentence, a military court must also take into consideration the following principles:

- (a) the proportionality to the gravity of the offence;

- (b) the degree of responsibility and previous character of the offender;
- (c) parity in sentencing, namely, a sentence should be similar to punishments imposed on similar offenders for similar offences committed in similar circumstances;
- (d) an offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances. In short, the Court should impose a punishment of imprisonment or detention only as a last resort, as was established by the Court Martial Appeal Court and the Supreme Court of Canada;
- (e) lastly, any punishment should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[9] I find that in the particular circumstances of this case, the punishment should focus on the objectives of denunciation and general deterrence. It should be noted that general deterrence should deter not only the offender but also any other Forces member who might be tempted to commit similar or comparable offences.

[10] Lieutenant-Colonel Bernier enrolled in the Canadian Forces in 1988. This officer in the armoured component was deployed during the Oka Crisis, to Cyprus and four times to Bosnia. He received a bachelor's degree in Business Administration in 2008, followed by a master in Defence Studies from the Royal Military College of Canada in 2009. In 2012, he was deployed again to Kabul, Afghanistan. In July 2013, he was given command of the 2nd Canadian Division Training Centre. He is married and has four children.

[11] The facts of this case unfolded during the night of 18 to 19 October 2014, at an evening event commemorating the 100th anniversary of le Royal 22<sup>e</sup> Régiment. This event was held at the Québec Convention Centre, located at 1000 René-Lévesque Boulevard East, in Québec City, in the Province of Québec. The guests were in civilian attire. At that time, Lieutenant-Colonel Bernier commanded the 2nd Canadian Division Training Centre.

[12] The complainants were also members of the Regular Force of the Canadian Forces, one as an officer and the other as a non-commissioned member. They were both employees at the 2nd Canadian Division Training Centre at the time and Lieutenant-Colonel Bernier was aware of this.

[13] The two complainants are friends. They came to the event with their respective spouses, who are also Canadian Forces members. That evening, after the dinner, the complainant who is an officer ran into Lieutenant-Colonel Bernier and asked him if he was having a good evening. She then told him about her desire to remain at the 2nd Canadian Division Training Centre, if any positions happened to be available.

[14] Around midnight, the two complainants and one of their spouses were together on the dance floor. Lieutenant-Colonel Bernier came to join them. He danced with the one who was an officer by taking her by the hand and twirling her around. She felt a bit uncomfortable, but thanked Lieutenant-Colonel Bernier by telling him that was enough for her.

[15] Lieutenant-Colonel Bernier also danced with the other complainant by twirling her around in the same manner. He held her by the hand and touched her waist. She found Lieutenant-Colonel Bernier to be a bit forward, “handsy”, and this made her uncomfortable.

[16] Shortly thereafter, the spouse of the second complainant took the complainants by the shoulders while Lieutenant-Colonel Bernier held them around their waists. One was on Lieutenant-Colonel Bernier’s left and the other was on his right. The four guests then continued to dance together.

[17] The non-commissioned member complainant related that Lieutenant-Colonel Bernier did not leave his hand around her waist and rather “grabbed [her] buttock, hard”. He touched her left buttock with the palm of his left hand and she stated that this was no accident or a case of someone bumping into someone else. Lieutenant-Colonel Bernier said nothing when he did this. The complainant froze and she felt sick because she had just had her “buttocks grabbed” by her commanding officer, in the presence of her spouse, who had not seen anything.

[18] While all four of them were dancing together, the other complainant also felt Lieutenant-Colonel Bernier touch her left buttock. She stepped back and thought that he might have bumped into her accidentally while dancing. Less than two minutes later Lieutenant-Colonel Bernier touched her left buttock again. This time, she knew it was no mistake because Lieutenant-Colonel Bernier’s had made a downward motion and had grabbed the bottom part of her buttock. She stepped back again and wondered what to do.

[19] The complainant therefore walked away from the offender. A little later, she was joined by the other complainant, her friend. The two of them had a discussion and each told the other that she had just been touched on the buttocks by Lieutenant-Colonel Bernier. They reported what had happened to their respective spouses. Later, they also had a discussion with Captain Roy, who had organized the evening.

[20] The spouse of one of the complainants approached Lieutenant-Colonel Bernier and told him that he was in the same unit, that his conduct towards his spouse was unacceptable and that this would not be the last of it. Lieutenant-Colonel Bernier denied having done anything.

[21] Two days later, one of the complainants met with her superior officer to talk to him about what had happened so that it would never happen again. A meeting was held with Lieutenant-Colonel Bernier who apologized for his unacceptable behaviour.

[22] At the end of that same day, Lieutenant-Colonel Bernier was finally able to speak with his superior, Brigadier-General Lafaut, to inform him of what was going on, the steps taken and the proposed measures to allow him to continue exercising his command. His superior told him to stay out of it while an investigation was launched to shed light on the situation.

[23] An informal unit investigation was launched, followed by a formal investigation by the National Investigation Service. During that time, Lieutenant-Colonel Bernier was relieved of command because of a loss of confidence in his ability to command the unit and he was assigned to another position in Ottawa which he still holds.

[24] Charges were preferred in March 2015 and the Court Martial was convened on 22 September 2015 and began on 8 October 2015.

[25] In arriving at what it considers to be a fit and just punishment, the Court considered the aggravating and mitigating factors that emerged from the facts presented before this Court through various documents and testimony.

[26] The Court finds the following to be aggravating factors:

- (a) First, the objective gravity of the offences. You have been found guilty of two service offences under section 129 of the *National Defence Act* which is punishable by a maximum punishment of dismissal with disgrace from Her Majesty's service or less punishment.
- (b) The Court also takes into account the subjective seriousness of the offences and the Court considered four factors:
  - i. First, there is respect. You violated one of the principles and conducts expected of all military members, that is, treating every person respectfully and fairly and ensuring a workplace free of harassment. Respect for an individual's integrity and dignity is another fundamental value that is recognized in our constitution. As a commanding officer, military colleague and citizen, you momentarily failed to uphold this principle.
  - ii. Second, command. You have been given the privilege and authority for the direction, coordination and control of other military members of a unit in the Canadian Forces. Because of your position, your rank and above all experience, expectations were very high in your regard. Although a month before the incident that brought you before this Court, you had reminded all

the members of your unit, in writing, of all the applicable policies, including the one on sexual harassment, you yourself violated that same policy in an instant. It was incumbent on you to show good judgement and moderation in your consumption of alcohol that evening, and despite your position and experience, you did not do so, which led you to make a second error, much more serious at that time.

- iii. Third, abuse of power. Nothing in the evidence suggests that it was because of your position that you decided to break the rules in committing the offences. However, you were well aware that there was a hierarchal relationship between you and the victims and paid it no heed. A superior who acts this way towards his or her subordinates simply knows nothing of the respect and esteem that must exist between two persons of different ranks.
- iv. Lastly, the consequences of your actions for the victims. Because of the context, the actions you took belittled, humiliated and embarrassed the two young women who were subjected to your behaviour. What is more, their work environment became an uncomfortable place. Let us say that they are now living somewhat in uncertainty and that they have concerns about both their future and their work environment, which they could well do without, all because of your actions.

[27] There are also mitigating factors that I have taken into account:

- (a) There is your guilty plea. Your guilty plea here is, in the Court's view, a clear, genuine sign of remorse testifying to your sincere desire to remain a valued asset to the Canadian Forces and to the Canadian society. This also shows the Court that you take full responsibility for your actions in the circumstances, and the Court takes this into account, particularly since you have acknowledged your wrongdoings and expressed your regrets and apologized more than once since the incident.
- (b) There is also the publicity that this case has received. The hearing into these charges was announced in advance, it was public and held in the presence of some of your peers and superiors and of certain media outlets. The opprobrium that results from such a situation is to a certain extent in keeping with the principle of general deterrence adopted by this Court.
- (c) Your work performance and military career. You have clearly demonstrated an exceptional level of performance and your personal knowledge and skills make you someone who could continue making a significant contribution to the success of various missions in the

Canadian Forces. Your intelligence and your talents as a negotiator have already been put to good use, and it appears that everyone is satisfied with your behaviour and is still able to trust you.

- (d) The fact that this was an isolated incident and not representative of who you are. Many people testified in this Court or through documents submitted to it regarding how your conduct was not representative of the values that you adhere to and have demonstrated in the past. I believe that there is sufficient evidence to support such a statement. You are a person who has usually proved himself to be respectful and highly ethical. The incident does not reflect the officer and person that you usually present in the society and it is clear that you had an unusual but significant lapse in judgement.
- (e) I must also consider the fact that you have no criminal record or entry on your conduct sheet showing other offences of the same or a similar nature. However, I must note the entry on your conduct sheet concerning a Chief of the Defence Staff Commendation you were awarded for your professionalism in planning and carrying out various operations.
- (f) Lastly, it must not be forgotten that upon your conviction, you will have a criminal record. This will be noted on your conduct sheet accordingly.

[28] A reduction in rank and a severe reprimand are both punishments that express a loss of confidence in an offender. However, because of the consequences associated with it, a reduction in rank clearly expresses a greater loss of confidence and a much lower expectation that the offender will ever be able to hold a supervisory position again.

[29] In the case at hand, the evidence shows that chances are very slim that Lieutenant-Colonel Bernier will ever have a command position again. However, it is also clear that the chain of command still has confidence in his ability to act as a supervisor despite his serious error in judgement. He immediately acknowledged his wrongdoings in this case and appears to have learned his lesson. He held a position in which he supervised several subordinates and was able to maintain their confidence and that of his superiors in directing other members in duties other than of commanding officer of a unit. In these circumstances, a punishment of reduction in rank would be too severe and disproportionate, in my view, to the gravity of the offence and the responsibility of the offender in this case.

[30] I disagree with the prosecutor that this incident is at the high end of the spectrum in terms of its gravity because of the very nature of the offence. This shocking and totally inappropriate act was very brief and was not repeated. Although it was far from harmless, the fact remains that it is at the low end of the spectrum in terms of its gravity. Rather, it is because of the very high expectations with regard to the offender that the act committed against the two victims appears serious.

[31] Regarding the case law, it appears that objectively, what was submitted by the prosecution does not constitute an offence similar to the one to which the offender pleaded guilty. Sexual assault and conduct to the prejudice of good order and discipline are offences that are very different in nature and that have different maximum penalties. An analysis of the circumstances surrounding the acts committed in the context of one of these offences or the other will clearly lead to different conclusions. Accordingly, the relevance of these decisions is low in the circumstances of this case.

[32] A severe reprimand appears to be an appropriate sentence in the circumstances because it both expresses a loss of confidence in the offender and indicates that there is a chance that he could show that he can again be worthy of trust to a certain extent.

[33] I also believe that this punishment should include a fine, as suggested by the defence counsel, and it seems to me that a fine of \$2,000 would be fair in the circumstances of this case.

[34] A fair and just punishment should recognize the gravity of the offence and the responsibility of the offender in the context of the particular case. In the Court's opinion, a severe reprimand and a fine of \$2,000 is the minimum punishment that is appropriate and that fits the offences.

[35] As for the two victims in this case, it is well worth noting that they did not ask to end up in such a situation. They were courageous in reporting the totally inappropriate acts committed against them. However, the Court remains concerned about the consequences that they could face in their workplace following such a denunciation, fears that they clearly expressed in their respective testimony. Nothing can be done about this in a court martial proceeding but I ask the military environment to think about the action that could be taken in their regard to ensure that nothing will be done in their workplace or with regard to their careers because they had to report such a situation involving their own commanding officer. They made sure that the code of ethics that guides them as Forces members was respected, so it would be important that this respect be shown to them in return.

**FOR THESE REASONS, THE COURT:**

[36] **FINDS** Lieutenant-Colonel Bernier guilty of the second and fourth charges concerning an offence punishable under section 129 of the *National Defence Act* for conduct to the prejudice of good order and discipline.

[37] **ORDERS** a stay of proceedings on the first and third charges.

[38] **SENTENCES** Lieutenant-Colonel Bernier to a severe reprimand and a fine in the amount of \$2,000.

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**Counsel:**

The Director of Military Prosecutions, as represented by Major J.S.P. Doucet

Lieutenant-Commander P.D. Desbiens, Directorate of Defence Counsel Services,  
counsel for Lieutenant-Colonel M.C. Bernier