



## COURT MARTIAL

**Citation:** *R. v. MacDougall*, 2015 CM 1018

**Date:** 20151215

**Docket:** 201564

Standing Court Martial

4th Canadian Division Support Base Petawawa  
Ontario, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Master Corporal M. MacDougall, Offender**

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

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### REASONS FOR SENTENCE

(Orally)

[1] Master Corporal MacDougall has admitted his guilt to one count of drunkenness contrary to section 97 of the *National Defence Act*.

[2] Prosecution and defence have made a joint submission on sentence in the order of a reprimand and a fine in the amount of \$1,250. The defence has asked that the fine be paid in monthly installments of approximately \$300. The prosecution leaves the issue of term of payments with the court. 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.

[3] The particulars of the charge read as follows:

In that he, on or about 28 February 2015, while attending the 1st Battalion, The Royal Canadian Regiment (1RCR) Paardeberg Ball, at Garrison Petawawa, Petawawa, Ontario, was drunk.

[4] The events surrounding the commission of the offence indicate that on 28 February 2015, Master Corporal MacDougall attended the 1 RCR Paardeberg Ball at building Y-101 located on Canadian Forces Garrison Petawawa. This event was an activity to which 1 RCR members could invite their spouse. At the beginning of the night's activities, following the commanding officer's opening address to the troops, the offender was asked to come forward to receive his appointment to master corporal.

[5] While Master Corporal MacDougall was receiving his appointment in front of his peers, the commanding officer noticed Master Corporal MacDougall showed signs of intoxication in that he had a smell of alcohol on his breath, glazed eyes, slurred speech, and he could not stand steadily at attention. On dismissal, Master Corporal MacDougall executed an improper drill movement by turning around the wrong way and, while marching off, he was staggering.

[6] After Master Corporal MacDougall received his appointment and was walking back to his table, he received congratulations from people at Mrs Rocque's table. Mrs Rocque was present at the ball with her fiancé, Corporal Oonsten. Mrs Rocque and Master Corporal MacDougall were acquaintances. She had met him a few times in the past as part of work functions. Master Corporal MacDougall then proceeded towards Mrs Rocque and she congratulated him. While congratulating Master Corporal MacDougall, Mrs Rocque remained seated. Mrs Rocque was wearing a low-cut dress that evening. Master Corporal MacDougall leaned down for a hug, turned his face to the left, placed his head onto Mrs Rocque's breasts and stayed there long enough to say something along the lines of "Thanks, sweetheart". Mrs Rocque felt Master Corporal MacDougall's face on her cleavage. Master Corporal MacDougall then walked away. This was witnessed by other people at the table and Master Corporal MacDougall's actions were reported to the battalion orderly sergeant.

[7] Shortly after the promotion ceremony, Master Corporal MacDougall was brought by the battalion orderly sergeant to the canteen room and placed at attention. While Master Warrant Officer Doucette was speaking to Master Corporal MacDougall, he observed him being unable to stand still, having a hard time standing at attention, staggering side to side and backwards. It was observed that Master Corporal MacDougall's speech was slurred and that he was having trouble forming sentences. His eyes were glassy and Master Warrant Officer Doucette smelled alcohol from Master Corporal MacDougall's breath. These signs of impairment were also observed by other people present with Master Corporal MacDougall.

[8] When questioned, Master Corporal MacDougall could not remember what had happened with Mrs Rocque. Shortly thereafter, Master Corporal MacDougall was driven home by the duty driver. In the course of the evening, Master Corporal

MacDougall was observed showing signs of intoxication and was seen at the bar several times with drinks in his hands.

[9] As stated by Pelletier M.J. in *R. v. Sloan*, 2014 CM 4004, at paragraphs 14 to 15:

[14] The offence of drunkenness is not aimed at sanctioning the consumption of alcohol or a drug. It is meant to address fitness for duty or behaviour that is disorderly or discredits Her Majesty's service. It reflects the fact that no member of the military is exempted from the obligation to show respect to anyone, let alone refrain from violence despite any level of intoxication.

[15] The attendance at commemorative events or military celebrations which sometimes involve the availability of alcoholic beverages is part of military life. The persons attending are generally going to these events, such as military balls, to have a pleasant time. They should not be subjected to violence or disrespect.

[10] During the sentencing hearing, the court heard the testimonies of Mrs Rocque and Master Corporal MacDougall. It leaves no doubt that the behaviour of the offender at the ball had serious consequences on both his victim and his unit. Mrs Rocque was not only truly embarrassed and humiliated that night, but almost one year after the event she still avoids social events, no longer attends at the gym on a regular basis or even goes to the grocery store. She does not want to be in a place where she could meet with the offender and she continues to feel embarrassed and humiliated as some people still raise the subject incident in her presence. She has isolated herself from the local military community and she no longer participates in military social activities as she used to enjoy them prior to the incident.

[11] In a letter filed by consent, the commanding officer highlighted the seriousness of the offence in stating that on the night in question Master Corporal MacDougall was severely intoxicated and uninvitedly touched the breasts of his subordinate's fiancée in front of other soldiers approximately two minutes after receiving his appointment as master corporal and having shortly completed a period of counselling and probation for alcohol misuse. Master Corporal MacDougall was immediately relieved of his appointment as a section second-in-command in the commanding officer's vanguard company for any upcoming operational deployments and he was replaced by another master corporal.

[12] Master Corporal MacDougall testified also during the sentencing hearing. He expressed sincere remorse and apologized to Mrs Rocque. He recognized that he truly hurt his former subordinate's fiancée because of his unacceptable behavior and he acknowledged that he could not change the past. His counsel introduced also highly relevant documentary evidence to indicate that the offender suffered from mental health issues in the form of post-traumatic stress disorder (PTSD) at the time of the offence, which explains his severe misuse of alcohol. It appears that one significant incident that led to the offender's mental health issues relates to an incident while he was serving in Afghanistan. The evidence also establishes that the offender is now medicated and followed by a therapist on a regular basis.

[13] A letter filed with the court from his previous sergeant major is also highly relevant. He has known the offender since 2008 and stated that until that moment in February 2015, Master Corporal MacDougall was an outstanding and highly respected individual within the unit. This description is corroborated by the performance evaluation reports filed with the court; however, irreconcilable with the report that stands for the period that covers the incident and a conviction for an offence of driving a motor vehicle while impaired.

[14] In one single year, the offender went from stellar performance with outstanding potential, as described by his previous officer in command and commanding officer, to the worst level of performance and potential by his new commanding officer in 2014 and 2015. It is troubling that this last personal evaluation report performance narrative exclusively refers to those two incidents when the report itself covers an almost full reporting period.

[15] The evidence filed with the court with regard to the diagnosed PTSD and its ramifications explain the past behavior of the offender during the relevant period. It is certainly helpful in assessing the weight to be given to the letter written by Master Corporal MacDougall's former sergeant major. It is unknown whether the chain of command had the opportunity to read the mental health reports filed with the court; however, the letter written by the commanding officer does not seem to take into account the diagnosis made by the psychiatrist and its contribution to the incident that brought us to court today.

[16] Today, the offender continues to serve a period of counselling and probation in relation to this incident for both misuse of alcohol and sexual misconduct. His health issues are under control with proper medication and therapy.

[17] The fundamental purpose of sentencing at courts 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;
- (b) the denunciation of the unlawful conduct;
- (c) the deterrent effect of the punishment, not only on the offender, but also on others who might be tempted to commit such offences; and
- (d) the reformation and rehabilitation of the offender.

[18] 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; however, the court must act with restraint in determining its sentence and imposing such punishment or punishments that constitute the minimum necessary intervention to maintain discipline.

[19] In this particular case, the predominant objectives of sentencing are denunciation and general deterrence. The sentence must also contribute to specific deterrence and allow for the process of rehabilitation to continue.

[20] The aggravating factors in this case relate to the degree of intoxication and the conduct or behaviour of the offender at the time of the incident in the presence of the chain of command, his comrades, his subordinates and guests at an important official function. In addition, the offender has a previous criminal record for an offence related to the misuse of alcohol. The mitigating circumstances are the following:

- (a) The plea of guilty that was entered at the first opportunity and the apology made by the offender to the victim for his behaviour in open court. These combined elements demonstrate genuine remorse and the full acceptance of responsibility by Master Corporal MacDougall.
- (b) The behaviour of Master Corporal MacDougall since the commission of the offence. He has continued to perform duties as a member of the Canadian Forces without any other incident and has respected the conditions imposed on him during the ongoing counselling and probation.
- (c) The diagnosed mental health condition of the offender and his continued efforts to deal effectively with his condition, which played a role in the intoxication and behaviour of the offender in the commission of the offence.

[21] The court accepts, in light of all these factors, principles and objectives, that the proposed sentence is the minimal sentence in the circumstances to achieve denunciation, general and specific deterrence and rehabilitation. It is not contrary to public interest and it would not bring the administration of military justice into disrepute. Therefore, I accept the joint submission.

**FOR THESE REASONS, THE COURT:**

[22] **FINDS** you guilty of the one count of drunkenness, contrary to section 97 of the *National Defence Act*.

[23] **SENTENCES** you to a reprimand and a fine in the amount of \$1250 to be paid in four equal monthly instalments starting today.

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**Counsel:**

The Director of Military Prosecutions as represented by Major A.-C. Samson and Captain G.J. Moorehead

Lieutenant-Commander P. Desbiens, Defence Counsel Services, Counsel for Master Corporal M. MacDougall