



## COURT MARTIAL

**Citation:** *R. v. Simms*, 2016 CM 4001

**Date:** 20160129

**Docket:** 201449

General Court Martial

17 Wing, Canadian Forces Base Winnipeg  
Winnipeg, Manitoba, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Master Warrant Officer A.W. Simms, Offender**

**Before:** Commander J.B.M. Pelletier, Military Judge

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### REASONS FOR SENTENCE

(Orally)

#### INTRODUCTION

##### **The charges**

[1] Master Warrant Officer Simms has been found guilty by the panel of this General Court Martial of four charges under the Code of Service Discipline in relation to an incident which occurred on 30 May 2014 at Winnipeg International Airport, while he was detained by the Winnipeg Police Service. Two members of the military police attended to assist. Corporal Hall decided to arrest Master Warrant Officer Simms for drunkenness. Master Warrant Officer Simms resisted the arrest, assaulted Corporal Hall, and uttered threats to cause death to both Corporal Hall and his colleague Corporal Paradise.

##### **Matters considered**

[2] It is now my duty as the military judge presiding at this General Court Martial to determine the sentence. In so doing, I have considered the principles of sentencing that apply in the ordinary courts of criminal jurisdiction in Canada and at courts martial. I have also considered the facts relevant to this case, the exhibits introduced in the course of the sentencing hearing and the case law cited by counsel in their submissions.

[3] The *Queen's Regulations and Orders for the Canadian Forces* (QR&O) require that the judge imposing a sentence at a court martial considers any indirect consequence of the finding or the sentence, and "impose a sentence commensurate with the gravity of the offence and the previous character of the offender." I will first discuss the offences and then the offender.

## **THE OFFENCES AND THE OFFENDER**

### **The offences**

[4] The circumstances of the offences were related to the court by witnesses and video footage entered in exhibit showing most of the interaction between the members of the military police and Master Warrant Officer Simms at Winnipeg International Airport, including the assault on Corporal Hall. The circumstances of the incident are as follows:

- (a) On 30 May 2014, Master Warrant Officer Simms was travelling on leave from Ottawa to Las Vegas with his wife, also a member of the Canadian Forces. The couple had a stopover of several hours at Winnipeg airport. As their flight to Las Vegas was about to board at around 2120 hours, airline staff became concerned about allowing Master Warrant Officer and Mrs Simms on the flight on the basis of perceived intoxication and disruptive behavior, especially from Master Warrant Officer Simms' wife.
- (b) Master Warrant Officer Simms did not accept that other passengers had complained about his wife's behavior. He became argumentative and confrontational. Airport security was called and members of the Winnipeg Police Service from the airport detachment attended at the gate to explain that boarding was denied and the couple had to leave the restricted area. Master Warrant Officer Simms refused to leave on his own and, as a consequence, was arrested and taken into custody, along with his wife, in holding cells located at the airport.
- (c) The military police was called in to assist as Master Warrant Officer Simms had disclosed that he and his wife were members of the Canadian Forces and, according to Master Warrant Officer Simms, demanded that the military police be called as they would be more sensitive to the difficulties his wife was experiencing with mental illness. Corporal Hall and Corporal Paradise, who were patrolling the city at the time, arrived at the holding cells and requested that the door to Master Warrant Officer Simms' cell be opened so they could talk to him.

- (d) Upon the door being opened, Corporal Hall found himself in close proximity to Master Warrant Officer Simms, who was standing in the doorway very close to him. Master Warrant Officer Simms was irate and angry. He was yelling that he was a master warrant officer and was to be addressed as "Sergeant Major" and be treated with respect. Corporal Hall could smell alcohol on the breath of Master Warrant Officer Simms, who appeared to be intoxicated by virtue of symptoms such as slurred speech and unsteadiness.
- (e) Corporal Hall proceeded to inform Master Warrant Officer Simms that he was under arrest for drunkenness. When informed of his arrest, Master Warrant Officer Simms failed to comply with several requests to step away from the door towards the back of the cell to allow for mechanical restraints to be placed on him. Corporal Hall then pushed Master Warrant Officer Simms in an attempt to create sufficient physical separation to affect the arrest. At that point, Master Warrant Officer Simms placed his hand on Corporal Hall's throat while yelling "I am going to kill you," pushing him out of the holding cell.
- (f) Corporal Hall was then quickly assisted by his colleague from the military police and by members of the Winnipeg Police Service to push Master Warrant Officer Simms to the back of the holding cell, allowing handcuffs to be placed. Master Warrant Officer Simms was still yelling, threatening to break the neck of a military police member.
- (g) Master Warrant Officer Simms made more threats to kill Corporals Hall and Paradise if he saw them. He offered some physical resistance while being taken outside of the holding cell but ultimately complied with officers in proceeding to the military police patrol car for transport to the military police detachment at 17 Wing Winnipeg. While in the car, however, he became agitated and once again threatened to kill the officers when he saw them.

[5] Both Master Warrant Officer Simms and Mrs Simms suffer from Post-Traumatic Stress Disorder (PTSD) and that condition was an important factor in the events of 30 May 2014. Mrs Simms claims she suffered an episode of dissociation as she approached the boarding area at the airport and needed assistance from Master Warrant Officer Simms, who knew how to calm her down. When she is in that state, her behaviour may seem strange to observers. She suffers from facial spasms which can be interpreted as being impaired. Master Warrant Officer Simms testified that he was trying to assist his wife and explained to authorities at the gate that she was not impaired but needed some time to recover and be ready for boarding. He said that both the airline agent and the police officers refused to help, would not let him provide his wife with medication she had in her purse and that he felt powerless and became very angry as a result. Master

Warrant Officer Simms could not remember significant portions of the incidents, including the assault and threats.

[6] The two psychiatrists called by the parties in this trial provided expert opinion to the effect that Master Warrant Officer Simms lost control of his anger during the events, in part because of his PTSD which rendered him more irritable and decreased his ability to control excesses of rage. Yet, the evidence of the prosecution expert was that, despite his PTSD, Master Warrant Officer Simms was still able to appreciate the nature and quality of his acts and knew that they were wrong. The decision of the court reveals that the accused has not discharged his burden of proving that he should be exempt from responsibility for the service offences committed.

[7] As for the impact that these incidents had on Corporal Hall and Corporal Paradise, they both testified that they were afraid as a result of the threats. Corporal Hall was shaken at having been attacked and was granted two days of leave by a medical officer the next morning for that reason. Corporal Hall also claimed suffering minor physical injuries as a result of the encounter with Master Warrant Officer Simms. However, the prosecution was unable to demonstrate beyond reasonable doubt that these injuries resulted from the confrontation or that they were of a significant enough gravity to constitute bodily harm, as evidenced by the verdict of not guilty on that charge but guilty of the lesser and included charge of assault.

### **The offender**

[8] Master Warrant Officer (Retired) Simms is 45 years old. This is his first conviction and the incident of 30 May 2014 was his first brush with the law. He has never been arrested nor charged with a criminal or service offence before. He currently resides in Saskatchewan where he relocated following his decision to retire from the Canadian Forces in July 2015, after 19 years of service with the Regular Force in the Construction Engineering Branch. His career progression was impressive, going from recruit to the rank of master warrant officer in just 15 years. Throughout those years, Master Warrant Officer Simms participated in significant deployments overseas in Bosnia, the Golan Heights, Ethiopia/Eretria and on four occasions to Afghanistan. From the evidence heard at trial, it is upon return from his deployment to Ethiopia, where Master Warrant Officer Simms was confronted with atrocities, that he began suffering from PTSD, a condition he was formally diagnosed with in 2007. He is currently employed as a power generation technician for a large civilian company. His wife and 11-year-old son live with him, as well as an adult daughter who has moved in with him as a result of personal difficulties last August and who has given birth to a son on the morning of this sentencing hearing.

[9] The offender's former commanding officer provided a statement in which he outlines the decisions he made, shortly after learning of the commission of the offences, to remove Master Warrant Officer Simms from the position of Squadron Sergeant Major. He had appointed Master Warrant Officer Simms to that position just over a month earlier, on parade, in presence of the troops. He stated that the actions of the offender on 30 May 2014 brought into question his decision-making skills and his judgement. It

constituted such a bad example that the commanding officer felt Master Warrant Officer Simms could not continue with his duties pertaining to the maintenance of discipline and order of the troops while resolution of the incident was pending. The commanding officer also alluded to consequences of an administrative nature resulting from decisions made by the chain of command following the incidents, which I find to be too indirect to consider as aggravating in relation to the offender.

[10] Master Warrant Officer (Retired) Simms testified at the sentencing hearing. He expressed remorse for his actions, saying that he has seen himself on the video images and has no choice but to accept that he did the acts depicted therein. He accepted responsibility for his actions, saying that he had no ill intentions towards the members of the military police and Winnipeg Police Service officers involved as they were simply doing their jobs. He also said he was sorry to be an embarrassment for himself, his family and friends and his uniform. Master Warrant Officer (Retired) Simms said that he has decided to leave the Canadian Forces last year because he was so embarrassed as a result of the events and felt useless in the service. He said he realized he needed help and felt he needed to move forward with the rest of his life.

### **POSITION OF PARTIES ON THE SENTENCE**

#### **Prosecution**

[11] In terms of the determination of an appropriate sentence, the prosecution stressed the objectives of denunciation and deterrence, asking this court to impose a sentence of 21 days of imprisonment or the combination of 14 days of imprisonment with a fine of \$4,000. The prosecution added that the duration of imprisonment requested takes into account the role played by the mental condition of the offender at the time of the offences. Otherwise, the prosecutor said he would have asked for 30 to 60 days' imprisonment.

#### **Defence**

[12] In response to submissions by the prosecution, defence counsel submitted that a custodial sentence was not warranted. Counsel suggested a reprimand or severe reprimand combined with significant fine, in the range of 1000 to 1500 dollars.

### **ANALYSIS**

#### **Objective gravity of the offences**

[13] In arriving at evaluating what would be a fair and appropriate sentence, the court has considered the objective seriousness of the four offences committed, as illustrated by the maximum punishments that the court could impose. Offences under section 130 of the *National Defence Act* for assault, resisting a peace officer and threatening death under the *Criminal Code* are punishable with a maximum of five years, two years and five years

respectively. Under section 148 of the *National Defence Act*, only one sentence can be imposed for all offences.

### **Subjective gravity – aggravating factors**

[14] The circumstances of the offences demonstrate to the court an extremely troubling incident, over several hours, during which the offender was so affected by rage that he behaved entirely irrationally. He refused to be contradicted in any way by anyone in his views of what his wife needed, how others should react to her condition and how he deserved to be treated. His confrontational behaviour was improper from the start of the incident, worsening as he got himself worked up. It became downright criminal when he grabbed hold of Corporal Hall's throat while yelling that he was going to kill him. There is no doubt that the offences of resisting the peace officers and threatening peace officers with death are serious and worthy of sanction but it is the assault of Corporal Hall that is foremost in my mind, as it pertains to the determination of an appropriate sentence. The assault was a violent, sudden act, accompanied with a threat to kill, in dangerous circumstances as it occurred in proximity of armed police officers. It is an assault of a significant level of gravity.

[15] I must also consider aggravating, for the purpose of sentencing, the status of the person assaulted. At the moment of being assaulted, Corporal Hall was not in contact with Master Warrant Officer Simms by choice; he had just informed him that he was under arrest. The court was unable to come to a finding of guilty on charge number two for assaulting a peace officer, an outcome resulting from the fact that it was relegated as an alternate to the first charge of assault causing bodily harm. Yet, the court did impose a stay of proceeding indicating that the charge had been made out and returned a finding of guilty on charge number three for resisting a peace officer in the execution of his duty. Clearly then, the victim of the assault in this case was a peace officer in the execution of duty, an aggravating factor.

[16] There is another element in relation to Corporal Hall that is important to consider in this case – his status as member of the Canadian Armed Forces. Indeed, Master Warrant Officer Simms was already in the company of five peace officers when the military police was contacted. What the Winnipeg Police Service was in need of was not another peace officer but a representative of the Canadian Armed Forces in authority, in an attempt to bring Master Warrant Officer Simms under some control. In its well-known policy on harassment, the Canadian Armed Forces recognizes that all its members have the right to be treated fairly, respectfully and with dignity and have a responsibility to treat others in the same manner. Yet, the first things Master Warrant Officer Simms yelled to Corporal Hall in their encounter is a demand to be shown respect due to his rank and position as Sergeant Major, while denying any respect to Corporal Hall, as evidenced by the assault which ensued, with blatant disregard for Corporal Hall's physical integrity. Master Warrant Officer Simms had a duty of care for the subordinate standing before him who was in the execution of his duties and, according to Master Warrant Officer Simms himself, was present to assist, at his own request. In that sense, his failure to treat Corporal Hall with respect is a failure in leadership on the part of a person of his rank and

responsibilities. The impact of the incident on his leadership has been recognized by his commanding officer of the time and is another aggravating factor in this case.

[17] Finally, I consider that the events had an impact on the two members of the military police involved. The evidence establishes that Corporal Hall was shaken up by the attack, as witnessed by the doctor who saw him the next day and gave him two days of leave. Corporal Paradise said he was afraid of the threats as he had never seen a person of the rank of Master Warrant Officer Simms act in such a manner. These impacts are not as significant as they could have been given the level of violence used, but I would not want to leave the impression that they are insignificant in my determination of the appropriate sentence in this case.

### **Mitigating factors**

[18] I have also considered several important mitigating factors present in this case, as mentioned in submissions by counsel and demonstrated by the evidence at trial and during sentencing.

[19] First and foremost in my mind is the fact that the conduct of Master Warrant Officer Simms on 30 May 2014 appears to be entirely out of character for him, on the basis of the evidence heard at trial. He is an outstanding performer who has been entrusted with increased responsibilities as he quickly progressed through the ranks, deploying on multiple missions overseas thereby providing significant service to his country. In addition to this impressive record of service, the offender has no prior criminal or disciplinary record, no history of substance abuse and no history of violence. He has been a model of integrity and military bearing throughout his 19-year career.

[20] Second, the testimony of Master Warrant Officer Simms during the sentencing hearing when he expressed his regrets and remorse in relation to his family, friends and colleagues as well as the police officers involved. He said he accepted responsibility for what he had done which is not uncommon for offenders testifying on sentencing. What is strikingly rare in this case, however, is the fact that the offender says that he left military service on his own request, realizing that as a result of the events of 30 May 2014, he could not continue serving in his rank, as his leadership was irremediably compromised and was too embarrassed to stay. This is more than saying, "I take responsibility"; it is accepting responsibility at the cost of a substantial monthly salary and one year shy of 20 years of Regular Force service in July 2016. I believe Master Warrant Officer Simms has shown genuine remorse and has taken full responsibility for what he has done.

[21] Third, I consider as mitigating, the mental condition of Master Warrant Officer Simms at the time the offence. Both psychiatrists who testified at the trial opined that the PTSD suffered by Master Warrant Officer Simms impaired his judgement and his capacity to control his anger, leading to an escalation which peaked with the assault against Corporal Hall. Clearly, the mental disorder suffered by the offender does not absolve him of responsibility for the offences but it does offer an element of explanation

for conduct that is so out of character for him. This condition, acquired as a result of his military service overseas, will also bring challenges to him for the rest of his life.

[22] Finally, I consider as mitigating the age and potential of Master Warrant Officer Simms to contribute to Canadian society in the future in a civilian capacity. At his age, he can look forward to contributing his talents to the civilian workforce for as long as he has contributed his talents as a member of the Regular Force. There is no reason to doubt that with proper treatment for his medical condition, his potential to contribute to his community is considerable.

### **OBJECTIVES AND PRINCIPLES OF SENTENCING**

[23] 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 Armed Forces;
- (b) to denounce unlawful conduct;
- (c) to deter the offender and other persons from committing the same offences;
- (d) to separate offenders from society where necessary; and
- (e) to rehabilitate and reform offenders.

[24] When deciding what sentence would be appropriate, a sentencing judge must take into consideration the following principles:

- (a) a sentence must be proportionate to the gravity of the offence;
- (b) a sentence must be proportionate to the responsibility and previous character of the offender;
- (c) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (d) an offender should not be deprived of liberty, if applicable in the circumstances, if less restrictive sanctions may be appropriate; and
- (e) all sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.



[25] That being said, the punishment imposed by any tribunal should constitute the minimum necessary intervention that is adequate in the particular circumstances. For a court martial, this means imposing a sentence composed of the minimum punishment or combination of punishments necessary to maintain discipline.

### **Objectives of sentencing to be emphasized in this case**

[26] I came to the conclusion that, in the particular circumstances of this case, the focus in sentencing should be placed on the objectives of denunciation and deterrence. Peace officers who act within the boundaries of their duties must be respected and protected from verbal or physical abuse as, indeed, they represent the law. Disrespect to them equates to disrespect for our laws and the order required for any society to function effectively. Sentences must denounce any such conduct. Furthermore, members of the Canadian Forces on duty are also entitled to respect, most importantly, from their brothers and sisters in arm, whether peers, superiors or subordinates. Sentences must deter anyone from engaging in any conduct showing disrespect, especially violations of physical integrity.

[27] I also consider that rehabilitation is an important objective of sentencing in this case. The offender suffers from a significant mental condition. He has decided to turn the page on his military career and appears to be enjoying a period of relative stability with secure employment, good medical support from a number of professionals and a feeling that he is being adequately supported by Veterans Affairs as it pertains to his transition to civilian life and assistance with his medical condition. He is financially responsible for his wife and son and assists his daughter through difficult times. He now has a newborn grandson to go back to when he returns to Saskatchewan. Any sentence I impose should not irremediably compromise what appears to be a successful integration in civilian society.

### **The sentences proposed by the parties**

[28] In supporting its submission for a sentence of imprisonment for 21 days, the prosecution mentioned having made a detailed search of the assault cases involving peace officers in courts martial and found only five cases worth discussing. The most severe sentence imposed by a court martial was six months' imprisonment, suspended, imposed in 1991 or 1992 and upheld by the Court Martial Appeal Court in its decision *R. v. Mathews* [1993] CMAC-345. The assault in that case involved one hit with the fist and two kicks at military police officers effecting arrest, with no resulting injuries. The four other cases are more recent, rendered between 2007 and 2012. The most severe sentence imposed was 14 days of detention, not the more severe punishment of imprisonment, for two assaults not involving police officers. The prosecution argued that military judges have been too lenient in recent years in imposing sentences for crimes of assault involving peace officers and that I should take the occasion to modify that trend. It is worth noting that in the four military cases brought to my attention, the most the prosecution asked for was 21 to 45 days detention. In all of the cases where detention was requested by the prosecution, the defence agreed that it was an appropriate sentence. It

seems to me that if sentences have not been severe it may be simply because they were not required to be severe on the basis of the circumstances of the offender or the offences as agreed by prosecutors at the time.

[29] Yet, the prosecution has also brought to my attention civilian cases where sentences ranging from 14 days to 6 months were imposed for offences of various gravity involving assault and, in one case, threats to peace officers. Essentially, the prosecution submits imprisonment is within the range. I agree. The range of severity of offences of assault of peace officers is very broad and, consequently, the range of sentencing also needs to be very broad. These are serious offences and the punishment of imprisonment should, in all but the most minor cases, be on the table for consideration.

[30] In support of its position that a reprimand and a fine of \$1,000 to \$1,500 would be appropriate, the defence brought to my attention the cases of *R. v. April*, 2012 CM 1020 and *R. v. Klein*, 2014 CM 4009. Warrant Officer April was sentenced to a reprimand and a \$1,200 fine for not letting go of the shoulder of a military policeman in the course of the arrest of his wife. Lieutenant (N) Klein was sentenced to a reprimand and a fine of \$1,000 for a push to the shoulder of a commissionaire guarding the entrance of a base. Again, I note that in these cases, the most the prosecution was asking for was a reprimand and a fine of \$3,500 against Warrant Officer April and a severe reprimand and a fine between \$1,000 and \$2,000 against Lieutenant (N) Klein. Consequently, I am of the view that these cases involved minor circumstances and, of course, lesser punishments. The defence proposition is within the range of potential sentences.

[31] As both parties suggest sentences which are in the range of potential outcomes, what I need to determine is whether their propositions are appropriate in the circumstances of these offences and the offender here. After having spent much time and consideration on the submissions of counsel and the case law in support of their position for either imprisonment or a reprimand and a fine, I have come to conclude that neither proposition takes into proper consideration the aggravating circumstances of the offences, on one hand, and the mitigating circumstances of the offender, on the other.

[32] Indeed, the gravity I attach to the offences committed in this case make comparisons with cases such as *Lieutenant (N) Klein* and *Warrant Officer April* impossible to sustain. Those cases involved minor assaults without threats to kill and without injuries of any kind. Both parties in those cases agreed on the minor nature of the offences as evidenced by their respective positions to the effect that a reprimand or severe reprimand combined with a fine would be sufficient to sanction the offending conduct. The assault in this case, however, was a violent, sudden act, accompanied by a threat to kill. It was directed at representatives of the Canadian Forces, present to assist on duty. It was made by a senior non-commissioned member in blatant disregard for his leadership responsibilities to care for subordinates, especially those representing lawful authority. In addition to the assault, threats to kill were made on multiple occasions and resistance was offered to the military police. I don't believe that a reprimand combined with a fine in the range proposed by defense counsel would be sufficient to meet the objectives of denunciation and deterrence that I have identified as important here. Even a severe

reprimand combined with a fine would be insufficient to adequately denounce the behavior of the offender. In addition, given that the offender is no longer serving, such a sentence could well be seen as entirely inconsequential, which would reduce its deterrent effect.

[33] As it pertains to the submission of the prosecution, I have difficulty seeing how a sentence of imprisonment for 21 days sufficiently takes into account the mitigating factors I have identified earlier, most notably the fact that the offence was totally out of character for the offender in his 19-year career and that the mental condition of the offender was a direct cause of his uncontrollable anger on 30 May 2014, which culminated in the offences for which he is being sentenced. I cannot accept the prosecution's submission to the effect that the mental condition was factored in to decrease the length of the punishment of imprisonment requested from a range of 60 to 30 days to the current submission of 21 days. In my view, the mitigating factors at play here are worth much more than 9 to 39 days of additional imprisonment. The civilian case law submitted by the prosecution had no mitigating factors coming anywhere near those present here to mitigate the sentences of 14 to 90 days' intermittent imposed. The older case of *Matthews* involved a suspended sentence of imprisonment as did the case of *R. v. Corporal S.J. Wells*, 2007 CM 2006 submitted by the prosecution.

[34] To be clear, I do agree with the passage from the case of *R. v. Forrest* (1986), 15 O.A.C. 104 at p. 107 to the effect that “Police officers, in the performance of their duties, are the representatives of the whole community and an attack upon them is an attack upon the structure of a civilized society.” As I stated before, the punishment of imprisonment should, in all but the most minor cases of assaulting peace officers, be on the table for consideration. That being said, any sentence imposed for these crimes must also be commensurate to the previous character of the offender and must be the minimum sentence required to maintain discipline. Here, the mitigating evidence is overwhelming to the effect that a departure from what would otherwise be an appropriate sentence is required. Of course, it would be in some way easier for me to impose a punishment of imprisonment and then suspend the execution of that punishment. However, I have stated in *R. v. Boire*, 2015 CM 4010 that the issue of suspension of a sentence of incarceration does not arise unless and until the sentencing judge has determined that the offender is to be sentenced to imprisonment or detention, after having applied the proper sentencing principles appropriate in the circumstances. In this case, I have not gotten to that point. If I had, the burden would be on the defence to show exceptional circumstances affecting the offender at the time of sentencing to justify the suspension of the punishment of imprisonment. I do not believe in the suspension of custodial sentences on the basis of mitigating factors.

#### ***Determination of the appropriate sentence***

[35] From my exchange with counsel during the sentencing hearing, I believe that their consideration of available punishments may have been limited by the current status of the offender as a former member of the Canadian Forces given his release in July 2015. Yet, subsection 60(3) of the *National Defence Act* provides that a person who has since the

commission of an offence ceased to be liable under the Code of Service Discipline must be deemed in relation to trial and punishment for that offence to have the same status and rank held immediately before ceasing to be so liable. In the scale of punishments listed at section 139 of the *National Defence Act* lies a punishment that is exactly midway between the punishment of imprisonment proposed by the prosecution and the punishment of a reprimand suggested by defence: the reduction in rank. It has an important symbolic signification which could serve the objectives of denunciation and deterrence. That punishment would have, in my view, been adequate if Master Warrant Officer Simms was still in uniform today. Accepting that I must take the accused as he is today, I am reluctant to jump up two rungs in the punishment ladder and impose the most severe punishment of imprisonment, a punishment of last resort; simply because I know Master Warrant Officer Simms will never wear the rank I could reduce him to. If section 60(3) of the *National Defence Act* is to mean anything, it must allow the imposition of a sentence of reduction in rank to a member after his release, as it was done by courts martial previously, notably in relation to the highly publicized case of *R. v. Ménard*, 2011 CM 3007 who was sentenced to a reduction in rank to colonel after having left the Canadian Forces voluntarily following an affair with a subordinate while he was the Commander of Joint Task Force Afghanistan.

[36] It is important to keep in mind, however, that the punishment must meet the objectives of sentencing I have identified. The reduction in rank will not entirely serve the requirements for denunciation and deterrence in relation to informed observers aware of the status of Master Warrant Officer Simms as a former member of the Canadian Armed Forces. Therefore, that punishment needs to be coupled with a fine, a punishment which has and will be seen to have an actual impact on the offender, hence meet the objectives of denunciation and deterrence. A fine was also coupled with the reduction in rank imposed on Brigadier-General Ménard in the above-mentioned case. Incidentally, if I had come to the conclusion that imprisonment was the appropriate punishment in this case and if the defence had presented evidence allowing the suspension of that punishment, I would have also imposed a fine to ensure an actual impact on the offender.

[37] As for the amount of the fine, I believe the amount of \$1,000 to \$1,500 proposed by the defence to accompany the punishment of a reprimand is insufficient. I agree with the prosecution that the sum of \$4,000 is a minimum required in the circumstances of this case. I will provide for terms of payment that will avoid imposing an excessive burden on the offender and his family.

[38] As the prosecution specifically expressed the view that no ancillary orders were required in this case, none will be made.

[39] Master Warrant Officer Simms, the circumstances of the four charges you were found guilty of are particularly troubling to me, as I believe they are to you. These are serious crimes. Yet, I have chosen to regard the regrets you expressed in this courtroom as sincere. You said you took your release from the Canadian Forces because you needed to get help and move on with your life. It looks like you got the help you needed and your health has improved. I now wish you will indeed move on and leave the events dealt with

in this trial behind you. You have now paid your due; with a clear mind, you should look forward to making a positive contribution to your family, friends, neighbours and, indeed, to your country.

**FOR THESE REASONS, THE COURT:**

[40] **SENTENCES** you to a reduction in rank to the rank of warrant officer and a fine of \$4,000 payable in 10 monthly installments of \$400, starting on 1 March 2016 by certified cheque or money order to the Receiver General of Canada. The payments shall be forwarded to the address provided by the Director of Military Prosecutions.

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**Counsel:**

The Director of Military Prosecutions as represented by Major D. Martin and Captain C.S. Nam

Lieutenant-Colonel D. Berntsen, Defence Counsel Services, Counsel for Master Warrant Officer Simms