



COURT MARTIAL

Citation: *R. v. Beaudry*, 2016 CM 4011

Date: 20160715

Docket: 201523

Standing Court Martial

Canadian Forces Base Wainwright
Wainwright, Alberta, Canada

Between:

Her Majesty the Queen

- and -

Corporal R.P. Beaudry, Offender

Before: Commander J.B.M. Pelletier, M.J.

[OFFICIAL ENGLISH TRANSLATION]

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Code*, information that could disclose the identity of the person described in this judgment as the complainant shall not be published in any document or broadcast or transmitted in any way.

REASONS FOR SENTENCE

(Orally)

INTRODUCTION

[1] Following his Standing Court Martial trial, Corporal Beaudry was found guilty of the first charge brought against him under section 130 of the *National Defence Act* (*NDA*), for having committed a sexual assault causing bodily harm, contrary to section 272 of the *Criminal Code*. He was found not guilty of the second charge of overcoming resistance to the commission of an offence, contrary to paragraph 246(a) of the *Criminal Code*.

[2] As the military judge presiding at this Standing Court Martial, it now falls to me to determine the sentence. In my deliberations, I considered the sentencing principles that apply to criminal courts in Canada, as well as to courts martial. I also considered the relevant facts of this case, as established by the evidence I have heard and the materials submitted, both during the trial and the sentencing hearing. I also took the arguments of counsel, for the prosecution and for the defence, into consideration.

OBJECTIVES AND APPLICABLE PRINCIPLES

[3] The military justice system is generally the ultimate way of imposing discipline within the Canadian Armed Forces (CAF) and is a fundamental element of military life. As recognized by the Supreme Court of Canada, the objective of a military justice system and courts is to give the armed forces the necessary tools to ensure respect for internal discipline in order to encourage efficiency and boost morale. Indeed, it is through discipline that an armed force is able to maintain a state of readiness in order to take action at the request of the government and is able to make sure that its members can successfully execute missions in a reliable and trustworthy manner. By ensuring that persons subject to the Code of Service Discipline can be punished, this system equally serves the public interest in seeing the law is respected by everyone.

[4] Therefore, the key objectives of sentencing are to support the operational effectiveness of the CAF by helping to maintain discipline, efficiency and morale, and to contribute to respect for the law. These fundamental purposes can be achieved by imposing sanctions that have one or more of the following objectives:

- (a) to protect the public, which includes the CAF;
- (b) to denounce unlawful conduct;
- (c) to deter offenders and other persons from committing offences;
- (d) to provide reparations for harm done to victims or to the community;
- (e) to separate offenders, if necessary, from other officers or non-commissioned members or from society generally; and
- (g) to integrate offenders back into society or military life.

[5] When imposing sentences, a military court also takes into consideration the following principles:

- (a) Parity in sentencing: given that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of an offender, it should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

- (b) A sentence should be the least severe sentence required to maintain discipline, efficiency and morale;
- (c) An offender should not be deprived of liberty by imprisonment or detention if less restrictive sanctions are appropriate in the circumstances;
- (d) Any indirect consequences of the finding of guilty or the sentence should be taken into consideration; and
- (e) The sentence will be adjusted to account for any relevant aggravating or mitigating circumstances relating to the offence or to the offender.

[6] Any punishment to be imposed should constitute the minimum necessary intervention in the circumstances. For a court martial, this means imposing a sentence composed of the minimum punishment or combination of punishments necessary to maintain discipline.

[7] Under the *Queen's Regulations and Orders for the Canadian Forces*, the judge must consider the indirect consequences of the conviction and the sentence, which must be proportionate to the seriousness of the offence and the degree of responsibility of the offender. The sentence must therefore be tailored to the individual offender and the offence that he or she committed. I will begin my analysis by discussing the offence, which will be followed by a discussion about the offender.

THE OFFENCE AND THE OFFENDER

The circumstances of the offence

[8] In this proceeding, the following facts were accepted by the Court and constitute the circumstances of the offence, as described by the victim, Private L.D., during her testimony. On September 5, 2014, she had dinner in her room at Base Wainwright in the company of her friend Marilyn Danis, who had travelled from Quebec to visit her. They subsequently went to a bar called JD's, in the municipality of Wainwright, where they met a number of friends, including Corporal Charles Drouin. This is also where she met the accused, Corporal Raphael Beaudry, an acquaintance she had met on two previous occasions, during nights out at a neighbouring establishment. Private L.D. had a few drinks at the bar. Her mood and energy were positively affected by the alcohol, but she could certainly keep her balance and speak coherently. She recounted the conversations she had with Corporal Beaudry during the course of the evening and the fact that he asked her if she liked sex and repeatedly said that he would be interested in having sexual relations with her and, if possible, with her friend. Corporal Beaudry also touched her buttocks and crotch during the evening. She testified that she did not make a big deal about this and found his actions amusing. She testified that she clearly indicated that they would not be having sex. About 30 minutes before last call at the

bar, she accepted Corporal Beaudry's invitation to go back to his place with Ms. Danis and Corporal Drouin to have a few more drinks and talk some more.

[9] Once they had arrived at Corporal Beaudry's residence, on the military base in Wainwright, Corporal Drouin and Ms. Danis sat down in the living room. Corporal Beaudry remained standing and asked Private L.D. if she wanted to go up to his bedroom. She declined his invitation, saying that they were not going to have sex. Corporal Beaudry insisted, saying that they were just going to talk. She agreed but again repeated that they would not be having sex. She went upstairs, while Corporal Drouin and Ms. Danis stayed downstairs. When they got upstairs, the offender opened the door to his bedroom. Private L.D. remained in the doorway while Corporal Beaudry headed for the bathroom located on the other side of the hallway. Corporal Beaudry then returned to the bedroom, but this time he was undressed, with only a towel around the hips.

[10] Corporal Beaudry then closed the door and announced, "We're going to have sex." She replied: "No." Corporal Beaudry then grabbed her by the throat with one hand, pushing her onto the bed. He told her that he didn't want to hear another word from her, that if she screamed or cried she had no idea what he could do to her. She was scared and froze. He moved towards her, removed her pants and underwear and penetrated her forcibly, first vaginally and then orally. He bit her violently on the arm when she tried to push him away, causing an injury. He also pinched her violently in several areas, including her inner right thigh so that she would keep her legs open after he had bitten her. After he had ejaculated partly in her vagina and partly in her mouth, he lay on his back. Private L.D. then gathered her clothing and left on the pretext that she had to get to work for a shift starting in an hour.

The consequences of the offence

[11] During the sentencing hearing, the Court heard Sergeant Hartling, Private L.D.'s superior at the base's kitchens, describe the transformation that occurred with Private L.D. following her assault. A cheerful and dynamic member who had excellent leadership potential became withdrawn, timid and introverted, as if all of the life had drained out of her. Sergeant Hartling stated that Private L.D. nonetheless remained a tireless worker who seemed to enjoy her work in the kitchen, despite everything, but that once she was distracted by any correspondence or request relating to her assault, she became so distraught that she had to have her tasks reduced and often needed to get away from her workplace.

[12] Private L.D. testified, not without difficulty, but with a great deal of courage, about the impacts of the assault on her. She stated that in the days after the assault, once she was back at work, she was sort of all right when she was in the kitchen and cooking, but that she would feel horribly alone once she returned home, despite the support of her friends. Later, the weight of the assault began to affect her ability to fall asleep, which affected her work, where she had difficulty concentrating, cutting and burning herself constantly, and was hypersensitive, often crying in front of colleagues. She

sought out mental health support from the chaplaincy, in addition to being prescribed sleeping pills and antidepressants. It was very difficult for her to tell her parents, who were devastated and deeply saddened by the news, a situation made more difficult given the distance between Wainwright and their home in Quebec. Lately, however, Private L.D. claims to be doing better. She consults with a mental health professional only when she requests to and has stopped taking medication for over a month, which is good for her as she doesn't like the effect the medications have on her. Although her testimony before the Court was trying, she said she was relieved that this important stage in her recovery process was over, as the unexpected postponement of the proceeding to the fall of 2015 had come as a blow to her. Despite anxiety issues and some nightmares, Private L.D. has returned to a more normal life.

The circumstances of the offender

[13] Corporal Beaudry is 32 years old. He joined the CAF in September 2008 as an ammunition technician. After completing basic training and his trade course, he was posted to Wainwright in 2010 and has been serving in Edmonton since last summer. He was deployed to Afghanistan in 2013. He is married and has no children.

[14] Corporal Beaudry did not have any evidence heard in relation to his performance. His commanding officer testified for the prosecution and had very little to say to the offender's counsel, who asked her whether she had been informed about positive things in relation to the performance and potential of Corporal Beaudry. She replied that his work had been appreciated at the reserve unit he was assigned to after the charges were brought, when he had to be assigned work that would not breach the conditions of his release.

[15] The review of the documents submitted at the sentencing hearing indicates that Corporal Beaudry was initially arrested and detained for three days in September 2014. It appears that he was arrested and detained once again following a breach of conditions. He was subject to five summary convictions for absences without leave since the assault he committed in September 2014, although one was for an absence in June 2014. I mention this not because they are aggravating factors, but because these facts allow me to understand that Corporal Beaudry has not re-entered the ranks in an entirely productive manner since the incidents in September 2014. Corporal Beaudry's commanding officer testified eloquently on this matter. In responding to the questions of the Court, she indicated that Corporal Beaudry had been notified in the last few weeks that a decision had been made to order his administrative release from the CAF the following month. That compulsory release was at the initiative of the chain of command, which found him unfit to continue his military service, mainly due to factors within his control, that is to say his violation of the CAF policy on drugs and shortcomings that imposed an excessive burden on the administration of the CAF.

[16] Counsel for Corporal Beaudry offered an apology on behalf of his client before beginning his oral argument on sentencing. He stated that his client was in shock and had difficulty expressing himself, but that he was still remorseful. Counsel stated that

Corporal Beaudry apologized to Private L.D. for what he had done, saying that he had a sincere, but, as it appears from the verdict, unreasonable belief in Private L.D.'s consent to the sexual activities of September 6, 2014.

THE POSITIONS OF THE PARTIES ON THE SENTENCE

The Prosecution

[17] The military prosecutor characterizes the offence committed as an aggravated sexual assault that must be punished by a sentence of four years of imprisonment, so as to satisfy the principles of denunciation and general deterrence that, in his view, should be prioritized in this case. It is, according to him, the minimum sentence needed to maintain discipline.

The Defence

[18] For its part, the defence acknowledges that the objective seriousness of the offence requires the imposition of a term of imprisonment. In his opinion, the sentence should be for a term of six months and should be accompanied by dismissal from Her Majesty's Service. In this way, the sentence would satisfy the principles of denunciation and deterrence identified by the prosecution while not compromising the principle of rehabilitation.

ANALYSIS

Characterization of the offences

[19] As mentioned previously, the purpose of a separate system of military tribunals is to allow the armed forces to deal with matters that pertain directly to discipline, efficiency and morale, in addition to allowing for the sanctioning of persons who are subject to the Code of Service Discipline in the same manner as any other citizen, to ensure compliance with the law in Canadian society in general. In this case, the sentence imposed by the Court must meet these two objectives. First, there is a certain military aspect in the circumstances of the offences and in the perspective of this proceeding being held at CFB Wainwright. Second, I have to impose a sentence on a member that the CAF authorities plan to release from its ranks very soon in relation to his misconduct. In these circumstances, the sentence I impose must absolutely satisfy society's broader interests. The Court is sanctioning the offender for a serious crime, not only in the armed forces, but in our society in general. The sentence to be imposed must also protect the interests of the citizens of Alberta and elsewhere in civil society, of which the offender will soon be a part.

Objectives to be prioritized

[20] I have come to the conclusion that the circumstances in this case warrant a sentence that targets the objectives of denunciation, general deterrence and

rehabilitation. The sentence must clearly express the notion that the conduct of the offender was unacceptable, both in society and within the CAF. It should deter not only the offender but also others in a similar situation who could be thinking of acting in the same manner. However, the sentence should not unduly undermine the serious efforts at rehabilitation Corporal Beaudry will be required to undertake given that, at age 32, he has an opportunity to change and to rehabilitate himself to contribute in a positive manner as a member of society.

Objective seriousness of the offence

[21] In considering what would constitute a just and appropriate sentence, the Court considered the objective seriousness of the offence which, under the provisions of section 272 of the *Criminal Code*, is an offence punishable by a maximum of 14 years.

Aggravating factors

[22] The objectives of sentencing, set out at sections 718 *et seq.* of the *Criminal Code*, need to be taken into consideration by courts martial. The sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or to the offender. In his oral argument, the prosecution submitted to the Court certain observations on the subjective seriousness of the offence. He asserted that the circumstances of the offence were serious, citing the categorization adopted by the Alberta Court of Appeal in *R. v. Arcand*, 2010 ABCA 363. I am in agreement with respect to the seriousness of the offence. I recognize the violent and sudden nature of the assault as well as the threats made against the victim during the assault, to the effect that she should keep quiet or she would have no idea what would happen to her. It is clear to me that the experience the offender forced upon the victim would have been traumatic for anyone.

[23] The significant psychological impact of the assault recounted by Private L.D. to the Court during the sentencing hearing, corroborated in part by the testimony of her superior officer who witnessed that impact at work, convince me that serious harm was inflicted on the psychological integrity of the victim, which constitutes an aggravating factor. The physical impacts have also been taken into consideration. Although the physical injuries sustained by Private L.D. are on the lower end of the scale of potential seriousness in terms of bodily injury, they caused a great deal of discomfort and affected her appearance for several weeks.

[24] The military prosecutor went on at great length about issues of discipline and the impact of the offences on the unit during his oral argument, and I have no intention of discussing every issue that was raised. It is true that as Master Corporal, which was Corporal Beaudry's rank at the time, he was the first line of responsibility in leadership within the army and had a special responsibility towards junior members. However, the difference in rank was not a factor in the circumstances of the offence. What was far more important was that Corporal Beaudry assaulted a colleague, a fellow member of the CAF. Of course, he physically attacked her, but he also and above all attacked her

dignity. We all joined the armed forces for different reasons. No doubt the duty of CAF members is to contribute to a military force that is regularly confronted with various threats. Someone who consents to put their personal safety at risk to help fight those threats should not face the additional threat of being assaulted by their brothers or sisters in arms. Defence Administrative Order and Directive (DAOD) 5019-5, on sexual misconduct, describes the negative impact of this type of conduct on security, morale, discipline and cohesion in the CAF. In simple terms, these behaviours weaken the CAF. The evidence clearly shows that the assault committed by the offender was contrary to his duty not to threaten the security of a fellow member and that it weakened the CAF. This is an aggravating factor, given that Corporal Beaudry should have been completely familiar with the standard of conduct expected of him in that regard.

Mitigating factors

[25] The Court also considered the following mitigating factors:

- (a) the offender's lack of a disciplinary record;
- (b) the apology and remorse expressed by the counsel for the offender on his behalf, although it would have been far more preferable for these to have been expressed verbally by Corporal Beaudry himself. It is with some degree of reluctance that I agree to consider the apology and remorse as a mitigating factor, given the unflattering language used by the offender when referring to the victim during his examination at trial, which leads me to believe that the remorse expressed may not have been entirely sincere. That said, it is possible that the trial and my decision yesterday may have helped produce greater awareness on the part of the offender and, considering his counsel's statement to the effect that Corporal Beaudry had difficulty expressing himself, I have decided to take into account his remorse as a factor that may be considered in mitigation of punishment;
- (c) Corporal Beaudry's brief period of detention before trial, as well as the fact that his freedom was at least partially curtailed as a result of the conditions imposed upon him since September 2014. Even though the details of those conditions were not communicated to me, the fact of being restricted by an order of a quasi-judicial nature, in addition to having to live with the inherent stress of the status of a person charged with sexual assault causing bodily harm awaiting trial should be considered as mitigating in a military context in which the justice system coexists with the duties of managing personnel imposed on military authorities as an employer, not only of the accused, but of the alleged victim and often of the witnesses. It is also important to note that a significant period of time has elapsed since this proceeding and the commission of the offence in September 2014, at that the postponement of the trial originally scheduled for November 2015, at the last minute

and through no fault of the parties, complicated Corporal Beaudry's life, as much as it complicated the life of the victim and of the unit's authorities;

- (d) Corporal Beaudry's cooperation with police authorities during the investigation; and
- (e) Corporal Beaudry's past contribution to public service within the CAF, including a deployment to Afghanistan. This contribution should be proof to him that he still has the potential to make a positive contribution to Canadian society in the future.

[26] Counsel for the defence suggests that the offence is not the most serious, considering that in Corporal Beaudry's mind there was consent and that his situation was far different from that of an offender hiding in some bushes and attacking and assaulting passers-by. I have duly noted the circumstances of the offence in my sentencing, *inter alia*, of the level of seriousness of the physical injuries caused to the victim, which are at the lower end of the scale of possible injuries. However, I am not prepared to consider the fact that the victim was assaulted in the residence of a colleague rather than having been suddenly assaulted by a stranger as a mitigating factor. Nor does the offender's unreasonable belief of consent constitute a mitigating factor.

Determination of the sentence(s) to be imposed

[27] Both parties agree that, in the circumstances of this case, the minimum sentence the Court must impose in order to meet the aforementioned objectives of denunciation and deterrence includes a period of imprisonment. The issue is how long that sentence should be and whether it should be accompanied by dismissal from Her Majesty's Service, as recommended by the defence.

[28] With regard to the parties' submissions, I conclude from defence counsel's arguments that sentences imposed for sexual assault offences tried before military courts fall into a very broad range, from 30 days to 36 months, the sentence that was imposed by the court martial in *R. v. Royes*, 2013 CM 4034. I must, however, squarely reject the defence's proposal to impose a 6-month sentence, even with the understanding that the proposed sentence would have been 12 months, were it not for the suggestion to add dismissal to the prison sentence. The defence has submitted no authority to me that would show how such a light sentence could be appropriate for the offence of sexual assault causing bodily harm.

[29] I am of the opinion that the prosecution's arguments for a sentence of four years', or 48 months', imprisonment are not unreasonable, in light of the two precedents cited, namely, *Royes*, above, and *R. v. Lough*, 2011 CM 2022, which resulted in the imposition of sentences of 36 and 34 months respectively. It is clear that the

circumstances of these two cases were different from each other, and that they in turn were different than the circumstances of this case. It is impossible to find two identical cases. That said, I agree entirely with the reasons of Perron MJ in *Royes*, and I find that the sentence he imposed in that case was entirely appropriate for its circumstances, namely, sexual assault of a colleague, with penetration, who was drunk to the point of unconsciousness, whom Master Corporal Royes had taken back to his room, on this very base at Wainwright. I note, however, that the objective seriousness of the offences in this case is greater. Offences of sexual assault causing bodily harm are considered uniquely as criminal offences, that are punishable by a maximum term of imprisonment of 14 years and not hybrid offences punishable by a maximum of 10 years' imprisonment like sexual assaults. Furthermore, I find the circumstances in this case to be more serious. There was a physical assault, threats and an interaction marked by violence. I am therefore of the view that in this case, I must impose a sentence of imprisonment that is slightly harsher than the one imposed by Perron MJ in *Royes*. Thus, the prosecution's proposal appears entirely justified to me.

[30] I must add, however, that I have considerable difficulty with the prosecution's submissions, when I am presented with arguments and material on policies dealing with sexual misconduct within the CAF, including initiatives such as Operation HONOUR, and when I am asked to impose the same sentence that one would ask a judge in a proceeding in civil court. I want to be very clear that I am in no way bound, as a judge, by the pronouncements of Headquarters, and I am not in the least concerned by what Headquarters may think of my decisions. However, it does so happen, in this case, that I agree with them with regard to the fact that, in my view, someone who sexually assaults a fellow member has no place in the CAF. It is therefore unfortunate that the prosecutor did not see fit to recommend one of the sentences that section 140.1 de la *NDA* expressly provides as a possible accompaniment to a term of imprisonment of more than two years, namely, dismissal or dismissal with disgrace from Her Majesty's service.

[31] I firmly believe that the imposition of one of these sentences would further the principles of denunciation above all, but also general deterrence that the prosecution identified as needing to be upheld in this case. I am aware that the offender was, at any rate, going to be forced to leave the CAF next month, and therefore that the impact on specific deterrence is lessened, though not eliminated. However, the verdict of this Court and its sentence should, in my view, be clearly reflected in terms of the reasons for which Corporal Beaudry is no longer a member of the CAF. As for the choice between dismissal and dismissal with disgrace from Her Majesty's service, I feel that dismissal is more likely to reflect the important principle of rehabilitation that I am keeping in mind in imposing the sentence. Corporal Beaudry has the potential to rehabilitate himself and may wish to serve Her Majesty as a civilian again in the future. I will therefore avoid imposing a sentence that would render such service impossible under subsection 141(2) of the *NDA*.

[32] I concur with the arguments of the defence that the imposition of a sentence of dismissal must result in a reduction in the length of the term of imprisonment that

accompanies it. In the specific circumstances of this case, in particular the mitigating factors I mentioned earlier, reduction corresponding to six months' imprisonment appears appropriate to me.

Orders to be imposed

[33] Given that the offence of sexual assault causing bodily harm, set out at section 272 of the *Criminal Code*, constitutes a primary designated offence within the meaning of paragraph 196.11(a) of the *NDA* and of section 487.04 of the *Criminal Code*, I am required, under subsection 196.14(1) of the *NDA*, to issue an order authorizing the taking from the offender the number of bodily substances that is reasonably required for the purpose of forensic DNA analysis.

[34] In addition, with respect to the application for an order that the offender comply with the *Sex Offender Information Registration Act*, the offence of sexual assault causing bodily harm under section 272 of the *Criminal Code* is a designated offence within the meaning of section 227 of the *NDA* and section 490.011(1)(a) of the *Criminal Code*. The order sought is therefore mandatory. Section 227.02 of the *NDA* deals with the duration of the order. Given that the offence of sexual assault causing bodily harm under section 272 of the *Criminal Code* is punishable by a term of imprisonment of 14 years, I order, pursuant to subsection 227.02(2) of the *NDA*, that the offender comply with the *Sex Offender Information Registration Act* for a period of 20 years.

[35] In accordance with the prosecution's request, I find that in the circumstances of this case, an order is warranted that would prohibit the offender from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, pursuant to section 147.1 of the *NDA*. This order will be for a period of ten years from today's date.

[36] Corporal Beaudry, the circumstances of the offence for which you have been found guilty are troubling. You behaved like a criminal by imposing your wish to fulfill your sexual desire on Private L.D. when, where, and how you wanted without any respect for her will or her dignity. In so doing, I must now treat you like a criminal by sending you to prison.

[37] Your conduct was also totally incompatible with service in the CAF. I will therefore use the powers conferred upon me by law to accelerate your departure from this institution of which you have rendered yourself unworthy.

[38] I believe you have a serious problem with anger management and with your attitude toward women that you must resolve. I encourage you to make use of the opportunities you will be provided with in prison facilities during the next months to work on this. The choice is yours, as with other offenders, you have the potential to rehabilitate yourself.

FOR THESE REASONS, THE COURT:

[39] **SENTENCES YOU** to a term of imprisonment of 42 months and dismissal from Her Majesty's service.

Counsel:

The Director of Military Prosecutions, as represented by Lieutenant-Commander S.C. Leonard and Major P. Rawal

M. Morin
Morin Lessard avocats
118 Saint-Jean-Baptiste Street
Victoriaville, Quebec, G6P 4G1
Counsel for Corporal R.P. Beaudry