



## COURT MARTIAL

**Citation:** *R. v. Captain A.G.M.*, 1997 CM 26

**Date:** 28 August 1997

**Docket:** S199726

Standing Court Martial  
Halifax, Nova Scotia, Canada  
Canadian Forces Base Halifax

**Her Majesty the Queen**

- and -

**Captain A.G.M., accused**

**Before:** Commander R.F. Barnes, M.J.

### Warning

**Subject to sub-section 486(3) and 486(4) of the *Criminal Code* and section 179 of the *National Defence Act*, the court has directed that the identity of the complainant and any information that would disclose the identity of the complainant shall not be published in any document or broadcast in any way.**

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### SENTENCE

(Orally)

[1] The submissions of both counsel have assisted me greatly in the difficult task of sentencing. The range of sentence suggested by the prosecution is not unreasonable and

there are no extraordinary circumstances which would justify exceeding the suggested maximum. Therefore, I can say at the outset that imprisonment is not an issue.

[2] I agree that the principles of sentence which are best designed to protect the public in this case, and, of course, the public includes the military community, are a combination of general deterrence and rehabilitation of the offender.

[3] This case can be distinguished from the Standing Court Martial result in the case of Petty Officer, 2nd Class Mosher because in *Mosher* the sexual assault had a premeditated aspect to it: it was committed in a ship at sea during an exercise; it involved an older petty officer and a young female ordinary seaman; and the *actus reus* of the sexual assault in that case was more than fleeting. The other cases cited by the prosecution are less similar on the facts.

[4] While Lieutenant(N) Demirkan indicated that he could not find - rather, he could find few recent incidents of this offence of sexual assault in the court martial records, I believe he explained that as being a result of the operation of section 70 of the *National Defence Act* which removes military jurisdiction over sexual assaults committed in Canada. However, no evidence was led as to the prevalence of sexual assault in the Canadian Forces generally, apart from another instance reported by Sub-Lieutenant M., and, therefore, I must assume that it is not prevalent since the law requires that any disputed aggravating factor against an offender must be established beyond a reasonable doubt.

[5] The effect of this offence on the complainant has been serious. I expect that this underlies the fact that all sexual assaults are serious offences for which Parliament has provided a maximum penalty of 10 years imprisonment. I cannot sentence, however, in a vacuum. So I must consider the character and circumstances of Captain M.. This is a first offence for him and that is important. He has also demonstrated remorse through his letter to the complainant dated the 21st of March 1997 and in his testimony. His explanation for the lack of an apology on the 9th of March of 1997, the day after the offence, is reasonable and I accept that. The past social behaviour of Captain M. has been described by the character witnesses as most acceptable. I conclude that this offence committed against his friend was not an example of his true character.

[6] I have also considered the consequences of the finding of guilty and a sentence on the accused. And one such consequence may well be the release from the Canadian Forces of Captain M. pursuant to Canadian Forces Administrative Order 19-36, paragraph 22. If it were within my authority to impose a sentence that included

mandatory counselling on harassment or gender sensitivity I would do so. However, it is not and all I can do here is recommend such training.

[7] Would you stand up, Captain M..

[8] This court sentences you to a severe reprimand a fine in the amount of two thousand dollars.

[9] March out Captain M..

[10] The proceedings of this Standing Court Martial in respect of Captain M. are hereby terminated.

**Counsel:**

Major J.S. MacKay, Deputy Judge Advocate Gagetown, Counsel for Her Majesty the Queen

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