



COURT MARTIAL

Citation: *R. v. Clark*, 2017 CM 1006

Date: 20170418

Docket: 201611

Standing Court Martial

Asticou Centre
Gatineau, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Lieutenant(N) J.C. Clark, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Lieutenant(N) Clark admitted his guilt on 22 February 2017, in Sydney, Nova Scotia, to 4 counts of conduct to the prejudice of good order and discipline under the section 129 of the *National Defence Act*. Three charges dealt with separate incidents of harassment contrary to Defence Administrative Orders and Directives (DAOD) 5012-0, Harassment Prevention and Resolution, where the other charge arose from making inappropriate comments to a subordinate.

[2] We are in the presence of a joint submission by counsel and they recommend a sentence composed of a reprimand and a fine in the amount of \$2,000. This joint submission is made in the context of the current applicable law in Canada with regard to joint submissions as stated by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43, where the court exposed the legal test that trial judges must apply when they are facing a joint submission by counsel.

[3] Unless the joint submission is contrary to public interest or will bring the administration of justice into disrepute, the Court cannot depart from it. The Supreme Court of Canada was absolutely clear that it is a desirable practice for prosecution and defence to agree on joint submissions on sentence, but it also highlights the fact that they are responsible and accountable for those joint submissions. In other words, the judge cannot change their recommendation by tweaking it even a little bit. Agreements of that nature are commonplace and they are vitally important to the well-being of any justice system, whether it is the military justice system or the criminal justice system, because it frees up resources and allows their allocation to needier cases. We have to trust the judgement, the experience and the competence of counsel in the legal system.

[4] Joint submissions have many benefits, one, of course, is that the prosecution can secure a conviction when its case may have some weaknesses, but most importantly, it economizes resources by not having to call witnesses, and spares plaintiffs or victims from having to come and testify about the experience that led to the charges. It also assists the defence in the sense that the accused knows what to expect in terms of sentencing. So it provides both parties with a high probability that if they discharge their burden, their recommendation will be accepted.

[5] A Statement of Circumstances and an Agreed Statement of Facts were provided to the court as a result of the pleas of guilty and are hereby reproduced to provide a detailed rendering of the events that led to charges before the court as well as relevant information in the determination of a fair and fit sentence. They read as follows:

“Statement of Circumstances

1. At all material times, Lt(N) J.C. Clark the Detachment commander of CFB Halifax Detachment Cape Breton, Nova Scotia located in Sydney.

2. Mary MacIsaac is a DND civilian employee, who, at the relevant times was employed as a cleaner for the Garrison Victoria Park. On numerous occasions, Lt(N) Clark joined Ms MacIsaac and her civilian co-workers in their lunch room during breaks. Lt(N) Clark often initiated sexually driven conversations that made her feel uncomfortable. These comments included the following:

- a. Lt(N) Clark’s intimate details of his relationship with wife;
- b. Lt(N) Clark’s being offered a “blow job” by his neighbor.

3. Further to that, during his last day at the Detachment in Sydney, as part of a departure gathering, Lt(N) Navy Clark and others were involved in a conversation where Cpl Essemble was telling a story about his walking around his home naked and his wife being upset because the senior lady who lived next door might see him, Lt(N) Clark said the

following to Ms MacIsaac, in front of other co-workers, military and civilian, in a loud manner:

“the old lady hasn’t seen a young naked guy in a while, right Mary”

4. All these comments caused personal embarrassment to Ms MacIsaac. She felt that she had to listen to him as he was the Officer in charge. As a result, she felt she could not report this adverse situation. As a result of these comments, Ms MacIssac no longer liked coming to work as she was uncomfortable in her workplace.

5. MCpl Forrest is a Resource Management Support (RMS) Clerk, who, at the relevant times was employed as the Finance clerk for the Detachment of CFB Halifax Detachment Cape Breton.

6. In October 2014, Lt(N) Clark asked her how many kids she had. She answered she had four, to which Lt(N) Clark replied: “wow, you’d think you would have kept your legs closed after two”. This comment shocked her.

7. During the winter of 2015, Lt(N) Clark called Sgt Forrest into his office and proceeded to tell her about his neighbor who had propositioned him recently and offered him a “blow job”, no strings attached.

8. Cpl Melnick is a Resource Management Support (RMS) Clerk, who, at the relevant times was employed as a clerk for the Detachment of CFB Halifax Detachment Cape Breton.

9. On one occasion, Lt(N) Clark relayed a story in which he stated that he sparred with a larger female and that he had to “push her away by the tits”. This caused embarrassment to Cpl Melnick.

10. During the winter of 2015, Lt(N) Clark told her about his neighbor had propositioned him and offered him a “blow job”, no strings attached. This caused embarrassment to her.

11. As a result of these comments, Cpl Melnick no longer liked coming to work as she was uncomfortable in her workplace.

12. At all material times, Maj Timbury was posted to Detachment of CFB Halifax Detachment Cape Breton, while on the Advanced Training List (ATL), undergoing the completion of a Master’s degree in Business Administration.

13. In Mid-April 2014, Maj Timbury was working at the Detachment and stated that she would be on leave to visit with her fiancé the following week. Lt(N) Clark said words to the effect “have a good time you won’t be walking right when you get back”. Senior Non-commissioned officers were also present. The comment was referring to the opportunity that Maj Timbury would have to engage in sexual activities with her partner over the week. This comment shocked and humiliated her. She felt extremely embarrassed, uncomfortable and angry.

14. On 20 May 2014 during a unit function, the Detachment, participated in a unit "Fun Day", at a local establishment. Upon her arrival at the pool hall, Lt(N) Clark invited her to play pool. As the afternoon progressed, comments escalated to be more and more uncomfortable and inappropriate. The first comment that made her uncomfortable was after she had made a comment about him leaving her shots at the other end of the table. His response was that by doing so, he was making it harder for her to make the shot as she would have to lean over the table. Subsequent to that comment, PO2 Lake approached the table. The PO2 asked who was winning, to which Lt(N) Clark replied in a loud tone, "by now she should be stripped down to her panties". Within earshot, there were very junior members. These comments made Maj Timbury feel embarrassed, undermined, disrespected and uncomfortable. Maj Timbury addressed the comments the next day with Lt(N) Clark and he apologized.

15. Lt(N) Clark knew or ought to have known that the comments discussed herein would cause offence. As a result of the events that form the basis of the charges, Lt(N) Clark lost the respect of the members and employees discussed herein. The morale of the unit was also adversely affected by Lt(N) Clark’s actions.

16. Lt(N) Clark knew of the prohibition contained within DAOD 5012-0.

17. The comments discussed herein caused prejudice to good order and discipline.”

“Agreed Statement of Facts

1. The detachment commander in Sydney is responsible to the CO of Base Administration Canadian Forces Base (CFB) Halifax for the provision of force support to 36 Brigade Elements in Cape Breton. The detachment commander is the senior military officer in the station and is thus responsible for the performance, conduct, and discipline of CAF personnel posted to the CFB Halifax billets at the station. As the senior

CAF member at the station the detachment commander is also responsible to work with Civilian Human Resources to hire and supervise DND civilian employees serving at the station. At all times the detachment commander is responsible for the safety, and welfare of all personnel working at the station.

2. The detachment commander is the divisional officer for all CAF personnel posted to CFB Halifax billets at the station.

3. The detachment commander reports through the LCdr Base Personnel Administration Officer to the Commanding Officer of Base Administration at CFB Halifax.

4. Capt(N) Chris Sutherland was the Commander of CFB Halifax from 10 July 2015 to 31 March 2017. He was informed of the essence of the allegations that formed the basis of the charges for which Lt(N) Clark was found guilty through his review of the statements of the victims.

5. The following is a summary of the views expressed by Capt(N) Chris Sutherland, in his capacity as the Base Commander, with regards to Lt(N) Clark's actions:

a. Through his actions, Lt(N) Clark failed to lead in a manner that is expected of an officer given authority to care for the health, safety, and welfare of his people.

b. It is the CAF's responsibility to select the right officer with the right leadership experience and competencies to serve. The CAF sent a toxic leader to the Sydney Detachment and he adversely affected the unit's morale, good order, and discipline through his actions.

c. Those DND, CAF, and Civilian Contracted personnel under Lt(N) Clark's leadership have lost faith in CAF/DND as an institution charged with caring for their welfare and providing them with a safe and respectful workplace. Lt(N) Clark failed to provide a safe and respectful workplace for his people.

d. Unless properly sanctioned, word of Lt(N) Clark's misconduct will spread and will impact on CAF/DND's ability to attract and retain people to serve this institution because they fear being subject to misconduct by those that we entrust with leadership over them.

6. Lt(N) Clark joined the CF in Feb 1987 as a Private in the admin clerk trade.

7. Lt(N) Clark 's home is in Fall River, NS which he owns, subject to a mortgage, with his wife.

8. Lt(N) Clark has two children that live at home in Fall River (age 14 and 11).

9. Lt(N) Clark is currently on IR in Ottawa and resides on Cooper St.

10. Lt(N) Clark advises that he has a net disposable income after expenses each month of approximately \$300.

11. As a result of these incidents an administrative review has been initiated, to determine whether he should be released from the Canadian Armed Forces.

12. As a result of Lt(N) Clark learning how his communications were taken by Maj Timbury, Ms MacIsaac, Sgt Forrest and Cpl Melnick, Lt(N) Clark has sought medical treatment form Canadian Forces Mental Health Services for a potential cognitive deficiency affecting his ability to perceive appropriateness or affecting his judgment.

13. The Canadian Forces Medical Services initially declined to provide a referral to mental health. After further communications by Lt(N) Clark he has recently been advised that he will get a referral, although one has not been made yet.

14. While Lt(N) Clark now recognizes that he ought to have known that the comments discussed in the Statement of Circumstances would cause offence, Lt(N) Clark's indicates that he did not realize, until the Court Martial, that they did.

15. Other than Maj Timbury, in relation to the events at the pool table (discussed at paragraph 14 of exhibit 7), Ms MacIsaac, Sgt Forrest and Cpl Melnick did not advise Lt(N) Clark that they were offended by his comments.

16. None of the comments discussed in the Statement of Circumstances were of the nature that they suggested any possibility of contact between Lt(N) Clark and Maj Timbury, Ms MacIsaac, Sgt Forrest and Cpl Melnick.”

[6] The offender joined the Canadian Armed Forces (CAF) as a private in 1987 and commissioned in 2006. Throughout his career, he has been deployed several times including Syria, Egypt and Haiti. Additional documents were also filed during the

sentencing hearing by consent of the parties. Personnel Evaluation Reports for years 2012 to 2014 indicate that the offender performed otherwise in an outstanding manner prior to these events and that persons who have known him for several years in a personal and professional capacity think highly of him as an officer, a caring father and a person well respected in his community. Those documents provide a complete picture of the offences and of the offender that led counsel to prepare and make this joint submission in light of the main sentencing objectives applicable to this case, namely general deterrence and denunciation. In making this joint submission, counsel have taken into account the most relevant aggravating factors, including the rank and position of the offender at the time and the fact that the inappropriate conduct was not an isolated incident. With regard to the mitigating factors, the pleas of guilty of the accused and the rationale behind it as described in the Agreed Statement of Facts, must be given their full weight. In the circumstances, the Court considers that Lieutenant(N) Clark fully recognizes his responsibility and that his admissions of guilt are a sincere expression of remorse for his past conduct. He is 53 years old and has had a fine career in serving his country. I am satisfied with the circumstances that were provided to the Court as well as the rationale supporting the criteria set by the Supreme Court of Canada put forward by both counsel. This joint submission is in the public interest and it does not bring the administration of justice into disrepute.

FOR THESE REASONS, THE COURT:

[7] **FINDS** you guilty of four counts of conduct to the prejudice of good order and discipline contrary to section 129 of the *National Defence Act*.

[8] **SENTENCES** you to a reprimand and a fine in the amount of \$2,000 payable on 30 April 2017.

Counsel:

Major D.J.G. Martin for the Director of Military Prosecutions

Lieutenant-Colonel D. Berntsen, Counsel for Lieutenant(N) J.C. Clark