



COURT MARTIAL

Citation: *R. v. Brisebois-Bergeron*, 2016 CM 1023

Date: 20161124

Docket: 201602

Standing Court Martial

3rd Canadian Division Support Group
Edmonton, Alberta, Canada

Between:

Her Majesty the Queen

- and -

Corporal J. Brisebois-Bergeron, Offender

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

NOTE: Personal data identifiers have been redacted in accordance with the Canadian Judicial Council's "*Use of Personal Information in Judgments and Recommended Protocol*".

REASONS FOR SENTENCE

(Orally)

[1] Corporal Brisebois-Bergeron, you have admitted your guilt to an offence under section 84 of the *National Defence Act*, striking a superior officer. The charge reads as follows:

STRUCK A SUPERIOR OFFICER

Particulars: In that he, on 30 September 2015, at approximately 1030 hrs, at Edmonton Garrison in Edmonton, Alberta, did strike XXXX, Captain McLean, C. in the face.

[2] The purpose of the military justice system is to prevent misconduct or, in a more positive way, to promote good conduct. Today, counsel have made a joint submission on sentence, seeking a reduction in rank to the rank of private, a severe reprimand and a fine in the amount of \$1,500, payable at a rate of \$500 per month, starting 30 November 2016. This joint submission comes after a decision from the Supreme Court of Canada released on 21 October 2016, *R. v. Anthony-Cook*, 2016 SCC 43. In that decision, Moldaver J, for the court, exposed the legal test that trial judges should apply in deciding whether it is appropriate, in a particular case, to depart from a joint submission. The court affirms, in that decision, as pointed by counsel today, that the public interest test is the proper legal test that trial judges should apply, as stated at para 29 :

[29] [A] trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[3] Trial judges should depart from the proposed sentence only if, viewed by reasonable and informed persons, it would be seen as a breakdown in the proper functioning of the justice system. That was mentioned by Major Tremblay for the defence. As stated by the Supreme Court in *Anthony-Cook* :

[25] It is an accepted and entirely desirable practice for Crown [or the prosecution in the military context] and defence counsel to agree to a joint submission on sentence in exchange for a plea of guilty. Agreements of this nature are commonplace and vitally important to the well-being of our criminal justice system [and military justice system].

...

[40] The prospect of a joint submission that carries with it a high degree of certainty encourages accused persons to enter a plea of guilty. And guilty pleas [as mentioned by defence counsel] save the justice system precious time, resources, and expenses, which can be channeled into other matters.

[41] [F]or joint submissions to be possible, the parties must have a high degree of confidence that they will be accepted. Too much doubt [in the court accepting those joint submissions on sentence] and the parties may choose instead to accept the risks of a trial or a contested sentencing hearing.

In short, why is this a good approach? First, it is proper and necessary for the system. Second, it provides certainty to the accused, who gives up his right to a fair trial. Certainly, one of the most obvious advantages for the defence or the accused to enter a plea of guilty is that the Crown agrees to recommend a sentence that the accused is prepared to accept. Sometimes, this recommendation may be more lenient than what an accused might expect otherwise. By entering a plea of guilty, the accused, also, can minimize his own stress and anxiety and all the legal costs associated with the trial. It is especially true for those persons who are truly remorseful; a guilty plea offers the opportunity to begin making amends.

[4] In the Statement of Circumstances and the Agreed Statement of Facts, it is clear that the offender here, Corporal Brisebois-Bergeron, informed his counsel and, in turn, the prosecution, of his intent to enter a plea of guilty at the earliest stage possible. So, that is an important aspect to this joint submission.

[5] There are not only advantages for the defence. There are advantages for the prosecution to propose joint submissions on sentence. Certainly, it minimizes the risk of the prosecution and it secures a conviction. We never know the case of the Crown before it is heard, but, sometimes, a case may suffer from flaws, or some evidence may be problematic with regard to its admissibility, for example. Prosecution does not have to inform the Court as to any flaw in their case, but they may propose or enter into joint proposal on sentence for other reasons as well, as long as it is in the public interest. One example of why the Crown would enter into a joint proposal on sentence is that it could be in the interest of the victims or witnesses. When an accused is pleading guilty to an offence, in exchange for a joint submission, the victims or witnesses are spared the emotional distress of coming to court and testifying. In addition, the victim or victims may obtain some comfort from a guilty plea by the accused. In that sense, it provides them with comfort in acknowledging that the offender has sincere remorse for what he did. And finally, of course, joint submissions on sentence, minimize the stress, the legal costs and the impact on all other participants in the justice process.

[6] However, this process relies heavily on the work of the prosecution and of the defence. Here, prosecution representing the military community's interests, but also the defence counsel acting in the accused's best interest. And how do they fulfil their duties and responsibilities? It is in providing a full account of the circumstances of the offence and the circumstances of the offender.

[7] The Statement of Circumstances and the Agreed Statement of Facts filed in court are reproduced to provide a full account of the circumstances of both the offence and the offender.

“STATEMENT OF CIRCUMSTANCES

1. Master Corporal Brisebois-Bergeron enrolled in the Canadian Armed Forces on 16 March 2007. His trade is Armoured Crewman. He completed his Recce Crewman qualification on 10 December 2007 and his Primary Leadership Qualification on 13 March 2014. He was posted to Lord Strathcona's Horse (Royal Canadians) armoured regiment in Edmonton on 1 Feb 2008. He was deployed to Joint Force Afghanistan's armoured squadron in Kandahar from 1 April to 30 October 2009. Following that deployment, he returned to the Lord Strathcona's Edmonton garrison.

2. In the fall of 2015, MCpl Brisebois-Bergeron was on half days for medical reasons. On the morning of 30 September 2015, at approximately 1030, MCpl Brisebois-Bergeron reported to the office of Captain C.D.

McLean, the regimental accounts officer. He had been directed to do so by his chain of command at Capt McLean's request. Capt McLean reminded MCpl Brisebois-Bergeron that he had been asked to provide a memorandum regarding his civilian employment, and that it was past due. MCpl Brisebois-Bergeron responded in a manner that Capt McLean perceived as aggressive, and inappropriate. Capt McLean suggested that they discuss the matter with the Headquarters Squadron Sergeant Major. MCpl Brisebois-Bergeron agreed. Both left the office.

3. Once Capt McLean and MCpl Brisebois-Bergeron were in the hallway outside the office, MCpl Brisebois-Bergeron requested some time to decompress before going to see the SSM. Capt McLean said MCpl Brisebois-Bergeron could take five minutes. MCpl Brisebois-Bergeron suggested he would need more time. MCpl Brisebois-Bergeron later stated that he made this request because he felt too agitated to have a productive conversation, and that Capt McLean also seemed agitated. Capt McLean told MCpl Brisebois-Bergeron that he had five minutes, then he would see him in the SSM's office, and "that is a direct order." At this point, Capt McLean's recollection is that he was standing still and MCpl Brisebois-Bergeron approached him. MCpl Brisebois-Bergeron's recollection is that each was walking towards the other, and that Capt McLean had an "aggressive posture." When the two were within striking distance, MCpl Brisebois-Bergeron punched Capt McLean in the lower left side of his face. Capt McLean attempted to restrain MCpl Brisebois-Bergeron. He was able to do so, but in the scuffle, he was hit in the forehead by the back of MCpl Brisebois-Bergeron's head. As Capt McLean held MCpl Brisebois-Bergeron in a bear hug, other members, including SSM Brown, came to assist. MCpl Brisebois-Bergeron was removed from the scene and sequestered in the Regimental Accounts office.

4. Capt McLean suffered a small bruise to his forehead, and redness and swelling to his face. He returned to work after about half an hour. He had a headache the next day, and took Tylenol. He suffered no other injuries.

5. A charge was laid 17 November 2015. MCpl Brisebois-Bergeron elected trial by court martial on 13 January 2016. Charges were preferred on 6 April 2016."

"AGREED STATEMENT OF FACTS

PERSONAL CIRCUMSTANCES

1. Following an Administrative Review of Cpl Brisebois-Bergeron Medical Employment Limitations, the Directorate of Military Career

Administration has rendered a decision imposing an administrative release for medical reasons. A copy of this decision, dated 21 September 2016 is introduced as an exhibit in these proceedings.

2. Corporal Brisebois-Bergeron has been medically released on the 21st October 2016. He was released at the rank of Corporal.
3. Corporal Brisebois-Bergeron is a first time offender. This Standing Court Martial constitutes his first appearance before a Military Tribunal.
4. From the onset, Cpl Brisebois-Bergeron instructed his Defence counsel to resolve this matter efficiently and to proceed with a guilty plea, Prosecution was quickly engaged thereafter.
5. Cpl Brisebois-Bergeron has been formally diagnosed with Post Traumatic Stress Disorder (PTSD) Tour related, in April 2015.
6. Cpl Brisebois-Bergeron has been formally diagnosed with Major Depressive Disorder single episode, mild, in April 2015.
7. Major Adrian Norbash, Psychiatrist, Flight Surgeon, is of the view that Cpl Brisebois-Bergeron's mental health condition has contributed to the commission of the offence for which he admitted guilt.

“This irritability and hypervigilance (i.e. being angry to begin with and misreading danger cues such as when someone strikes what in his PTSD-altered mind appears to be a threatening pose) may have led to an impulsive act as such as throwing a punch, especially in the context of poor judgment due to several mental health disorders, all of which are known to interfere with good judgment.”

8. Maj Norbash's report was reviewed for the prosecution by Maj Andrea Tuka, CD, MD, FRCPC. Maj Tuka is the Clinical Leader of Mental Health Services at Canadian Forces Health Services Centre (Pacific). Maj Tuka had not examined MCpl Brisebois-Bergeron, but supported Maj Norbash's clinical reasoning with regard to the questions posed by the defence and agreed that the information provided by Maj Norbash about the mental health conditions was accurate. Maj Tuka also noted that policy regarding mental health and discipline is covered at pages 31-32 of the Senior Leadership Guide to Mental Health, which reads in part:

“[A disorder] may lead to behaviour that contravenes Canadian law and the CF Code of Service Discipline.... As leaders, it is important to understand that destructive behaviour, regardless of cause to include

mental illnesses, must be addressed and dealt with like any other violation”

and;

“it is important that the chain of command holds its members accountable for their actions, regardless of the cause, in accordance with current CF policies and the military justice system. The mere presence of mental health issues does not make the member any less accountable for his/her actions.”

9. Following his Medical Release, Corporal Brisebois-Bergeron obtained qualification to act as an Insurance Agent to transact Accident and Sickness Insurance, this authorization was obtained on 13 July 2016, from the Alberta Insurance Council.

10. Corporal Brisebois-Bergeron is in the process of obtaining his qualification to act as an Insurance Agent to transact Accident and Sickness Insurance in the province of Quebec.

11. Cpl Brisebois-Bergeron is now completing a three months training period under the supervision of Mr. Adam Lancaster, this training period will end on the 8 January 2017.

12. Following that three months training period, Corporal Brisebois-Bergeron will receive a representative certificate from l’Autorité des marchés financiers (AMF) and will be authorized to perform as an Insurance Agent within the Province of Quebec.

13. Cpl Brisebois-Bergeron is currently self-employed and collaborates with World Financial Group as a Senior Marketing Director. Word Financial Group is a corporation that offers a wide array of life insurance and income protection solutions throughout North America.

14. Cpl Brisebois-Bergeron is relocated in Montreal, Quebec.”

[8] With regard to the offender, Corporal Brisebois-Bergeron is 28 years old. He enrolled in 2007 and served his country very well until his release. He has no prior conduct, either criminal or disciplinary. Medical issues contributed to the commission of the offence and that is clearly portrayed in the Agreed Statement of Facts. Circumstances of the offence are straightforward, and I agree with counsel that it appears to be an isolated incident that was prompted, at least in part, by a medical condition. The Court is amply satisfied that counsel have discharged their obligation in making their joint submission, today, on sentence.

FOR THESE REASONS, THE COURT:

[9] **FINDS** Corporal Brisebois-Bergeron guilty of the offence of striking a superior officer under section 84 of the *National Defence Act*.

[10] **SENTENCES** Corporal Brisebois-Bergeron to a reduction in rank to the rank of private, a severe reprimand and a fine in the amount of \$1,500, payable in three equal monthly instalments of \$500 starting 30 November 2016.

Counsel

Major E.J. Cottrill for the Director of Military Prosecutions

Major B.L.J. Tremblay, Defence Counsel Services, Counsel for Corporal J. Brisebois-Bergeron