



Citation: *R. v. Desjardins*, 2017 CM 3002

Date: 20170206

Docket: 201628

Standing Court Martial

Canadian Forces Base Kingston
Kingston, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Master Corporal S.J.F. Desjardins, Offender

Before: Lieutenant-Colonel L-V. d'Auteuil, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Master Corporal Desjardins, having accepted and recorded your plea of guilty in respect of the first and second charges contrary to section 129 of the *National Defence Act (NDA)*, the Court now finds you guilty of those charges.

[2] In the particular context of an armed force, the military justice system constitutes the ultimate means of enforcing discipline, which is a fundamental element of military activity in the Canadian Armed Forces (CAF). The purpose of this system is to prevent misconduct, or, in a more positive way, promote good conduct. It is through discipline that an armed force ensures that its members will accomplish, in a trusting and reliable manner, successful missions. The military justice system also ensures that public order is maintained and that those subject to the Code of Service Discipline are punished in the same way as any other person living in Canada.

[3] Here, in this case, the prosecutor and the offender's defence counsel made a joint submission on sentence to be imposed by this Court. They recommended that this Court sentence you to a reprimand and a fine in the amount of \$500.

[4] Although this Court is not bound by this joint recommendation, it is generally accepted that the sentencing judge should depart from the joint submission only when it is contrary to the public interest as stated by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43 at paragraph 32:

Under the public interest test, 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.

[5] In accordance with the decision by the Supreme Court of Canada in *Anthony-Cook*, the court has no more obligations to assess if the sentence proposed by counsel is a fit and proper sentence in the circumstances. So, my main interest now is if this sentence is not contrary to the public interest.

[6] Why is it good to take such approach by the court? I would say that it's proper and necessary to the military justice system because it provides certainty for the accused. Further to discussions amongst counsel, an accused gives up his right to trial, knowing what he may expect as matter of sentence if he pleads guilty.

[7] It also provides certainty for the prosecution. It minimizes the risk and secures a conviction. Also, it minimizes the stress on many people and the legal cost associated with a full trial. There are no witnesses called and the length of the trial is not such as it would have been, two, three days, one week. It has an impact on other participants such as the alleged victims or those who were involved. It could have been possible that the prosecution had to call many witnesses; the alleged incident occurred in front a class, so those people don't have to come before the Court. From my perspective, I think it creates what I call an area of certainty for both sides. People know exactly what they are facing.

[8] The only situation where the court would depart from the recommendation is where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system (see *Anthony-Cook*, paragraph 42). So this approach relies heavily on the work of the prosecution as representing the community's interest which would include CAF members, the chain of command and the unit of the accused and, also, it represents the defence counsel as acting in the accused's best interests.

[9] Here I'm dealing with Master Corporal Desjardins who has been in the military for a very long time. Being with the Reserve Force at the beginning of the year 2000, he joined the Regular Force in 2003, so he has a lot of experience in the CAF, and was appointed, at some point in his career, as a Master Corporal. As mentioned by counsel, he is married and has one child, a seven-year-old daughter. He is currently posted in Shilo and came here to Kingston to help and support the course as an instructor. He has an extensive training history; he went through a lot of courses. So, my understanding from counsel is that he is a valuable asset for the CAF.

[10] He has a lot of experience but, what is of concern is his maturity. The conduct that brought him to do what he did, I do understand, was an element considered in order to come to this joint submission. Counsel came up with a suggestion and probably gave consideration to the fact that it is something that will serve as a lesson to you in your military career as well as in your personal life.

[11] The Statement of Circumstances is reproduced to provide a full account of the circumstances of both the offence and the offender:

“Statement of Circumstances

1. At all material times, Master Corporal Desjardins was a member of the Regular Force, Canadian Armed Forces, posted to the Shared Services Unit (West) Detachment Shilo (SSU(W) Det Shilo). Between January and March 2016, he was employed as an incremental instructor on a Development Period (DP) 1.0 Army Communications and Information Systems Specialist (ACISS) course (serial 0019) at the Canadian Forces School of Communications and Electronics (CFSCE) in Kingston.
2. As an incremental instructor, Master Corporal Desjardins was part of an instructor cadre expected to deliver training to candidates who were at the very beginning of their careers in the Canadian Armed Forces.
3. The general responsibilities of instructors at CFSCE are as follows:
 - a. to deliver instruction IAW established training plans;
 - b. to provide constructive feedback to students;
 - c. to evaluate students’ performance and potential as it pertains to the course material;
 - d. to assist students in areas of difficulty;
 - e. to ensure training is conducted in a safe manner; and
 - f. to stand as a positive example of military bearing and professionalism.
4. Instructors at CFSCE are expected to demonstrate the following when interacting with students:
 - a. to act in a professional manner at all times;

- b. to be respectful;
 - c. to provide clear and consistent direction and feedback;
and
 - d. to conduct themselves in accordance with School and CAF policies, especially those pertaining to Op HONOUR
5. Master Corporal Desjardins attended the following lectures prior to his employment as an incremental instructor at CFSCE:
- a. Op HONOUR – delivered by Lt Piper on 01 October 2015;
 - b. ethics – delivered by Lt Piper on 01 October 2015 and by Capt Mitchell on 18 June 2015;
 - c. harassment prevention – delivered by Master Warrant Officer O’Grady on 25 June 2015; and
6. Master Corporal Desjardins successfully completed the following courses:
- a. *Introduction to Defence Ethics* on the Defence Learning Network on 25 November 2013; and
 - b. *Army Primary Leadership Qualification (A-PLQ – ID 119016-18)* on 07 December 2012, which specifically included the following topics:
 - i. PO 201 Lead Subordinates; and
 - ii. PO 202 Maintain Good Order and Discipline.
7. In addition, Master Corporal Desjardins received training on cultural awareness at the Canadian Forces Joint Signals Regiment (CFJSR) on 23 June 2010.
8. The training received by Master Corporal Desjardins should have enabled him to realize that his conduct was incompatible with the roles and responsibilities of an instructor at CFSCE

CIRCUMSTANCES SPECIFIC TO THE FIRST CHARGE

9. On the morning of 03 March 2016, as Warrant Officer Melko was passing by the classroom of the ACISS DP 1.0 (serial 0019) course, he saw a slide depicting a painting of a duck biting onto the genitals of a naked young Asian boy who was eating a bowl of rice (see Annex A to this Statement of Circumstances). The slide had been put on display by the instructor, Master Corporal Desjardins. Warrant Officer Melko immediately called Master Corporal Desjardins out of the class and proceeded to tell him that this was not acceptable and that it was never to happen again.

10. After speaking to Master Corporal Desjardins, Warrant Officer Melko walked down to the CFSCE 2 Squadron Sergeant Major's office where he told Master Warrant Officer Taylor about the incident. Both Master Warrant Officer Taylor and Warrant Officer Melko proceeded to the classroom, dismissed Master Corporal Desjardins and addressed the candidates to inform them that the slide displayed was inappropriate. A unit disciplinary investigation was subsequently ordered to enquire about Master Corporal Desjardins' conduct.

11. During the investigation, the unit investigator, Sergeant Hawes, learned of other incidents involving Master Corporal Desjardins after interviewing the course candidates.

12. On 15 February 2016, Master Corporal Desjardins showed up one evening in the candidates' barracks, in Building C-53, to check up on candidates and answer their questions. After being asked a question by Private Robertson, Master Corporal Desjardins used the expression "pulling a Robertson" as a reference to one who asks too many or too silly questions, which made some other candidates laugh. Private Robertson was very much disturbed by the comment and several of his peers apologized to him for having laughed at Master Corporal Desjardins' comment. Master Corporal Desjardins did use this expression a few times again during the course.

13. During one of the classes, Private Mastronardi, a female candidate, dropped her pen on the floor. As she bent over to pick it up, her head appearing to be at the same height as the crotch of another candidate, Master Corporal Desjardins said in a loud voice "that looks like frat from here" or words to that effect, referring to fraternization. The incident had a personal devastating impact on Private Mastronardi as she was offended and thought it to be inappropriate.

CIRCUMSTANCES SPECIFIC TO THE SECOND CHARGE

14. During the unit disciplinary investigation referred to, at paragraph 8, Sergeant Hawes learned from Private Fitzjohn, a candidate

on the course, that Master Corporal Desjardins offered him a can of Guinness beer in the students' barracks. At the time, Private Fitzjohn was underage (age 18) and this fact was known by Master Corporal Desjardins.

15. Knowing that he would be under investigation, Master Corporal Desjardins approached Private Fitzjohn on 04 March 2016 in the Dining Hall and asked him to deny that he provided him alcohol if he was ever asked.

16. During a cautioned interview conducted on 11 March 2016, Master Corporal Desjardins admitted to: 1) displaying the image of the Asian boy referred to, at paragraph 7; 2) to using the expression "pulling a Robertson"; 3) to making the joke regarding Private Mastronardi on fraternization and 4) to asking Private Fitzjohn to deny having been given alcohol by him.

VIEWS OF THE CHAIN OF COMMAND

17. The impact of a bad instructor on a course and on 24 candidates, cannot be overstated. Young and impressionable candidates are being entrusted to our instructors and Master Corporal Desjardins has broken that trust.

18. Master Corporal Desjardins' conduct put a tremendous strain on both candidates and instructors. This resulted in a loss of cohesion and morale amongst the students.

19. Staff became hesitant to enforce discipline as they lost a lot of their credibility because of the actions of one Master Corporal.

20. Other instructors were questioning if more inappropriate things were being done without anyone knowing, again creating a climate of distrust and doubt within the organization.

21. Students did not want to report anything as they were afraid of potential repercussions, once they saw that some of their staff were investigated. It took a lot of efforts in order to dispel this perception, including the personal involvement of the Cmdt of the school.

PERSONAL CIRCUMSTANCES

22. Master Corporal Desjardins is 33 years old and first enrolled in the Res F of the CAF when he was 16. He is married and has been with his wife for over 12 years. They have a 7 years old daughter. Master

Corporal Desjardins does not have any particular financial issues but was placed on a permanent medical category last week.”

[Annex A omitted.]

[12] As explained by the prosecutor, your guilty plea is a clear sign of remorse and it indicates, not just to me, not just to counsel, but also to the people here, that you take full responsibility for what you did. The apology you provided to your Commanding Officer, your unit, your fellow instructors and, also, the candidates, clearly reflects that attitude. I hope that it will serve as a lesson learned for the future. Considering what has been said and provided to me, I will accept the joint submission made by counsel to sentence you to a reprimand and a fine in the amount of \$500 considering that it is not contrary to the public interest and will not bring the administration of justice into disrepute.

FOR THESE REASONS, THE COURT:

[13] **FINDS** you guilty of two charges for conduct to the prejudice of good order and discipline, the first and the second charges.

[14] **SENTENCES** you to a reprimand and a fine of \$500 payable in monthly instalments with the first payment of \$100 on the 15th of February, and two other instalments of \$200 payable on the 15th of March and 15th of April.

Counsel:

The Director of Military Prosecutions as represented by Captain S.J.P. Poitras

Major A.H. Bolik, Defence Counsel Services, Counsel for Master Corporal S.J.F. Desjardins