



COURT MARTIAL

Citation: *R. v. Riddell*, 2017 CM 1014

Date: 20171011

Docket: 201652

Standing Court Martial

2nd Canadian Division Support Base Valcartier
Courcellette, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Corporal R.A. Riddell, Offender

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

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information that could disclose the identity of the person described during these proceedings as the complainant shall not be published in any document or broadcast or transmitted in any way.

REASONS FOR SENTENCE

(Orally)

[1] Corporal Riddell, having accepted and recorded your plea of guilty in respect of the second charge on the charge sheet, the Court now finds you guilty of that charge under section 93 of the *National Defence Act* (NDA) for disgraceful conduct and the Court directs a stay of proceedings with regard to the alternate first charge under section 271 of the *Criminal Code* for sexual assault.

[2] Prosecution and defence counsel have made a joint submission on sentence. They propose that I should impose the punishments of a severe reprimand and fine in the amount of \$1800 payable in four equal instalments of \$450. In *R. v. Anthony-Cook*, 2016 SCC 43, the Supreme Court of Canada exposed the legal test that trial judges must

apply when they are facing a joint submission by counsel on sentence. In a nutshell, unless the proposed sentence is contrary to the public interest or will bring the administration of justice into disrepute, the presiding trial judge cannot depart from that joint recommendation. The Court voiced that it is a desirable practice for the prosecution and for the defence to agree on joint submissions on sentence, but it also highlighted the fact that counsel are responsible and accountable for those joint submissions. In other words, the judge cannot alter their recommendation by tweaking it even a little bit. Not only are agreements of that nature commonplace and are vitally important to the well-being of the criminal justice system and the military justice system, they free up resources and allow justice participants to put these resources to needier cases. Trial judges have to trust the judgement, the experience and the competence of counsel in the legal system making those submissions.

[3] Joint submissions have many benefits, including the fact that the prosecution can secure a conviction even when its case has some weaknesses. It saves resources by not having to call witnesses and spares victims from having to come and testify about the experience that led to the charges. It also assists the defence in knowing in advance or at least to provide them with some sense of certainty as to what they expose themselves to. So, it provides both parties with a high probability that if they discharge their burden, their recommendation will be accepted.

[4] A Statement of Circumstances and an Agreed Statement of Facts were provided to the court during the sentencing hearing and are hereby reproduced to provide a detailed rendering of the events that led to the 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, Corporal RIDDELL was a member of the Regular Force, Canadian Armed Forces, posted to the 5^e Régiment de génie de combat (hereafter “5^e RGC”), Valcartier QC. Between 08 December 2015 and 08 February 2016, Cpl RIDDELL was employed on Op IMPACT, Kuwait.

2. On the evening of January 1st 2016, Cpl RIDDELL had just finished participating in a ball hockey game at the arena, located at Ali Al Salem AFB, Kuwait. As he was walking in the arena, he met T.D., a US Army member, who congratulated him following the hockey game by making a “high five” hand movement. Cpl RIDDELL placed down his hockey equipment, and gave her a “high five”. Subsequently, he requested a hug from T.D. to which she hesitantly agreed. During the accolade, Cpl RIDDELL placed both hands completely on T.D.’s buttocks and lifted her upward to the point that only her toes were touching the ground. She immediately pushed him away and expressed her displeasure with the gesture.

3. On the morning of January 2nd 2016, MWO DURAND contacted the Military Police about the incident that was reported to him by WO DUBOIS. An investigation was launched and was subsequently transferred to the Canadian Forces National Investigation Service (hereafter “CFNIS”).

4. The investigation was conducted by MS FORBES and Sgt RUTHERFORD. The investigators learned that MCpls RENAUD and PARÉ witnessed the incident. They also learned during an interview with T.D. that she did consent to the hug but specified that she did not consent to Cpl RIDDELL grabbing her buttocks. She also underlined that she felt humiliated, shocked and ultimately felt violated.

5. When Cpl RIDDELL was informed that he was the subject of an investigation, on January 4th 2016, he quickly agreed to provide a statement in which he admitted to his guilt.”

“AGREED STATEMENT OF FACTS

1. Cpl RIDDELL is 31 years old and enrolled in the Reg F of the CAF on February 10th 2010. He is single.

2. Shortly after arriving in theater and as part of his Op IMPACT “in” clearance, Cpl RIDDELL received his Reception Staging Onward Movement (hereafter “RSOM”) briefing. Capt WALSWORTH, Cpl RIDDELL’s supervisor, confirmed that as part of his RSOM he had received a briefing on the Theater Standing Order 2.0 on December 9th 2015.

3. The Theater Standing Order 2.0, dated June 2nd 2015 states the following:

a. Section 7: As CAF personnel and personnel from other nations work and live together in close proximity and are separated from their partners and loved ones, certain restrictions must be placed on professional conduct to ensure operational effectiveness through the maintenance of discipline, morale and cohesion. Furthermore, all CAF personnel must be cognizant of how their behaviour is perceived by other CAF personnel as well as those from other nations.

b. Section 12: Sexual activity or romantic contact in any context with another individual is strictly prohibited anywhere while in theater on Op IMPACT in the JOA [Joint Operations Area].

4. Cpl RIDDELL had also received an Op HONOUR briefing in November 2015 prior to deploying on Op IMPACT. He also had received various other emails and briefs WRT Op HONOUR while in theater.

5. Cpl RIDDELL successfully completed the Introduction to Defence Ethics on 19 October 2015.

VIEWS OF THE CHAIN OF COMMAND

6. In his letter to the referral authority, CO 5e RGC stated that it is essential to maintain confidence in the chain of command to show CAF members that sexual misconduct and harassment will not be tolerated and that the impact of the incident went beyond the CAF as the victim was a member of the US Army.

7. The referral authority, Comd 2nd Canadian Division, further stated that Cpl RIDDELL's conduct breached clear directives and orders aimed at ridding the CAF of all forms of harassment and sexual misconduct. To that effect, a number of measures had been taken to effect a culture change and to reaffirm the military ethos through Op HONOUR. Despite these measures, Cpl RIDDELL failed to uphold CAF values and ethics.

STATEMENTS & PERSONAL CIRCUMSTANCES

8. Cpl RIDDELL is fully taking responsibility for his conduct and has quickly expressed genuine remorse. A letter of apology is enclosed at ANNEX A.

9. Shortly after charges were preferred, Corporal Riddell instructed his Defence Counsel to resolve this matter efficiently and to proceed with a guilty plea. Prosecution was engaged quickly thereafter.

10. Cpl Riddell provided an incriminating statement during the course of the CFNIS Investigation that led to these charges. He admitted to all elements of the offence through his statement.

11. Cpl Riddell mentioned, in that audio video statement, the intent to offer his apologies to the victim, as soon as it was feasible.

12. CFNIS investigators told him that this was not recommended – as no contact between the victim and the suspect was the preferable course of action while the investigation was ongoing.

13. Cpl Riddell was placed under escort for the remainder of his tour, in order to eliminate any risk that he might see the victim in theater.
14. Corporal Riddell has been placed on Recorded Warning for a duration of 3 months with regards to the 1st January 2016 incident.
15. Cpl Riddell had to be repatriated from OP IMPACT, Kuwait, as a result of the 1st January 2016 incident.
16. Cpl Riddell has been placed under an Administrative Review for Sexual Misconduct as a result of the 1st January 2016 incident.
17. Cpl Riddell is a first time offender.
18. This guilty plea is an economy of time and resources for the Military Justice System.
19. As a result of this guilty plea, the victim does not have to testify and revisit this trauma.
20. In the eventuality of an Administrative Release for Sexual Misconduct, Cpl Riddell intends to remain in the Quebec region and invest his qualifications within the Power Generation field.
21. As a result of his military training within the CAF, Cpl Riddell is qualified as an Electrical Generation Systems Technician.”

[5] In addition to the evidence that was filed during the sentencing hearing, the Court also heard the submissions of counsel that support their joint position on sentence on the basis of the facts and considerations relevant to this case. These submissions and the evidence, including the letter of apology of Corporal Riddell, are sufficiently adequate to inform the court to impose a fit and just sentence adapted to the offender and the offence.

[6] Corporal Riddell is a first-time offender. He is 31 years old and he enrolled in January 2004. He is single. The evidence indicates that Corporal Riddell has admitted his wrongdoing at the earliest stage of the investigation leading to the charges and also his intent to enter a plea of guilty shortly after the charges were preferred. He accepts full responsibility for his actions and has expressed genuine signs of remorse. Corporal Riddell was repatriated to Canada following the events and placed on Recorded Warning for a period of three months. He has been placed under an administrative review for sexual misconduct and he awaits the outcome of that process that could lead to his administrative release from the Canadian Armed Forces (CAF).

[7] The offence under section 93 of the *NDA* for disgraceful conduct is punishable by imprisonment not exceeding five years or to less punishment. It is a serious offence. The behaviour of Corporal Riddell caused the victim to feel humiliated, violated and shocked. The offender had been briefed shortly after his arrival in theatre as part of Operation (OP) IMPACT “in clearance” on the acceptable behaviour expected during his deployment as stated in the Theatre Standing Orders as well as receiving briefings on OP HONOUR and also an Introduction to Defence Ethics.

[8] A fit and just sentence must emphasize the need for denunciation as well as general and specific deterrence and maintain discipline. The joint submission achieves these objectives.

[9] In determining whether the jointly proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest, the court must be satisfied that the joint submission is not so markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a breakdown in the proper functioning of the military justice system and cause an informed and reasonable public, including members of the CAF, to lose confidence in the institution of the courts. Therefore, I am satisfied that the joint submission is appropriate in this case.

FOR THESE REASONS, THE COURT:

[10] **SENTENCES** you to a severe reprimand and a fine in the amount of \$1800 payable in four equal monthly instalments of \$450 beginning on 15 October 2017.

Counsel:

Major S.J.P. Poitras for the Director of Military Prosecutions

Major B.L.J. Tremblay, Defence Counsel Services, Counsel for Corporal R.A. Riddell