



## COURT MARTIAL

**Citation:** *R. v. Mensah*, 2017 CM 3018

**Date:** 20171205

**Docket:** 201712

Standing Court Martial

Canadian Forces Base Esquimalt  
Victoria, British Columbia, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Commander N.K. Mensah, Offender**

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

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### REASONS FOR SENTENCE

(Orally)

[1] Commander Mensah pleaded guilty to the third charge the charge sheet for conduct to the prejudice of good order and discipline which reads as follows:

“In that he, between 12 August 2015 and 5 September 2015, at or near Canadian Forces Esquimalt, British Columbia, did not report his personal relationship with Maj xx, as he was required to do so pursuant to Defence Administrative Orders and Directives 5019-1.”

[2] The Court accepts and records your plea of guilty in respect of the third charge contrary to section 129 of the *National Defence Act* and now finds you guilty of this charge.

[3] 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 severe reprimand and a fine in the amount of \$2,500.

[4] 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 the 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.

[5] The evidence before this Court includes a Statement of Circumstances, which reads as follows:

#### **“STATEMENT OF CIRCUMSTANCES**

1. At all material times, Commander (Cdr) Nord K. Mensah was a Regular Force member posted to Canadian Forces Base (CFB) Esquimalt, British Columbia as the Commanding Officer of CFB Esquimalt Base Logistics.
2. Cdr Mensah was the Acting Base Commander of CFB Esquimalt between 13 August 2015 and 7 September 2015.
3. Major (Maj) XX was posted to CFB Esquimalt as a logistics officer in 2014, and other than a deployment on Op Reassurance from 16 February 2015 to 10 July 2015, reported at all material times directly to Cdr Mensah.
4. In addition to being her Commanding Officer and writing her personnel evaluation reports (PER), Maj XX perceived Cdr Mensah to be her mentor.
5. After Maj XX was posted to CFB Esquimalt, she and Cdr Mensah engaged in inappropriate conversations of a sexual nature with one another.
6. Following Maj XX's deployment, Cdr Mensah continued to participate in inappropriate conversations of a sexual nature with Maj XX. Cdr Mensah engaged in a sexual relationship with Maj XX from 12 August 2015 until 5 September 2015.
7. Cdr Mensah was familiar with his responsibilities under Defence Administrative Orders and Directives (DAOD) 5019-1, including that he had duty to report to his chain of command any personal relationship that could compromise the objectives of this DAOD.

8. At no time did Cdr Mensah report his sexual relationship with Maj XX to anyone in his chain of command.”

[6] The evidence before this Court also included an Agreed Statement of Facts, which reads as follows:

### **“AGREED STATEMENT OF FACTS**

#### **COMMANDER MENSAH’S MENTAL HEALTH PROFILE**

1. Commander Mensah was removed of his position as Commanding Officer of the Base Logistics Branch, Canadian Forces Base Esquimalt on 5 October 2015, primarily as a result of the allegations for which he now faces this Standing Court Martial.

2. Commander Mensah was formally diagnosed with Severe Major Depressive Disorder and severe anxious distress, on 1 December 2015, by Dr. Martin Beaupré, psychologist.

3. Commander Mensah’s mental health progressively deteriorated from this point on to reach an assessment of Major Depression with psychosis, combined with Paranoid ideation (delusional disorder) which was made on 16 March 2016, by Dr. Jonathan Pulman, a psychiatrist working for the CAF

4. Commander Mensah’s mental health final diagnosis while he was under treatment of the CAF mental health services was of delusional disorder, deteriorated, which was made by Dr. Pulman, on 9 September 2016.

5. Commander Mensah was administratively released from the CAF, under the release Item 3 B, Medical Release, on 3 October 2016, as the member’s Medical Employment Limitations were not compliant with the Universality of Service Principles.

6. Commander Mensah took part in fifteen cognitive therapy sessions under the guidance of the CAF mental health services, between 22 October 2015 and 2 June 2016.

7. Since 22 October 2015, Commander Mensah has had a prescription for medication to treat his mental health condition; although, at times, he has not taken his medication consistently, as he felt the titration was not delivering the desired clinical effect.

8. On 4 December 2017, Dr. Owen, a psychiatrist, diagnosed Commander Mensah with bipolar disorder.

9. CF Health Services is of the opinion that Commander Mensah could have suffered from a serious mental health condition for several years, however, this assessment has not been confirmed following the release of this member.

10. On 18 January 2017, in an official decision, Veterans Affairs Canada granted Commander Mensah with an initial minimum assessment of 10% disability award for Major Depressive Disorder starting from December 2015.

11. Veterans Affairs Canada concluded, in the same decision that Commander Mensah's Major Depressive Disorder arose out of the Regular Force Service.

12. Veterans Affairs Canada concluded, in the same decision, that Commander Mensah's Major Depressive Disorder has not yet been stabilized, and that he still requires active treatment, and that as a result the total extent of his disability cannot be assessed at this time.

13. Commander Mensah and his Defence counsel decided not to investigate a potential correlation between the commission of the offence and the mental health status of the offender at the time of the commission of the offence, as a reasonable Joint Submission was reached between Parties.

#### **COMMANDER MENSAH'S PERSONAL CIRCUMSTANCES**

14. Commander Mensah is a full-time professor with Fanshawe College, in their Faculty of Business at Lawrence Kinlin School of Business, London, Ontario, since 15 August 2016.

15. As part of his full-time work, Commander Mensah teaches Undergraduate Management and Leadership for a duration of 6 hours per week.

16. Commander Mensah continues to obtain mental health support and treatment with the following professionals, Dr. Richard Owen, psychiatrist, every three weeks and Cindy Steffy, psychotherapist, on a weekly basis.

17. Commander Mensah's future plans as a civilian are as follows:

I plan to continue lecturing in Canadian colleges and universities, publishing articles related to problem-based learning, and providing strategic advice to political leaders in my regional community while

trying to regain a stable sense of mental health normalcy while suffering from a serious mental illness. While, there is no firm plan in place I also intend to advocate and lobby for the empathetic and compassionate treatment of CAF military members who suffer from mental health issues.

18. A few months before the incidents that led to this charge, Commander Mensah was assessed by the Royal Canadian Navy as a CAF member that was expected to progress at a rate ahead of his peers, and that would need to be managed very carefully in order to realize his potential.

19. A few months before the incidents that led to this charge, Commander Mensah was assessed by the Royal Canadian Navy as a CAF member eligible for immediate promotion.

20. Commander Mensah is married and is the father of five children.”

[7] Although the Court is not bound by the joint recommendation made by counsel, 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 (*Anthony-Cook*), 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.

[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, as mentioned in the decision of *Anthony-Cook* at paragraph 42.

[9] In the same decision at paragraph 25, the Supreme Court of Canada recognizes:

It is an accepted and entirely desirable practice for Crown 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, as well as our justice system at large.

And I would add, it would include courts martial, the military justice system.

[10] However, lawyers must provide to the Court a full account of the offender’s situation and of the circumstances of the offence in the joint submission. Here, the Court is satisfied with the information and explanation provided by counsel. In fact, they provided detailed information for the Court to appreciate the joint submission.

[11] In this case, the principles and objectives of denunciation and general deterrence were an integral part of counsel discussions and I would suggest the basis of the joint submission they made.

[12] Commander Mensah enrolled in 1999 as a logistics officer in the Navy. He underwent various training and I would say that he studied a lot during his career in the military. He had a good career until this isolated incident occurred. He has experienced various consequences on him: he was relieved from his position; it triggered serious mental health issues; he was released from the CAF in 2016; and he was tried before a court martial. Today he took responsibility for what he did in 2015.

[13] It does not excuse the fact that you did not notify your chain of command of what happened at the time, but today you decided to turn the page and go on with your life. I looked at the joint submission made by counsel and listened carefully to their explanations, I looked at the information provided and will accept the joint submission made by counsel to sentence you to a severe reprimand and a fine in the amount of \$2,500, considering that it is not contrary to the public interest and will not bring the administration of justice into disrepute.

[14] I wish you good luck in your new life. I hope you will continue to respect the treatment you're going through. I think it is very important for you, it will keep your life in balance, and one day I'm sure you will feel better.

[15] I haven't heard from the person involved in the alleged incident, but I took it as there was no main consequences on that person. I haven't heard anything, but I expect this person will go well too.

**FOR THESE REASONS, THE COURT:**

[16] **FINDS** you guilty of the third charge for conduct to the prejudice of good order and discipline.

[17] **SENTENCES** you to a severe reprimand and a fine in the amount of \$2,500 payable in monthly instalments of \$500 starting today.

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**Counsel:**

Lieutenant-Commander S. Torani for the Director of Military Prosecutions

Major B.L.J. Tremblay, Defence Counsel Services, Counsel for Commander Mensah