



COURT MARTIAL

Citation: *R. v. Euper*, 2018 CM 2012

Date: 20180327

Docket: 201759

Standing Court Martial

8 Wing Trenton
Astra, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Sergeant R. Euper, Offender

Before: Commander S.M. Sukstorf, 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)

Introduction

[1] Today, Sergeant Euper admitted his guilt to one charge contrary to section 95 of the *National Defence Act*, for ill-treating a person who by reason of rank was subordinate to him.

Section 95
National Defence Act

Particulars: In that he, on or about 6 June 2016, at or near Camp Eureka, Territory of Nunavut, ill-treated MCpl D.V by placing his hands on her upper body without her consent.

[2] The Statement of Circumstances reads as follows:

“STATEMENT OF CIRCUMSTANCES

1. At all material times XXXX Sgt Ray Euper was a Construction Technician, and a member of the 8 Wing Construction Engineers, Regular Force, Canadian Armed Forces.
2. Between 30 May 2016 and mid June 2016, Sgt Euper was deployed as the senior ranking member of the Camp Opening Team for Operation Nevus 2016 at Camp Eureka, Ellesmere Island, Nunavut.
3. Operation Nevus is an annual Operation that provides the framework to perform preventive maintenance and upgrading of key communication systems and infrastructure in the most remote parts of Canadian North. The purpose of the operation is to maintain the High Arctic Data Communications System sites between CFS Alert and Eureka, ensuring the critical communications link connecting the Canadian high Arctic to the Government of Canada in Ottawa remains unbroken and operable.
4. Camp Eureka, is located some 500km from CFS Alert, Canada’s most northerly full time occupied settlement. A map of Canada referring the location of Camp Eureka in relation to 8 Wing Trenton, as well as a topographical photograph of the position of Camp Eureka in relation to CFS Alert is attached as Annex A.
5. The Operation involved a small number of between 10 and 12 construction technicians from 8 Wing Trenton as well as a medic and a cook. As the senior ranking CAF member of the Camp Opening Team, Sgt Euper was in a command position and responsible for the welfare, safety and discipline of the members of Camp Eureka.
6. Due to instances of alcohol misconduct in years prior to OP Nevus 2016, an Operation Order of 25 April 2016 had been briefed to all members of the Operations in which the consumption of alcohol was prohibited. In addition, all members of 8 Wing CE, including Sgt Euper, had been briefed on Operation Honour prior to deploying on Operation Nevus 2016.
7. Operation Honour is the Chief of Defence Staff Op Order which was initiated in August of 2015 in response to the Deschamps Report which indicated the existence of an underlying sexualized culture in the Canadian Armed Forces.

8. On 30 May 2016, MCpl D.V. was deployed on Operation Nevus 2016 as the only member of the medical staff. All members of the Camp Opening Team lived, worked and dined in one large building located at Camp Eureka. The medical station in which MCpl D.V. worked was in a small medical office at the rear of the building.
9. In the medical room there was an older medical gurney which was equipped with stirrups protruding from the sides of the bed for conducting medical exams.
10. On or about 6 June 2016, Sgt Euper, while in the presence of others, which included MCpl D.V. , made unwanted and inappropriate sexually suggestive comments concerning the use of the medical stirrups directed at MCpl D.V. MCpl D.V. was extremely uncomfortable with the comments made by Sgt Euper in the workplace.
11. MCpl D.V. did not know Sgt Euper prior to this Operation. She had noted that while in Camp, he was “touchy feely” with female subordinates in the workplace. On an occasion at the Camp, Sgt Euper had made comments about the physical appearance of another female Cpl at the Camp, commenting in a group setting that she had a “nice ass”. The comments from Sgt Euper were not welcome from the female Cpl and made MCpl D.V. uncomfortable generally and uneasy being alone with Sgt Euper.
12. Soon after making the comments concerning the medical gurney, Sgt Euper proceeded to put his arms around the upper torso of MCpl D.V. in such a way that her upper body was in contact with his upper body. This contact persisted for 1 to 2 minutes and took MCpl D.V. by surprise and caused her to freeze and become visibly upset. MCpl D.V. felt very vulnerable given the isolated area in which she was working, and the previous sexualized comments made by Sgt Euper. MCpl D.V. became noticeable uncomfortable with this contact and refrained from any further conversation with Sgt Euper. Sgt Euper broke off the contact without saying anything and left the room.
13. MCpl D.V. is small in stature, standing 4’11 in height and weighing 110lbs. Sgt Euper stands approximately 5ft 8inches tall and was approximately 250lbs which increased her feelings of vulnerability and discomfort.
14. A few days later, while in line at the mess, Sgt Euper approached MCpl D.V. from behind, and placed his hands on the shoulders of MCpl D.V. and rubbed them. MCpl D.V. immediately flinched and

recoiled at this touch and asked Sgt Euper not to touch her. Sgt Euper refrained from touching MCpl D.V. any further during the Operation.

15. MCpl D.V. was distraught by this repeated physical contact and stated to her colleagues that she did not want to be left alone with Sgt Euper again. She “avoided him like the plague” and stated to her co-workers: “do not leave me alone with him again”.
16. Both MCpl D.V. and another female Cpl spoke to the designated Camp Harassment Advisor about the conduct of Sgt Euper. Due to the fact that protocol required such incidents be reported to the highest ranking supervisor, which was Sgt Euper, it was determined that reporting of the incident would have to wait until the end of the four week deployment as Sgt Euper could not take the complaint against himself.
17. On 13 June 2016 at 1040hrs, MCpl D.V. was successful in contacting her medical chain of command at 24 CF H Svc in order to advise of situation occurring. The conduct was then reported to the CFNIS for investigation.”

[Annex A – Maps and topographical photograph omitted.]

[3] The Agreed Statement of Facts reads as follows:

“AGREED STATEMENT OF FACTS

1. A short time before being deployed on Op Nevus 2016, Sgt Euper was made acting Flight Warrant Officer within 8 Wing CE, in anticipation of his pending promotion to Warrant Officer (WO). As a result of the allegations made during Op Nevus, Sgt Euper’s promotion was held in abeyance pending the outcome of this trial.
2. Notwithstanding that his promotion was deferred, Sgt Euper continued to act as the Flight Warrant Officer since his return from Op Nevus 2016. On 23 February 2018, Sgt Euper turned 60 years of age and was released from the Canadian Armed Forces (CAF) due to terms of the Compulsory Retirement Age 60, after 20 years of service.
3. Sgt Euper’s conduct sheet contains an entry for a conviction related to Op Nevus 2016 whereby he authorized the consumption of alcohol contrary to standing orders for the Operation. The events surrounding that conviction were contemporaneous with those of these proceedings. Sgt Euper has no other disciplinary or administrative marks on his record. His Branch Warrant Officer, CWO Lori White, who has

known him for most of his career, describes him as a gregarious individual. She describes the events before this court as being very much out of character, based on her observations of him over those many years.

4. Mr. Euper, as he now is, lives in the Trenton area with his wife, Diane, who is herself a CAF member. Since retiring from the CAF last month, Mr. Euper has taken up employment with a firm that produces and installs high-end cabinetry and office furniture for dental offices throughout Ontario. His wife intends to remain in the CAF until she completes 30 years of service, some 6 years hence. She will be posted to CFB Kingston this summer, and will be doing so on Imposed Restrictions as the couple intends to maintain their home in Trenton.

5. MCpl D.V. provided a ‘Witness Impact Statement’ to the Prosecutor on 23 March 2018, which is included at Annex A.

6. The Chief of Defence Staff, General Jonathan Vance, published an article in the Canadian Military Journal in 2016, Volume 16, Number 3, Summer 2016, which further amplifies the foundational principles of Operation Honour. This article is attached at Annex B.”

[Annex A – Witness Impact Statement omitted.]

[Annex B – Article, CMJ, Vol 16, No. 3, Summer 2016, pp. 6-15 omitted.]

Joint submission

[4] In a joint submission, counsel recommend that I impose a sentence of reduction in rank from sergeant to corporal and a fine in the amount of \$1,500 payable forthwith.

[5] In *R. v. Anthony-Cook*, 2016 SCC 43, the Supreme Court of Canada clarified that a trial judge must impose the sentence proposed in a joint submission “unless the proposed sentence would bring the administration of justice into disrepute, or is otherwise not in the public interest.”

[6] As you heard when I verified the guilty plea earlier, by entering into a plea bargain, the constitutional right to be presumed innocent is given up and this should never be done lightly. In fact, by virtue of the oath taken by all service members, this right is one we all stand to protect. Thus, in exchange for making a plea, the accused must be assured of a high level of certainty that the court will accept the joint submission.

[7] The prosecutor, who jointly proposes the sentence, will have been in contact with the chain of command. He is aware of the needs of the military and its surrounding community and is responsible for representing those interests. Defence Counsel, Major Bolik, acts exclusively in the accused’s best interest, including ensuring that the

accused's plea is a voluntary and informed choice and unequivocally acknowledges his guilt.

[8] As members of the legal profession and accountable to their respective law societies, the court relies heavily on the professionalism, honesty and judgement of both the counsel and their duty to the court.

Evidence

[9] In this case, on consent, the prosecutor read the Statement of Circumstances and provided the documents required under article 112.51 of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O) which were supplied by the chain of command. In addition, defence counsel submitted an Agreed Statement of Facts. The court also considered a victim impact statement as well as a *Canadian Military Journal* Special Report, The Chief of Defence Staff, General Jonathan Vance, Addresses Sexual Misconduct in the Canadian Armed Forces, Vol 16, No. 3, Summer 2016, pp. 6-15.

[10] In addition, the Court benefitted from submissions from counsel, including an outline of relevant case law: *R. v. Duhart*, 2015 CM 4023; *R. v. Duvall*, 2017 CM 2008; *R. v. Christensen*, 2016 CM 1026; and *R. v. Bernier*, 2015 CM 3015 to support their joint position on sentence, while highlighting the facts and considerations relevant to Sergeant Euper.

[11] Counsel's submissions and the evidence before the Court have enabled me to be sufficiently informed of Sergeant Euper's personal circumstances, allowing me to consider any indirect consequence of the sentence, so I may impose a punishment adapted specifically to Sergeant Euper and the offence committed.

The offender

[12] Sergeant Euper is 60 years old and just recently retired from the Canadian Armed Forces (CAF). He enrolled in the CAF originally as a reservist in September 1998 and transferred to the Regular Force in August 2001. He served for approximately 20 years, most recently as a construction technician, and has been awarded military decorations and medals of General Campaign Star, Southwest Asia, Canadian Forces Decoration, United Nations Disengagement Observer Force and Canadian Peacekeeping Service Medal. Sergeant Euper has otherwise had an untarnished and unblemished military record.

Objectives of sentencing to be emphasized in this case

[13] The prosecution has emphasized that in his negotiations with defence counsel, they considered the objectives of sentencing. Based on the submissions of counsel, sentencing should focus on the objectives of denunciation and general deterrence, which the court agrees with.

[14] The Court highlights that the principle of general deterrence means that the sentence should deter not only Sergeant Euper from reoffending, but it is also important that we deter other CAF members who might be tempted to commit similar offences.

[15] The court accepts that this incident was completely out of character for Sergeant Euper. Sergeant Euper thought he was joking or having fun, without fully recognizing the impact of his statements and conduct. However, as the court has stated in a number of previous cases, it is all fun until someone does not welcome the behaviour in question. It is at that point, a line is crossed and what Sergeant Euper might have thought was fun rises to the level of harassment, which eventually leads to a breakdown of trust, loyalty and discipline, all of which are fundamental to the functioning of an effective armed force.

[16] It is normal for camaraderie to exist, particularly on military operations that unfold in isolated areas. However, as the Chief of Defence Staff (CDS) stated in his address published in the *Canadian Military Journal*, “There is no greater menace to the integrity and effectiveness of a force of last resort than the erosion of trust amongst serving members standing shoulder to shoulder.” The CDS’ address was kick-started by the revelations exposed in Madame Deschamps’ report that highlighted the disturbing prevalence of a sexualized culture that existed and still exists within the CAF.

[17] The fact that I accepted a plea from Sergeant Euper assuming responsibility for engaging in “low-level misconduct” is an encouraging sign. It reflects that he recognizes that his actions crossed the line of acceptable conduct. As the CDS stated, “Organizational culture change depends not only on the change implemented, but on the response of the concerned stakeholders (internal and external) to this change.” It appears that the message is being heard and understood.

Aggravating and mitigating factors

[18] In making the joint submission, counsel advised the Court that they have taken into account all relevant aggravating and mitigating factors.

Aggravating factors

[19] The Court highlights the following aggravating factors for the record:

- (a) Deployed Operations/Rank: The charge before the Court involved behaviour that occurred when Sergeant Euper was serving as the senior non-commissioned officer, in a position of authority. He was specifically charged with the responsibility for not only the operational success of the mission, but also the safety and welfare of all his subordinates. Instead, as a result of a serious lapse in judgement, he engaged in conduct that had the opposite effect. Sergeant Euper’s actions intimidated and

offended one of his subordinates, who was someone he was specifically tasked to protect and respect;

- (b) **Impact on the Victim:** The Court received and considered an impact statement from the victim. It is clear that Sergeant Euper's conduct had an adverse effect on her. She had been an eager volunteer who had specifically asked to serve at this isolated posting filling a pivotal role. After the conduct, she felt vulnerable and afraid. In essence, she lost her enthusiasm for seeking out this type of tasking. The inappropriate conduct came at a cost to the CAF, because at least in the short term, it lost that member's enthusiasm to volunteer for future missions such as this.

Mitigating factors

[20] The Court highlights the following mitigating factors:

- (a) **Length of Service and Conduct Sheet:** I agree with counsel that Sergeant Euper's lengthy untarnished military career and lack of conduct sheet until the date of this last deployment are mitigating factors. As Chief Warrant Officer White indicated in a statement provided to the court, the incident was out of character for Sergeant Euper in what has been an otherwise long and distinguished military career;
- (b) **Guilty plea:** Sergeant Euper's guilty plea reflects both his genuine remorse and acceptance of responsibility for his conduct. His guilty plea spared the victim from having to come before the Court to recount the ordeal. This must be given significant weight in the consideration of the sentence.
- (c) **Level of Cooperation/Administrative Consequences:** From the initial reporting of this incident, Sergeant Euper was subjected to administrative sanctions which began with the withholding of his promotion to warrant officer. Now that he is retired, he returned to accept responsibility before his former unit in a public trial that is unfolding in a small community where he resides with his family.

[21] Although Sergeant Euper may never engage in this type of inappropriate conduct again, it is absolutely imperative that the rest of the CAF community understand that low-level misconduct will not be tolerated. The military justice system has been designed to address and correct this type of shortcoming. Sergeant Euper's guilty plea to an offence under section 95 for ill-treating a subordinate is no small matter. As I explained during the plea process, the offence of ill-treating a subordinate is very serious. In fact, when the offence is compared to a criminal assault charge under the *Criminal Code*, it is arguably more serious as it also involves a breach of trust.

[22] Parliament legislated this offence into the *National Defence Act* to ensure that superiors respect the dignity of all those who are more junior in rank and are subordinate. The essence of the section 95 offence is to denounce conduct that rises to the level of what is otherwise an abuse of authority even where it involves low-level behaviour. Holding a senior rank as an officer or a member in the Canadian Armed Forces is a privilege and with that privilege comes both responsibility and accountability. Hence, any conduct that undermines the trust, confidence and morale of others must be addressed.

[23] Operation HONOUR aims to hold everyone accountable, but it also places special responsibility on the chain of command to ensure that harmful and inappropriate behaviour is stopped in its infancy. As this court stated in *Duvall*, general deterrence is foremost in halting inappropriate behaviour and changing the culture, but it also demands that the chain of command address all levels of misconduct:

[24] However, as with any operation and concentrated effort, the devil is always in the details. Stopping inappropriate sexual behaviour in its infancy is not an easy task. As damaging as each act may be, the smallest indiscretions often fall short of meeting the elements of sexual assault or other similar criminal conduct and let us be clear, civilian prosecutors would not even pursue them.

[25] But at the same time, these less serious acts are completely unacceptable in the military context and must be stopped. A failure to address even the smallest instance of inappropriate conduct is exactly what threatens and undermines the military ethos, values, norms and ethics expected of every CAF member.

[26] The increased commitment to addressing inappropriate conduct brings increased pressure to ensure that people are held to account. However, the increased focus in eradicating inappropriate conduct must be done fairly pursuant to the same Canadian law that we serve to protect.

[24] Further,

... [T]he most minor level of misconduct must be addressed and resolved at the appropriate level. It takes significant courage for a victim or complainant to come forward to his or her chain of command to report conduct that has made him or her feel uncomfortable.

[25] In his address, the CDS also stated, “The responsibilities and accountabilities of Canadian Armed Forces’ leaders at all levels were specifically underscored because only sound, fully engaged leadership will solve the problem this time.” Reporting is one tool in achieving the goals of Operation HONOUR. However, it also requires commitment from the chain of command to take action to eradicate unacceptable conduct.

[26] Leadership requires a willingness of superiors to put the interests of their subordinates before their own and to have respect for, comply with and enforce the law. When service members serve away from home and work closely with others in confined quarters, they are vulnerable and there is an implied expectation of trust. It is

sacrosanct. It is the Court's hope that the sentence imposed on Sergeant Euper today will be a significant deterrent to anyone who might be tempted to do anything similar.

[27] After considering counsel's submissions in their entirety and all the evidence before the Court, I must ask myself whether the proposed sentence would be viewed by the reasonable and informed CAF member, as well as the general population as a breakdown in the proper functioning of the military justice system. In other words, would the acceptance of the proposed sentence cause the CAF community and its members to lose confidence in the military justice system?

Reduction in Rank and Fine

[28] Although on its face, a reduction in rank, a strictly military punishment, might not seem significant, it is important to note that its imposition is reserved for the most serious offences. If Sergeant Euper was still serving, it would carry significant career implications earmarked by financial loss and damage to his professional standing. However, as a veteran, it still delivers a social stigma. It signifies that Sergeant Euper has betrayed the trust that was expected of his senior military rank and status and he is not deserving of that rank.

[29] The fine recommended by counsel is also substantial and when combined with the sentence of reduction in rank, taints the military record of Sergeant Euper.

Conclusion

[30] Sergeant Euper, you have already made a very successful transition to a civilian position and it is very possible you will soon find yourself in a similar leadership role. I trust that you learned an important lesson. The small stuff matters; conduct that may not have been considered serious or offensive 20 or 30 years ago, will no longer be tolerated. This is a message that you learned the hard way. Nonetheless, I am hopeful that your experience will deter other members who may be tempted to engage in this type of conduct.

[31] Considering all of the factors, the circumstances of the offence and of the offender, the indirect consequences of the the sentence, the gravity of the offence and the previous character of the offender, I am satisfied that counsel have discharged their obligations in making their joint submission.

FOR THESE REASONS, THE COURT:

[32] **FINDS** Sergeant Euper guilty of the first charge, contrary to section 95 of the *National Defence Act* for ill-treating a person who by reason of rank was subordinate to him.

[33] **SENTENCES** Sergeant Euper to a reduction in rank from sergeant to corporal and a fine in the amount of \$1,500, payable forthwith.

Counsel:

The Director of Military Prosecutions as represented by Major C. Walsh

Major A. Bolik, Defence Counsel Services, Counsel for Sergeant R. Euper