



COURT MARTIAL

Citation: *R. v. Ryan*, 2018 CM 2018

Date: 20180516

Docket: 201744

Standing Court Martial

Canadian Defence Academy
Kingston, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Lieutenant(N) B. Ryan, Offender

Before: Commander S.M. Sukstorf, 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 arising in this trial by Standing Court Martial that could identify any person who is described during these proceedings as a complainant shall not be published in any document or broadcasted or transmitted in any way.

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Lieutenant(N) Ryan was charged with one offence under section 130 of the *National Defence Act (NDA)*, that is to say, sexual assault contrary to section 271 of the *Criminal Code* and a second charge under section 130 of the *NDA*, that is to say, criminal harassment contrary to section 264 of the *Criminal Code*. The particulars of the two charges read as follows:

FIRST AN OFFENCE PUNISHABLE UNDER

CHARGE
Section 130 of the
National Defence
Act

**SECTION 130 OF THE NATIONAL
DEFENCE ACT, THAT IS TO SAY
SEXUAL ASSAULT CONTRARY TO
SECTION 271 OF THE CRIMINAL CODE**

Particulars: In that he, on or about the 18th day of May, 2012, at or near Moose Jaw, Saskatchewan, did commit a sexual assault on A.M.

**SECOND
CHARGE**
Section 130 of the
National Defence
Act

**AN OFFENCE PUNISHABLE UNDER
SECTION 130 OF THE NATIONAL
DEFENCE ACT, THAT IS TO SAY
CRIMINAL HARASSMENT CONTRARY
TO SECTION 264 OF THE CRIMINAL
CODE**

Particulars: In that he, between the 1st day of August, 2012, and the 31st of October, 2014, at various locations within Canada and the Islamic Republic of Afghanistan, knowing that A.M. is harassed, or being reckless as to whether A.M. is harassed, did without lawful authority repeatedly communicate directly or indirectly with A.M. thereby causing A.M. to reasonably fear, in all the circumstances, for her safety or the safety of anyone known to her.

[2] The accused admitted his guilt to the second offence, punishable under section 130 of the *NDA*, that is to say criminal harassment. Considering that the prosecutor offered no evidence on the first charge, the Court finds Lieutenant(N) Ryan not guilty with respect to that offence. The Court, having accepted and recorded a plea of guilty with respect to the second charge, will now determine and pass sentence on that charge.

Joint submission

[3] In a joint submission, counsel recommend that the Court impose a sentence of a severe reprimand and a fine in the amount of \$2,500 to be paid in two instalments.

[4] The joint submission before the Court is reviewed in the context of the current Supreme Court of Canada (SCC) guidance in *R. v. Anthony-Cook*, 2016 SCC 43 which says 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.”

[5] In a plea bargain, the prosecution recommends a sentence that the accused is prepared to accept, avoiding the stress of a trial and providing an opportunity for offenders, such as Lieutenant(N) Ryan, to make amends, rehabilitate and move on with their lives.

[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 proposes the sentence is aware of the needs of the military, its surrounding community and is responsible for representing those interests. Prosecution assured the Court today, that he has spoken with the complainant and the relevant individuals in the chain of command. Conversely, defence counsel acts exclusively in the accused's best interest, which, in this case, meant facilitating the accused in raising every defence authorized by law in responding to the charges before the court. Further, defence counsel ensured that Lieutenant(N) Ryan's plea was voluntary and an informed choice and unequivocally acknowledged his guilt.

Evidence

[8] In this case, the prosecutor read a Joint Statement of Circumstances outlining the personal circumstances of the accused and factual events of the charge which you plead guilty to. He provided the documents required at the *Queen's Regulations and Orders for the Canadian Forces* articles 111.17 and 112.51. In addition, the prosecutor provided the court with case law, *R. v. McKenzie*, 2014 CM 201.

[9] The Joint Statement of Circumstances filed in court is reproduced to provide a full account of the circumstances of both the offence and the offender:

“Joint Statement of Circumstances

1. At all times material to the offence Lt(N) Ryan was a member of the regular force, Canadian Armed Forces.
2. Between the period of approximately August 2009 and August 2012, Lt(N) Ryan and A.M. were in an intimate relationship.
3. After the breakdown of that relationship in August of 2012, Lt(N) Ryan continued to attempt to reconcile with A.M. by communicating with A.M. and/or her mother via telephone, skype, e-mail and text messages.

4. These messages were frequent until 1 January 2013, and sporadic until October of 2014.
5. Lt(N) Ryan had trouble accepting the end of the relationship.
6. As of 28 September 2012, A.M. had made clear that she would contact Lt(N) Ryan if and when she was ready to.
7. Lt(N) Ryan continued to contact A.M. and her mother to attempt to reconcile and/or find closure.
8. As of 16 December 2012, A.M. had made clear that she wanted all contact from Lt(N) Ryan to cease, and that she would pursue action against him if it did not.
9. The communication by Lt(N) Ryan continued, and A.M. repeated that she did not want to be contacted and continued to threaten legal action.”

[10] In addition, the Court benefitted from submissions from counsel to support their joint submission on sentence highlighting the facts and considerations relevant to Lieutenant(N) Ryan allowing me to impose a punishment adapted specifically to him and the offence he committed.

The offender

[11] Lieutenant(N) Ryan is 47 years old. He enrolled in the Canadian Armed Forces (CAF) in July 1997 and has now served for approximately 21 years. Aside from earning the Canadian Forces’ Decoration, the court notes that he has twice served in Afghanistan earning General Campaign Star South-West Asia Service medals 1 and 2. Similarly, as a naval officer, he spent significant periods of time away at sea, serving his country. As a submariner, he was serving onboard HMCS *Chicoutimi* when the vessel caught on fire and led to the tragic loss of one of his friends. By all accounts, he appears to have served his country extremely well and has no previous conduct or criminal record for the court to consider.

Objectives of sentencing to be emphasized in this case

[12] Prosecution and defence counsel emphasized that they considered the objectives of sentencing and recommend that the sentence address the objectives of general and specific deterrence. This means that the sentence should not only deter Lieutenant(N) Ryan from reoffending, but also deter any other CAF members who might be tempted to commit similar or comparable offences.

Aggravating and mitigating factors

[13] In making the joint submission, counsel advised the Court that they considered all the relevant aggravating and mitigating factors.

Aggravating factor

[14] The Court highlights the following aggravating factor for the record: frequency and persistence of the communication. Although Lieutenant(N) Ryan had trouble accepting the end of the relationship, the complainant was clear that she wanted Lieutenant(N) Ryan to stop contacting her and went so far as to threaten legal action several times. Notwithstanding this clear communication, he continued to contact her, attempting to reconcile.

Mitigating factors

[15] The Court highlights the following mitigating factors for the record:

- (a) Guilty plea. Most importantly, Lieutenant(N) Ryan's guilty plea shows a sense of remorse and acceptance of his responsibility for the behaviour in question. In addition, his guilty plea saved the court and counsel considerable time;
- (b) First-time offender. There was no relevant previous conduct for the court to consider;
- (c) Nature of the contact. Although Lieutenant(N) Ryan was persistent in contacting the complainant, the unwanted contact did not escalate to threats. At no time, in any of the transmissions, whether it be by text or by email, did he ever threaten A.M. physically, nor did he threaten her family;
- (d) Delay. Although, the prosecution submitted that delay is not something that is generally considered in mitigation, the Court is of the view that, with respect to the charge of criminal harassment, it is relevant and it should be considered. The complainant ended her relationship with Lieutenant(N) Ryan in August 2012. Although the messages from Lieutenant(N) Ryan were frequent and sporadic during certain periods, there has not been any contact between the parties since October 2014, which is a period of approximately three and a half years. Nonetheless, despite having had no further contact with the complainant for over two and a half years, on 27 January 2017, Lieutenant(N) Ryan was formally charged;
- (e) Rehabilitation. Since October 2014, Lieutenant (N) Ryan has successfully moved forward with his life both professionally and personally;

- (f) Pre-trial custody and public arrest. Lieutenant(N) Ryan's lawyer had communicated to the Ottawa Police Department, which was conveyed to CFNIS WR that if they intended to arrest Lieutenant(N) Ryan that they should make arrangements through her and he would cooperate. This type of cooperation is routine in civilian policing jurisdictions, permitting an accused, accompanied by his counsel to turn himself in to the police to be formally charged. Nonetheless, despite his willingness to cooperate, the CFNIS arrested Lieutenant(N) Ryan at the Royal Military College, leading him out in handcuffs. After his arrest, he was brought to the military police station where he was kept in custody for several hours before he was eventually released, with conditions, by the Custody Review Officer.

Conclusion

[16] After considering counsel's submissions in their entirety and considering 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 a breakdown in the proper functioning of the military justice system. Would it cause its stakeholders to lose confidence in the military justice system?

[17] The Court considered the list of mitigating factors and, more importantly, the extensive progress that Lieutenant(N) Ryan has made to date in terms of his rehabilitation, personally and professionally, in the consideration of such a sentence. The Court concurs with counsel that both a severe reprimand and a substantial fine are in order.

[18] The Court also considered a relatively similar court martial of Warrant Officer (Retired) D.P. McKenzie provided by counsel to support that the recommended joint submission is within the range deemed acceptable. It was agreed that the *McKenzie* case was more serious, as the member had engaged in very worrying and threatening conduct. In that case, the Gibson MJ (as he then was) sentenced the offender to a severe reprimand and a fine in the amount of \$3,000.

[19] Considering all of the factors, the circumstances of the offences and of the offender, the indirect consequences of the finding and 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.

Weapons prohibition order

[20] Further to subparagraph 147.1(d) of the *NDA*, based on the evidence before the Court and the fact that there has not been any contact between the parties for almost four years, in the Court's view, a Weapons Prohibition Order is neither desirable nor necessary for the safety of the offender or of any other person in the circumstances of this trial.

FOR THESE REASONS, THE COURT:

[21] **ACCEPTS** your plea of guilty to the second charge.

[22] **FINDS** you not guilty of the first charge under section 130 of the *NDA*, that is to say, sexual assault contrary to section 271 of the *Criminal Code*.

[23] **FINDS** you guilty of the second charge under section 130 of the *NDA*, that is to say criminal harassment, contrary to section 264 of the *Criminal Code*.

[24] **SENTENCES** you to a severe reprimand and a fine in the amount of \$2,500 which is payable in two instalments commencing at the end of May 2018 and with the final payment to be made no later than the end of September 2018. In the event that you are released before the final payment is made, the remainder must be paid in full prior to your release.

Counsel:

The Director of Military Prosecutions as represented by Lieutenant Colonel S.D. Richards and Major A. van der Linde

Lieutenant-Commander B.G. Walden, Defence Counsel Services, Counsel for Lieutenant(N) B. Ryan