



## COURT MARTIAL

**Citation:** *R. v. Abbott*, 2018 CM 2032

**Date:** 20181105

**Docket:** 201848

Standing Court Martial

Asticou Courtroom  
Gatineau, Quebec, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Major T.W.J. Abbott, Offender**

**Before:** Commander S.M. Sukstorf, M.J.

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### **REASONS FOR SENTENCE**

(Orally)

#### **Introduction**

[1] Major Abbott has admitted his guilt to one charge contrary to section 93 of the *National Defence Act (NDA)* for disgraceful conduct which reads as follows:

“FIRST CHARGE      BEHAVED IN A DISGRACEFUL MANNER  
NDA Section 93

*Particulars:* In that he, on or about September 7<sup>th</sup> 2017, at or near the Canadian Forces Leadership and Recruit School, St-Jean-sur-Richelieu, QC did grab C.R.’s butt cheek.”

[2] The Statement of Circumstances filed in court reads as follows:

“Agreed Statement of Circumstances

1. At all times material to this case, both Major Abbott and Sgt Robinson were members of the Regular Force, Canadian Armed Forces.
2. At the time of the incident, Maj Abbott was the Officer in Charge (OC) of C Division at the Canadian Forces Leadership and Recruit School (CFLRS), which is located in St-Jean-sur-Richelieu, Quebec.
3. At the time of the incident, Sgt Robinson was in the position of Operations (Ops) Sergeant; a position within the Headquarters of C Division. Under the command and supervision of Maj Abbott, she was responsible to manage the movements and operations for all nine platoons of C Division.
4. At around 16h00 hrs on September 7<sup>th</sup> 2017, following the graduation ceremony of one of the platoons, Sgt Robinson and two of her colleagues, Sgt Martin and MCpl Mauricio, both instructors at the CFLRS, went to the Warrant Officers and Sergeants' Mess of the CFLRS to attend the Thank God It's Thursday (TGIT) function and socialize.
5. Sometime during the afternoon, Maj Abbott joined the group at the Mess. Both Maj Abbott and Sgt Robinson consumed alcohol while being at the Mess.
6. At around 20h30 hrs, the group left the Mess. Sgt Robinson went to her office to grab her jacket as she was then planning to leave the CFLRS with Sgt Martin and MCpl Mauricio.
7. Sgt Robinson's office is located in proximity of Maj Abbot's office and across from the office of the Second in Command of C Division, Lt(N) Burdon.
8. While she was alone, Maj Abbott appeared at the doorstep of her office. He asked her if she could provide him with the spare key to his office since he had just locked himself out. Sgt Robinson agreed. She turned around, facing away from Maj Abbott, in order to access the locked filing cabinet, which contained the spare key.
9. At the time, Sgt Robinson's cellular phone was placed inside the right rear pocket of her jeans.
10. As she was unlocking the filing cabinet, Maj Abbott suddenly came behind her and grabbed her right butt cheek with his hand and over her jeans. Sgt Robinson felt Maj Abbott's fingers firmly squeeze her

right butt cheek while the palm of his hand pushed against her cell phone. The grab lasted a few seconds.

11. Following the grab, Sgt Robinson immediately pulled away from him and to her left, and said to Maj Abbot “don’t be an asshole”, or words to that effect.

12. She then gave the key to Maj Abbott and heard a noise: Lt(N) Burdon had just appeared inside her office. Lt(N) Burdon engaged in a conversation with Maj Abbott. Maj Abbott subsequently gave the key back to Sgt Robinson and told her that Lt(N) Burdon would help him get inside his office instead.

13. Sgt Robinson placed the key back inside the filing cabinet, grabbed her jacket and left her office to go to the “blue break room” (hereafter, the “break room”) located within the CFLRS. There, she met with Sgt Martin and reported to him the incident that had just happened with Maj Abbot. Sgt Martin decided to go talk to Maj Abbott and left Sgt Robinson in the break room.

14. Shortly thereafter, Maj Abbott, Sgt Robinson, MCpl Mauricio, and Sgt Martin attended the break room and Maj Abbott was heard repeatedly saying “I just went for the keys”, or words to that effect.

15. Later that evening, Maj Abbot sent a text to Sgt Robinson’s cellular phone stating: “Hey, it’s Maj Abbott, not sure what happened, but that last thing just shocked me. What happened?” Sgt Robinson did not respond to the text.

16. That evening, Sgt Robinson formally reported the incident to WO Strickland who was on duty at the CFLRS.

17. On September 8<sup>th</sup> 2017, WO Strickland reported the incident to MWO Fortin, the Division Sergeant Major.”

### **The joint submission**

[3] In a joint submission, both the prosecution and defence counsel recommend that I impose a sentence of a severe reprimand and a fine in the amount of \$2,500. 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.” 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. The prosecution, who jointly proposed the sentence, has been in contact with the chain of command as well as the victim, is aware of the needs of the military and the surrounding community and is responsible for representing those interests. The defence counsel is very experienced and acts exclusively in the accused's best interests, including ensuring that the accused's plea is a voluntary and informed choice, and unequivocally acknowledges the accused's guilt. As members of the legal profession and accountable to their respective law societies, the court relies heavily on their professionalism, honesty, judgement, as well as their duty to the court.

### **The evidence**

[4] In this case, the prosecutor read the Statement of Circumstances and provided all those documents required under the *Queen's Regulations and Orders for the Canadian Forces* (QR&O). The Statement of Circumstances was introduced on consent to inform the court of the context of the incident that led to the charge before the court. Further, the court benefitted from counsel's submissions to support their joint submission on sentence, where they highlighted relevant facts and considerations. The Court also heard from Major Abbott as well as the victim, Sergeant Robinson. The prosecution and defence counsel also provided the court with judicial precedents for comparison.

### **The offender**

[5] Major Abbott is 33 years old. In June 2002, he enrolled in the Canadian Armed Forces (CAF) as a private and after graduating from Royal Military College (RMC) in May of 2007, he was commissioned as an officer. He has served his country well and has no conduct sheet or criminal record for the court to consider. He has one operational tour to Afghanistan.

### **The victim**

[6] It takes significant courage for a victim or a complainant to come forward to his or her chain of command to report conduct that has made him or her feel uncomfortable, and the Court recognizes this. It is absolutely imperative that victims feel comfortable doing so, and if we can stop this type of conduct early, in its infancy, then we can all move forward confidently and together.

[7] Pursuant to the new QR&O article 112.481, Sergeant Robinson prepared and read for the court a victim impact statement. In her statement, she summarized the physical and emotional harm that flowed from this incident. She was clear in expressing how the incident has affected her and the self-doubt it created for her both personally and professionally. Like all victims, she was worried about how she would be perceived as a complainant, coming forward to report a minor incident. She did not want to be "that girl" and she questioned herself as to whether she had done anything to precipitate the conduct. The types of feelings she expressed are consistent with those voiced by other victims in other courts martial.

**Purpose, objectives and the principles of sentencing**

[8] The fundamental purpose of sentencing in a court martial is to promote the operational effectiveness of the CAF by contributing to the maintenance of discipline, efficiency and moral, and to contribute to respect of the law and maintenance of a just, peaceful and safe society. The fundamental purpose is achieved by imposing sanctions that have one of more objectives as set out in the *NDA* at paragraph 203.1(2). The prosecution has emphasized that in negotiations, he and defence counsel closely considered the objectives set out therein. On the facts of this case, both prosecution and defence submit the objectives they considered most important are general and specific deterrence as well as denunciation and rehabilitation. I agree with their assessment.

[9] Also under the new article 203.3 of the *NDA*, in imposing a sentence, the court shall increase or reduce a sentence to account for any aggravating and mitigating circumstances relevant to the offence or the offender. After hearing the submissions of counsel, the Court highlights the following aggravating factors for the record:

- (a) First, at the time of the incident, the accused was in a command position and Sergeant Robinson worked directly for him. He held a higher rank and position and was responsible for upholding the policies of the CAF. With his conduct, he failed to meet the standards expected from someone in command. He was well aware of the rank difference and, to some extent, exploited it while she was trying to assist him get into his office.
- (b) The lack of respect. During military service, we are often required to work in close confines and it is imperative that the personal space of our colleagues, subordinates and superiors is safeguarded. Major Abbott's actions reflect the lack of respect for his subordinate and a disregard for the physical integrity of her work area and personal space.
- (c) Consequences on the victim. Sergeant Robinson clearly encountered emotional stress that flowed from the incident which extended to self-blame while living with uncertainty and fear.

[10] However, the court notes there are several mitigating factors that must be highlighted:

- (a) Guilty plea. Major Abbott's plea of guilty for this offence as described in the Statement of Circumstances must be given its full weight. He has displayed courage in stepping forward at an early opportunity and accepting responsibility. His guilty plea has helped the victim, in that she does not have to testify and be cross-examined nor endure a lengthy trial. As highlighted by defence counsel during submissions, Major Abbott's guilty plea saved the court, counsel and the unit supporting the court considerable time.

- (b) First offender and isolated incident. This is the first disciplinary hearing of any form for Major Abbott. He has had a successful career in the combat arms, which the court notes is not an easy trade or occupation to serve and his service includes a successful tour in Afghanistan. Defence counsel submitted this is an isolated incident and the accused's conduct has already been addressed administratively in a very harsh manner. He was removed from command and transferred to a staff position at National Defence Headquarters, Ottawa. These actions are evidence that he has already paid a price for his conduct.
- (c) His sincere remorse and efforts towards rehabilitation. Major Abbott shows sincere remorse and in his statement to the court, he advised the court that he has taken active steps to turn his life around. He admitted that over the last three years, he has struggled and lost the support of many of the women in his life. He stated that he is working hard to regain the necessary trust. The Court applauds these efforts and encourages him to continue his efforts.
- (d) Age and potential. The offender is a young man and his past and current performance indicates that he has a great deal of potential to continue serving in the CAF. His response to the charges before the court and his assumption of immediate responsibility, combined with his efforts to rehabilitate provide confidence that he has learned a valuable lesson that will inform his future behaviour.

### **Parity**

[11] Pursuant to section 203.3 of the *NDA*, the law requires that the sentence imposed be similar to sentences imposed on similar offences. The prosecution provided me with three cases being *R. v. Bernier*, 2015 CM 3015, *R. v. Carrier*, 2009 CM 4019 and *R. v. Lieutenant-Commander L.B. Pringle*, 2004 CM 3003. In short, based on the case law and the submissions made by counsel, it is clear that the sentence recommended in the joint submission is within an acceptable range for the type of punishment historically awarded for this type of offence.

[12] 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 reviewed by the reasonable and informed CAF member, as well as the public at large, as a breakdown in the proper functioning of the military justice system. In other words, would the acceptance of the sentence cause the general public to lose confidence in the military justice system? As this Court has stated in earlier decisions, stopping inappropriate conduct in its infancy is not an easy task. As damaging as each act may be, even the smallest indiscretion may have far-reaching effects and is unacceptable between colleagues, leaders and subordinates. The 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. The joint submission before the Court recognizes that even the lower-level misconduct must be addressed and resolved at the appropriate level.

[13] As a result of the careful negotiation between prosecution and defence counsel, Major Abbott pleaded guilty to section 93 of the *NDA*, an offence of disgraceful conduct, and accepted full responsibility for his actions. Essentially, section 93 criminalizes conduct that is shockingly unacceptable and the maximum punishment possible reflects the seriousness of the offence. In addition to the recommended fine, counsel have recommended a severe reprimand. This combined sentence will send a message to the larger community that inappropriate conduct involving even minor touching is unacceptable and will be severely punished.

[14] Considering all the factors, the circumstances of the offence, the consequence of the finding, the sentence, the gravity, I am satisfied that counsel have discharged their obligations in making their joint submission. The recommended sentence is in the public interest and does not bring the administration of justice into disrepute.

**FOR THESE REASONS, THE COURT:**

[15] **FINDS** Major Abbott guilty of the one charge before the court, contrary to section 93 of the *National Defence Act* for disgraceful conduct; and

[16] **SENTENCES** the offender to a severe reprimand and a fine in the amount of \$2,500 which is payable in five equal instalments of \$500 beginning in the December pay period.

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**Counsel:**

The Director of Military Prosecutions as represented by Major L. Langlois and Lieutenant(N) G. Benoit-Gagné

Lieutenant-Commander É. Léveillé, Defence Counsel Services, Counsel for Major T.W.J. Abbott