



## COURT MARTIAL

**Citation:** *R. v. Durnford*, 2018 CM 3021

**Date:** 20181204

**Docket:** 201818

Standing Court Martial

Halifax Courtroom Suite 505  
Halifax, Nova Scotia, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Master Warrant Officer A. Durnford, Offender**

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

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### **REASONS FOR SENTENCE**

(Orally)

[1] Master Warrant Officer Durnford pleaded guilty to the first charge on the charge sheet which reads as follows:

**“FIRST CHARGE**  
Section 129 of the  
*National Defence Act*

**CONDUCT TO THE PREJUDICE OF  
GOOD ORDER AND DISCIPLINE**

*Particulars:* In that he, between 1 January 2010 and 1 November 2010, onboard or near HMCS TORONTO, did harass J.B.M.”

[2] The Court accepts and records your plea of guilty in respect of the first charge and now it finds you guilty of this charge.

[3] In the present 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 reprimand and a fine in the amount of \$1,000 payable immediately.

[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

*(Queen’s Regulations and Orders for the Canadian Forces, art. 112.51(3))*

1. At all material times, MWO Durnford was a member of the Regular Force, Canadian Armed Forces and employed as a medical technician aboard HMCS TORONTO.
2. MCpl Miller was working as a junior medical technician under the supervision of MWO Durnford between 1 January 2010 and 1 November 2010. She was his only subordinate during that timeframe.
3. On many occasions during these 10 months, he would hug and kiss her on the cheeks without her consent.
4. While his behavior appeared to mimic a friendly greeting in some cultures, it was inappropriate in this instance for the following reasons:
  - a. MCpl Miller was a subordinate of his;
  - b. The hugs and kisses took place during work, aboard the ship;
  - c. The hugs and kisses were repetitive over the course of 10 months all the while living in close proximity with MCpl Miller;
  - d. He knew there was a risk that MCpl Miller did not want to be hugged and kissed in this way.

5. MWO Durnford knew the content of DAOD 5012-0 - Harassment Prevention and Resolution during these incidents.
6. MWO Durnford ought reasonably to have known, given the circumstances, that his behavior would cause offence or harm.
7. MWO Durnford released from the Canadian Armed Forces on 24 May 2012.”

[6] 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 at paragraph 32.

[7] 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 *Anthony-Cook* at paragraph 42.

[8] Just to say that such practice is desirable in a sense that it is common to see that in the justice system, including the military justice system. And it is very important for the well-being of the system.

[9] 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 that the information provided by counsel is sufficient and detailed in order to appreciate the joint submission.

[10] In this case the principles and objectives of denunciation and general deterrence were an integral part of counsel’s discussions for presenting such a joint submission.

[11] Master Warrant Officer Durnford enrolled in 1985 with the artillery and transferred as a medical technician in 1993. His Member’s Personnel Record Resume indicates that he was posted to numerous locations. He is very experienced and he progressed up to the rank of master warrant officer. He released from the CAF in May 2012 as a physician assistant.

[12] As mentioned in the Statement of Circumstances, the incident occurred while on-board Her Majesty’s Canadian Ship *Toronto*. The evidence before me indicates that you had an excellent career and that the incident was out of character. I don’t have anything about your performance, but I think you progressed, according to the record, well enough that you became a physician assistant, which is not the case for all medical technicians in the CAF. You were also exposed to various missions. It looks like you had a successful career. For sure, the fact that you are a first-time offender and that at the first opportunity you had, you entered a plea of guilty to this offence, is a clear

recognition from you of your responsibility and the Court sees it as you taking full responsibility for what happened in 2010.

[13] As expressed by both counsel, in similar circumstances the range of sentences usually goes from a reprimand to a reprimand and a fine to a fine. That is what is usually imposed by a court. Here, it is suggested by counsel to impose a reprimand and a fine in the amount of \$1,000 and I have no reason to doubt that it is a proper suggestion made by counsel. So I will accept the joint submission made by them, to sentence you to a reprimand and a fine in the amount of \$1,000, considering that it is not contrary to the public interest and will not bring the administration of justice into disrepute.

**FOR THESE REASONS, THE COURT:**

[14] **FINDS** Master Warrant Officer Durnford guilty of the first charge, for conduct to the prejudice of good order and discipline, contrary to section 129 of the *National Defence Act*.

[15] **SENTENCES** Master Warrant Officer Durnford to a reprimand and a fine in the amount of \$1,000 payable immediately.

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**Counsel:**

The Director of Military Prosecutions as represented by Major M.L.P.P. Germain

Lieutenant Commander B.G. Walden, Defence Counsel Services, Counsel for Master Warrant Officer A. Durnford