



## COURT MARTIAL

**Citation:** *R. v. Hunt*, 2019 CM 4009

**Date :** 20190507

**Docket :** 201901

Standing Court Martial

Asticou Courtroom  
Gatineau, Quebec, Canada

**Between :**

**Her Majesty the Queen**

- and -

**Captain C.D.L. Hunt, Offender**

**Before :** Commander J.B.M. Pelletier, M.J.

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### **REASONS FOR SENTENCE**

(Orally)

#### **Introduction**

[1] Captain Hunt, having accepted and recorded your plea of guilty in respect of the only remaining charge on the charge sheet, the Court now finds you guilty of that charge under section 129 of the *National Defence Act (NDA)* for conduct to the prejudice of good order and discipline.

#### **A joint submission is being proposed**

[2] I now need to impose the sentence. This is a case where a joint submission is made to the Court. Both prosecution and defence counsel recommended that I impose a sentence of a severe reprimand.

[3] This recommendation of counsel severely limits my discretion in the determination of an appropriate sentence. As any other trial judge, I may depart from a

joint submission only if the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. This is the test promulgated by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43.

[4] Indeed, the threshold to depart from the joint submission being made is high as joint submissions respond to important public interest considerations. The prosecution agrees to recommend a sentence that the accused is prepared to accept, avoiding the stress and expenses of a trial and allowing efforts to be channelled into other matters. Furthermore, offenders who are remorseful may take advantage of a guilty plea to begin making amends. The most important benefit of joint submissions is the certainty they bring to all participants in the administration of justice.

[5] Yet, even if certainty of outcome is important for the parties, it is not the ultimate goal of the sentencing process. I must also keep in mind the disciplinary purpose of the Code of Service Discipline and military tribunals in performing the sentencing function attributed to me as military judge. As recognized by the Supreme Court of Canada, courts martial allow the military to enforce internal discipline effectively and efficiently. Punishment is the ultimate outcome once a breach of the Code of Service Discipline has been recognized following trial or a guilty plea. It is the only opportunity for the Court to deal with the disciplinary requirements brought about by the conduct of the offender, on a military establishment, in public and in the presence of members of the offender's unit.

[6] The imposition of a sentence at court martial proceedings therefore performs an important disciplinary function, making this process different from the sentencing usually performed in civilian criminal justice courts. Even when a joint submission is made, the military judge imposing punishment should ensure, at a minimum, that the circumstances of the offence, the offender and the joint submission are not only considered, but also adequately laid out in the sentencing decision to an extent that may not always be necessary in other courts.

[7] The fundamental principle of sentencing found at section 203.2 of the *NDA* provides that a military judge shall impose a sentence commensurate with the gravity of the offence and the degree of responsibility of the offender.

### **Matters considered**

[8] In this case, the prosecutor read a Statement of Circumstances which was entered in evidence as an exhibit, along with other documents provided by the prosecution as required at *Queen's Regulations and Orders for the Canadian Forces* (QR&O) 112.51.

[9] Defence counsel read on the record and entered as exhibit an Agreed Statement of Facts highlighting mitigating evidence on behalf of Captain Hunt as well as providing details of the offender's personal circumstances, describing the administrative consequences of the offence as well as the steps taken to rehabilitate himself to the

satisfaction of his chain of command. Illustrating this last point is a letter from Captain Hunt's current commanding officer which was read by defence counsel and introduced as exhibit to highlight the reasons why the steps taken by the offender led him to conclude that he is ready to move forward and contribute to the Canadian Armed Forces (CAF).

[10] In addition to this evidence, the Court also benefitted from the submissions of counsel that support their position on sentence on the basis of the facts and considerations relevant to this case, as well as by comparison with judicial precedents in four cases involving inappropriate sexualized behaviour by military personnel in various positions of authority. These cases provide a picture of the range of sentences imposed in the past for similar cases. Along with the submissions of counsel and the evidence, I am confident that I can adequately apply the purposes and principles of sentencing to the circumstances of both the individual offender and the offence committed.

### **The offender and the offence**

[11] Captain Hunt is a 43-year-old pilot who joined the regular force in 1998. After training in that occupation he served mainly in Tactical Aviation Squadrons in Petawawa and Borden. He is scheduled to leave shortly for training in England in anticipation for his next posting as a helicopter investigator with the Directorate of Flight Safety in Ottawa as of 15 July 2019. He is the father of two children and has no criminal or disciplinary record. This is his first appearance before a military tribunal.

[12] The facts surrounding the commission of the offence in this case are disclosed in the Statement of Circumstances read by the prosecutor and formally admitted as accurate by Captain Hunt. These circumstances can be summarized as follows:

- (a) Captain Hunt was deployed with Joint Task Force – Iraq (JTF-I) on 24 February 2018. He was serving as a Canadian officer embedded within Combined Joint Task Force – Operation Inherent Resolve CJ32 aviation planning cell (CJ32) at the United States (US) Army Camp Arifjan in Kuwait.
- (b) On 25 February 2018, as part of his in-clearance at JTF-I Kuwait, Captain Hunt reviewed the Commander JTF-I in-routine direction regarding matters including harassment and harmful and inappropriate sexual behaviour.
- (c) While employed at Camp Arifjan, Captain Hunt commented on numerous occasions on the appearance of female service members he observed throughout the camp. These comments included inappropriate comments of a sexual nature made in front of CJ32 members, both female and male, known to Captain Hunt even if typically made at a distance from the subject of his comments who did not hear them.

- (d) While the comments in relation to the females were meant to be joking and exaggerated in nature, on reflection Captain Hunt fully acknowledges that they were inappropriate.
- (e) On 8 May 2018, Captain Hunt, while holding a banana, made several comments to Sergeant Ronsani, a co-worker who was employed in CJ32 as a traffic technician from the United States National Guard. Sergeant Ronsani had brought a courier package she had received from her parents into her work area. She incorrectly interpreted Captain Hunt's comments as sexual innuendos involving the package and the banana. Rather than correcting the meaning of his comments, Captain Hunt ultimately made a joking innuendo in line with where the nature of the conversation had gone, in which he did state, "OK, I will take my banana off your box!" This was a sexual innuendo meaning he was removing his penis from her vagina. At the time this comment was made, there were CJ32 members within the working area.
- (f) Roughly an hour after the incident, Captain Hunt approached Captain Schwartz for advice with regards to the conversation he had with Sergeant Ronsani involving the package and banana. During this conversation with Captain Schwartz, Captain Hunt acknowledged that he had made an inappropriate comment in line with the remarks that had first been interpreted incorrectly by Sergeant Ronsani. Captain Schwartz warned that this comment was inappropriate and that other members of CJ32 would find it offensive.
- (g) The sexual innuendo was meant to be a joke but on reflection, Captain Hunt fully acknowledges that the comment was inappropriate. Comments such as these:
  - i. corrode the morale and internal cohesion of a unit;
  - ii. affect the foundation of esprit de corps;
  - iii. are totally incompatible with the military ethos and effective military service; and
  - iv. create an impression with other service members that the CAF cannot be relied upon to perform their duties in a fair and impartial manner, without regard to gender.
- (h) Captain Hunt was repatriated for inappropriate conduct on 21 May 2018, the circumstances of which have resulted in the charge he pleaded guilty to. He was denied the General Service Medal – Expedition for the time

served on Operation IMPACT and was placed on recorded warning for a period of 6 months.

- (i) During the monitoring period, Captain Hunt wrote a 1500-word essay that spoke to the consequences of not adhering to accepted policies, related to conduct and behaviours. He also met his commanding officer on a monthly basis to reflect on his identified shortcomings and determine a positive way ahead.
- (j) At the first opportunity provided in the court martial process, Captain Hunt fully acknowledged and took responsibility for making the inappropriate comments mentioned previously. In so doing, he has publicly denounced the making of such comments and shown leadership in taking responsibility for his actions.
- (k) Captain Hunt has received the support of his chain of command with regard to this sentencing hearing. His commanding officer at 400 Tactical Helicopter Squadron has formally recognized, in a letter, that Captain Hunt is a positive asset to the CAF and that he made the right decisions to reestablish trust in his judgement. He intends to recommend retention in the service as Captain Hunt is ready to move forward and has learned from his deficiencies.

#### **Aggravating factors**

[13] In my view, the main aggravating factors in this case relate to the fact that Captain Hunt made these inappropriate sexualized comments while deployed in an operational area overseas as part of a multinational Joint Task Force hosted in a US Army Camp in Kuwait. Having received direction regarding matters including harassment and harmful and inappropriate sexual behaviour upon arriving in the theatre of operations, he engaged in workplace behaviour incompatible with this direction in the presence of male and female co-workers from allied militaries. One would have expected much better from an officer of his age and years of service.

[14] That said, I believe the evidence reveals that Captain Hunt quickly recognized that he had fallen short of expectations with his behaviour in relation to Sergeant Ronsani.

#### **Mitigating factors**

[15] The Court acknowledges the significant mitigating factors in this case, including the following:

- (a) first and foremost, Captain Hunt's admission of responsibility for his actions early on and through his guilty plea today, which avoided the expense, energy and costs of running a trial involving foreign witnesses.

The plea and the actions of the offender throughout the last year reveal that he was prepared to take responsibility for his actions, in this public trial in the presence of members of the military community;

- (b) second, the fact that Captain Hunt has no criminal or disciplinary record in his 21-year career;
- (c) third, the letter from his current commanding officer revealing that he has progressed in his awareness of the inappropriate nature of his actions and has shown a willingness to contribute in raising awareness of the consequences of that sort of behaviour within his squadron; and
- (d) finally, Captain Hunt's past service and significant potential to contribute to the CAF as once again evidenced by the comments of his commanding officer, leading the Court to conclude that the offender is well engaged in his rehabilitation and that his behaviour is not likely to repeat itself.

**Objectives of sentencing to be emphasized in this case**

[16] I agree with counsel that the circumstances of this case require that the focus be placed on the objectives of denunciation and deterrence in sentencing the offender. That said, as highlighted by defence counsel, any sentence imposed should not compromise the rehabilitation of Captain Hunt.

**Assessing the joint submission**

[17] To assess the acceptability of the joint submission, the Court has considered the objective seriousness of the offence as illustrated by the maximum punishment that can be imposed. Offences under section 129 of the *NDA* are punishable by dismissal with disgrace from Her Majesty's service or less punishment.

[18] The submissions from counsel contained brief references to previous cases, which assist me in assessing the joint submission and determine if it is acceptable. I may depart from the joint submission of counsel for a severe reprimand only if I consider that this proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[19] The issue for me to assess as military judge is not whether I like the sentence being jointly proposed or whether I would have come up with something better. Any opinion I might have on an appropriate sentence is not sufficient to reject the joint submission that was made to me.

[20] The Supreme Court of Canada has required such a high threshold as it is necessary to allow all of the benefits of joint submissions to be obtained. Prosecution and defence counsel are well placed to arrive at joint submissions that reflect the

interests of both the public and the accused. They are highly knowledgeable about the circumstances of the offender and the offence, as with the strengths and weaknesses of their respective positions. The prosecutor who proposes the sentence is in contact with the chain of command. He or she is aware of the needs of the military and civilian communities and is charged with representing the community's interest in seeing that justice be done. Defence counsel is required to act in the accused's best interests, including ensuring that the accused's plea is voluntary and informed. Both counsel are bound professionally and ethically not to mislead the Court. In short, they are entirely capable of arriving at resolutions that are fair and consistent with the public interest.

[21] In determining whether a jointly proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest, I must ask myself whether the joint submission is so markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a breakdown in the proper functioning of the military justice system.

[22] I do believe that a reasonable person aware of the circumstances of this case would expect that the offender, guilty of making inappropriate sexualized comments in the circumstances of this case, especially during a deployment overseas, receive a sentence that expresses disapprobation for the failure in discipline involved. In my view, a severe reprimand is aligned with these expectations.

[23] Considering the circumstances of the offence and of the offender, the applicable sentencing principles, and the aggravating and mitigating factors mentioned previously, I am unable to conclude that the sentence jointly proposed by counsel would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. I must, therefore, accept it.

[24] Captain Hunt, I believe the circumstances of the charge you pleaded guilty to reveal very troubling behaviour that is unacceptable for an officer in the CAF, especially when deployed on a multi-national operation. By now, I am confident you know that too. It is up to you now to rebuild the trust that was lost as a result of your actions and achieve your full potential while respecting the law.

**FOR THESE REASONS, THE COURT:**

[25] **SENTENCES** you to a severe reprimand.

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**Counsel:**

The Director of Military Prosecutions as represented by Major R. Gauvin and Captain M. MacPherson

Major B.L.J. Tremblay, Defence Counsel Services, Counsel for Captain C.D.L. Hunt