



## COURT MARTIAL

**Citation:** *R. v. Edwards*, 2019 CM 4012

**Date:** 20190530

**Docket:** 201876

General Court Martial

Canadian Forces Base Esquimalt  
Esquimalt, British Columbia, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Ordinary Seaman C.A. Edwards, Offender**

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

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### SENTENCE

(Orally)

#### *Introduction*

[1] Ordinary Seaman Edwards, having accepted and recorded your plea of guilty in respect of the two remaining charges on the charge sheet, the Court now finds you guilty of these charges under section 85 of the *National Defence Act (NDA)* for insubordinate behaviour.

#### *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 fine in the amount of \$150.

[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 expense 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* article 112.51.

[9] 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 three cases involving insubordinate comments, thereby providing the Court with an idea

of the range of sentence imposed in the past in 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 offences committed.

### *The offender and the offences*

[10] Ordinary Seaman Edwards is a 22-year-old Marine Technician who was born in Oromocto, New Brunswick, and has joined the Canadian Armed Forces (CAF) less than two years ago, on 7 September 2017. After successful completion of basic military and trade training, he was posted to Her Majesty's Canadian Ship (HMCS) *Vancouver*, his first ship, on 19 February of this year where he continues his progression as a technician and a sailor. He has no conduct sheet.

[11] The facts surrounding the commission of the offences in this case are disclosed in the Statement of Circumstances read by the prosecutor and formally admitted as accurate by Ordinary Seaman Edwards. These circumstances can be summarized as follows:

- (a) Ordinary Seaman Edwards was serving in Naval Fleet School Pacific when, on 4 May 2018, he was assigned by Able Seaman Lefebvre to escort the cleaners around the building. Specifically, Able Seaman Lefebvre tasked Ordinary Seaman Edwards to go upstairs of the building and retrieve a hall pass for the cleaners, should they decide to clean any of the classrooms.
- (b) Ordinary Seaman Edwards went upstairs, but came back without a hall pass. When Able Seaman Lefebvre queried why Ordinary Seaman Edwards did not have a hall pass, he stated, "The cleaners are not cleaning today." Able Seaman Lefebvre then asked who made that decision, to which Ordinary Seaman Edwards responded, "I did." When Able Seaman Lefebvre told Ordinary Seaman Edwards again to go upstairs and retrieve a hall pass, Ordinary Seaman Edwards rolled his eyes and uttered the sound, "Ugh."
- (c) On 8 May 2018, Ordinary Seaman Edwards was instructed by Master Seaman Bruce to respect Able Seaman Lefebvre's rank when she gave him orders. As soon as Master Seaman Bruce left this conversation, Ordinary Seaman Edwards was contemptuous to Able Seaman Lefebvre and in a mocking tone asked, "Is it okay if I go downstairs, AB?"
- (d) During both interactions, both Able Seaman Lefebvre and Ordinary Seaman Edwards were in uniform. Ordinary Seaman Edwards knew that Able Seaman Lefebvre was his superior in rank. Ordinary Seaman Edwards understood that his behaviour was disrespectful of Able Seaman Lefebvre's rank.

***Seriousness of the offences and aggravating factors***

[12] The Court has considered the nature of the offence committed on two occasions on the facts of this case. Insubordinate behaviour under section 85 of the *NDA* is an offence objectively serious as illustrated by the maximum punishment of dismissal with disgrace that can be imposed.

[13] In my opinion, the first offence on 4 May 2018 is of a very minor nature. In most occasions such minor circumstances do not require that charges be laid, and the intervention of Master Seaman Bruce is usually all that would have been required to bring matters back in line. What is aggravating in this case is the fact that Ordinary Seaman Edwards did not react appropriately to Master Seaman Bruce's intervention and decided to engage in further contemptuous behaviour towards Able Seaman Lefebvre. It is understandable that at that point the laying of charges was considered the appropriate response.

***Mitigating factors***

[14] That said, the Court acknowledges the following mitigating factors in this case, including the following:

- (a) first, Ordinary Seaman Edwards' guilty pleas today, which avoided the expense and energy of running a trial and demonstrate that he is prepared to take responsibility for his actions in this public trial in the presence of members of his unit and of the broader military community;
- (b) second, the fact that Ordinary Seaman Edwards has no conduct sheet;
- (c) third, Ordinary Seaman Edwards' young age and potential to contribute to the CAF and society as he has demonstrated in progressing with his training without reoffending this past year.

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

[15] I agree with counsel that the circumstances of this case require that the focus be placed on the objectives of deterrence and rehabilitation in sentencing the offender. Counsel submitted that the fine proposed would be sufficient to act as a deterrent yet of an amount which would allow its consequences to be minimized. I agree.

***Assessing the joint submission***

[16] The submissions from counsel contained brief references to previous cases, which assist me in determining that the fine in the amount of \$150 being proposed is within the range of sentences imposed in similar cases in the past. 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.

[17] As stated earlier, I may depart from the joint submission of counsel only if I consider that this proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[18] 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 offences, 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.

[19] 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.

[20] I do believe that a reasonable person aware of the minor circumstances of this case would expect that the offender receive a punishment which expresses disapprobation for the failure in discipline involved but has a limited impact on the offender's future career, given that he offended within the first year of his service. A fine in the amount of 150 dollars, which will be purged from Ordinary Seaman Edwards' conduct sheet after one year without reoffending, is in my view, aligned with these expectations.

[21] 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.

[22] Ordinary Seaman Edwards, the prosecution and defence have joined to recommend a lenient sentence which in itself will have minimal impact on your career prospects. I must assume you have done good things in the last year to deserve this vote of confidence. I hope that you will recognize the break you are getting today but most importantly, you must recognize that the offences you pleaded guilty to is not trivial. Authority and rank are granted in the military as a result of decisions of the

chain of command at all levels. Disrespect for the authority of those who, by rank or appointment, are your superiors is disrespect for everyone in the chain of command and subverts a very fundamental principle of any military organization. If you have learned this lesson today and you continue to perform well, you will be given rank and appointment and you too will be entitled to the respect of subordinates. If you have not learned this lesson, you will have very little prospects for advancement in this Navy. It is up to you from now on.

**FOR THESE REASONS, THE COURT:**

[23] **SENTENCES** you to a fine in the amount of \$150, payable forthwith.

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**Counsel:**

The Director of Military Prosecutions as represented by Commander S. Torani

Lieutenant-Colonel D. Berntsen, Defence Counsel Services, Counsel for Ordinary  
Seaman C.A. Edwards