



COURT MARTIAL

Citation: *R. v. Barrieault*, 2019 CM 2014

Date : 20190605

Docket : 201902

Standing Court Martial

19 Wing Comox
Comox, British Columbia, Canada

Between:

Her Majesty the Queen

- and -

Master Corporal A.P. Barrieault, Offender

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

Restriction on Publication: By court order, pursuant to section 179 of the *National Defence Act*, this court directs that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way.

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Master Corporal Barrieault pleaded guilty to three charges; two charges were contrary to section 129 of the *National Defence Act (NDA)*, that is to say, conduct to the prejudice of good order and discipline and one charge related to conduct contrary to section 93 of the *NDA*, for behaving in a disgraceful manner. Charges 2 and 3 were stayed as they were alternate to charges 1 and 4 respectively. Having accepted and recorded his pleas of guilty with respect to the charges, the Court must now determine and pass sentence on the charges which read as follows:

“FIRST CHARGE

Section 93 of the
National Defence Act
(Alternate to the Second
Charge)

**BEHAVED IN A DISGRACEFUL
MANNER**

Particulars: In that he, on or about 13 December 2017, at or near Canadian Forces Base Comox, British Columbia, did grab the buttocks of MCpl X without her consent.

FOURTH CHARGE

Section 129 of the
National Defence Act
(Alternate to the Third
Charge)

**AN ACT TO THE PREJUDICE OF
GOOD ORDER AND DISCIPLINE**

Particulars: In that he, on or about 25 April 2018, at or near Canadian Forces Base Comox, British Columbia, did breathe on the neck and blow in the ear of Cpl X without her consent.

FIFTH CHARGE

Section 129 of the
National Defence Act

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

Particulars: In that he, between September and November 2017, made inappropriate requests for intimate photos of Ms. X to her.”

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

“STATEMENT OF CIRCUMSTANCES

1. At all material times, Master Corporal (“MCpl”) Barrieault was a member of the Regular Force and posted to 19 Mission Support Squadron, Canadian Forces Base (“CFB”) Comox, British Columbia.
2. On 13 December 2017, at CFB Comox, MCpl Barrieault attended the men’s Christmas dinner. MCpl X also attended this same event. MCpl X held the rank of Cpl on 13 December 2017.
3. After the dinner portion of the men’s Christmas dinner was dismissed, MCpl X went upstairs to the Junior Ranks Mess. Once at the Junior Ranks Mess, MCpl X and MCpl Barrieault, were socializing.
4. At one point in the evening when MCpl X and MCpl Barrieault were next to each other, MCpl Barrieault grabbed her buttocks with one hand (the “incident of 13 December 2017”). MCpl X did not consent to the grabbing of her buttocks.

5. At the time of the incident of 13 December 2017, MCpl Barrieault was in charge of authorizing when MCpl X could leave work and for providing input on her personal evaluation report (“PER”). MCpl X has children and she needed to be able to leave work when required to do so because of family needs. Additionally, the conduct of MCpl Barrieault harmed her in that she felt demoralized at work and felt hopeless to remedy the situation as MCpl Barrieault was her supervisor.

6. On 25 April 2018, Cpl X, along with Ms. Courture, attended clothing stores, at CFB Comox, to clarify a purchase order with Cpl Maxwell. While Cpl X was speaking to Cpl Maxwell, MCpl Barrieault approached her from behind and started to breathe on her neck. Cpl X did not consent to MCpl Barrieault breathing on her neck.

7. Cpl Maxwell told Cpl X not to turn around, and at that point, MCpl Barrieault blew into Cpl X’s ear. Cpl X did not consent to MCpl Barrieault blowing into her ear. Cpl X cringed and said: “that was really creepy”. MCpl Barrieault laughed and walked away.

8. Ms. Courture said: “what the hell”, and told Cpl X that she should report what had happened. Cpl X felt overwhelmed as a result of MCpl Barrieault’s actions and had to go outside to catch her breath. Cpl X did report the incident to her chain of command.

9. Ms. X and MCpl Barrieault met in August 2016. Ms. X’s spouse was MCpl Barrieault’s supervisor.

10. Ms. X and MCpl Barrieault ended up becoming friends via social media and would communicate using Facebook and Snapchat. A few weeks after their social media friendship started, in September 2016, MCpl Barrieault requested inappropriate pictures from Ms. X. Ms. X declined MCpl Barrieault’s request and asked him to stop sending messages of that nature.

11. In June 2017, Ms. X’s husband was deployed and would not return until February 2018. In November 2017, while Ms. X’s husband was deployed, MCpl Barrieault again asked Ms. X for an inappropriate picture. This request upset Ms. X.

12. News of the three incidents described above spread quickly throughout the unit, and many members of the unit were skeptical that the Canadian Armed Forces, as an institution, could or would do anything to remedy the situation, despite repeated efforts and messages from the Squadron Command Team that they would take all necessary steps to ensure that these incidences were dealt with fairly and according to the law.”

The joint submission

[3] In a joint submission, the prosecution and defence counsel recommend that I impose a sentence of a reduction in rank from master corporal to private. 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.

[4] 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, will have been in contact with the chain of command as well as the victims, is aware of the needs of the military and the surrounding community and is responsible for representing those interests. The defence counsel 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

[5] 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*. 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. In addition, defence counsel presented an Agreed Statement of Facts that provided specifics regarding Master Corporal Barrieault. 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 received two victim impact statements to consider and heard from Master Corporal Barrieault. The prosecution and defence counsel also provided the Court with judicial precedents for comparison.

The offender

[6] Master Corporal Barrieault is 49 years old. He enrolled in the Canadian Armed Forces (CAF) on 7 May 1997. He served 25 years in the CAF as a supply technician. He was promoted to his substantive rank in March 2015. Aside from the incidents before the Court, he has served his country well and has no conduct sheet or criminal record. He has done four operational tours. He has one daughter who he is still financially supporting. As a result of his conduct, which gave rise to the charges for which he is being sentenced, Master Corporal Barrieault voluntarily released from the CAF in May 2019. He recognized that he would be administratively released and he did

not want the CAF to have to go through the process. He has moved to Calgary where he obtained work as a stores man in a warehouse.

The victims

[7] It takes significant courage for a victim or victims 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.

[8] The prosecution advised the Court that victims were consulted and advised of their right to provide victim impact statements. The prosecution read one statement for the court's record and Corporal X read a statement herself before the court.

[9] There are a few comments from the victim impact statements that the Court highlights. The first one from Master Corporal X, where she stated:

"I was set to be promoted in the coming months was treated as though I hadn't earned my position. I feel as though he wanted to create a dominance prior to his pounce. This man would hand orders through a civilian or a co-worker to pass to me, the person who was scheduled to take over his position when he was supposed to be posted that APS with a ranking of SGT!"

Then she stated:

"This situation has tainted my view on the military and the justice system. General Vance spoke here in Comox and gave me false hope in the system unfortunately, there are definitely broken promises."

Corporal X stated:

"I was scared. Scared to confront him about his behavior [*sic*] that was getting more and more uncomfortable. Scared of being pointed out as the one creating problems, scared of being seen as THAT woman in the military that you can't talk to or joke around with, scared of being a burden, scared of the impact a MCpl could have on a Pte's career and reputation."

Then she stated:

"Countless nights where I lost sleep . . . rethinking of what happened, what I should've said or done and reliving these experience [*sic*]."

Corporal X further stated:

“I have been rethinking about my place in this organization and seriously questioning [sic] my future in the Canadian Forces.”

[10] The above comments are repeated, in various ways, in almost every case that I preside over with respect to charges that emanate from Operation HONOUR. As I referred to earlier, it is not the actual incident that causes the greatest stress on a complainant, but rather it is the effect of reporting it and the complainant's perception of how they are perceived that is the most stressful.

[11] The message that I want to send to the victims here today, is that you are courageous. If you look at our military ethos, it requires courage and bravery. The bravery and the courage you displayed in coming forward shows that you belong in uniform. Your chain of command listened to you and took your concerns seriously. I heard you today. Master Corporal Barrieault also heard what you had to say. We need both men and women who are strong and willing to come forward to report even minor misconduct, so we can become better collectively as an armed force. The serious misconduct is easy to report, as there is no ambiguity. It is the minor misconduct, particularly cases where members can be rehabilitated that are the most important to address. Yet, the Court also recognizes that these minor incidents are also the most difficult to report.

[12] We are trained to be strong and convince ourselves that the minor stuff does not affect us. As an institution, we have to accept that it is the small stuff that matters. If we can control it, then the more serious misconduct will be pre-empted. Having said that, not all misconduct is the same and institutional attempts to provide a one-size-fits-all response are counterproductive and serve as a disincentive for anyone to report. Conduct that falls short of being criminal or a violation of the Code of Service Discipline must still be addressed, but not every transgression should end up in a court martial or lead to the administrative release of a member. We must all be cognizant of the fact that flexibility, discretion and good judgement are all key to eliminating harmful conduct.

Purpose, objectives and the principles of sentencing

[13] 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 morale, 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 at subsection 203.1(2) of the *NDA*. 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.

[14] Also under the new section 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) Rank of the offender. At the time of the incidents, the accused was a master corporal and was responsible for upholding the policies of the CAF;
- (b) Status of supervisor. With respect to at least two of the victims, he was their supervisor and expected to set an example, protect and promote them, not exploit them;
- (c) Adverse effect on the victims. Due to his supervisory position, his conduct had an enduring adverse effect on some of the victims. One victim, Corporal X stated that she felt so much stress in the workplace that she had to sit in her car, trying to convince herself to go into work.
- (d) Age and experience as a CAF member. At the time that the events took place, the offender was an experienced CAF member of approximately 46 years of age.
- (e) Work environment. One of the incidents took place in the work environment, more specifically the clothing stores. It is imperative that the personal space of our colleagues, subordinates and superiors, is safeguarded.

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

- (a) Guilty plea and sincere remorse. Master Corporal Barrieault's pleas of guilty for these offences as described in the Statement of Circumstances must be given full weight. He displayed courage by stepping forward to publically accept responsibility before his former peers and supervisors. His guilty pleas have helped the victims in that they do not have to testify and be cross-examined, nor endure a lengthy trial. Further, Master Corporal Barrieault's guilty pleas saved the court, counsel and the unit supporting the court considerable time. Master Corporal Barrieault showed sincere remorse and provided a statement to the Court where he publicly acknowledged the impact of his actions.
- (b) First time offender, no conduct sheet or previous criminal record. This is the first disciplinary hearing of any type for Master Corporal Barrieault. He had an otherwise successful 25-year career as a supply technician. Defence counsel submitted that this conduct seemed to occur over a two-year period. I also note from his Member's Personnel Record Résumé, that he obtained the substantive rank of master corporal in March 2015, which I think is important to highlight. I am not sure what triggered this

conduct, but I encourage Master Corporal Barrieault to conduct some soul-searching and seek professional help to ensure that this does not happen again. It is very possible that he may obtain a position of authority in his civilian job and he will want to ensure that he can pre-empt any conduct that would jeopardize his work.

- (c) Rehabilitation and release from CAF. The matters before the Court date back to 2016 and during this time, the offender has had these issues hanging over his head. In the intervening time, as a result of the incidents, recognizing the impact of his actions, he released from the CAF and moved on with his life, securing full-time employment and moving to a different geographical area.

Parity

[16] 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. Wellowszky*, 2016 CM 1011; *R. v. Chapman*, 2016 CM 4019; and *R. v. Paul*, 2018 CM 4013. 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.

Comments

[17] For a number of reasons, the court feels it imperative to clarify the direction provided under Operation HONOUR, its reporting process as well as addressing cases that have been brought forward under the military justice system.

[18] Operation HONOUR, released by the Chief of Defence Staff in 2015:

“is the Canadian Armed Forces’ (CAF) mission to eliminate harmful and inappropriate sexual behaviour in the Canadian military. Operation HONOUR is based on the principles that:

every man and woman who serves their country deserves to be treated with dignity and respect – anything less is simply unacceptable;

any attitudes or behaviours which undermine the camaraderie, cohesion and confidence of serving members threatens the CAF’s long-term operational success.”

[19] All environments of the CAF are responsible for implementing the principles of Operation HONOUR into their daily business. Operation HONOUR provides direction to the chain of command on how it must deal with incidents that they become aware of.

It is imperative that the chain of command and the military police believe victims when they report conduct that makes them feel uncomfortable. If victims are not believed at the time of reporting, the allegations will not be taken seriously and incidents will not be properly investigated. It will often take time for victims to fully open up to the police or the chain of command and when an investigation begins, it often becomes clear that there may be other victims or similar incidents that have gone unreported.

[20] In a military context, even minor incidents of inappropriate touching are completely unacceptable and must be stopped. A 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. If left unchecked, minor misconduct can lead to heightened reprehensible conduct.

[21] However, in order to support a conviction in a criminal case, the increased commitment to addressing inappropriate conduct must not detract from the right of the accused to be treated fairly pursuant to the same Canadian criminal law that we serve to protect. Consequently, at court martial, the strength of evidence must go much further and the prosecution, must establish the elements of the offence to a standard of proof beyond a reasonable doubt.

[22] This means that a military judge must not fall into the trap of believing that a sexual assault complainant is always truthful or that when they testify, they must be believed. To do this would in effect transfer the burden of proof from the prosecution to the defence. This would be an error of law and would violate the accused's presumption of innocence.

[23] Attending a court martial and testifying regarding the conduct that made the victim feel uncomfortable is the most difficult part for complainants. It is daunting and at the same time, it is defence counsel's professional responsibility to question the victims in order to test the evidence.

[24] A court martial is the first time the prosecution's evidence will be vigorously challenged and the accused puts forward his own defence. Vigorous cross-examination by the defence is not intended to harass or humiliate a complainant who comes forward. It is a necessary element of criminal proceedings.

[25] It is for these reasons, that Master Corporal Barrieault's guilty pleas are particularly important. His guilty pleas ensured that the victims did not have to testify. When given an opportunity to address the Court, he was sincerely apologetic. He told the Court that his actions were inexcusable and were the demise of his career. It was obvious, by his decision to release from the CAF and his guilty pleas that he recognizes not only that what he did was wrong, but he has stepped forward and accepted responsibility.

[26] Although Master Corporal Barrieault is no longer serving and, as a result, may never engage in this type of inappropriate conduct within the CAF again, it is absolutely

imperative that the rest of the CAF community understand that this type of misconduct will not be tolerated. The military justice system is actually well designed to address and correct this type of shortcoming. Master Corporal Barrieault's decision to plead guilty to offences under section 93 for disgraceful conduct and section 129 for conduct that is prejudicial to good order and discipline is no small matter. As I explained during the plea process, the offence of disgraceful conduct is very serious. In fact, it is one of those offences that is not exempt a criminal record under section 249.27 of the *NDA*.

[27] Parliament legislated this offence into the *NDA* to ensure that all military members respect the dignity of those around them, regardless of rank, status or circumstance. The essence of the section 93 offence is to denounce conduct that rises to the level that it is shockingly unacceptable, even where it involves low-level behaviour. Holding a senior rank as a supervisor in the CAF is a privilege and with that privilege comes both responsibility and accountability. Hence, any conduct that undermines the trust, confidence and morale of others must be addressed.

[28] Operation HONOUR aims to hold everyone accountable, but it also places special responsibility on the chain of command to ensure that harmful and inappropriate behaviour is stopped in its infancy. Leadership requires a willingness of superiors to put the interests of their subordinates before their own and to have respect for, comply with and enforce the law. In this case, although the offender specifically failed in his role, I congratulate the rest of the chain of command for the actions taken from the first steps when the misconduct was reported to the guilty plea before the court.

Conclusion

[29] After considering counsel's submissions in their entirety and all the evidence before the Court, I must ask myself whether the proposed sentence would, if reviewed by the reasonable and informed CAF member, as well as the public at large be viewed 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?

Sentence

[30] Although a reduction in rank is a strictly military punishment and it might not seem significant, it is important to note that based on the scale of punishments set out within section of the *NDA*, its imposition is reserved for the most serious offences. If Master Corporal Barrieault was still serving, it would carry significant career implications, earmarked by financial loss and damage to his professional standing. However, as a veteran, it still delivers a social stigma. It signifies that he has betrayed the trust expected of the rank and status that he held and he is no longer deserving of that rank. The punishment of reduction in rank denounces the behaviour that resulted in the charges before the Court.

[31] Considering all the factors, the circumstances of the offence, the consequence of the finding, the sentence and 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:

[32] **FINDS** Master Corporal Barrieault guilty of charges 1, 4 and 5.

[33] **SENTENCES** the offender to a reduction in rank from master corporal to private.

Counsel

The Director of Military Prosecutions as represented by Commander S. Torani and Lieutenant-Commander G.J.M. Benoit-Gagne

Lieutenant-Colonel D. Berntsen, Defence Counsel Services, Counsel for Master Corporal A.P. Barrieault