



COURT MARTIAL

Citation: *R. v. Brumwell*, 2019 CM 5003

Date : 20190910

Docket : 201940

Standing Court Martial

Halifax Courtroom Suite 505
Halifax, Nova Scotia, Canada

Between:

Her Majesty the Queen

- and -

Lieutenant-Commander A.J. Brumwell, Offender

Before: Commander C.J. Deschênes, M.J.

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Lieutenant-Commander Brumwell pleaded guilty to one charge contrary to section 129 of the *National Defence Act (NDA)*, that is to say, conduct to the prejudice of good order and discipline. The maximum punishment that the Court may impose for this offence is dismissal with disgrace from Her Majesty's service. The particulars of the first charge read as follows:

"FIRST CHARGE
Section 129 of the
National Defence Act

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

Particulars: In that he, on or about 23 February 2019, while alongside in Catania, Italy, did not contact the ship by 0800 local

time, contrary to the Task Force Standing Orders, Section 2, Article 205 Port Visit Overnight Leave Policy.”

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

“Statement of Circumstances

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

1. At all material times, the offender, LCdr Brumwell, was a member of the Regular Force, Canadian Armed Forces, employed with Her Majesty’s Canadian Ship (HMCS) Toronto.
2. At the end of February 2019, HMCS Toronto was alongside Catania, Italy.
3. On 23 February 2019, LCdr Brumwell, then on ‘port visit leave’, failed to contact the ship by 0800 local time, contrary to Task Force Standing Order (TFSO) 205 – Port Visit Overnight Leave Policy.
4. HMCS Toronto made several attempts to contact LCdr Brumwell via cellular, text and other electronic means.
5. At 0827, unable to reach him, HMCS Toronto dispatched a team ashore to find him and inquire about his well-being.
6. At 0903, LCdr Brumwell finally contacted HMCS Toronto and reported that he was safe.
7. LCdr Brumwell was aware of TFSO 205 – Port Visit Overnight Leave Policy and its requirement to contact the ship each evening or no later than 0800 each morning.”

[3] The Agreed Statement of Facts filed in court reads as follows:

“AGREED STATEMENT OF FACTS

1. LCdr Brumwell is 35 years old and enrolled in the Canadian Armed Forces on 14 October 2009 as a Regular Forces member.
2. LCdr Brumwell is a first time offender. This Standing Court Martial constitutes his first appearance before a Military Tribunal.

3. Shortly after charges were preferred, LCdr Brumwell instructed his Defence Counsel to resolve this matter efficiently and to proceed with a guilty plea. Prosecution was engaged quickly thereafter.
4. This guilty plea is an economy of time and resources for the Military Justice System.

LCDR BRUMWELL'S PERSONAL CIRCUMSTANCES

5. The accused recently completed his Operations Room Officer tour with the end of TORONTO's deployment on Operation REASSURANCE ROTO 10
6. Following the incident, the accused was promoted to the rank of Lieutenant Commander on 30 August 2019.
7. LCdr Brumwell has completed his Command Development Course and will be challenging the next Command Board. The Command Board will be held during the months of October and November 2019.
8. On or about 15 September 2019, the accused will be assuming command of the Naval Replenishment Unit ASTERIX (East).
9. LCdr Brumwell was not placed on any type of Administrative Actions following the incident.
10. LCdr Brumwell has been employed as Plans Officer in HMCS TORONTO since November 2018."

The joint submission

[4] Counsel are presenting the Court with a joint submission. They recommend that the Court impose the punishment of a fine in the amount of \$200.

[5] Joint submissions are quite common and in fact, are essential in a justice system as they allow the system to function efficiently, otherwise it could collapse under its own weight. Guilty pleas, in exchange for a joint submission, minimize the stress and legal costs associated with the conduct of a trial. In *R. v. Anthony-Cook*, 2016 SCC 43, the Supreme Court of Canada (SCC) recognized the benefits of joint submissions and imposed a very stringent test, a high threshold for departing from joint submissions. The SCC established that judges are not to depart from a joint submission unless the mutually-agreed recommended sentence would cause an informed and reasonable public to lose confidence in the institution of the courts or unless it would be contrary to

public interest. Indeed, a too lenient or too harsh joint submission could bring the administration of justice into disrepute.

[6] This means that I have to examine the joint submission and determine if it is contrary to the public interest, or whether it would cause an informed and reasonable public to lose confidence in the institution of the courts. If it is not contrary to the public interest, or if it would not bring the military justice system into disrepute, I cannot depart from it. The public interest test ensures that these resolution agreements are afforded a high degree of certainty. Accused persons who plead guilty promptly are able to minimize the stress and legal costs associated with trials. Additionally, a guilty plea offers accused persons an opportunity to begin making amends. It is an indication of remorse and shows that the offender takes responsibility for his actions.

[7] The SCC in *Anthony-Cook* also established, at paragraph 44, that:

Crown and defence counsel are well placed to arrive at a joint submission that reflects the interests of both the public and the accused. As a rule, they will be highly knowledgeable about the circumstances of the offender and the offence and the strengths and weaknesses of their respective positions. The Crown is charged with representing the community's interest in seeing that justice is done. Defence counsel is required to act in the accused's best interests, which includes ensuring that the accused's plea is voluntary and informed. And 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. [Citations omitted.]

The evidence

[8] As a result, trial judges can rightfully assume that counsel took all relevant facts into consideration when mutually agreeing on an appropriate sentence. The Statement of Circumstances and the Agreed Statement of Facts that were both read in court, generally provide the court with the facts that guided counsel in coming to a joint submission.

[9] In reviewing these documents, it is apparent that counsel identified the relevant aggravating and mitigating factors surrounding the commission of the offence and with regard to the offender. They also addressed the applicable principles and objectives of sentencing in this case as stated by the prosecution.

The offender

[10] Lieutenant-Commander Brumwell has been serving in the Canadian Armed Forces (CAF) since 2009. This is his first appearance before a military tribunal. His career progression and recent accomplishments, including his promotion to the rank of Lieutenant-Commander, are indicative of his character and of the confidence that his chain of command and the CAF place in him. Furthermore, shortly after the charge was preferred, the offender instructed his defence counsel to enter a guilty plea on his behalf. This has an important and positive impact in mitigating the sentence. By pleading guilty, he accepts responsibility for his action, as he knew that not contacting

the ship at the prescribed time to let them know of his whereabouts while overseas, was inappropriate. With his guilty plea, he has demonstrated that he is ready to move on.

FOR THESE REASONS, THE COURT:

[11] **FINDS** Lieutenant-Commander Brumwell guilty of one offence under section 129 of the *NDA*: conduct to the prejudice of good order and discipline.

[12] **SENTENCES** the offender to a fine in the amount of \$200, payable forthwith.

Counsel

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

Captain M. Melburne, Defence Counsel Services, Counsel for Lieutenant-Commander Brumwell