



COURT MARTIAL

Citation: *R. v. Bannister*, 2020 CM 4005

Date : 20200107

Docket : 201938

Standing Court Martial

Her Majesty's Canadian Ship *Queen Charlotte*
Charlottetown, Prince Edward Island, Canada

Between:

Her Majesty the Queen

- and -

Captain T.J. Bannister, Offender

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

Restriction on publication: Pursuant to section 179 of the *National Defence Act*, this Court directs that any information obtained in relation to this trial by Standing Court Martial that could identify anyone described in these proceedings as victim or complainant, including the person referred to in the charge sheet as "Cadet B.M." shall not be published in any document or broadcast or transmitted in any way.

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Captain Bannister, 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 two charges for conduct to the prejudice of good order and discipline contrary to section 129 of the *National Defence Act* (NDA).

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 reduction in rank to lieutenant and a fine in the amount of \$1,500.

[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 (SCC) 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 a military judge. As recognized by the SCC, 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 either a 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 formally admitted as accurate by Captain Bannister. It 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. For its part, the defence did not produce any evidence nor an Agreed Statement of Facts, but summarily described the administrative consequences on Captain Bannister of the complaint and the disciplinary proceedings which ensued.

[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 similar cases. As a result, I can adequately apply the purposes and principles of sentencing to the circumstances of both the individual offender and the offence committed in this case.

[10] The Statement of Circumstances and the comments of counsel reveal the following circumstances relevant to the offender and the offence.

The offence

[11] Captain Bannister was a member of the reserve force on part-time service as the Commanding Officer of the 148 Charlottetown, Royal Canadian Army Cadet Corps, located in Charlottetown, Prince Edward Island, at the time of the offences.

[12] In March of 2014, B.M., an 18-year-old cadet, was in Captain Bannister's office, at the Queen Charlotte Armoury, to complete the necessary paperwork for her application to join the Cadet Instructor Cadre (CIC). Mr. Morrison, a civilian instructor, was also in that office, printing music sheets for the band.

[13] B.M. was upset. She related to both Captain Bannister and Mr. Morrison how she was stressed at her work as a tire installer and vehicle technician because of the sexual comments she was hearing in the garage. She felt some of the comments were being directed at her and it bothered her. She felt she was being sexually harassed at work.

[14] Captain Bannister responded, saying that young men can speak on topics that can be bothersome, but not exactly be harassment. He told her she should grow a thick skin, especially if she was going to work in a garage.

[15] Captain Bannister then offered as example an occasion when he had joked around with his officers about getting a blow job by one of them while sitting on the corner of his desk and said that everyone had laughed. He mentioned that at least one of the officers in the room was an adult woman, but yet everyone knew that he was joking and they were all okay with it. The offender said this was a bonding experience, not harassment.

[16] Captain Bannister said to B.M. that she had to get used to that kind of thing. He added that she might be in his office and hear him say, "Would you fuck me on my

desk?” or “I’m going to fuck you on my desk.” He added that she would need to be able to handle hearing these types of things if she was going to become a CIC officer as she would definitely be exposed to these types of conversations.

[17] B.M. was surprised and uncomfortable by these comments. She told Captain Bannister that she would rather not join the CIC and turned to Mr. Morrison, who was also taken aback by the comments. The offender then repeated his previous comments, pointed at B.M. and asked her if she would “fuck [him] on [his] desk.” Captain Bannister also jokingly pointed to Mr. Morrison and said that he could watch. These words were particularly inopportune for B.M. following Captain Bannister’s help with a sexual misconduct incident she had experienced a year prior.

[18] The offender re-engaged in such behaviour one more time in May 2015. B.M., a CIC officer by that point, was trying to organize the transportation of cadets from Ottawa for their trip back to Charlottetown. It was a stressful situation and B.M. started to cry after the cadets had boarded the train in Montreal. Captain Bannister pulled her off the train, told her to take a deep breath, that everything was going to be fine, and then he said, “Let’s have sex.” B.M. said, “Excuse me?” Captain Bannister answered, “I’m just trying to lighten the mood.” B.M. said, “That’s not funny.”

[19] Captain Bannister should have known that his words, on these two occasions, would cause offence or harm. Captain Bannister’s comments were a violation of the Cadet Administrative and Training Order 13-24 – Harassment Prevention and Resolution.

The offender

[20] Captain Bannister is currently 48 years old and a father of two adults. He first joined the Canadian Armed Forces (CAF) as a reservist with 721 Communication Regiment (Charlottetown) in 1989 and served part-time for over four years, being released as a corporal in 1993. In January 2010 he re-enrolled in the Cadet Organizations Administration and Training Service (COATS), a sub-component of the reserve force dedicated to the supervision, administration and training of cadets and other members of cadet organizations. He was promoted to the rank of lieutenant effective in January 2012 and wore the rank of captain starting in January 2013 following his appointment as Commanding Officer of the 148 Charlottetown, Royal Canadian Army Cadet Corps.

[21] Captain Bannister was relieved from command in the spring of 2016, following receipt of the complaints related to the charges. He has not served in the administration and training of cadets since then. A court martial convened to try him on six charges commenced its proceedings in January 2018 and was completed with a not guilty verdict rendered on all charges on 27 February 2018. The Director of Military Prosecutions appealed four of the not guilty verdicts and the Court Martial Appeal Court ordered a new trial on these charges on 1 May 2019.

[22] An administrative review was conducted following the first trial in 2018, which resulted in Captain Bannister being administratively released from the CAF on 24 August 2018 under item 5f as “Unsuitable for Further Service”. No details were provided as to his current occupation.

Seriousness of the offence

[23] The Court has considered the objective gravity of the offences in this case. The offence of conduct to the prejudice of good order and discipline contrary to section 129 of the *NDA* attracts a maximum punishment of dismissal with disgrace from Her Majesty’s service.

Aggravating factors

[24] The circumstances of the offences and the offender in this case reveal the following aggravating factors:

- (a) First and foremost, the fact that the offences were committed by an officer serving in the sub-component of the reserve force dedicated to administration and training of cadets in relation, as it pertains to the first offence, to a cadet member of that youth organization. I do not believe I need to describe in much detail how the making of inappropriate sexualized comments in that context offends the responsibilities entrusted to cadet officers to properly instruct and lead cadets to ensure they obtain the most positive experience from their membership in that important organization;
- (b) The fact that the improper conduct was displayed by the Commanding Officer of a Cadet Corps, the offence representing a breach of the trust placed in him by the chain of command to occupy this important position and of his supervisory responsibilities not only to respect but also enforce applicable orders and instructions on harassment resolution and prevention within the cadet movement;
- (c) The status, age and rank differential between the offender and the victim, which in this case increases the moral blameworthiness of the offender;
- (d) The circumstances of the victim at the time of the offences, as she was concerned about sexual harassment in the first instance and overwhelmed by the burden of her responsibilities in the second, both occasions which should have been seen by someone with the responsibilities and maturity of Captain Bannister as requiring support and understanding, not sexualized comments.

Mitigating factors

[25] The Court acknowledges the following mitigating factors:

- (a) Captain Bannister's guilty plea, which avoided the expense and energy of running a trial and demonstrates that he is prepared to take responsibility for his actions in the presence of the public and members of the military community;
- (b) The fact that Captain Bannister is a first-time offender; and
- (c) The administrative consequences of the offences on the personal situation of Captain Bannister, including the loss of status and employment as well as the negative media attention.

Objectives of sentencing to be emphasized in this case

[26] The circumstances of this case require that the focus be placed on the objectives of denunciation and deterrence in sentencing the offender. Specifically, I believe that the sentence proposed, a reduction in rank and a fine, must be sufficient to denounce and act as a deterrent to others who may be tempted to engage in the same type of unacceptable behaviour.

Assessing the joint submission

[27] The submissions from counsel contained references to previous cases. On the basis of the submissions and research of counsel, I must conclude that the punishment of reduction in rank being proposed is somewhat above the range of sentences imposed in similar cases in the past. Typically, offenders who have made improper comments of a sexualized nature tend to be sentenced to punishments of reprimands or severe reprimands combined with fines ranging from \$500 to \$4,000 depending on the circumstances. However, I understand that the punishment of reduction in rank is being proposed in this case in consideration of the current status of Captain Bannister as a civilian, who will therefore not suffer the same financial consequences that another offender on full-time service could face if awarded the same punishment. The reduction in rank in this case is combined with a fine which has an impact on the offender. It is reasonable to conclude that if that fine would have been combined with a lesser punishment, it would have been of a higher amount.

[28] I believe the mix of punishments imposed is, in these circumstances, entirely appropriate and fit in relation to the circumstances of the offender and the offences. In any event, 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. 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.

[29] In determining whether that is the case, 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. I do believe that the sentence being proposed expresses disapprobation for the failure in discipline involved and has a real impact on the offender. It is, in my view, aligned with the expectations of a reasonable person aware of the circumstances of this case. I must, therefore, accept it.

[30] As recognized by the SCC, trial judges must refrain from tinkering with joint submissions of counsel if their benefit can be maximized. 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 cases. The prosecutor who proposes the sentence is in contact with the chain of command and victims. 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 is done. Defence counsel is required to act in the accused's best interests. 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.

Closing

[31] Captain Bannister, I agree with the prosecutor's words to the effect that you should not be considered to be a sexual predator. You have served the CAF for a number of years and you no doubt have the potential to contribute a great deal to your community still. However, you need to realize the seriousness of the offences you have committed and their consequences. These consequences involve the breach of trust placed in you by superiors in the cadet organization to assume the role of commanding officer and ensuring that everyone under your care benefits from a respectful, harassment-free experience. You also breached the trust not only that your victim placed in you as her commanding officer and supervisor, but also the trust that all cadets and their parents place in the cadet organization. The type of behaviour that you displayed has real consequences on people. Their lives and welfare matter. Do not make the mistake of thinking that your troubles with the law are the result of oversensitivity on the part of the CAF and its leadership. I trust that you have reflected on the behaviour you displayed and have decided for yourself that it should not happen again as this kind of behaviour is not acceptable anywhere.

FOR THESE REASONS, THE COURT:

[32] **SENTENCES** you to a reduction in rank to the rank of lieutenant and a fine in the amount of \$1,500, payable forthwith.

Counsel:

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

Lieutenant-Commander B. Walden, Defence Counsel Services, Counsel for Lieutenant
T.J. Bannister