



COURT MARTIAL

Citation: *R. v. Havas*, 2020 CM 2001

Date: 20200217

Docket: 201955

General Court Martial

39 Canadian Brigade Group Headquarters
Vancouver, British Columbia, Canada

Between:

Her Majesty the Queen

- and -

Sub-Lieutenant T.J. Havas, Offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Sub-Lieutenant Havas pleaded guilty to one charge contrary to section 129 of the *National Defence Act (NDA)* for conduct to the prejudice of good order and discipline.

[2] Having accepted and recorded his plea of guilty with respect to the charge, the Court must now determine and pass sentence on the charge which reads, as follows:

“FIRST CHARGE
Section 129 of the
National Defence Act

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

Particulars: In that he, between the dates of 16 July and 1 August 2018, at or near Her Majesty's Canadian Ship QUADRA Cadet Summer Training Centre, Comox, British Columbia, did violate the Cadet Training Centre Adult Staff Code of Conduct."

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

"STATEMENT OF CIRCUMSTANCES

1. At all relevant times, SLt Havas was a Class B Reservist, acting as the direct supervisor to the complainant, Cadet M.B., at HMCS QUADRA CTC in Comox, BC.
2. At the time of the alleged offences, SLt Havas was 32 years old. The complainant was 18 years old.
3. As a part of his training and preparation for acting as a cadet instructor, SLt Havas had completed the following:
 - a. PYDPO GAP DLN Package on Luring and Grooming – completed 4 May 2018
 - b. CTC Adult Staff Code of Conduct – signed 25 June 2017
 - c. CIC Positive Youth Development – completed 29 January 2016
 - d. Harassment Prevention Mandatory Reading for All Adult Supervisors Working with Cadets – completed 29 October 2014
4. Included in the CTC Adult Staff Code of Conduct is an agreement that the instructor will not:
 - k. (1) engage in personal text messages with cadets;
(2) engage in personal conversation that extends beyond what is appropriate for a cadet instructor and a cadet;
 - m. exhibit conduct of a sexual nature or that has a sexual connotation;

- n. touch cadets without their permission except in an emergency situation out of absolute necessity.
5. SLt Havas has acknowledged the definition of harassment as included in the Harassment Prevention Mandatory Reading for All Adult Supervisors Working with Cadets.
6. On 15 July 2018, the complainant was emotionally upset because she had received a text from an ex-boyfriend who she says had sexually assaulted her in the past. At the same time, the complainant was also emotional as a result of family health issues at home.
7. SLt Havas noticed the emotional state that the complainant was in, and approached her to check on her. She disclosed these issues to him.
8. Upon disclosing this information to SLt Havas, he told her that he would have to tell the Chain of Command due to her potential emotional health and that she would likely have to leave the program.
9. The complainant was very upset by this, as she did not want to leave the program, have to disclose the sexual assault to her parents, nor to negatively affect the family health issues at home.
10. As a result, SLt Havas told the complainant that he would not tell the Chain of Command if she promised to call someone if she was upset. He said that she could call him and made sure that she was able to get his cell number.
11. On 16 July, the complainant contacted SLt Havas by text message and confirmed that she had his number.
12. Between 16 July and 1 August, SLt Havas sent over 250 text messages to the complainant.
13. These texts included the following:
 - a. On 16 July, SLt Havas tells the complainant that she can address him by his first name, Tim.
 - b. On 26 July, SLt Havas tells the complainant that he is there if “she needs a shoulder”.

- c. At 12:19 on 26 July, in response to her noting that the week has “been a shit show” he texts “I’d say we could meet now, but you work in 6 hrs”, and at 12:20 “But yeah, if you want a rant, and potentially if you need a hug, I’m here for you”. At 12:22 “Do you need to rant? Do you need a hug? :P”
- d. The next morning he texts “If I said anything that was awkward, I apologize”. She responds “And no you didn’t its fine”.
- e. Later that morning he asks if anyone missed him while he was on leave “:P” and tells the complainant that he missed her and three other cadets.
- f. She relates to him that she got upset while he was on leave and he responds with “*hug*. You should’ve called or texted me”.
- g. Later the same morning he confides in the complainant that his marriage was rocky the previous year and that they can compare stories sometime. In relation to their text conversation he texts “[My issue] is mainly I’d be bridging that officer/SCdt line with personal stuff that may get iffy” and later “Unless it’s you saying you’re going to hurt yourself while you’re here, it’s a vault.”
- h. He notes to her that he is having girl problems, asks her to promise not to tell anyone, and then tells the complainant that his wife identifies as asexual, that they have not had sex in 2.5 years, and that his wife is fine with him having extramarital relations.
- i. The complainant then relates her “boy problems” to SLt Havas, who responds by saying “You deserve someone who treats you the way you deserve to be treated. Someone who sees just how kind, smart, beautiful you are :)”
- j. She thanks him and he texts “Trust me; if I could help you feel cared for the way you deserve, I

would in an instant”. He continues, saying that he never took the opportunity to misbehave when he was younger and that it is a regret of his, that he still wants to rebel a bit “:P”.

- k. Early the next morning he tries to encourage the complainant to tell him how she has broken the rules, offering that he has already done so:

“I’m talking to a SCdt about wanting to be bad. I’m already a terrible person :P”

“I already delete these after each round of texts :P”

“I just realized that I told a SCdt I wanna be bad and break rules...I can only imagine thoughts in your head”

- l. Later that day SLt Havas texts the complainant, telling her that he never had a stronger desire for cuddles and hugs than today. She responds by telling him she cannot relate because she hates being touched and she only is ok with a few people hugging her. He responds offering a hug if she ever needs one. She says “Lol I don’t usually want them” and “So that probs wont happen”.
- m. On 29 July, SLt Havas tells the complainant that she was in his dreams the night before and offers an unsolicited account of the dream. Late that night he again tells her how amazing, beautiful, smart, sweet, caring, and funny she is, that he is very flirty around people he finds attractive when he is drunk, and that he wishes there was a way he could make her feel better and cared for.

- 14. The complainant later noted in a statement that over the course of the summer she became very uncomfortable with being in the workplace and with the topics SLt Havas was discussing via text message. She tried to avoid him as much as possible, but was also worried about cutting off communication or saying anything, as he was an officer and her direct supervisor. Instead, she began isolating herself and stopped talking to almost everyone, prompting several of her colleagues to be concerned about her.

15. On 29 July, the complainant was upset because she found out that her sister was admitted to hospital in relation to her cancer treatment. SLt Havas noticed that she was emotional and came to speak with her. The complainant states that SLt Havas then placed his hand on her inner upper left thigh that she describes as close to where the crotch area begins. She thinks he held it there for about a minute and then squeezes her thigh before letting go.
16. The complainant reported the incident to the Chain of Command that day.
17. An officer of the Canadian Armed Forces exhibiting this type of conduct towards and sending these types of inappropriate text messages to a cadet for whom he is a supervisor:
 - a. Corrode the moral and internal cohesion of a unit;
 - b. Effect the foundation of esprit de corps; and,
 - c. Are totally incompatible with the military ethos and effective military service.
18. SLt Havas acknowledges that the above-noted messages that he sent to the complainant and his conduct in relation to the complainant were inappropriate in nature and were prejudicial to good order and discipline.
19. At the first opportunity provided in the courts martial process, SLt Havas fully acknowledged and took responsibility for sending inappropriate messages and for the above-noted conduct. In so doing, he has publically denounced the making of such comments and has taken responsibility for his conduct.”

The joint submission

[4] In a joint submission, the prosecution and defence counsel recommend that I impose a sentence of a severe reprimand and a fine in the amount of \$2,000 payable in 10 equal instalments of \$200 over the next ten months. In *R. v. Anthony-Cook*, 2016 SCC 43, the Supreme Court of Canada (SCC) 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.

[5] Thus, in exchange for making a plea of guilty, 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 victim; in this case being, M.B., and he is aware of the needs of the military and the surrounding community and he is responsible for representing those interests.

[6] The defence counsel, on the other hand, acts exclusively in the accused's best interests, including ensuring that the accused's plea is a voluntary and informed choice, and unequivocally acknowledges his guilt. As members of the legal profession they are both accountable to their respective law societies and the court relies heavily on their professionalism, honesty, judgement, as well as their duty to the court.

The evidence

[7] 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* that relate to Sub-Lieutenant Havas. 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, the Court received a letter from Constable Thomas Flynn, Instructor, Operational Skills Training Unit from the Royal Canadian Mounted Police and a copy of the accused's Cadet Training Centre (CTC) Adult Staff Performance Evaluation written before the events in question. 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 had the opportunity to hear from Sub-Lieutenant Havas.

The offender

[8] Sub-Lieutenant Havas is 33 years old. He enrolled in the Canadian Armed Forces (CAF) as a reservist on 29 October 2014 and based on his performance report, appears to have consistently conducted himself professionally in all other aspects of his duties. His performance report highlighted that he accepts responsibility and demonstrates accountability, which appears consistent with the evidence and his actions before this Court today. The letter of support by Constable Flynn also confirms the offender's willingness to accept responsibility and suggests that the incident before the Court was an uncharacteristic lapse of judgement for the offender. The offender has no conduct or criminal record of any type.

The victim

[9] The prosecution consulted and advised the victim, M.B., of her right to provide a victim impact statement which she declined. It takes significant courage for a victim to come forward to his or her chain of command to report conduct that makes one feel uncomfortable and I applaud her for reaching out when she did.

Purpose, objectives and the principles of sentencing

[10] 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 or 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.

[11] On the facts of this case, both prosecution and defence counsel submit the objectives they considered most important are general and specific deterrence as well as denunciation. The Court agrees.

Mitigating and aggravating factors

[12] Also under 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.

[13] After hearing the submissions of counsel, the Court highlights that the offender's rank and position of authority were aggravating factors. The court noted that the victim held a position on staff, (she was not a child or youth), but nonetheless, the offender was her supervisor and held a more senior rank. Consequently, there was an inherent power imbalance between the two of them based on their positions, rank and age difference.

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

- (a) Guilty plea. Sub-Lieutenant Havas's plea of guilty for this offence as described in the Statement of Circumstances must be given full weight. His guilty plea has helped the victim in that she does not have to testify and be cross-examined, nor endure a lengthy trial. Further, Sub-Lieutenant Havas' guilty plea saved the Court, counsel and the unit supporting the Court considerable time.
- (b) Sincere remorse and acceptance of responsibility. As his counsel submitted, he came forward and pleaded guilty at the first opportunity. This reflects not only his willingness to accept responsibility, but his remorsefulness. When given the opportunity to speak, Sub-Lieutenant Havas displayed courage by stepping forward to publicly apologize for his conduct to the Court, his former unit and to CAF members at large. He was straightforward and unequivocal in accepting responsibility for his conduct.

- (c) This is the first military disciplinary hearing of any type for Sub-Lieutenant Havas.

Parity

[15] 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 the Court with three cases: *R. v. Duhart*, 2015 CM 4023; *R. v. Laferrière*, 2016 CM 3017 and *R. v. McInnis*, 2010 CM 2012 to support that their recommended sentence is in the appropriate range.

Moderation

[16] The *NDA* requires that a sentence should be the least severe sentence required to maintain discipline, efficiency and morale.

Comments

[17] The serious misconduct is easy to report, as there is no ambiguity that it is wrong. It is the minor misconduct, particularly cases where members exercise a lapse in judgement and can be rehabilitated that are the most important to address. Yet, the Court also recognizes that these minor incidents are also the most difficult for complainants to report.

[18] As an institution, we have to accept that it is the small stuff that matters. If we can control minor misconduct, then the more serious misconduct is 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. We must all be cognizant of the fact that flexibility, discretion and good judgement are all key to eliminating harmful conduct. I thank counsel for their work towards achieving this objective.

[19] A fine in the amount of \$2,000 is significant and reflects that even minor misconduct will have serious consequences. Further, based on the scale of punishments set out within the *NDA*, the imposition of a severe reprimand is reserved for serious offences. Together, they send a message to the larger defence community that any inappropriate conduct of this type, even minor, is unacceptable and will be punished. The severe reprimand will be a stain that stays on the member's record for the foreseeable future.

[20] Sub-Lieutenant Havas, you made a mistake and had a serious lapse in judgement, but your willingness to step forward to accept responsibility at the earliest opportunity provides all of us with confidence that you have learned a valuable lesson. It is important that you keep this in mind as you move forward and continue your service within the CAF. It's not just about correcting your own conduct, but we also have to be cognizant of the fact that our peers may also fall prey to the same sort of

vulnerability. The potential to cross the line into unacceptable behaviour exists in each and every one of us. Hence, this is something that we have to hoist in as leaders, be cognizant of, immediately address and hopefully pre-empt more serious misconduct.

Conclusion

[21] 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?

[22] 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:

[23] **FINDS** Sub-Lieutenant T.J. Havas guilty of the first charge contrary to section 129 of the *NDA*.

[24] **SENTENCES** the offender to a severe reprimand and a fine in the amount of \$2,000, payable in 10 equal monthly instalments of \$200 commencing as soon as possible, but no later than 1 April 2020.

Counsel

The Director of Military Prosecutions as represented by Captain C.R. Gallant

Lieutenant-Colonel D. Berntsen, Defence Counsel Services, Counsel for Sub-Lieutenant T.J. Havas