



## COURT MARTIAL

**Citation:** *R. v. Chiasson*, 2020 CM 2006

**Date:** 08072020

**Docket:** 201957

Standing Court Martial

Asticou Centre  
Gatineau, Quebec, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Petty Officer 2nd Class D.M. Chiasson, Offender**

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

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section 179 of the *National Defence Act*, the Court directs that any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way.**

### **REASONS FOR SENTENCE**

(Orally)

#### **Introduction**

[1] Petty Officer 2nd Class D.M. Chiasson pleaded guilty to one charge contrary to section 97 of the *National Defence Act (NDA)*, drunkenness. Having accepted and recorded her 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      DRUNKENNESS**  
*NDA* Section 97

*Particulars:* In that she, on or about 16 November 2018, in Kingston, Ontario, was

drunk.”

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

“Agreed Statement of Circumstances

1. At all times material to this case, PO2 Chiasson was a member of the Regular Force, Canadian Armed Forces. She was posted at the Joint Intelligence and Information Fusion Centre (JIIFC); a unit under the Strategic Joint Staff organization and located in Ottawa, Ontario.

2. At all times material to this case, XXXX was a member of the Regular Force, Canadian Armed Forces. She was employed as a Human Resources Administrator at the Base Personnel Selection Support Office, which is located in Canadian Forces Base (CFB) Kingston, Ontario.

3. XXXX was an acquaintance of PO2 Chiasson since April 2018. They originally became acquainted in Ottawa as they were neighbours and teammates on a soft ball team. XXXX was posted to Kingston in the late summer of 2018.

4. On 15 November 2018, PO2 Chiasson texted XXXX asking if she could come visit her in Kingston the next day since she had recently separated from her husband and was going through a difficult time. XXXX agreed.

5. In the morning of 16 November 2018, PO2 Chiasson drove from Ottawa to Kingston and met XXXX at her Private Military Quarter (PMQ) in CFB Kingston. She brought her puppy named “Micka” along with her.

6. XXXX and PO2 Chiasson hung out together during the day.

7. In the evening of 16 November 2018, PO2 Chiasson and XXXX had dinner together at XXXX’s PMQ. That evening, snow started to fall heavily and for that reason, XXXX offered PO2 Chiasson to stay the night to avoid her having to drive back to Ottawa in bad weather.

8. Both consumed alcohol during dinner and throughout the evening.

9. In the course of approximately five hours, XXXX consumed half a glass of red wine and half a shot of rum. During the same period of time, PO2 Chiasson consumed most of a 750 ml bottle of red wine, about half of a 375 ml bottle of spiced rum, and shots of hard liquor.

10. The following events occurred between approximately 1700 and 2200 hours on 16 November 2018.

11. After dinner, PO2 Chiasson started dancing in the living room and repeatedly asked XXXX to dance with her and reached for her hands. She attempted to move her hips close to XXXX's hips a few times, which made her feel uncomfortable.

12. XXXX consistently declined the invitations to dance and moved around the living room to avoid contact with PO2 Chiasson. At one point, she managed to avoid PO2 Chiasson's reach by pretending to dance with her own dog.

13. In an effort to get away from PO2 Chiasson's attempts to dance with her, XXXX took the two dogs outside for a quick walk. When she returned to her PMQ after a few minutes, PO2 Chiasson was naked from the waist up doing push ups in the living room. This made XXXX uncomfortable and angry. She told PO2 Chiasson "wow Diane, fuck, put on your clothes" or words to that effect. PO2 Chiasson responded "we are all woman here" or words to that effect.

14. Soon after, PO2 Chiasson put her shirt back on, but only buttoned the last two buttons, leaving part of her breasts exposed.

15. PO2 Chiasson then began to do what appeared to be Tai Chi movements in the living room. In order to avoid another uncomfortable situation, XXXX started cleaning up around her PMQ while PO2 Chiasson continued to listen to music and drink alcohol in her living room.

16. Eventually, XXXX returned to the living room and saw PO2 Chiasson executing a yoga pose, which caused her breasts to be fully exposed. XXXX started feeling angry that she kept seeing PO2 Chiasson's breasts exposed. At that point, XXXX informed PO2 Chiasson that she was going to her bedroom for the night and told her that she could sleep on the couch in the living room.

17. In the bedroom, XXXX sat on her bed, fully clothed, to watch a movie on her iPad. There was no door since it had been removed during her move to the PMQ.

18. While XXXX was in her bedroom, PO2 Chiasson would come to the bedroom, stand in the doorway and make comments such as: "We can sleep together", "I want to kiss you", "you are afraid of me", "I want you to be my first", and "I just want to get close", or words to that effect.

19. XXXX made it very clear that she was not interested in engaging in any sexual way with PO2 Chiasson by responding “no, we are not sleeping together” and “this is not happening Diane, get the fuck out”, or words to that effect.

20. When told to get out, PO2 Chiasson would retreat into the hallway and then come back to stand in the door way shortly thereafter. This happened five to six times.

21. At some point, PO2 Chiasson entered the bedroom, came to the foot of XXXX’s bed and said “I am going to break you” and “we are going to have sex” or words to that effect. Uncomfortable and exasperated, XXXX responded with a firm “no”.

22. With XXXX still in her bed, PO2 Chiasson waked to the left side of the bed, placed her left hand on the night table just beside the bed, lifted her right leg, and moved her right hand towards the centre of the head board and to the right of XXXX’s head.

23. As this was happening, XXXX once more saw PO2 Chiasson’s breasts fully exposed at about six inches from her face. XXXX believed that PO2 Chiasson was attempting to straddle her and have her breasts touch her face. In reaction, she grabbed the right wrist of PO2 Chiasson with her right hand, which stopped the straddling movement, and she immediately got up from her bed and moved to the doorway. PO2 Chiasson did not offer resistance when she was stopped in her movement or while XXXX was getting out of the bed.

24. XXXX felt angry, violated and she was also scared that she might aggravate the healing of a recent surgery. As she stood in the doorway of her bedroom, she told PO2 Chiasson “Diane get the fuck out of my room” or words to that effect. PO2 Chiasson responded “nope, we are going to sleep together”, or words to that effect, and she then laid down on her back in the bed.

25. Twice, XXXX informed PO2 Chiasson that she would have to call the Military Police (MP) to have her removed from her residence. PO2 Chiasson twice responded that she did not care and refused to get out of the bed.

26. XXXX proceeded to call the MP.

27. At around 2145 hours on 16 November 2018, Cpl Dunn and Cpl Frazer, two members of the 2 MP Regiment Detachment Kingston, arrived at XXXX’s PMQ.

28. Cpl Dunn informed PO2 Chiasson that she was no longer welcomed in XXXX's residence. He requested her to leave the premises and told her that they would escort her and help her secure temporary accommodation for the night. PO2 Chiasson responded that she did not want to leave the residence.

29. Cpl Dunn reiterated three more times that staying in the residence was not an option, that she had to leave, and that they would help her find temporary accommodation for the night. PO2 Chiasson did not respond to the requests, but eventually, she stated that she was unable to move because of her level of intoxication and that she needed the help to stand up.

30. Cpl Dunn and Cpl Frazer helped PO2 Chiasson to her feet.

31. She asked if she could go to the bathroom first and was allowed to. After a few minutes, PO2 Chiasson exited the bathroom and asked Cpl Dunn "where are the cuffs" or words to that effect.

32. Cpl Dunn explained that she was not under arrest and that they would help her find temporary accommodations for the night.

33. PO2 Chiasson turned around, walked down the hallway and climbed back into XXXX's bed. Cpl Dunn followed her to the bedroom and asked PO2 Chiasson three to four more times to get back on her feet and leave the residence with them.

34. PO2 Chiasson responded that she was not leaving and that she wanted the MP to leave her alone.

35. At around 2155 hours on 16 November 2018, Cpl Dunn placed PO2 Chiasson under arrest for drunkenness, an offence contrary to the *NDA* section 97.

36. At around 2213 hours on 16 November 18, Cpl Frazer and Cpl Dunn arrived at the 2 MP Regiment Detachment Kingston with PO2 Chiasson. She was placed into a holding cell for the night.

37. At around 0936 hours on 17 November 2018, Capt Phillips arrived at the 2 MP Regiment Detachment Kingston to act as the Custody Review Officer on behalf of the JIIFC.

38. At 0952 hours on 17 November 2018, PO2 Chiasson was released from custody without conditions.

39. Before being released, PO2 Chiasson read and signed as having read a letter of instructions written by Maj Lacasse, the acting Director of the JIIFC. Amongst other things, Maj Lacasse's instructions required PO2 Chiasson to:

- Return to the National Capital Region immediately upon release;
- Every day, between 0800 and 2200 hours, report her whereabouts every four hours to WO Ricard;
- Upon release, contact CP02 MacLeod; and
- Report to Maj Lacasse's office on Monday at 1100.

40. On 16 November 2018, while under the influence of alcohol, PO2 Chiasson behaved in a disorderly manner or in a manner likely to bring discredit on Her Majesty's service."

### **The joint submission**

[3] 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. 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 pleading 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, 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 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 and judgment, as well as their duty to it.

### **The evidence**

[5] In this case, the prosecutor read the Agreed Statement of Circumstances and provided all those documents required under the *Queen's Regulations and Orders for the Canadian Forces*. The Agreed Statement of Circumstances was introduced on consent to inform the Court of the context of the incident that led to the charge before it. Further, the Court benefitted from counsel's submissions to support their joint submission on sentence, where they highlighted relevant facts and considerations.

### *The offender*

[6] Petty Officer 2nd Class Chiasson is fifty-one years old. She enrolled in the Canadian Armed Forces (CAF) on 21 February 1991. She has served her country for almost thirty years as a naval communicator. She was promoted to her substantive rank of petty officer 2nd class in August 2014. Aside from the incident before the Court, she has served her country well and has no conduct sheet or criminal record. She has completed several operational tours and is currently in the possession of two different NATO medals: NATO – OUP, for service on board Her Majesty’s Canadian Ship *Charlottetown*, in Libya, NATO – Africa, for counter piracy, as well as the Special Service Medal for service in Alert and a Canadian Decoration.

[7] In her biological family, the offender was one of eighteen children. At a young age, she was taken into care by the Children’s Aid Society and grew up in the foster care system until she was eighteen years old. Growing up in a foster home was not a positive experience for her, as she predominantly served the needs of her foster family rather than receiving the necessary parenting and nurturing that she herself required. She has no meaningful relationship with either of her biological parents or siblings. In terms of her education, she is one credit shy of obtaining a college diploma in accounting.

[8] Notwithstanding the challenges she experienced during her upbringing, she successfully went on to get married and raise two children, who are now both adults. One of her children has a learning disability and lives with her at home while the other has moved out. She has also had a very successful and lengthy military career.

[9] At the time of the incident before the court, Petty Officer 2nd Class Chiasson was separated from her husband and was going through a very challenging time. She was personally vulnerable and just prior to the date of this incident, she had already reached out for mental health assistance, by checking herself into a hospital. Her family situation has now stabilized at home. For the majority of the time, Petty Officer 2nd Class Chiasson provides the sole income for her family. Her husband was employed for a short time prior to the COVID-19 pandemic, but was laid off when the pandemic was declared. He did receive the Canadian Emergency Response Benefit. Based on the submissions from counsel, the court accepts that due to a number of other family complications, Petty Officer 2nd Class Chiasson is enduring significant financial hardship.

[10] Although this is a drunkenness offence, there was no evidence before the Court to conclude that Petty Officer 2nd Class Chiasson is a regular drinker or that she has a problem with alcohol dependency.

[11] Petty Officer 2nd Class Chiasson is currently on a temporary medical category and although it is not clear whether she will be medically released, her counsel advised the court that she does not intend to continue serving in the CAF.

**The victim**

[12] It takes significant courage for a victim 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.

[13] In this particular case, it took even more courage for XXXX to pick up the phone during a weekend evening, to call the MPs when she did. Her quick action mitigated the offender's bad judgement by pre-empting a more serious offence. The victim in this case, came before the Court and very bravely read her statement.

[14] In her statement, XXXX referred to an incident that occurred earlier in her military career. After she reported it and it was dismissed the same day, the news of the incident spread quickly and she began receiving verbal attacks and harassment by fellow classmates, co-workers, supervisors and higher ranked members. She wrote that, "My reputation followed me for 13 years in the Military Police trade as a person of no integrity because I didn't 'play well with others'". She stated that she "learned early in my Military Police Career to stay quiet even though I was being sexually harassed and accosted on numerous occasions." She went on to say in her statement, "With the above being said, I feared that I will be put into similar situations and have to defend myself. Previous sexual abuses, misconducts are at the forefront of my memories and how these individuals were not accountable for their sexual inappropriateness towards me. I fear retaliation. I fear that I can't get passed this and not be able to forgive. I fear of early military release. I fear of loss of or reduced income if I am released. I fear misinterpretation by the media. I fear being out of my home for too long. I fear meeting new people. Relative to my past traumas, this incident can be considered as a minor one however, my fear and mistrust towards men and now women's unknown sexual intentions have increased."

[15] The above comments are repeated, in various ways, in almost every case that I preside over with respect to charges that relate to sexual misconduct. As I referred to during the proceedings, it is not always the actual incident that causes the greatest stress on a complainant, but rather it is often the second order effects that flow from reporting the incident including the complainant's perception of how they are perceived by others within their respective community that victims find particularly stressful. I am encouraged to hear that the reporting process was much easier for XXXX this time than it was many years ago.

[16] I wish to reiterate to XXXX that she was very courageous. If you look at our military ethos, it requires courage and bravery. The bravery and the courage she displayed in reaching out when she did and then coming forward to read out her statement in a public proceeding reflects this. I am very encouraged by the response of the Military Police on the evening in question, as well as the fact that the chain of command listened to her and took her concerns seriously. The court heard what she said today as did Petty Officer 2nd Class Chiasson.



[17] We need both men and women who are strong and willing to come forward to report even minor misconduct, so we can become collectively better as an armed force. The serious misconduct is easy to report, as there is no ambiguity that it is wrong and action must be taken. It is the minor misconduct, particularly cases where members can be rehabilitated that are arguably even more important to address. Yet, the Court also recognizes that most members find the reporting of minor incidents to be the most difficult.

[18] 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 the small stuff does matter. If we can control it, then the more serious misconduct will be pre-empted. We must all be cognizant of the fact that flexibility, discretion and good judgement are all key to eliminating harmful conduct.

**Purpose, objectives and principles of sentencing**

[19] The fundamental purposes 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 for 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, she 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.

[20] 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. After hearing the submissions of counsel, the Court highlights the following aggravating factors:

- (a) Private Home. The incident took place in the victim's private home. Our homes are places of sanctuary where we are supposed to feel safe. On the day in question, Petty Officer 2nd Class Chiasson reached out to XXXX asking if she could go visit her, which required Petty Officer 2nd Class Chiasson to travel from Ottawa to Kingston. Understanding that Petty Officer 2nd Class Chiasson was going through a very challenging time, XXXX invited her to spend time in her home. Later, due to heavy snow, XXXX invited Petty Officer 2nd Class Chiasson to stay over. Petty Officer 2nd Class Chiasson breached XXXX's trust.
- (b) Sexually Inappropriate Conduct. The advances made by Petty Officer 2nd Class Chiasson were sexually inappropriate and persistent. Although the advances occurred intermittently, the nature of the conduct escalated over the course of a five-hour period until XXXX felt that she had no other choice than to call the MPs.

- (c) Refusal to heed the direction of the MPs. When the MPs arrived at the home of XXXX, they advised Petty Officer 2nd Class Chiasson that she was no longer welcome in XXXX's home and they offered to find her a place to stay for the night. Notwithstanding their apparent willingness to assist, Petty Officer 2nd Class Chiasson needed to be formally arrested in order to have her removed from XXXX's home.
- (d) Rank of the offender. At the time of the incidents, the accused was a petty officer 2nd class and the victim was significantly junior to her, being a corporal. I accept the defence's position that the relationship between the offender and the victim did not evolve in the workplace. Their personal friendship developed during their mutual participation on various military sports teams and also during other outside interests. Although, I do not consider this to be an offence aggravated by an abuse of rank or position, the rank of Petty Officer 2nd Class Chiasson remains a factor, particularly when the MPs were called and she refused to vacate XXXX's home. As a senior Non Commissioned Member, she should have known better and treated the MPs with the appropriate respect.

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

- (a) Guilty plea. Petty Officer 2nd Class Chiasson's plea of guilty for this offence as described in the Agreed Statement of Circumstances must be given their full weight. She displayed courage by stepping forward to publicly accept responsibility before her peers, supervisors and subordinates. Her guilty plea has saved the Court, counsel and the unit supporting the Court considerable time.
- (b) First-time offender. Petty Officer 2nd Class Chiasson has no conduct sheet or previous criminal record.
- (c) Remorseful. Through her counsel, Petty Officer 2nd Class Chiasson expressed her remorse. Her remorse is further evidenced by the fact that she came forward and pleaded guilty at the earliest opportunity. She has publicly accepted responsibility for her conduct and did not contest any of the facts when they were proposed to her. It is evident that she understands the implications of what she did and the consequence of her conduct.
- (d) Rehabilitation. The Court is encouraged by the fact that even before the incident, Petty Officer 2nd Class Chiasson reached out for help and admitted herself into a hospital and she continues to take active steps to stabilize and improve her personal life. We are all works in progress and

we must all concentrate on becoming the best version we can possibly be of our particular selves. She understands this.

### **Parity**

[22] 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: *R v Gregory*, 2011 CM 1005; *R. v. Bernier*, 2015 CM 3015; *R. v. Prosser*, 2010 CM 3023.

[23] 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**

[24] Petty Officer 2nd Class Chiasson's guilty plea is particularly important because it ensured that this matter was dealt with quickly. It reflects that she has accepted responsibility for her conduct and, more importantly, it ensured that XXXX did not have to testify.

[25] Although Petty Officer 2nd Class Chiasson 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.

[26] Petty Officer 2nd Class Chiasson, before I conclude, I want to wish you the best of luck as you move forward. You need to draw strength and confidence from your personal life journey. You were not given a silver spoon in life and you did not just endure the challenges presented to you, you very successfully overcame them and rose to the level of a petty officer 2nd class in the Royal Canadian Navy, in a hard sea trade. That is no small feat. You also endured personal hardship in terms of your many operational postings. Your successful management of the challenges presented to you at home while juggling a demanding military career that required you to spend long periods away from your family, demonstrates that you have the necessary resilience to bounce back. We all make mistakes in life. We often make serious mistakes, but it is what we do after we make those mistakes that reveals our true character.

[27] This is a case about resilience for both of you, Petty Officer 2nd Class Chiasson and XXXX. Based on the evidence before the court, it is clear that you are individually very strong women. You both very bravely came forward today in an open and very public forum to reveal the incident and resolve this matter. I encourage you to continue with your respective mental health counselling, and I hope you can see the positive that others see in you. Believe in yourselves. I have no doubt that should either of you choose to continue serving in the Canadian Armed Forces or you venture into another career, that you will be able to turn this unfortunate incident into something positive that will provide you pivotal insight as you move forward in your careers.

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

[29] Although a fine in the amount of \$2,000 is indeed significant, based on the scale of punishments set out within the *NDA*, the imposition of a severe reprimand is reserved for very serious offences. A severe reprimand is intended to send a message to the larger community that this type of inappropriate conduct is unacceptable and will be punished. It will be a stain that stays on the member's record for the foreseeable future.

[30] 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:**

[31] **FINDS** Petty Officer 2nd Class Chiasson guilty of the charge before the Court.

[32] **SENTENCES** the offender to a severe reprimand and a fine in the amount of \$2,000 payable in monthly instalments of \$100, beginning in the August 2020 pay period.

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**Counsel:**

The Director of Military Prosecutions as represented by Lieutenant-Colonel M.A. Pecknold and Major L. Langlois

Captain C. Da Cruz, Defence Counsel Services, Counsel for Petty Officer 2nd Class D.M. Chiasson