



## COURT MARTIAL

**Citation:** *R. v. Bourque*, 2020 CM 2009

**Date:** 20200713

**Docket:** 201954

Standing Court Martial

Asticou Centre  
Gatineau, Quebec, Canada

**Between:**

**Her Majesty the Queen**

**- and -**

**Major D.G. Bourque, Offender**

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

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### REASONS FOR SENTENCE

(Orally)

#### Introduction

[1] Major Bourque pleaded guilty to one charge contrary to section 129 of the *National Defence Act (NDA)*. 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:

“Section 129 NDA

CONDUCT TO THE PREJUDICE OF  
GOOD ORDER AND DISCIPLINE

*Particulars:* In that he, on or about 11 April 2019, at Ottawa, Ontario, made comments that devalue females and female members of the Canadian Armed Forces.”

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

“STATEMENT OF CIRCUMSTANCES

1. At all times material to this case, Major Bourque was a member of the Regular Force of the Canadian Armed Forces. In April 2019, he was employed as the Senior Staff Officer Integration for the Planning and Policy Development team at what was then called the Canadian Armed Forces Strategic Response Team - Sexual Misconduct (DG CSRT – SM), now known as the Directorate Professional Military Conduct – Operation HONOUR (DPC – OpH).

2. Major Bourque received this posting as the result of a competitive process. His duties and responsibilities included representing the organization to five organizations/teams: the Operation HONOUR Tracking and Analysis System, the Research Coordination and Performance Measurement team, the ICCM-led Defence Team Healthy Workspace Tiger Team, to the Training and Education Team, and to Public Affairs.

3. On April 11, 2019, on a walk to a Tiger Team meeting, Major Bourque and CPO1 Wilcox ran into a female colleague who is a Major. Following their encounter, he made inappropriate comments about her sexuality. He further commented that her knowledge and leadership abilities were not to the standard of a field officer.

4. From there, Major Bourque’s comments turned into a general critique about how the system is unfair and caters to the advancement of females in the CAF.

5. Later on that day, in a car ride with CPO1 Wilcox and WO Foulds, Major Bourque continued with his diatribe about women in the military stating that they are pushed ahead into command positions at a faster rate because of their sex/gender.

6. Major Bourque’s behaviour left WO Foulds and CPO1 Wilcox in shock and disbelief. They were offended that Major Bourque felt as if they had similar opinions to his. Furthermore, his inappropriate comments are not conducive to their work environment; both have stated that they have felt uncomfortable working with him since that day.

7. Following a Unit Disciplinary Investigation, it was determined by Col Raymond - Director of DPC-OpH - that Major Bourque’s inappropriate behaviour and comments had degraded trust and affected team cohesion within the unit. He was subsequently re-assigned to his current position at CJOC headquarters, subjected to remedial measures,

and ultimately, charged with one count under s.129 of the *National Defence Act* for Conduct to the Prejudice of Good Order and Discipline.”

### **The joint submission**

[3] In a joint submission, the prosecution and defence counsel recommend that the Court impose a sentence of a \$200 fine, on the agreement that a formal apology would also be made by the accused. 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 joint submission, 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 that 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, and 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. The Court was also provided with the following: an Agreed Statement of Facts outlining those facts relevant to Major Bourque; a letter of reference from Colonel M. Sullivan, Deputy Chief of Staff for Chief Force Development; as well as a formal apology written by Major Bourque and delivered by him in the court today. Further, the Court benefitted from counsel’s submissions to support their joint submission on sentence, where they highlighted additional relevant facts and considerations.

### **The offender**

[6] Major Bourque is 38 years old. He enrolled in the Canadian Armed Forces (CAF) on 17 June 2000 and thus far has served his country well for over 20 years. He is currently serving as an artillery officer in the regular force. He has completed two operational tours: in Kandahar, Afghanistan as well as in the Congo, with the United Nations. Aside from the incident before the Court, he has no conduct sheet or criminal record.

[7] A former Commanding Officer, Colonel Sullivan, who has known Major Bourque for approximately 15 years had the following comments to share on Major Bourque's career so far:

“1. I am willing to provide reference in support of Major Dennie Bourque's Military Justice process. I have known of Major Bourque for around 15 years and known him professionally for 10 years. I maintain no personal relationship with Major Bourque. I was his Commanding Officer and worked closely with him in The Royal Regiment of Canadian Artillery School for two years where he was a senior gunnery instructor. In the 2018-2019 period I was his director for a number of months as part of the CDS's Targeting Capability Implementation Team; a high-range position. At this time, he was chosen personally by the Deputy Commander of the Canadian Army as being the most capable officer and being the best fit to work in another high-range position with the Directorate Professional Military Conduct – Operation HONOUR (DPMC-OpH).

2. In the time that we have worked together, I observed him to be of the highest character. He was genuine, trustworthy, loyal, hardworking, self-reflective, and ready to admit mistakes when required. He always advocated for what was best for his students; gender, ethnic background or sexual orientation was never an issue. In two years working together, not a single student had a bad thing to say about him as an instructor. I trust what he says.

3. Major Bourque's performance throughout his career has been excellent. Following stellar performance on operations he was selected as a candidate on the yearlong Instructor-in-Gunnery Course. This is a very demanding course for which the Artillery Corps selects only its brightest, most talented, most trusted and responsible officers. Years later, he was entrusted by The Royal Regiment of Canadian Artillery leadership to command a training battery within The Royal Regiment of Canadian Artillery School. After his successful battery command tour and completion of the Joint Command and Staff Program (JCSP), Major Bourque's anticipated career path would have been to work in high-range post JCSP positions before promotion to LCol where he would have been competed by the Artillery Branch for Commanding Officer Positions. It would have been expected that he had the potential to achieve the rank of at least full Colonel.”

**Purpose, objectives and the principles of sentencing**

[8] 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 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, 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 deterrence as well as denunciation. The Court agrees with their assessment. The Court observed that the chain of command has already implemented significant administrative action such that specific deterrence has been achieved. This was also captured in Colonel Sullivan's letter at paragraph 6 which reads as follows:

“In terms of the principles of sentencing, knowing Major Bourque as I do, I am certain that the Military Justice Courts-Martial process alone, along with its public nature, has already achieved specific deterrence, rehabilitation and reform of actions that is required; as such, I would expect that we will never see such conduct again from Major Bourque.”

[9] Pursuant to 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) Senior Officer. As a senior officer in the rank of major, the offender's conduct fell short of the professional standard expected of an officer with his rank and status;
- (b) Posting to the Strategic Response Team (SRT) for Sexual Misconduct. The position Major Bourque held at the time of the offence was considered to be a high range career posting for officers in a directorate that specifically aims to identify and address harmful behaviour. While serving in that position, he was expected to lead positive change and uphold CAF policies and recommendations, not breach them;
- (c) Comments made in front of subordinates. As the prosecution submitted, “words matter,” particularly when you are highly respected. When you are held in high esteem, people care about what you think. The prejudicial comments were made openly in front of subordinates which exacerbated their impact. As a senior leader, Major Bourque was required to exemplify the military ethos in his day to day interactions with his subordinates by outwardly respecting the dignity of all persons. His comments that day not only disparaged female officers as a class, but they also offended his subordinates who were left in shock and disbelief. Since that day, his subordinates have felt uncomfortable working with him.

- (d) Comments persisted throughout the day. The comments were not simply made once and then forgotten, but similar disparaging comments were repeated at various times throughout the day.

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

- (a) Guilty plea. Major Bourque's plea of guilty for the offence as described in the Statement of Circumstances must be given its full weight. His guilty plea has saved the Court, counsel and the unit supporting the Court considerable time.
- (b) First-time offender. Major Bourque has no conduct sheet or previous criminal record. This is the first disciplinary hearing of any type for him.
- (c) Apology. Major Bourque's apology was sincere and reflected remorse. In short, he accepted responsibility for his actions as he read out in open court, the following:

“FORMAL APOLOGIES

1. I, Major D.G. Bourque, sincerely apologize for the comments made on the 11 April 2019 in the presence of subordinate in ranks.
  2. Having had time to reflect on my conduct on that day, I fully appreciate the fact that this was unacceptable conduct for a Senior Officer in the CAF, and that these type of behaviors negatively affect Good Order and Discipline.
  3. I've learned from my mistakes and in the event that I am concerned about gender equality in the CAF in the future, I will raise my questions or concerns to higher authorities in an appropriate forum.
  4. Finally, I also appreciate and understand the valuable contribution of females in the CAF.”
- (d) Isolated incident. Colonel Sullivan confirms at paragraph 6 of his letter, that the incident before the Court is an isolated incident:

“6. For what I know of this incident, I find it to be entirely out of character for Major Bourque. Being a self-reflective and self-critical individual, I am certain that he has beat himself up many times over this incident and has

already learned from this mistake. Certainly in terms of his career, removal from a high-range Major's position has already adversely impacted his immediate chances of promotion and most probably his future potential.”

- (e) Nature of comments. Although his comments were inappropriate, and some were directed at an individual, most of the comments were general in nature.
- (f) Rehabilitation. On 27 May 2019, Major Bourque was placed on and successfully completed a three month recording warning in response to the incident that led to the charge before the court. In his letter, Colonel Sullivan concluded that Major Bourque has learned from his mistakes and Colonel Sullivan also expressed his belief that Major Bourque has the maturity to adopt more positive behaviours in the future.

### **Parity**

[11] Pursuant to section 203.3 of the *NDA*, the law requires that the sentence imposed be similar to sentences imposed for similar offences. The Court was provided with the following courts martial to consider: *R. c. Renaud*, 2019 CM 3021; *R. v. Hunt*, 2019 CM 4009; *R. v. Crabtree-Megahy*, 2017 CM 1002; *R. v. Betts*, 2017 CM 3010; *R. v. Florian-Rodriguez*, 2018 CM 3007. Most of the cases cited are much more serious than the facts before the Court. However, as the prosecution indicated, in a joint submission, the Court is not bound by this case law. However, I generally encourage counsel to provide similar cases, for a number of reasons. Firstly, they provide reliable reference to facilitate counsel in negotiating future joint submissions. Secondly, the case law serves to deter and educate CAF members when they read a decision so they can situate the various levels of similar misconduct and understand their consequences.

### **Indirect consequences of finding or sentence**

[12] Both counsel made submissions as to why the recommended sentence was lower than would be expected. Pursuant to paragraph 203.3(e) of the *NDA*, the indirect consequences of the finding of guilty or the sentence must be taken into consideration.

[13] At the time of the offence, Major Bourque was posted to the Director General CAF Strategic Response Team on Sexual Misconduct (DG CSRT-SM) as a Senior Staff Officer Plans Integration, which is a high-range position in terms of career progression. Following the incident, Major Bourque was moved to Canadian Joint Operations Command (CJOC) as J5 Europe 2, which is considered a mid-range major position. In short, the current proceedings have had a significant negative effect on Major Bourque's career progression.

[14] In his letter of reference, Colonel Sullivan summarizes some of the indirect consequences as follows:

“4. Clearly the nature of the incident for which Major Bourque is charged necessitated his removal from his position in Directorate Professional Military Conduct – Operation HONOUR (DPMC-OpH). It is my opinion that the impact on Major Bourque’s career of being found guilty of this charge will be significant. It is unlikely that he will be returned to a high-range major’s position for some time. And once eventually promoted to Lieutenant Colonel, it is unlikely that the Royal Regiment of Canadian Artillery will compete him for future Commanding Officers positions. It is quite probable that he will not command again and will complete his career as a staff officer.

5. I am of this opinion not because of Operation HONOUR environment but rather because of how much we expect of our Commanding Officers in the CAF. In addition, with the number of high quality candidates we have, I expect that the Artillery leadership and Canadian Army would not wish to take the risk. Having been a Commanding Officer four times including twice on operations, I can say that I find the impact that the Commanding Officer has on the personality of the unit and the members is actually both humbling and scary. Leaning on John Baynes ideas in *Morale A Study of Men and Courage*, one person’s personality, approach and ideas are decisive in creating the spirit of their command. I agree with the analysis that it is almost frightening to see how the character of a Commanding Officer can be reflected in their unit. As you well know being a lawyer, most all authority in the CAF is with the CDS and the Commanding Officers. At no other level in the military hierarchy does anyone have such direct power over the lives of those below them.”

### Comments

[15] Major Bourque’s guilty plea is particularly important because it reflects his level of professionalism and willingness to step forward to assume responsibility. As his defence counsel indicated, the approach taken with the joint submission was restorative, which I applaud.

[16] Major Bourque, I hope you have learned a very valuable lesson here. We all need to accept that every one of us carries certain unconscious biases. We are all unknowingly influenced by our perceptions and past behavior and unless we force ourselves to reflect, we will not recognize these biases nor can we assess the harm they can cause to our day to day decision making. Possessing an unconscious bias doesn’t make any of us bad people. Most of our thought processes are unconscious and would have been developed from external information and experiences we have collected over many years. In fact, as an officer in the combat arms, for most of your career, you will have worked predominantly with male leaders, so it’s likely that unconsciously you are more comfortable with that male image.



[17] By your rank and the position you held at the DG CSRT-SM, there is no doubt that consciously and outwardly you accepted certain beliefs on gender equality. In other words, you know very well that women and men are equally effective leaders, but unconsciously you harboured a contradictory belief that only officers that fit your perception or image of a field officer are deserving. It is because of the way you openly voiced that belief that you are here before this court martial.

[18] I note that you are a JCSP graduate, so you understand the difference in the required scope of thinking when you step out of tactical leadership into the strategic realm. At the strategic levels, the CAF and the artillery leadership have determined that for the long-term health and best interests of the organization, it needs female leadership and participation. Women are not less deserving or worthy simply because they do not look and act like the image you are most comfortable with. You must shed preconceived ideas and images from your mind and be open to different forms of leadership and participation.

[19] Additionally, the comments you made undermine the leaders who have made these very important strategic decisions. Women are not just equally deserving of promotion on their own merit and performance, but organizations benefit the most when women are at the table when important decisions are being made.

### **Conclusion**

[20] 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**

[21] Considering all the factors, the circumstances of the offence, the consequence of the finding, the sentence and the gravity, the Court is 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 military justice into disrepute.

### **FOR THESE REASONS, THE COURT:**

[22] **FINDS** Major Bourque guilty of the first and only charge on the charge sheet.

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

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**Counsel:**

The Director of Military Prosecutions as represented by Major A. Dhillon

Major B. Tremblay, Defence Counsel Services, Counsel for Major D.G. Bourque