COURT MARTIAL

Citation: *R. v. Ermine*, 2021 CM 4007

Date: 20210729
Docket: 202109

Standing Court Martial

3rd Canadian Division Support Base Detachment Wainwright
Denwood, Alberta, Canada

Between:

Her Majesty the Queen

- and -

Private S. G. Ermine, Offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

[1] In the early hours of 9 November 2019, after excessive drinking on base and in town, Private Ermine accessed without authorization the female section of the Canadian Forces Base (CFB) Wainwright's barracks in a heavily inebriated state to enter the room occupied by two female colleagues as they were sleeping. After sitting on the bed of a colleague and placing his hand on her thighs he was told to leave and complied, only to return on multiple occasions. Private Ermine has no memory of these events.

[2] At the opening of his court martial, over twenty months later, Private Ermine pleaded guilty to one charge under section 97 of the *National Defence Act* (*NDA*), for drunkenness. As part of a plea arrangement, the prosecutor has withdrawn a charge of assault.

[3] The prosecution and defence disagree as to the sentence that should be imposed and have submitted evidence, precedents and arguments to assist the Court in arriving at the appropriate and fair sentence.

Position of the parties

Prosecution

[4] The prosecution submits that Private Ermine should be sentenced to the minor punishment of confinement to barracks for a period of twenty-one days. Although this minor punishment is of a lesser objective gravity than punishments usually imposed at courts martial for drunkenness, the prosecution submits that the confinement to barracks is the punishment most likely to contribute to the maintenance of discipline, efficiency and morale in the Canadian Armed Forces (CAF) in the circumstances of this case and of this offender.

Defence

[5] The defence submits that Private Ermine should benefit from an absolute discharge as it is, in the view of defence counsel, the outcome that is in the offender's best interest in his circumstances. It is further submitted that the absence of a conviction by this Court is not contrary to the public interest given the mitigating factors at play and the offender's well-engaged rehabilitation.

Evidence

[6] The facts relevant to the determination of sentence were introduced first by the prosecution through the Statement of Circumstances read by the prosecutor and accepted as accurate by the offender, as well as by the documents mandated at *Queen's Regulations and Orders for the Canadian Forces* (QR&O) paragraph 112.51(2).

[7] For its part, the defence produced two affidavits from a representative of the command team and a supervisor of Private Ermine, respectively, discussing his professional situation prior to, during and subsequent to the time of the offence. The defence also produced three documents outlining the conditions imposed on Private Ermine on release from custody in November 2019, conditions which were increasingly reduced over time, as a result of two applications made by or on behalf of Private Ermine to higher authorities, including myself. Most importantly, the defence also produced what is known as a *Gladue* report, outlining the unique circumstances of Private Ermine as an Aboriginal offender. Several people contributed to the *Gladue* report, including some of Private Ermine's supervisors in the CAF.

Facts

The circumstances of the offence

[8] The Statement of Circumstances includes the following facts relevant to the immediate circumstances of the offence. I quote:

> "2. On 8 November 2019, Private Ermine attended the Junior Ranks Mess at CFB Wainwright and JD's Saloon in Wainwright, Alberta with other members. He drank to excess and to the point of inebriation.
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> 3. Due to the alcohol consumed, Private Ermine does not clearly remember leaving the bar and has no memory until waking up in his own bed the following morning.
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> 4. After leaving the bar, Private Ermine returned to barracks at CFB Wainwright.
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> 5. At some point early in the morning of 9 November 2019, Private Ermine entered the female section of the barracks, from which he was restricted from entering. He entered the room where the complainant and another member was sleeping.
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> 6. The complainant awoke to Private Ermine sitting beside her on her bed. Private Ermine placed his hand on her thigh and asked her to cuddle. The complainant told Private Ermine to 'get the fuck out of here,' or words to that effect, and to leave her alone. Private Ermine left the room.
>
> 7. Sometime later, Private Ermine returned to the room and sat on the bed of the complainant, and once again rubbed her thigh and asked her to cuddle. She again told him to leave and he complied.
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> 8. Private Ermine left and returned to the room multiple times that morning; at one point entering the room to search for his flip flops, at another point laying down on the bed, and at another, falling asleep on the floor beside the bed of the complainant for approximately ten minutes."

The circumstances of the offender

[9] Private Ermine is a thirty-one-year-old First Nation Cree member of the Lac La Ronge Indian Band in Saskatchewan. He has enrolled in the CAF through the Bold Eagle program, a unique summer training program combining Indigenous culture and teachings with military training. Following successful completion of that six-week program, Private Ermine chose to remain with the CAF as a member of the regular force and commenced training on 14 October 2019 in what was described as a pre-Development Period 1 (DP1) program, joining a basic training platoon to achieve the skills required for loading onto the infantry DP1 course.

[10] Private Ermine was removed from the pre-DP1 training shortly after the incident of 9 November 2019 and was not loaded on a DP1 course in January 2020 as his chain of command was unsure at the time of how the disciplinary investigation then under way would proceed. He was ultimately loaded on a DP1 course in January 2021 and graduated in May 2021. I am informed that Private Ermine will be posted to CFB Edmonton after the completion of these proceedings and will achieve the rank of private (trained) once at his new unit, typically an infantry regiment.

[11] Private Ermine was briefly arrested on 15 November 2019 and released on a number of conditions, including to abstain from the possession or consumption of alcohol and to refrain from attending any establishments whose primary purpose is the conveyance of alcohol. Just over a year later, on 23 November 2020, Private Ermine applied to lift that later condition and a new direction was released which effectively allowed him to attend any place where alcohol was served, as long as he continued to abstain from possession or consumption. That condition was lifted on 11 June 2021 following an application from defence counsel to this military judge.

[12] Despite and quite apart from the release conditions just described, Private Ermine was subject to a number of constraints while residing in barracks on CFB Wainwright since the offence. As he returned from Saskatchewan in June 2020 after over three months away following the outbreak of the COVID-19 pandemic, he was billeted in a different building than those who had complained about his behaviour of 9 November 2019 and had to report to a sergeant's office seven times a day for seven days a week until mid-July 2020, at a time when members of the basic training platoon were prevented from leaving base due to the pandemic. Following his summer leave in August 2020, Private Ermine was again required to report seven times a day but only during the five-day work week. These conditions ceased in September or October 2020 when those who had complained about his behaviour were no longer on base. Supervisors at the rank of sergeant and master corporal have reported that they were satisfied with Private Ermine's compliance with orders and conditions as well as being satisfied with his performance during that time.

[13] The *Gladue* report reveals that Private Ermine was separated from his biological mother when he was about two years old, his father leaving with two siblings as he could no longer deal with the significant substance abuse his mother suffered and which ultimately caused her early death at the age of forty-five in 2010. His father, a survivor of a residential school, also had alcohol abuse issues which he resolved by abstinence from the age of thirty-four years old. Private Ermine's youth was spent with his dad and his dad's spouse, with two biological siblings and three stepbrothers and sisters. He was expelled from the family home at the age of sixteen, upon which he became effectively homeless, suffering alcohol abuse challenges. He moved in with his stepsister when he was about nineteen and was able to complete his high school education at that time. He has a nine-year-old daughter from a past relationship whom he speaks to and sees frequently. He has begun a relationship in December 2020 and hopes to move in with his girlfriend once these proceedings are completed. While Private Ermine reports that

he has his alcohol issues under control as evidenced by his attendance at Alcoholics Anonymous (AA) meetings, those closest to him mention that he needs to address his alcohol addiction.

Analysis

The purpose and objectives of sentencing

[14] The purpose, objectives and principles applicable to sentencing by service tribunals are found at sections 203.1 to 203.4 of the *NDA*, reproduced at QR&O article 104.14. As provided at section 203.1 of the *NDA*:

> **203.1 (1)** The fundamental purposes of sentencing are
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> **(a)** to promote the operational effectiveness of the Canadian Forces by contributing to the maintenance of discipline, efficiency and morale; and
>
> **(b)** to contribute to respect for the law and the maintenance of a just, peaceful and safe society.
>
> **(2)** The fundamental purposes shall be achieved by imposing just sanctions that have one or more of the following objectives:
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> **(a)** to promote a habit of obedience to lawful commands and orders;
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> **(b)** to maintain public trust in the Canadian Forces as a disciplined armed force;
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> **(c)** to denounce unlawful conduct;
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> **(d)** to deter offenders and other persons from committing offences;
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> **(e)** to assist in rehabilitating offenders;
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> **(f)** to assist in reintegrating offenders into military service;
>
> **(g)** to separate offenders, if necessary, from other officers or non-commissioned members or from society generally;
>
> **(h)** to provide reparations for harm done to victims or to the community; and
>
> **(i)** to promote a sense of responsibility in offenders, and an acknowledgment of the harm done to victims and to the community.

[15] As can be seen, the fundamental purposes of sentencing are twofold, recognizing the dual nature of the Code of Service Discipline which, as suggested by the Supreme Court of Canada, not only serves to regulate conduct that undermines discipline and integrity in the CAF, but also serves a public function by punishing specific conduct which threatens public order and welfare. (*R. v. Généreux*, [1992] 1 S.C.R. 259 at page 281).

[16] Also, the objectives that a just sanction must try to achieve are mainly associated with the CAF, but also include considerations reaching outside the bounds of the military, for instance, the maintenance of public trust and acknowledgement of the harm done to victims who may belong to the larger civilian community.

Objectives to be applied in this case

[17] I agree with counsel that the circumstances of this case require that the focus be primarily placed on the objectives of denunciation and deterrence, both general and specific, in sentencing the offender.

[18] That being said, the objective of rehabilitation is also important, especially in cases such as this one where there is evidence of satisfactory post-offence conduct for a period of over twenty months, suggesting that the offender has the potential to be reintegrated into military service and make a positive contribution to society following the imposition of the sentence.

[19] Having established the objectives to be pursued, it is important to discuss the principles to be considered in arriving at a just and appropriate sentence.

Main principle of sentencing: Proportionality

[20] The most important of these principles is proportionality. Section 203.2 of the *NDA* provides that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. In conferring proportionality such a privileged position in the sentencing scheme, Parliament acknowledges the jurisprudence of the Supreme Court of Canada which has elevated the principle of proportionality in sentencing as a fundamental principle in cases such as *R. v. Ipeelee*, 2012 SCC 13. At paragraph 37 of this case, Lebel J. explains the importance of proportionality in these words:

> Proportionality is the *sine qua non* of a just sanction. First, the principle ensures that a sentence reflects the gravity of the offence. This is closely tied to the objective of denunciation. It promotes justice for victims and ensures public confidence in the justice system. . . . Second, the principle of proportionality ensures that a sentence does not exceed what is appropriate, given the moral blameworthiness of the offender. In this sense, the principle serves a limiting or restraining function and ensures justice for the offender. In the Canadian criminal justice system, a just sanction is one that reflects both perspectives on proportionality and does not elevate one at the expense of the other.

[21] The principle of proportionality thus obliges a judge imposing sentence to balance the gravity of the offence with the degree of responsibility of the offender. Respect for the principle of proportionality requires that the determination of a sentence by a judge, including a military judge, be a highly individualized process.

Other principles

[22] Having reviewed the circumstances directly relevant to the principle of proportionality, I now need to discuss other principles relevant to the determination of the sentence, which are listed as the paragraphs of section 203.3 of the *NDA* as follows:

> **(a)** a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender . . .

Here, a number of aggravating circumstances are listed in this section, none of which are applicable in this case, on the facts submitted to me.

> **(b)** a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

That is known as the principle of parity;

> **(c)** an offender should not be deprived of liberty by imprisonment or detention if less restrictive punishments may be appropriate in the circumstances;
>
> **(c.1)** all available punishments, other than imprisonment and detention, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders;
>
> **(d)** a sentence should be the least severe sentence required to maintain discipline, efficiency and morale of the Canadian Forces;

Those paragraphs embody the principle of restraint, especially for Aboriginal offenders; and, finally,

> **(e)** any indirect consequences of the finding of guilty or the sentence should be taken into consideration.

[23] I will now go over these factors in light of the circumstances of this case.

Aggravating and mitigating factors

[24] As provided in the enumeration of principles of sentencing, a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating either to the offence or the offender. That being said, one aggravating or mitigating factor, in isolation, cannot operate to increase or decrease the sentence to a level that would take it outside of the range of what would be an adequate sentence.

[25] The circumstances of the offence and the offender in this case reveal that the nature and detail of the disorderly behavior at the source of the prohibited conduct in this case constitutes an aggravating factor. Indeed, the offence of drunkenness under section 97 of the *NDA* does not target inebriation per se. It targets a potentially broad range of disorderly behaviour owing to the influence of alcohol or a drug. That behaviour in this case relates to repeated unauthorized entry into female quarters and

the room of female colleagues while they slept, to sit on the bed of a colleague and rub her thigh on two occasions as well as laying on and beside the bed on other occasions. Even if no specific evidence was produced as to the impact of such conduct on those who witnessed it or on the discipline, efficiency or morale of the platoon or unit, it remains that sleeping quarters are places where occupants should feel protected, including by rules that limit access to certain groups of people at certain times. For those in basic training environments as we have here, it is the only place they can truly call their own. Violations of the sanctity of that space need to be addressed. In my opinion the conduct of Private Ermine in this case is at the higher end of the spectrum of disorderly behaviour which can support a charge of drunkenness and this should be considered aggravating.

[26] The Court also considered the following as mitigating factors arising either from the circumstances of the offence or the offender:

(a) the guilty plea of the offender which avoids the expense and energy of running a trial and demonstrates that he is taking full responsibility for his actions in this public trial in the presence of members of his unit and of members of the broader military community;

(b) the fact that Private Ermine is a first-time offender;

(c) the satisfactory conduct of Private Ermine since the offence, including during his training which laid the foundation for his career in the CAF; and

(d) the length of time that has passed since the offence. This is particularly significant in this case, given the scrutiny and strenuous conditions imposed on the offender since the offence, especially in the first year post-offence. Even if the post-charge delay of thirteen months in this case is below the threshold at which it is presumed unreasonable, it remains that this eighteen-month limit adopted in the military justice system in *R. v. Thiele*, 2016 CM 4015 is not and has never intended to be an objective to be reached as *R. v. Jordan*, 2016 SCC 27 eloquently states. We should strive to do better, especially when time prevents the training progression of a suspect or accused, hence deprives the CAF of the full contribution of that person. I am not passing judgement on the wisdom or adequacy of the measures taken in relation to Private Ermine nor blaming anyone as it pertains to the time it took to bring this matter to trial. What must be recognized is the fact that Private Ermine has been subjected to measures such as reporting requirements that have a punishing effect on him and can be seen as such by others. In that sense, the objectives of denunciation and deterrence have already been addressed to an extent. This state of affairs decreases the sentence that ultimately needs to be imposed to address these objectives at the time of sentencing by court martial. That is how the length of time that passes

> while an offender is under such measures is a factor which may operate to mitigate the sentence, as it does here.

Parity and sentencing range

[27] The next principle to be taken into account is the principle of parity. The prosecution submitted to my attention three recent cases where the minor punishment of confinement to barracks has been imposed, albeit not for offences of drunkenness. I am informed that the usual punishment for drunkenness at courts martial is a combination of a reprimand or severe reprimand and a fine. Yet, the prosecution submits that in the case of objectively minor offences revealing relatively minor misconduct by offenders of a low rank, the minor punishment of confinement to barracks is one that can very well address the objectives of sentencing applicable to such situations, citing the cases of Officer-Cadet Bobu *(R. v. Bobu*, 2021 CM 5007) and Private MacKenzie (*R. v. MacKenzie*, 2021 CM 2011), both involving charges under section 129 of the *NDA* for improper touching of female colleagues by male offenders. My attention was also brought to the case of Private MacDonald, (*R. v. MacDonald*, 2021 CM 4002), which involved an incident where the offender had gotten into an argument with a colleague and threw heavy snow at him. In that case I commented as follows on the appropriateness of imposing confinement to barracks:

> [19](…) It has been said previously that minor punishments, including specifically confinement to barracks, are unusual punishments to be imposed at courts martial. Although it may be statistically true, it does not make confinement to barracks inadequate or otherwise suspect. It is an entirely acceptable punishment and is, as specified at Note (D) to QR&O article 104.13, a particularly appropriate vehicle to correct the conduct of service members who have committed service offences of a minor nature while allowing those members to remain productive.
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> …
>
> [21] It is also a punishment which has a significant deterrent effect, both specific and general. Indeed, it has a direct impact on the offender who experiences the additional confinement, accompanied by extra work and drill for an equal term, in a manner that is usually much more personal than a fine for instance. It is also a punishment that is usually visible within unit lines and with which others can associate and reflect.

[28] I agree with the prosecution to the effect that confinement to barracks is an appropriate punishment in the circumstances of the misconduct committed in this case. It is a punishment which allows the application of the principle of parity with similar cases, including the three recent cases submitted to my attention, mentioned previously. Indeed, I am in a position to assess and compare the misconduct committed in these cases with the misconduct committed by Private Ermine and apply the principle of parity. Specifically, I am in a position to assess how the twenty-one days of confinement to barracks requested by the prosecution compares with the fourteen days imposed on Officer Cadet Bobu, the twenty-one days coupled with a fine of $2,790 imposed on Private MacKenzie and the fifteen days imposed on Private MacDonald. On the other

hand, the defence has not presented any precedent where an absolute discharge had been imposed as a punishment by a court martial.

[29] In relation to the principle of parity, therefore, I conclude that the range of sentences imposed in the past on similar offenders for similar offences varies from a severe reprimand or reprimand combined with a fine, to confinement to barracks.

[30] That said, the range of sentence cannot impose an absolute limit on a sentencing judge's discretion given that, as explained earlier, proportionality is the cardinal principle that must guide judges in imposing a fit sentence. There will always be situations that call for a sentence outside a particular range: although ensuring parity in sentencing is in itself a desirable objective, the fact that each crime is committed in unique circumstances by an offender with a unique profile cannot be disregarded. The specific circumstances of Private Ermine are what defence counsel has relied on in submissions to convince me to grant an absolute discharge, emphasizing the principle of restraint, in light of the mitigating factors identified and the information contained in the *Gladue* report that she produced.

The principle of restraint and the Aboriginal status of the offender

[31] The principle of restraint obliges me to sentence the offender with the least severe sentence required to maintain discipline, efficiency and morale, and, in this case, I must consider all available punishments paying particular attention to the circumstances of Private Ermine as an Aboriginal offender, as provided for at paragraph 203.3 (c.1) of the *NDA*, which has been added to the Act to mirror paragraph 718.2(e) of the *Criminal Code*, following the court martial decision of *R. v. Levi-Gould*, 2016 CM 4003. As explained by the Supreme Court of Canada in *R. v. Gladue*, [1999] 1 SCR 688, the purpose of paragraph 718.2(e) is to ameliorate the serious problem of overrepresentation of aboriginal people in prisons, and to encourage sentencing judges to have recourse to a restorative approach to sentencing. Although the sentence being proposed by the prosecution in this case does not involve incarceration, I nevertheless need to alter the method of analysis which I must use in determining a fit sentence for Private Ermine. The Supreme Court of Canada requires sentencing judges to undertake the sentencing of Aboriginal offenders individually, but also differently, because the circumstances of aboriginal people are unique. In sentencing an Aboriginal offender, a judge must consider the unique systemic or background factors which may have played a part in bringing the particular Aboriginal offender before the courts.

[32] During oral arguments, counsel have been unable to express the exact impact of the Aboriginal status of the offender on their sentencing submissions in terms of how they would have varied if the offender had not been Aboriginal. This is normal as the Aboriginal status of an offender does not necessarily have a quantitative impact on a given sentence but rather has a qualitative impact, in that it obliges counsel and the sentencing judge to ensure that the submission and ultimate sentence are adapted to the unique circumstances of the Aboriginal offender.

[33] In this case, the submission of the defence for an absolute discharge can hardly be incompatible with the Aboriginal status of the offender given that, if it is chosen, the offender is deemed not to have been convicted of the offence. What I need to consider then is the compatibility of the submission of the prosecution for a punishment of confinement to barracks with the Aboriginal status of the offender.

[34] It is alcohol abuse that got Private Ermine in trouble in November 2019 resulting in the current court martial proceedings. There is a history of drug and alcohol abuse tracing back to his mother and father. Although the offender did not grow up in an environment of substance abuse, the trauma experienced by his father due to factors unique to Aboriginal people such as attendance at a residential school remained despite his father's own commitment to become sober. Tensions between Private Ermine and his stepmother appear to have been caused by her role in disciplining him following episodes of alcohol abuse, leading to his expulsion from the family home at the age of sixteen. At that point he developed a significant problem with alcohol, being frequently taken into custody by authorities until he sobered up. Things obviously got better when he moved in with his stepsister, obtained a high school diploma and eventually joined the CAF. The *Gladue* report reveals that, to this day, Private Ermine adopts a casual attitude in relation to alcohol, mentioning that it is not an issue as he attends AA meetings while consuming moderately on occasions, mainly with his girlfriend. That positive outlook is not shared by his two closest siblings and his father, who believe that he continues to struggle with alcohol addiction which needs to be addressed.

[35] The proposal of the prosecution for a punishment of confinement to barracks would not worsen the situation of Private Ermine in relation to his alcohol dependency. It is important to keep in mind that the Aboriginal status of an offender is not evaluated in isolation from other relevant principles and factors of sentencing which must be taken into consideration in determining the fit sentence. In this case, rehabilitation is an important objective that the sentence must meet, especially considering that the *Gladue* report mentions that Private Ermine takes pride in his work with the CAF. I believe that his military career is a positive aspect of his life and development as a citizen. The proposed punishment of confinement to barracks will not, in my view, compromise his rehabilitation for the following reasons:

(a) it will not be significantly onerous for him given the restrictive conditions he has been accustomed to since joining the CAF, as he has been in a strict training environment, been confined to base for sanitary reasons and been subject to strict reporting requirements. The confinement to barracks bears no resemblance to actual incarceration, especially given that this punishment includes extra work and drill which will keep Private Ermine more busy than during the pandemic confinement which he had to endure on base in 2020;

(b) as provided at section 249.27 of the *NDA*, the punishment proposed by the prosecution, although recorded in Private Ermine's conduct sheet, will not result in a criminal record. It will therefore have reduced

consequences on the rehabilitation of Private Ermine should he decide to seek civilian employment following his engagement with the CAF; and

(c) the punishment proposed will be served at the unit where the offence took place, as explained by the prosecutor, hence will allow Private Ermine to join his new unit in Edmonton after having paid his dues for his misconduct in the location where it occurred, ready to reintegrate seamlessly into military service with a fresh start.

[36] I conclude therefore that the proper recognition of the Aboriginal status of Private Ermine does not rule out the possibility of imposing the punishment of confinement to barracks. Such punishment will not exacerbate the circumstances that brought him before the Court and would not jeopardize his rehabilitation, to the contrary, as it could well facilitate his reintegration into military service.

Choosing a fit sentence

[37] The principle of restraint obliges me to sentence the offender with the least severe sentence required to maintain discipline, efficiency and morale. In choosing a fit sentence, I believe it is appropriate to consider first whether the suggestion of the defence to grant the offender an absolute discharge would be sufficient to maintain discipline. I must ask myself whether the circumstances of Private Ermine and the mitigating factors identified previously are sufficiently compelling to justify granting an absolute discharge despite the aggravating factor I have identified.

[38] In my view, an absolute discharge would be insufficient to maintain discipline considering the severity of the disorderly behaviour displayed by Private Ermine in this case. What he did in breaching the sanctity of the sleeping quarters of colleagues repeatedly in the early morning of 9 November 2019 is extremely serious and troubling. Members of the CAF, especially here in Wainwright's training environment, would have difficulties understanding how an offender who admitted behaving that way owing to the influence of alcohol could benefit from the most lenient outcome possible after being brought before a court martial. Members of the CAF need to feel safe in their sleeping quarters on base, especially women who typically constitute a minority of trainees in army courses. They need to feel that the organization protects their security when they sleep. An absolute discharge is simply not an outcome that is consistent with these expectations, despite the mitigating factors at play in this case. I find that it is therefore inappropriate in the present circumstances.

[39] Beyond an absolute discharge, moving up the scale of punishments available in the scale of section 139 of the *NDA*, are minor punishments. The prosecution suggests confinement to barracks following consultations with representatives of the current chain of command of Private Ermine, who have expressed their willingness to provide the support required for the administration of that punishment in accordance with rules governing minor punishments at the unit. Confinement to barracks is a punishment that has been imposed on at least three occasions this year at courts martial. It meets the

objectives of denunciation and deterrence that have been identified as important in this case without jeopardizing the rehabilitation of the offender, as explained previously. Most importantly, the punishment of confinement to barracks would not be excessive or inadequate in consideration of the Aboriginal status of the offender. As recognized by the Supreme Court of Canada in *Gladue*, Aboriginal peoples do believe in the importance of traditional sentencing goals such as deterrence, denunciation and separation where warranted. I am confident they would recognize the necessity of imposing the punishment of confinement to barracks in circumstances such as these. I conclude that it is the punishment that must be imposed.

[40] The prosecution proposes that the confinement to barracks be for a period of twenty-one days. This is the maximum that a court martial may impose, as provided at QR&O 104.13, referring to the table of article 108.24. That period of twenty-one days is adequate to the severity of the disorderly conduct admitted by the offender, as evidenced by precedents submitted to my attention. However, I believe the proposed duration does not sufficiently take into account the length of time that has passed since the offence, which I have identified and explained as a mitigating factor earlier, especially given the scrutiny and strenuous conditions imposed on the offender. Consequently, I believe that a period of confinement to barracks for fifteen days would be sufficient to maintain discipline in consideration of the fact that the objectives of denunciation and deterrence have been partly addressed to an extent during this lengthy pre-trial period.

Conclusion and disposition

[41] I am confident that the sentence I am choosing to impose is within the range of sentences imposed for similar cases in the past and also confident that the circumstances of the offender in this case warrant it.

[42] Private Ermine, you have made sacrifices and deployed significant efforts to advance your training and career in the CAF in the last two years. You have also seen efforts deployed by your unit and supervisors to support you. You will get more supervision and support while serving your punishment over the next fifteen days. I invite you to accept all of the help you can get to assist your rehabilitation as I believe this organization cares and wants to set you up for success, both in your military and personal life. You have every reason to be proud of your accomplishments in obtaining your high school diploma and successfully progressing in a demanding military career. For these successes to continue and not be jeopardized, you will have to recognize and deal with what those close to you consider to be your alcohol addiction. You are not alone dealing with this kind of affliction and there is help readily available to you, as you know from attending AA meetings. I see a lot of potential in you and I am certain that I am not alone. It is up to you to take the measures needed to avoid falling back into trouble as a result of intoxication and achieve your full potential, not only to the benefit of the CAF but also and mainly to the benefit of our Canadian society, those who love and count on you and for yourself. Good luck.

FOR THESE REASONS, THE COURT:

[43] **FINDS** you guilty of the charge of drunkenness under section 97 of the *NDA*.

[44] **SENTENCES** you to the minor punishment of confinement to barracks for a period of fifteen days.

Counsel:

The Director of Military Prosecutions as represented by Major R. Gallant

Lieutenant-Commander F. Gonsalves, Defence Counsel Services, Counsel for Private Ermine