



COURT MARTIAL

Citation: *R. v. Fields*, 2022 CM 5003

Date: 20220216

Docket: 202102

Standing Court Martial

Halifax Courtroom Suite 505
Halifax, Nova Scotia, Canada

Between:

Her Majesty the Queen

- and -

Lieutenant (N) J.E.D. Fields, Offender

Before: Commander C.J. Deschênes, M.J.

Restriction on publication: Pursuant to section 179 of the *National Defence Act*, the Court directs that any information that could disclose the identity of the person described in these proceedings as the complainant, including the person referred to in the charge sheet as “K.M.G.”, shall not be published in any document or broadcast or transmitted in any way.

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Lieutenant(N) Fields admitted his guilt to an offence punishable under section 93 of the *National Defence Act (NDA)*, that is to say, behaved in a disgraceful conduct in touching K.M.G. without her consent. The Court accepted and recorded the guilty plea on this charge and must now determine and impose a fair and fit sentence, which requires that the punishment be proportional to the circumstances surrounding the commission of the offence, and that takes into consideration the offender’s personal situation. In order to assist the Court in determining the appropriate punishment, both

counsel are jointly recommending that this Court impose a punishment of a severe reprimand combined with a fine in the amount of \$5,000.

Summary of circumstances

[2] The circumstances surrounding the commission of the offence contained in the Statement of Circumstances were read in court and the document was introduced as an exhibit. Lieutenant(N) Fields admitted that the account of the events was true. The Statement of Circumstances reads as follows:

“STATEMENT OF CIRCUMSTANCES

(Queen’s Regulations and Orders for the Canadian Forces, art. 112.51 (3))

1. At the material time, the offender, LT(N) fields, was a member of the Regular Force, Canadian Armed Forces, and posted to the HMCS Regina. He and the victim, K.M.G, were colleagues onboard the ship.
2. In the fall of 2018 the ship was at sea conducting Immediate Multi-Ship Readiness Training. Following the completion of Phase 2 of the training in late November 2018, the Regina came alongside in San Francisco, California.
3. The offender, along with K.M.G. and four other colleagues consumed some alcohol in the ship’s mess, then decided to go out for dinner and drinks. They had one drink at a bar, then went to a seafood restaurant for dinner.
4. The group was seated on the main floor of the restaurant. While sitting at the table, K.M.G. and the offender flirted as the group continued to consume alcohol. At one point later in the evening, K.M.G. went to the gender neutral bathroom located on the second floor. Shortly after, the offender was observed going upstairs.
5. The offender and K.M.G. wound up in a toilet stall together which had floor-to-ceiling walls. Neither recall how they came to be in the stall together.
6. Both the offender and K.M.G. had consumed a number of drinks throughout the evening. She was somewhat intoxicated and he was severely so. He sat on the toilet for the majority of the interaction, and K.M.G. observed his eyes drooping shut as he sat.
7. While in the stall, the offender fondled K.M.G.’s breasts and made attempts to pull her towards him to kiss her. She resisted by placing her hands on his shoulders, and by pushing him away and saying “no.” LT(N) Fields did not have the consent of K.M.G. for his acts.

8. At some point, the incident ended and K.M.G. left the stall. Neither party remembers exactly how they came to leave the stall. K.M.G. is unsure how long the incident lasted; the offender has no recollection of the incident whatsoever.

9. Once K.M.G. left the bathroom, she went back downstairs. By then her colleagues had left, so she paid her bill and walked back to the ship alone.”

Evidence

[3] The Court examined and considered the Statement of Circumstances, the content of which was agreed to by the defence, as well as the documentary evidence listed at article 111.17 of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O) and provided by the prosecution, in accordance with article 112.51 of the QR&O. The defence introduced an Agreed Statement of Facts, which includes additional information pertaining to Lieutenant(N) Fields' personal and professional situation.

Victim impact statement

[4] The prosecution consulted with, and advised the victim of her right to provide a victim impact statement. K.M.G. read her statement in court.

The analysis

Sentencing principles of the military justice system

[5] When determining a sentence, the Court must be guided by the sentencing principles contained in the *NDA*. Subsection 203.1(1) enunciates the fundamental purposes of sentencing, which are:

- (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.

[6] The fundamental purposes shall be achieved by imposing just sanctions that have one or more of the objectives listed at subsection 203.1(2), such as to promote a habit of obedience to lawful commands and orders, to maintain public trust in the Canadian Forces as a disciplined armed force, or to assist in rehabilitating offenders. The objectives of the sentence are dictated by the particularity of the case and of the offender.

[7] Finally, section 203.2 of the *NDA* provides for the fundamental principle of sentencing:

203.2 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

Role of counsel

[8] It is part of counsel's mandate, in representing their respective client, to recommend to the Court a sentence that they deem fit and fair. Counsel have a comprehensive and complete knowledge of the circumstances surrounding the commission of the offence, and defence counsel is also aware of the offender's personal situation. When considering an appropriate sentence to recommend to this Court, counsel will often times engage in resolution discussions and may agree on a joint submission. The Supreme Court of Canada (SCC) recognized in *R. v. Anthony-Cook*, 2016 SCC 43 that, "properly conducted, [these resolution discussions] permit the system to function smoothly and efficiently."

Benefits of a joint submission

[9] Joint submissions provide many benefits to the accused, the participants, the unit, and the military justice system. They assist in limiting the resources normally required to support a trial by court martial. A guilty plea offers accused persons an opportunity to take responsibility for their actions and tends to show that they are indeed remorseful.

Public interest test

[10] The SCC in *Anthony-Cook*, in recognizing these many benefits in the criminal justice system at large, has established the public interest test for trial judges dealing with a joint submission. It dictates that joint submissions should not be departed from by trial judges. However, if the joint submission would cause an informed and reasonable public to lose confidence in the institution of the courts or would be contrary to the public interest, only then should the sentencing judge follow certain steps before considering rejecting the recommendation. This means that I, as the sentencing judge, have limited discretion in this case.

[11] This Court must therefore examine the joint submission and determine if it is contrary to the public interest or whether it would cause an informed and reasonable person or public to lose confidence in the institution of the courts. If it is not contrary to the public interest, or if it would not bring the military justice system into disrepute, this Court is required to accept it even though it may have arrived at a different sentence in the absence of a joint recommendation.

[12] When considering a joint submission, trial judges can rightfully assume that counsel were mindful of the statutory sentencing principles explained earlier when agreeing on the joint submission. It is also assumed that counsel took into consideration

all relevant facts when mutually agreeing upon an appropriate sentence. The Statement of Circumstances that was read in court and filed as an exhibit, provides the Court with the facts that guided counsel in coming to a joint submission, as it generally provides a fulsome description of the circumstances surrounding the commission of the offence, including the existence of aggravating factors. Additionally, when adduced as evidence as part of the sentencing hearing, an Agreed Statement of Facts provides information that may present mitigating factors that were also considered during the plea negotiations, which would presumably further support the joint submission.

The offence

[13] In consideration of the proposed punishment, the Court considered the objective gravity and the nature of the offence in which the guilty plea was offered. Disgraceful conduct is a shockingly unacceptable behavior that has the effect of tarnishing the Canadian Armed Forces (CAF) as an institution. It is a serious offence, carrying a maximum punishment of imprisonment for a term not exceeding five years. In addition, the circumstances of the offence of disgraceful conduct in the present case reveal highly inappropriate touching of a shipmate without her consent. The conduct involved the invasion of the victim's privacy in an intrusive way. This type of conduct undermines the trust that CAF members should have toward one another. Furthermore, the confidence that non-commissioned members are entitled and expected to place in their officers is further damaged by such conduct, as it discredits the officer corps and erodes moral and unit cohesion.

[14] Lieutenant(N) Fields' conduct cannot in any fashion be justified by his consumption of alcohol. Sexual misconduct committed while the offender is highly intoxicated to the point that they do not, later, remember having committed the act, is unfortunately a scenario seen too often. Thus, in light of the circumstances of the offender and of the facts surrounding the commission of the offence, the Court accepts, as suggested by counsel, that general and specific deterrence should be the most important objectives to attain for the case at bar.

Aggravating factors

[15] When determining whether the proposed punishment meets the public interest test, the following aggravating factors were considered:

- (a) the status of the offender as an officer and his years of experience in the CAF. Although he was a sub-lieutenant at the material time of the offence, he was an officer and ought to lead by example at all times. He also has many years of military experience, having served quite extensively as a sailor before being commissioned from the ranks;
- (b) the impact of the conduct on the victim. It takes courage for a victim to report conduct that makes one feel violated, particularly when both the victim and the suspect are part of a very small community such as a

ship's company. When she read her victim impact statement, the victim explained that she felt that her trust was betrayed by a friend, a colleague, and a peer, in the worst way possible. She described feeling alone, let down by her colleagues. It was difficult for her to carry on as normal with her duties the next day, alongside the offender, and to "put on a brave face and fake it". She also expressed concerns with the reputational impact that reporting the commission of the infraction would have on her. She worries about her own safety and being vulnerable with her colleagues. She expressed feeling guilt for coming forward because it might harm the offender's family and may cause other women to think twice about joining the Navy. She started to doubt putting her trust in her shipmates, and questioned her ability to be a good role model for her daughter. It is apparent that Lieutenant(N) Fields' conduct continues to have a detrimental emotional impact on the victim.

- (c) the conduct involved the violation of the victim's physical integrity and was composed of more than one act toward her, as the offender fondled the victim's breasts and made attempts to pull her towards him to kiss her;
- (d) the conduct took place in a small, confined and isolated space, putting the victim in a more vulnerable situation; and
- (e) the conduct occurred while in a foreign port, when the ship had completed phase two of the Immediate Multi-Ship Readiness Training.

[16] The Court did not accept the prosecution's contention that there was an operational impact on the ship's company or a risk thereof, resulting from the offender's actions. No evidence was presented to support this contention.

Mitigating factors

[17] In considering the joint submission, the following mitigating circumstances were also taken into consideration:

- (a) Lieutenant(N) Fields pleaded guilty to the offence, dispensing with the need for the victim to have to testify and live through the stress that a testimony in court generally causes. Further, more resources would be required to sustain a longer, more costly trial. The guilty plea is effectively saving the Court, counsel and the unit supporting the Court, considerable time and resources. It is a significant mitigating factor for many reasons, including because it attests to the presence of remorse; and
- (b) publically recognizing his wrongdoing and taking responsibility for his actions shows integrity and leadership. It will not erase the harm done to

the victim, but it supports the argument in some ways that the impugned conduct was out of character, as demonstrated by the evidence jointly provided, in particular in the agreed statement of facts. In addition, Lieutenant(N) Fields does not have a conduct sheet.

The offender's situation

[18] The offender is forty-two years old. He enrolled in the CAF on 4 March 2003. He commissioned from the ranks on 1 July 2013. Throughout his nineteen-year career in the Navy, he served on the following operations: Operation ACTIVE ENDEAVOUR, Operation UNIFIED PROTECTOR, Operation PROJECTION, Operation MOBILE, Operation HORATIO, Operation CARIBBE, Operation NANOOK, Operation PODIUM, Operation ARTEMIS, Operation NEON and Operation DOLPHIN. He has served a total of 796 days at sea.

[19] He received the following medals: Article 5 NATO Medal for Operation ACTIVE ENDEAVOUR, Queen Elizabeth II's Diamond Jubilee Medal, Non-Article 5 NATO Medal for Service on NATO Operation UNIFIED PROTECTOR - LIBYA, Canadian Forces' Decoration, Special Service Medal - EXPEDITION, Operational Service Medal - EXPEDITION, and the Special Service Medal - NATO.

[20] His performance did not go unnoticed, as described in the Agreed Statement of Facts. In one of his subordinate's opinion, Lieutenant(N) Fields is a "strong and competent Bridge Watch Keeper who is well liked and respected. He is always respectful when speaking to subordinates, he is great at making less experienced members feel at ease and he is always very patient when dealing with the new sailors". He was further described as having a strong work ethic and dedicated to his duty as a naval warfare officer. One of Lieutenant(N) Fields' direct supervisors and instructor for approximately five months reported that the offender's wealth of personal and professional knowledge from his prior experience on operational deployments was an asset to both himself and his fellow students. His work ethic was described as superior through the quality of his performance on assignments, and he displayed utmost professionalism, respect, devotion to duty and pride in his accomplishments and contributions to the Royal Canadian Navy. He shows respect for his fellow students, the staff and guest lecturers.

[21] He is also known by another supervisor for volunteering in support of the CAF community and shows an intellectual curiosity towards new and adaptive processes and technology, always being respectful and displaying a willingness to work. He also has a lengthy training history, an indication of his motivation to better himself. The Court accepts, in looking at the evidence as a whole, that Lieutenant(N) Fields presents a very good prospect for rehabilitation.

[22] The Court also took into consideration the fact that Lieutenant(N) Fields received a notice of intent for his release.

[23] He is married and has five children. He is the sole provider for his family.

Parity

[24] Having considered the circumstances surrounding the commission of the offence and the offender's personal situation, the Court examined precedents for similar offences to determine whether the joint submission is similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. Sentences imposed by military tribunals in previous cases are useful to appreciate the kind of punishment that would be appropriate in this case.

[25] In the context of this case, the Court accepts that the decisions submitted by counsel provide an adequate range of sentences. In particular, in *R. v. Brownlee*, 2019 CM 2021, the offender, a sub-lieutenant, pleaded guilty to three charges laid pursuant to section 93 of the *NDA* for inappropriately touching briefly two of her crewmates on two separate occasions each, while alongside Split, Croatia. A joint submission of a severe reprimand and a fine in the amount of \$3,000 was accepted and imposed by the Court. In the case of *R. v. Brunelle*, 2017 CM 4001, Second Lieutenant Brunelle admitted that on a few occasions, he put his hands down the pants of a sister-in-arms while he was intoxicated. After pleading guilty to a charge pursuant to section 93 of the *NDA*, a joint submission of a severe reprimand and a fine in the amount of \$3,000 dollars was accepted and imposed. In *R. v. Duvall*, 2018 CM 2027, Captain Duvall admitted to touching the victim on the vaginal area without her consent. A severe reprimand and a fine in the amount of \$2,000 was imposed in the context of a joint submission being accepted.

[26] The Court also considered cases submitted by the prosecution which pertained to officers who committed a similar offence in similar circumstances, namely *R. v. Pearson*, 2012 CM 1004 where a severe reprimand and a fine in the amount of \$8,000 was imposed for an assault and for a conduct to the prejudice of good order and discipline; and *R. v. Amirault*, 2011 CM 2017 where a sentence of a severe reprimand and a fine in the amount of \$8,000 was imposed.

[27] In addition, the Court reviewed two other cases. In *R. v. Abbott*, 2018 CM 2032, after accepting a guilty plea for an infraction pursuant to section 93 of the *NDA*, the Court imposed a severe reprimand and a fine in the amount of \$2,500. The offender who was at the rank of major, admitted he grabbed the buttocks of a subordinate under his direct supervision, a sergeant. Lastly in *R. v. Morgado*, 2017 CM 4012, a guilty plea was accepted and recorded, and the joint submission of a reprimand and a fine in the amount of \$1,500 was imposed.

[28] After a brief review of these precedents, the Court concludes that the proposed sentence is within the range of punishments imposed in the past for similar offences. That is sufficient to allow the Court to conclude that the proposed sentence is not unfit.

Conclusion

[29] In reviewing the documentary evidence introduced as exhibits and considering counsel's submissions, it is apparent that they carefully assessed the specific circumstances of this case when they arrived at their joint submission. Counsel overall identified and considered the most relevant aggravating and mitigating factors surrounding the commission of the offence. They properly addressed the applicable principles and objectives of sentencing in this case. I am therefore satisfied that the documents introduced as exhibits provided this Court with a complete picture of both the offence and of the offender's personal situation and I accept counsel's position that the need for general and specific deterrence are met with the proposed sentence. In addition, the proposed sentence would not hinder Lieutenant(N) Fields' rehabilitation. Consequently, the Court finds that the joint recommendation is not contrary to the public interest and would not bring the military justice system into disrepute.

FOR THESE REASONS, THE COURT:

[30] **FINDS** Lieutenant(N) Fields guilty of one charge under section 93 of the *NDA*.

[31] **SENTENCES** him to a severe reprimand combined with a fine in the amount of \$5,000, payable by monthly installments of \$500 with the first payment being due on 1 March 2022. If Lieutenant(N) Fields is released from the CAF before the fine is paid in full, the remaining amount will be due before the release.

Counsel:

The Director of Military Prosecutions as represented by Major M. Reede

Major A. Gélinas-Proulx, Defence Counsel Services, Counsel for Lieutenant(N) J.E.D. Fields