



## COURT MARTIAL

**Citation:** *R. v. Billings*, 2022 CM 2011

**Date:** 20220628

**Docket:** 202214

Standing Court Martial

Canadian Forces Base Esquimalt  
Victoria, British Columbia, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Petty Officer 1st Class A.W. Billings, Offender**

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

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### REASONS FOR SENTENCE

(Orally)

#### Introduction

[1] Today, Petty Officer 1st Class Billings pleaded guilty to an offence contrary to section 97 of the *National Defence Act (NDA)* for drunkenness.

[2] At the commencement of proceedings, the prosecution withdrew the first charge. Having accepted and recorded his plea of guilty with respect to the second charge, the Court must now determine and pass sentence on the charge which reads as follows:

**“Second Charge**  
Section 97 *NDA*

**DRUNKENESS**

*Particulars:* In that he, on or about 19 June 2021, at or near Diego Garcia, British Indian Ocean Territory, was drunk.”

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

**“STATEMENT OF CIRCUMSTANCES**

1. At all material times, Petty Officer 1st Class Billings was a member of the Regular Force. He was posted to Her Majesty’s Canadian Ship CALGARY. He was the senior Material Management Technician on board the ship.

2. From 26 February 2021 to 3 September 2021, Her Majesty’s Canadian Ship CALGARY was deployed as part of Operation PROJECTION to the Middle East and Asia. From the period 15 April 2021 to 15 June 2021, the CALGARY was a part of the Operation ARTEMIS Task Force in the Gulf of Aden.

3. During the deployment, the Chief Clerk was Acting While So Employed Warrant Officer N Lewis. Following the deployment, she reverted to Sergeant, and changed her surname to Munro. During the deployment, Warrant Officer Lewis and Petty Officer 1st Class Billings were members of the same department on board the ship.

4. On or about 18 June 2021, the CALGARY made a port visit to Diego Garcia, British Indian Ocean Territories, in the Indian Ocean. The island population is made up of British and American military personnel and their families.

5. On the evening of 18 June 2021, the crew were allowed shore leave privileges. Petty Officer 1st Class Billings and others went to the “Brit Club”, where they relaxed and consumed alcohol. That evening, there were members of the local population there, as well as a large contingent of Canadians from the CALGARY.

6. Warrant Officer Lewis and Sergeant Poole, both females, acted as Shore Patrol that evening and into the morning. Their duties included making rounds of popular locations, checking on crew members, and providing rides back to the ship. Both they, and all members of the crew, were in civilian attire.

7. At approximately 0230 hours on 19 June 2021, Warrant Officer Lewis and Sergeant Poole entered the Brit Club. They moved off to the side, and awaited for a televised game to finish.

8. Petty Officer 1st Class Billings was highly inebriated. He saw Warrant Officer Lewis and made his way to her. As he approached, he began to dance. Warrant Officer Lewis saw him coming. She shook her head side to side and said “no” to Petty Officer 1st Class Billings. He continued toward her, and she began to move away from him. Warrant Officer Lewis broke into a jog to get away, but Petty Officer 1st Class Billings also increased his pace. When he was close enough, Petty Officer 1st Class Billings struck Warrant Officer Lewis on the buttocks with his hand. The slap was an across-and-upward motion, using significant force. Warrant Officer Lewis stopped, turned to face Petty Officer 1st Class Billings and shouted “No!” Petty Officer 1st Class Billings said “OK” and walked away.

9. Warrant Officer Lewis returned to Sergeant Poole, in pain and feeling embarrassed. Sergeant Poole, asked her if she was okay, and how she wanted to proceed. Two other crew members who noted the incident and Warrant Officer Lewis’s distress, also came to check on her. At that time, Warrant Officer Lewis indicated that she was unsure of how she wanted to proceed.

10. Later in the morning on 19 June 2021, Warrant Officer Lewis approached the Non-Public Fund Manager, Petty Officer 1st Class C.R. Cea, about the incident. Together, they spoke to Petty Officer 1st Class Billings privately. When confronted with his behaviour, Petty Officer 1st Class Billings stated that he was drunk, did not remember the incident, and immediately apologized.”

### **Joint submission**

[4] In a joint submission, the prosecution and defence counsel recommend that the Court impose a sentence of a severe reprimand and a fine in the amount of \$2,500. Defence requested that the amount be payable in five monthly instalments of \$500 beginning in the August 2022 pay period. 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.

[5] Thus, in exchange for making a plea, Petty Officer 1st Class Billings 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 victim, chain of command 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 his 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.

### **Evidence**

[6] In this case, the prosecutor read the Statement of Circumstances and provided all those documents required under *Queen's Regulations and Orders for the Canadian Forces* (QR&O). The Statement of Circumstances was introduced on consent to inform the Court of the context of the incident that led to the charge. The prosecution also filed an Agreed Statement of Facts and the Victim Impact Statement completed by the victim. The prosecution had one witness testify regarding the unit impact, being Commander M. Coates, who was the Executive Officer on Her Majesty's Canadian Ship (HMCS) *Calgary* during the time of the incident before the court.

[7] 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**

[8] Petty Officer 1st Class Billings, the offender, is forty-one years old. He enrolled in the Canadian Armed Forces (CAF) in 1998, as a private in the infantry, prior to transferring to his current trade as Material Management Technician in 2002. In total, he has served his country for almost twenty-four years. He has been awarded the General Campaign Star-South-West Asia, Operational Service Medal-Expedition, Special Service Medal-Expedition as well as his Canadian Forces' Decoration. He is also a recipient of the Commander-in-Chief Unit Commendation. His Member's Personnel Record Résumé indicates that he has had a very active career which has featured a number of operational deployments. He has no conduct sheet or criminal record.

### **The victim**

[9] Firstly, as noted in the Statement of Circumstances, when the incident occurred, the victim was Acting While So Employed Warrant Officer Lewis. She has returned to her prior rank of Sergeant and now goes by the surname of Munro. She will be referred to herein as Sergeant Munro. Upon reviewing the Victim Impact Statement that was read into the court record, I noted a few points that we must all pay attention to. In her statement, Sergeant Munro commented:

“I struggled with reporting your actions because I knew that this could potentially proceed to a public hearing. Having others know about this is not

something I took lightly. . . . I thought a lot about the example I was setting by not saying anything, especially as someone who has helped others, mainly other junior members go through similar situations. After being approached by a colleague who was concerned about me and the way I had been acting (due to keeping everything to myself), I realized that your actions have affected me more than I realized and that I needed to report them.”

[10] As I explained at paragraphs 10 to 12 in the court martial of *R. v. Barrieault*, 2019 CM 2014, the Court recognizes that it takes significant courage for a victim to come forward to his or her chain of command to report conduct that has made them feel uncomfortable. It is absolutely imperative that victims feel comfortable doing so. The above comments of Sergeant Munro are repeated, in various ways, in almost every case that I preside over with respect to charges that arise from the cultural problems that have been plaguing the CAF for many years. It is not the actual incident that causes the greatest stress on a victim, but rather it is the effect of reporting it and the victim’s perception of how they will be perceived that is the most stressful.

[11] The message that we need to send to Sergeant Munro and all victims today, is that you are courageous. If you look at our military ethos, it requires courage and bravery. The bravery and the courage you displayed in coming forward shows that you belong in uniform. Your chain of command listened to you and took your concerns seriously. I heard you today. Petty Officer 1st Class Billings also heard what you had to say. We need sailors, airmen and soldiers who are strong and willing to come forward to report even minor misconduct, so we can become better collectively as an armed force. The serious misconduct is easy to report, as there is no ambiguity. It is the minor misconduct, particularly cases where members can be rehabilitated that are also important to address. Yet, the Court also recognizes that these minor incidents are also the most difficult to report.

[12] We are all trained to be strong and convince ourselves that the minor stuff does not affect us, just as Sergeant Munro did for seven weeks, keeping her feelings bottled up inside her. During that time, her Executive Officer, Commander Coates noticed a change in Sergeant Munro as did another colleague. As an institution, we have to accept that the small stuff that matters. If we can control it, then the more serious misconduct will be pre-empted.

[13] Having said that, as I have repeated in other decisions, not all misconduct is the same and institutional attempts to provide a one-size-fits-all response are counterproductive and serve as a disincentive for anyone to report. Conduct that falls short of being criminal or a violation of the Code of Service Discipline must still be addressed, but not every transgression should end up in a court martial or lead to the administrative release of a member. We must all be cognizant of the fact that flexibility, discretion and good judgement are all key to eliminating harmful conduct.

**Unit Impact Statement**

[14] As the Executive Officer of the HMCS *Calgary* during the time of the alleged incident, Commander Coates provided the court with valuable insight on the effect of the incident on the ship's company. In her testimony, Commander Coates described the importance of the positions filled by both the offender and the victim and how they worked together as peers within the ship's company. Commander Coates testified to how the stress of the COVID restrictions affected the ship's company and how they utilized Wi-Fi, phones and physician assistants to help alleviate the stress.

[15] Commander Coates described the disappointment felt when they learned of the incident as it did not fit within expectations and she was further upset to learn that the victim had been suffering by herself for weeks. Commander Coates described the effect on the morale of the ship's company when they learned of the incident and the rumours that automatically began to circulate. She described that after the offender was returned home the tension in the mess lifted.

### **The purposes, objectives and principles of sentencing**

[16] The fundamental purposes of sentencing in a court martial are 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. These fundamental purposes are achieved by imposing sanctions that have one or more objectives that are delineated in the *NDA* at subsection 203.1(2).

[17] Both the prosecution and the defence highlighted for the Court that on the facts of this case, the objectives of sentencing considered to be the most important are general deterrence and denunciation. The Court agrees with this assessment.

### **Accounting for relevant aggravating and mitigating circumstances**

[18] Pursuant to section 203.3 of the *NDA*, in imposing a sentence the Court must increase or reduce a sentence to account for any aggravating and mitigating circumstances relevant to the offence or the offender.

### ***Aggravating factors***

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

- (a) victim was on duty. At the time of this incident, both the offender and the victim were serving onboard HMCS *Calgary* which was alongside in a foreign port. The victim was on duty in the role of a shore patrol, tasked with ensuring that all the sailors who were enjoying their first port visit in a very long time made it back safely to the ship;

- (b) operational setting. HMCS *Calgary* was deployed on two different named operations, being Operation PROJECTION and Operation ARTEMIS, very far from the ship's home base in Esquimalt, British Columbia. The deployment was high tempo unfolding under strict COVID restrictions which provided little opportunity for crew rest. The incident that unfolded during one of the very few shore visits created rumours and concerns regarding future shore visits. The port visit to Diego Garcia was considered to be a luxury where the crew could finally relax. The incident took place in the Brit Club where both locals and the ships company were relaxing together;
- (c) rank and position. At the time, Petty Officer 1st Class Billings was fulfilling a pivotal leadership role not only within his department, but also within the ship's company. He was expected to be a leader and a role model, setting the example for other sailors on how to carry out the CAF core values. On what was described as their first real shore visit throughout the demanding deployment during COVID, he was expected to be a positive leader;
- (d) degree of intoxication. The evidence presented in court suggests that Petty Officer 1st Class Billings was so intoxicated that he did not remember his behaviour the next day, nor does he recall it now; and
- (e) effect on Sergeant Munro. The incident had a significant effect on Sergeant Munro who struggled with the fact that she had been so disrespected by a peer while she was performing her military duty. She felt degraded, particularly knowing that others saw the incident unfold. It took her seven weeks before she eventually reported the incident as she had trepidation about it proceeding to a public hearing and having others learn about this experience. She struggles with whether she would go back to a ship environment.

### ***Mitigating factors***

[20] However, as counsel pointed out, there are several mitigating factors that must be highlighted:

- (a) guilty plea. Petty Officer 1st Class Billings'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. Importantly, it also spared Sergeant Munro from having to come forward to testify where she would have to relive the incident. When given an opportunity to speak to the Court, it was clear that Petty Officer 1st Class Billings is remorseful. Although he has already apologized to Sergeant Munro, he took advantage of the opportunity to apologize again, but this time, on the

public record. He also apologized to the chain of command and the ship's company of HMCS *Calgary*;

- (b) the offender has no conduct sheet or previous criminal record;
- (c) personal challenges. Although the fact that Petty Officer 1st Class Billings was having his own personal challenges does not in any way absolve him of his conduct, it is a factor to be considered on sentencing. He was going through a personal rough patch and Commander Coates confirmed that the COVID restrictions had placed undue stress on all the ship's company. Since the offender was so intoxicated and is unable to recall what transpired, it is not clear what his underlying motivation was for acting the way he did. However, it is notable that notwithstanding his unacceptable conduct, he did heed the clear message of "No" when it was communicated to him; and
- (d) other administrative consequences. It is noted that the day after the alleged incident, on the 19th of June 2021, when then-Warrant Officer Lewis and Petty Officer 1st Class Cea confronted Petty Officer 1st Class Billings privately about the incident, Petty Officer 1st Class Billings admitted to being drunk but, could not remember the incident. Nonetheless, Petty Officer 1st Class Billings immediately apologized. Further, to their professional credit, both the offender and the victim continued to work together without incident. However, when then-Warrant Officer Lewis reported the incident formally to her chain of command, Petty Officer 1st Class Billings was immediately sent back to Canada. By being sent home early, Petty Officer 1st Class Billings suffered a financial loss from not earning the approximately \$2000 in deployment allowances he would have earned if he had returned with HMCS *Calgary* as originally planned.

### **Parity**

[21] Paragraph 203.3(b) of the *NDA* stipulates that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[22] The prosecution relied upon the following case law: *R. v. Bernier*, 2015 CM 3015; *R. v. Duvall*, 2017 CM 2008; *R. v. Mark*, 2019 CM 2012; *R. v. Morgan*, 2015 CM 4005; *R. v. Thurber*, 2019 CM 5002; and *R. v. Wellowszky*, 2016 CM 1011.

[23] The defence relied upon the following case law: *R. v. Desjarlais*, 2006 CM 48; *R. v. Crawley*, 2006 CM 82; *R. v. Chiasson*, 2020 CM 2006; and unpublished decision of *R. v. Lavoie*, (20 August 2002).

### **Conclusion**



[24] As the Court often expresses to people who come before it when they have exercised poor judgement; we all make really bad choices at one point in our lives and it is how we deal with our mistakes that governs our success moving forward. Petty Officer 1st Class Billings, it is clear that you accepted responsibility immediately after this incident occurred. It takes humility to admit when one has erred and be willing to make amends. The timing of this case also suggests that you did do everything possible to resolve this case early and to plead guilty at the first opportunity. This provides the Court with confidence that you understand your personal responsibility to check your own actions against the standard expected of every member and officer serving in the CAF. We must all be aware that unconscious biases exist around all of us and consequently, we must all be open to changing our behaviour when we recognize that it is offside of the standard expected of us.

[25] This case is an excellent example that in a military context, even minor incidents of inappropriate touching are unacceptable and must be stopped. A failure to address even the smallest instance of inappropriate conduct is exactly what threatens and undermines the military ethos, values, norms and ethics expected of every CAF member. If left unchecked, minor misconduct can lead to heightened reprehensible conduct.

[26] 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 viewed 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.

[27] Considering all the factors, the circumstances and gravity of the offence, the consequence of the finding and the sentence, the Court is indeed satisfied that counsel have discharged their obligation in making the 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:**

[28] **FINDS** Petty Officer 1st Class Billings guilty of the second charge contrary to section 97 of the *NDA*.

[29] **SENTENCES** you to a severe reprimand and fine in the amount of \$2,500, payable in five monthly instalments of \$500 commencing in the month of August 2022. In the event you are released from the Canadian Armed Forces for any reason before the fine is paid in full, the then outstanding balance is to be paid the day prior to your release.

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**Counsel:**

The Director of Military Prosecutions as represented by Major G. J. Moorehead

Major E. Carrier, Directorate of Defence Counsel Services Counsel for Petty Officer 1st  
Class Billings