



## COURT MARTIAL

**Citation:** *R. v. Gillis*, 2022 CM 4019

**Date:** 20221215

**Docket:** 202233

General Court Martial

Canadian Forces Base Esquimalt  
Victoria, British Columbia, Canada

**Between:**

**His Majesty the King**

- and -

**Lieutenant(N) B.J. Gillis, Offender**

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

---

### **REASONS FOR SENTENCE**

(Orally)

#### **Introduction**

[1] Lieutenant(N) Gillis, having accepted and recorded your plea of guilty in respect of the only charge remaining on the charge sheet, the Court now finds you guilty of that charge for conduct to the prejudice of good order and discipline, contrary to section 129 of the *National Defence Act (NDA)*.

#### **A joint submission is being proposed**

[2] I now need to impose the sentence. This is a case where a joint submission is made to the Court. Both prosecution and defence counsel recommended that I impose a sentence constituted of a reprimand and a fine of \$750.

[3] This recommendation by counsel severely limits my discretion in the determination of an appropriate sentence. As any other trial judge, I may depart from a joint submission only if the proposed sentence would bring the administration of justice

into disrepute or is otherwise contrary to the public interest. This is the test promulgated by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43.

[4] Indeed, the threshold to depart from the joint submission being made is high as joint submissions respond to important public interest considerations. The prosecution agrees to recommend a sentence that the accused is prepared to accept, avoiding the stress and expense of a trial and allowing efforts to be channelled into other matters. Furthermore, offenders who are remorseful may take advantage of a guilty plea to begin making amends. The most important benefit of joint submissions is the certainty they bring to all participants in the administration of justice.

[5] Yet, even if certainty of outcome is important for the parties, it is not the ultimate goal of the sentencing process. I must also keep in mind the disciplinary purpose of the Code of Service Discipline (CSD) and military tribunals in performing the sentencing function attributed to me as a military judge. As recognized by the Supreme Court of Canada, courts martial allow the military to enforce internal discipline effectively and efficiently. Punishment is the ultimate outcome once a breach has been recognized following either a trial or a guilty plea. It is the only opportunity for the Court to deal with the disciplinary requirements brought about by the conduct of the offender, on a military establishment, in public and in the presence of members of the offender's unit.

[6] The imposition of a sentence at court martial proceedings, therefore, performs an important disciplinary function, making this process different from the sentencing usually performed in civilian criminal justice courts. Even when a joint submission is made, the military judge imposing punishment should ensure, at a minimum, that the circumstances of the offence, the offender and the joint submission are not only considered, but also adequately laid out in the sentencing decision to an extent that may not always be necessary in other courts.

[7] The fundamental principle of sentencing found at section 203.2 of the *NDA* provides that a military judge shall impose a sentence commensurate with the gravity of the offence and the degree of responsibility of the offender.

### **Matters considered**

[8] In this case, the prosecutor read a Statement of Circumstances which was formally admitted as accurate by Lieutenant(N) Gillis. It was entered in evidence as an exhibit, along with other documents provided by the prosecution as required at *Queen's Regulations and Orders for the Canadian Forces* (QR&O) article 112.51.

[9] The prosecution also produced an Agreed Statement of Facts, which sheds some light on the particular circumstances of Lieutenant(N) Gillis and the context of his actions from the perspective of his superiors before, at the time and since the commission of the offence.

[10] In addition to this evidence, counsel made submissions to support their position on sentence, on the basis of the facts and considerations relevant to this case and of precedents in other cases, in order to assist the Court to adequately apply the purposes and principles of sentencing to the circumstances of both the individual offender and the offence committed.

**The circumstances of the offence**

[11] The Statement of Circumstances, the Agreed Statement of Facts, the submissions of counsel and the information on the documents entered as exhibits reveal the following circumstances relevant to the offence:

- (a) Lieutenant(N) Gillis served on His Majesty's Canadian Ship (HMCS) *Calgary*, from September 2021 to January 2022 as assistant combat engineering officer. Upon joining the ship, Lieutenant(N) Gillis completed annex E to chapter 8 of the Ship's Standing Orders (SSOs) as part of the in-clearance, acknowledging, as any other member of the ship's company, that he was aware of the various orders, directives and policies in force on-board on a wide variety of topics including the smoking policy. He had completed similar in-routines on other ships previously;
- (b) SSOs are promulgated under the authority of Commander Sea Training Group, for the whole of the Royal Canadian Navy. SSO version AL 11 was in effect at the material times and includes SSO 8.7.2 – Smoking Policy which states, in part, that “for the purposes of SSOs, smoking and vaping shall be considered synonymous” and that smoking in the interior of the ship is prohibited. Lieutenant (N) Gillis had regular access to orders and directives while ashore and on-board ship. He was aware of SSO 8.7.2 – Smoking Policy;
- (c) on 4 October 2021, a number of officers were in the ship's wardroom after working hours. Lieutenant(N) Gillis was observed holding an electronic cigarette, puffing on it and emitting smoke or vapour from his mouth. A colleague sent an e-mail to Lieutenant(N) Gillis, reminding him of the SSOs and setting up a meeting with himself and the officer in command of the combat systems engineering department;
- (d) on 5 October 2021, the three met and it was made clear to Lieutenant (N) Gillis that vaping was not permitted in the wardroom;
- (e) yet, on 15 October 2021, Lieutenant(N) Gillis was once again observed using an electronic cigarette in the wardroom. On that occasion, however, no smoke or vapour was emitted as Lieutenant(N) Gillis had used a different setting on the device to reduce the amount of visible smoke emitted when the electronic cigarette was brought to his lips;

- (f) in both instances, other junior officers were present in the wardroom;
- (g) the Agreed Statement of Facts contains a statement from the executive officer (XO) of HMCS *Calgary* to the effect that as assistant combat systems engineering officer, Lieutenant(N) Gillis formed part of the departmental leadership team and served as divisional officer for the junior officers within his department. As such, he was expected to set an example for those subordinate to him, both within his department and the ship;
- (h) this incident became known throughout the ship in short order. The XO opined that Lieutenant(N) Gillis' actions had a negative impact, undermining unit morale and cohesion and eroding the discipline and trust that he, as a ship's officer and leader within the unit, was responsible to uphold and enforce. A previous incident involving smoking in the wardroom resulted in a previous XO being relieved, hence the incident possibly solidified some subordinates' opinions that officers believe they are above the rules; and
- (i) a Record of Disciplinary Proceedings including charges for the two incidents was issued on 30 November 2021. The matter was referred to Commander Canadian Fleet Pacific, for summary trial on 11 January 2022. However, the Court is informed that for unknown reasons, the disciplinary file was not actioned as it should have been in the following weeks or months. On 27 May 2022, Lieutenant(N) Gillis sought to re-elect to trial by court martial. This prompted the matter to be referred to the Director of Military Prosecutions on 5 July 2022 and subsequently to today's proceedings, Lieutenant(N) Gillis having expressed the intention to plead guilty at the first opportunity.

**The circumstances of the offender**

[12] The documents examined by the Court and the submissions of counsel reveal the following circumstances relevant to the offender:

- (a) Lieutenant(N) Gillis enrolled in the Naval Reserve in 2008 as an ordinary seaman, training as a naval combat information operator. He transferred in the regular force in September 2010 as an officer in the rank of naval cadet and was sent to the University of Ottawa to obtain a bachelor's degree in computer science. He rejoined a naval training establishment full-time in May 2014 and successfully completed naval engineering and other courses necessary for a posting to his first ship in September 2015. He served in engineering positions ashore in Esquimalt and in the national capital region from end 2016 to the summer of 2021

when posted to HMCS *Calgary*. He was posted to Base Information Services at Canadian Forces Base Esquimalt in January 2022;

- (b) Lieutenant(N) Gillis was placed on a recorded warning for conduct in November 2021, in part in relation to the vaping incidents of 4 and 15 October 2021, which were listed in the deficiencies. He completed the monitoring period without incident. Indeed, aside from these incidents, Lieutenant(N) Gillis' performance and potential were average to above average when employed in the combat system engineering department for the purpose of developing the necessary skills to achieve the naval combat systems engineer head of department qualification and to assist the combat systems engineering officer. Lieutenant(N) Gillis made some progress with his training package and provided satisfactory support to the combat systems engineering officer. He engaged with his subordinates and was an active member of the wardroom; and
- (c) Lieutenant(N) Gillis acknowledges that his actions did not set a good example for others who saw or heard what occurred and he is regretful. The Court is informed that the vaping incident has, in part, contributed to Lieutenant(N) Gillis' anticipated release from the military by the end of March 2023.

### **Seriousness of the offence**

[13] The Court has considered the objective gravity of the offence in this case. The offence in section 129 of the *NDA*, attracts a maximum punishment of dismissal with disgrace from His Majesty's service. It is therefore an objectively serious offence going to the core of the need to maintain a disciplined armed force.

[14] Of course, a broad range of circumstances can lead to offences under section 129 of the *NDA*. The Court acknowledges that the circumstances of the behaviour itself in this case is of a minor nature. However, the events reveal a lack of respect for rules and, more importantly, a lack of judgement as it pertains to the foreseeable consequences for an officer of the offender's rank and position not following these rules. These circumstances bring the conduct under a specific light for the purpose of discipline. Indeed, a public lack of judgement by an officer of the offender's rank and responsibilities on-board ship generates specific risks of prejudice to good order and discipline which materialized in the circumstances of this case. As such, the conduct needed to be sanctioned.

### **Objectives of sentencing to be emphasized in this case**

[15] I agree with counsel that the circumstances of this case require the focus be placed on the objectives of denunciation and general deterrence in sentencing the offender. This is not a case where specific deterrence is significant. Here, the sentence proposed must be sufficient to denounce Lieutenant(N) Gillis' conduct in the

community, acting as a deterrent to others who may be tempted to engage in a similar type of unacceptable behaviour, specifically choosing to disregard SSOs, especially in the presence of subordinates.

[16] Although the sentence must show that misbehaviour has consequences, the circumstances of this case also reveal the need to keep in mind the objective of rehabilitation. Indeed, the sentence must not compromise the steps Lieutenant(N) Gillis has taken to rehabilitate himself and his future potential as he prepares for a career outside of the Navy.

**Aggravating factors**

[17] The circumstances of the offence reveal aggravating factors which explain why the conduct needed to be the subject of formal charges dealt with in today's proceedings. Indeed, Lieutenant(N) Gillis was, at the time of the offence, serving in a leadership position. He committed his offence in the wardroom, in the presence of junior officers. These officers could rightly expect an officer of his experience to show what right looks like instead of demonstrating contempt for a very simple rule which, although no doubt annoying for smokers, is nevertheless very well-known and logical.

**Mitigating factors**

[18] That said, the Court acknowledges the following significant mitigating factors:

- (a) Lieutenant(N) Gillis' guilty plea today, which avoided the expense and energy of running a trial and demonstrates that he is taking responsibility for his actions in this public trial in the presence of members of the military community;
- (b) his collaboration with authorities in indicating his intention to plead guilty at the earliest opportunity, accelerating the treatment of a case which appeared to have been unfortunately left aside for a period of time;
- (c) the fact that Lieutenant(N) Gillis has no record and is a first-time offender who has served the Canadian Armed Forces (CAF) satisfactorily for over fourteen years in the regular and reserve forces; and
- (d) the fact that Lieutenant(N) Gillis has made efforts to rehabilitate himself and consequently deserves a sentence which will not compromise his potential to contribute to society in the future.

**Assessing the joint submission**

[19] In the context of arguments to demonstrate that the joint submission was within a range of similar sentences for similar offences, the prosecution brought several cases to my attention, showing that the proposed sentence fits in an acceptable range for similar cases, although no case is the same. Indeed, none of the cases have the same factors pertaining to rank or type of offences than this case.

[20] That said, the sample of cases discussed as well as the Court's involvement in recent cases such as the case of Colonel Russel who was sentenced on 4 October 2022 to a reprimand and a fine of \$500 after pleading guilty to having shown his buttocks during a social outing and the case of *R. v. Barber*, 2022 CM 4005 where Master Sailor Barber was fined \$500 for a face covering violation while in isolation as submarine's crew to prevent the spread of COVID-19. These cases confirm, along with the other cases discussed by the prosecution that the sentence being proposed here is within the range of sentences imposed for similar behaviour in the past. In any event, the issue for me to assess as military judge is not whether I like the sentence being jointly proposed or whether I would have come up with something better. As stated earlier, I may depart from the joint submission of counsel only if I consider that the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

[21] In determining whether that is so, I must ask myself whether the joint submission is so markedly out of line with the expectations of reasonable persons aware of the circumstances that they would view it as a breakdown in the proper functioning of the military justice system. In this case, I do believe that a reasonable person aware of the circumstances would expect the offender to receive a punishment which expresses disapprobation for the failure in discipline involved and have a direct impact on the offender. The punishments of reprimand and a fine being proposed are aligned with these expectations. In combination with the fact that these proceedings have taken place following the decision to sanction the behaviour involved with a charge under the CSD, the sentence proposed is well suited to meet the objectives of denunciation and general deterrence, without having a lasting effect detrimental to the rehabilitation of the offender.

[22] As recognized by the Supreme Court of Canada, trial judges must refrain from tinkering with joint submissions if their benefit can be maximized. Prosecution and defence counsel are well placed to arrive at joint submissions that reflect the interests of both the public and the accused. They are highly knowledgeable about the circumstances of the offender and the offence, as they are with the strengths and weaknesses of their respective positions. The prosecutor who proposes the sentence is in contact with the chain of command and victims. He or she is aware of the needs of the military and civilian communities, and is charged with representing the community's interest in seeing that justice be done. Defence counsel is required to act in the accused's best interests, including ensuring that the accused's plea is voluntary and informed. Both counsel are bound professionally and ethically not to mislead the Court. In short, they are entirely capable of arriving at resolutions that are fair and consistent with the public interest, as they have demonstrated in this case.

[23] Considering the circumstances of the offence and of the offender, the applicable sentencing principles, and the aggravating and mitigating factors mentioned previously, I conclude that the sentence being jointly proposed would not bring the administration of justice into disrepute nor would otherwise be contrary to the public interest. I will, therefore, accept it.

[24] Lieutenant(N) Gillis, at this stage of my decision, I usually try to convey to offenders my views on the gravity of what they have done, the need to recognize their mistake and the importance of moving forward with a positive contribution to the CAF and society without reoffending. I do not think it is necessary in your case. You have demonstrated that you accept responsibility, as a leader should do. I hope this serves as a model for others who may find themselves in similar situations in the future. As you move forward with the rest of your life away from the CAF, I believe you should reflect on what you have gone through and conclude that you do not wish to place yourself in a situation where you must face charges again.

**FOR THESE REASONS, THE COURT:**

[25] **SENTENCES** Lieutenant(N) Gillis to a reprimand and a fine in the amount of \$750, payable in full no later than 15 January 2023. Should the offender be released from the CAF before the fine is paid in full, any outstanding amount is due on the date of release from the CAF.

---

**Counsel:**

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

Lieutenant-Commander F. Gonsalves Defence Counsel Services, Counsel for  
Lieutenant(N) B. J. Gillis