COURT MARTIAL

Citation: *R. v. Meeks,* 2023 CM 2016

Date: 20231027
Docket: 201960

Standing Court Martial

4th Canadian Division Support Base Petawawa
Petawawa, Ontario, Canada

Between:

His Majesty the King

- and -

Sergeant J.K. Meeks, Offender

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

REASONS FOR SENTENCING

(Orally)

The case

[1] On 28 June 2023, this Court found Sergeant (Sgt) Meeks guilty of the offence of assault causing bodily harm. The facts related to my findings are set out in two decisions published as *R. v. Meeks,* 2023 CM 2013 and *R. v. Meeks,* 2022 CM 2016. It is now my duty to determine the sentence on the charge.

[2] This is a tragic case that unfolded during the 3rd Battalion, The Royal Canadian Regiment (3 RCR) participation in the multinational Exercise SWIFT RESPONSE 19. On the evening in question, Sgt Meeks and a small handful of soldiers were part of a rear party who stayed in Kaiserslautern, Germany, while another group was conducting a parachute jump into Bulgaria. The two groups were expected to rendezvous the next day in Bulgaria. Sgt Meeks and other members in the rear party had gone out for dinner and then many proceeded to a nightclub. Sadly, during the parachute jump into

Bulgaria, a tragic incident occurred. Shortly, thereafter, a notification was sent to the rear party in Germany, advising them all to immediately return to base.

[3] Sgt Meeks quickly found himself in a challenging situation, trying to usher a group of young, drunk soldiers out of a nightclub and back to their barracks. He was aware that a fellow soldier had either died or suffered serious injuries, which increased the urgency of the situation for him. Despite initial requests, some soldiers had to be ordered out of the nightclub. As they were organizing transportation in taxis to return to the base, a drunk Private (Pte) Melvin re-entered the nightclub contrary to the order they received, and this led to a heated exchange of words between him and Sgt Meeks. In his testimony, Pte Melvin told the Court that he wanted to fight Sgt Meeks. Multiple individuals made efforts to prevent a physical altercation from unfolding between the two. At one point, Pte Meadows got in-between them to physically intervene and defuse the situation, but somehow, he ended up tripping. That is when Pte Melvin broke loose from those restraining him and advanced directly towards Sgt Meeks, intent on fighting him. When Pte Meadows got up and moved towards Sgt Meeks, Sgt Meeks struck Pte Meadows with a powerful punch to the face. In my finding, I found that it was likely that due to the unfolding events, the punch was delivered in self-defence. However, the evidence was that after the punch, Sgt Meeks then kicked Pte Meadows in the face while uttering the words “nighty night nigger” before Sgt Meeks was dragged away by the officers present. In his submissions, the prosecution conceded that it is the kick to the head that needs to be sanctioned.

Evidence

[4] In this case, the prosecutor provided the documents required under *Queen’s Regulations and Orders for the Canadian Forces* (QR&O) article 112.17 that were supplied by the chain of command.

[5] The following additional evidence was adduced at the sentencing hearing in the court martial:

(a) victim impact statement from Mr Meadows;

(b) military impact statement by Major (Maj) Vogel, Acting Commanding Officer, 3 RCR;

(c) the testimony of Captain (Capt) Severin, 4th Canadian Division Training Centre Detachment, Petawawa;

(d) the testimony of Maj Collins, the Commandant of the Canadian Forces Service Prison and Detention Barracks, Edmonton;

(e) the testimony of Master Warrant Officer (MWO) Royce; and

(f) the testimony of Sgt Meeks' wife, Mrs Kelly Meeks.

[6] Furthermore, the Court benefitted from counsel's submissions to support their respective positions on sentence where they highlighted the facts and considerations relevant to Sgt Meeks.

[7] Counsel's submissions and the evidence before the Court have enabled me to be sufficiently informed of Sgt Meeks' personal circumstances so I may adapt and impose a sentence specifically for him.

Victim impact statements (VIS)

[8] The Court considered the VIS by Mr Meadows, which the prosecution read into the court proceedings. The Court summarizes the following pivotal parts of the statements as follows:

(a) Emotional Impact:

> "The assault I experienced from Sgt Meeks over four years ago has impacted my personal relationships with my family, friends, and girlfriends. It shattered the trust I had in some of the leadership in my unit, as well as some of the people I was trying to help. I have lost the ability to trust.
>
> The confidence I had prior to service along with the confidence I had gained serving in the Canadian Armed Forces is gone. Taken from me by Sgt Meeks in the two remaining months of service that I had left in the Canadian Armed Forces.
>
> Since the assault I found myself thinking about the events of that night even when I don't want to, at family gatherings, dates, when I am out with friends, and when I am alone. I am constantly reminded by people that knew me before the assault that I am different, and I feel different."

(b) Physical Impact:

> "Sgt Meeks altered the symmetry of my face. The triangular fracture, from my left temple, down to my jaw, over to my sinus, and back up through my orbital bone created an air bubble between my skull and brain. My jaw doesn't align the same, the feeling in the left side of my face and part of my head is still numb as the

> sensation still hasn't returned and may never again. Every time I touch my face, I can feel the damage on the left side."

(c) Financial Impact:

> "I lost hours at work having meetings about the assault, as well as missing work to fly back to Petawawa for the trial. The dental I had before I released was incomplete because of the fracture in my face. I haven't been able to afford a dental checkup so it remains to be seen if there is any work that needs to be done as a result of the assault."

Military impact statement (MIS)

[9] Maj Vogel provided his perspective on the impact this incident had upon the unit with respect to discipline, efficiency, and morale.

[10] With respect to the impact on discipline, he wrote:

> "Sgt Meeks' actions eroded trust that existed between NCMs and their officers and Sr NCOs. Sgt Meeks was the direct supervisor of several soldiers involved in the altercation that culminated in the violent interaction with Pte Meadows. Additionally, the officers in charge of all parties present failed to prevent Sgt Meeks' actions, which served to further erode the trust between junior soldiers and those in positions of responsibility above them. The destruction of trust undoubtedly affected the positional authority of leaders within Oscar Company and across 3 RCR, which threatened the maintenance of good order and discipline in the Battalion."

[11] With respect to the incident's impact on efficiency, he wrote:

> "Sgt Meeks' actions took place during the conduct of Oscar Company's participation in the multinational Exercise SWIFT RESPONSE 19. As a result of his actions, the company lost a CQMS stores person in Pte Meadows who remained in hospital for the duration of the exercise until he was stable enough to be flown back to Canada. They also lost Sgt Meeks himself, a Pl 2IC and the Company's Subject Matter Expert in Air Assault Operations. Moreover, the Company was reeling from the loss of a brother, Bdr Patrick LaBrie, during the parachute jump into Bulgaria. At a time when the Company needed to come together as a team to succeed during the exercise, Sgt Meeks' actions only compounded the stressors affecting Oscar Company's performance."

[12] With respect to the incident's impact on the morale, he wrote:

> "There is no discounting the effect on morale that the death of a fellow soldier would have on the company, however, the degradation of morale across the company was amplified by Sgt Meeks' actions. Any opportunity for the Company to rally together following Bdr LaBrie's death was overshadowed by Sgt Meek's actions as they became known to the remainder of the Company in the following days. Ultimately, the unit's morale was negatively affected through the erosion of discipline and the degradation of efficiency as a direct result of Sgt Meeks' actions in Kaiserslautern, Germany that night."

Circumstances of the offender

[13] Sgt Meeks is thirty-seven years old. He enrolled in the Canadian Armed Forces (CAF) on 13 September 2005, having served Canada now for over eighteen years. Following basic and occupational training in the infantry, he was posted to the RCR where he served with both the 1 and 3 RCR. During that time, he deployed twice to Afghanistan, serving in combat for a total period of eighteen months, all before the age of twenty-five. He is currently posted to the Canadian Forces Transition Unit at Canadian Forces Base (CFB) Petawawa due to a permanent medical category.

[14] Sgt Meeks is married and has one daughter.

[15] Sgt Meeks suffers from post-traumatic stress disorder (PTSD) arising primarily from two tours of military service in Afghanistan.

[16] Sgt Meeks benefits from the love and support of his family.

Positions of the parties

Prosecution

[17] The prosecution suggested that the appropriate punishment should consist of imprisonment for a period of twenty to twenty-four months. He also seeks a DNA order and a weapon's prohibition order for five years.

[18] The prosecution argued that based on the precedents in the case law submitted, this is the minimum sentence to be imposed to deter others from engaging in similar misconduct.

Defence

[19] The defence submits that, in the unique circumstances of this case, the just and appropriate sentence is a non-custodial one. He argued that the appropriate sentence is a severe reprimand and a fine.

[20] He submitted that the facts of this case are somewhat unique and are easily distinguished from the case law upon which the prosecution seeks to rely and argued that this Court must be cautious in importing the civilian courts' range of sentences. To support his recommended sentence, he argued:

(a) a non-custodial sentence best serves the accused's ongoing rehabilitation; and

(b) should a sentence of imprisonment be imposed, it should be suspended pursuant to subsection 215(1) of the *National Defence Act* (*NDA*).

Purposes, objectives and principles of sentencing to be emphasized in this case

[21] Sentencing is a complex and discretionary process, as stated in the Supreme Court of Canada's decision in *R. v. Parranto*, 2021 SCC 46.

[22] When crafting a sentence, I must first consider the fundamental purpose and goals of sentencing. Military justice aligns its sentencing objectives with Canadian values, but they are adapted to the special circumstances associated with the military service in the CAF. As indicated at subsection 203.1(1), "The fundamental purpose of sentencing in a court martial is to maintain the discipline, efficiency, and morale of the Canadian Forces." The fundamental purpose is achieved by imposing sanctions that have one or more of the objectives set out within at subsection 203.1(2) of the *NDA*.

[23] In sentencing, military judges have discretion over which sentencing objectives to prioritize, such as denunciation, deterrence, and rehabilitation, and how much weight to afford to the secondary sentencing principles that are also set out therein.

[24] The prosecution has emphasized that the objectives of denunciation and deterrence are the key sentencing objectives that the Court should prioritize.

[25] Defence argued that rehabilitation and restraint should also be considered due to Sgt Meek's PTSD, extensive rehabilitation which suggests that punitive measures are not necessary.

Analysis

[26] With respect to how the fundamental purpose of sentencing shall be achieved by imposing a punishment that has one or more of the objectives set out in the military

justice sentencing regime, it is important to first explain the different principles as these principles set the framework for the crafting of an appropriate sentence.

Denunciation – denounce unlawful conduct (NDA* 203.1(2)(c)*)

[27] Although constantly referred to in sentencing decisions, denunciation is not always explained. It is important to note that a sentence represents the judicial condemnation of the specific conduct displayed to the affected community.

[28] As stated by Lamer C.J. in *R. v. M.(C.A.)*, [1996] 1 S.C. R. 500 at paragraph 81:

> Our criminal law is also a system of values. A sentence which expresses denunciation is simply the means by which these values are communicated. In short, in addition to attaching negative consequences to undesirable behaviour, judicial sentences should also be imposed in a manner which positively instills the basic set of communal values shared by all Canadians as expressed by the *Criminal Code*.

[29] A sentence imposed for the particularized conduct serves to communicate to members the specific consequences of engaging in similar conduct. As Perron M.J. described in *R. v. Semrau*, 2010 CM 4010, at paragraph 13, a sentence is a "form of judicial and social censure". What this means is the sentence should express the CAF's shared values.

Deter offenders and other persons from committing offences (NDA* 203.1(2)(d)*)

[30] Crafting a sentence where one of the objectives is deterrence depends on whether the primary purpose is focussed on deterring Sgt Meeks personally from recommitting a similar act versus whether the purpose is to send a broader message of general deterrence to the larger CAF community. Where the purpose of the sentence is to deter others who may be inclined to commit the same offence, then the court must carefully consider the sentence from an objective perspective based on the facts and the context of the offence.

[31] If the objective is to deter Sgt Meeks personally from ever repeating this offence, then the Court must consider his individual needs, his attitude, motivation, and his rehabilitation. The evidence in this case suggests that Sgt Meeks has been able to rehabilitate himself very successfully and in the time that has passed, which is over four years, and he has not encountered any setbacks that would suggest that the personal changes he made are not sustainable.

[32] In a case where the primary objective is one of general deterrence, the court must consider the gravity of the offence, the incidence of this type of offence within the military community, the harm caused by it, with respect to the individuals directly affected, the military community and the reputation of the CAF at large as well as its effect on the confidence of the Canadian public. It is for this reason that the prosecution

has led evidence of the victim impact statement of Pte Meadows as well as the military impact the incident had within the unit, the RCR and the CAF.

[33] In hoping to achieve the objective of deterring others, the challenge lies in reconciling what exactly is needed to deter others from ever committing something similar.

[34] Based on the facts of this case, and after considering the comments within both the MIS and the VIS by Mr Meadows, it is my assessment that the purpose of general deterrence must take precedence over individual deterrence with respect to Sgt Meeks.

To assist in rehabilitating offenders (NDA* 203.1(2)(e)*)

[35] When conducting an individualized sentencing analysis, military judges are still expected to account for other relevant sentencing objectives such as rehabilitation.

[36] The rehabilitation of military offenders is pivotal in addressing the unique circumstances and the individual needs of military personnel who may have committed offences. By emphasizing rehabilitation, the system acknowledges that some service members may require support and interventions to reintegrate back into military service successfully. This approach not only helps individual offenders rebuild their lives but also contributes to the overall maintenance of discipline, efficiency, and morale within the CAF. Furthermore, rehabilitation underscores the military justice system's commitment to fostering respect for the law and creation of a just, peaceful, and safe military environment, aligning with broader Canadian values and principles of justice.

Priority of objectives

[37] Based on the specific facts of this case, I find that the restorative principle, which focuses on rehabilitating Sgt Meeks, is extremely important. However, since I do have to prioritize them, after a review of case law, I must place both denunciation and general deterrence to the forefront. To clarify, I have not disregarded rehabilitation, but based on the facts of this case, it must carry less weight due to the greater importance I must assign to denunciation and general deterrence.

[38] In summary, the Court concludes that the objectives of sentencing that must be given the highest priority are general deterrence and denunciation.

Gravity of offence and degree of responsibility of the offender

[39] It is a fundamental principle that the military judge must impose a proportionate sentence by reasonably appreciating the gravity of the offence and the degree of responsibility of the offender in the specific circumstances of the case.

[40] Exploring the treatment of the offence of assault causing bodily harm within Canadian criminal law, it is essential to understand its hybrid nature. In civilian criminal courts, for cases where the prosecution proceeds by indictment, the legislator prescribes a maximum penalty of ten years of imprisonment. However, based on the *Criminal Code* at the time, in 2019, if the charge was prosecuted summarily, the maximum penalty was that of imprisonment for a term not exceeding eighteen months. It is worth noting that under the military justice system, all offences are considered indictable so courts martial are not limited by a maximum penalty for a summary conviction of the same offence and the maximum penalty of ten years applies.

[41] Consequently, in the sentencing process, it is an important task for a military judge to properly situate the level of the assault before the Court. While all assaults are inherently serious, the offence of assault causing bodily harm covers a wide spectrum of behaviours that vary in their subjective seriousness. In practice, causing bodily harm can result from a single blow, or a push that leads to an unfortunate fall. At the other extreme, we encounter brutal and relentless attacks, sometimes involving weapons.

[42] The facts related to the injuries sustained by Pte Meadows were laid out and analyzed extensively in my decision at *R. v. Meeks,* 2023 CM 2013 at paragraph 179. In short, the parties all agree that his injuries were very serious and located on the upper end of assault causing bodily harm.

[43] Consequently, for a sentence to be proportionate, individualization and parity of sentences must be reconciled based on the specific facts of the case which, in this case, saw Pte Meadows suffer extensive injury.

Parity

[44] As previously discussed, the *NDA* sets out a structured and military-centric approach to sentencing with well-defined objectives and principles and, pursuant to paragraph 203.3(b), it requires that a sentence be like sentences imposed on similar offenders for similar offences committed in similar circumstances.

[45] The prosecution provided the Court with the following case law to support their position on sentencing:

(a) *R. v. Mikasinovic*, 2017 ONSC 3192. The offender was initially charged with aggravated assault but was found guilty of the lesser included offence of assault causing bodily harm. The offender threw a punch at one individual that either did not land or landed minimally. He then threw two punches at Mr Runge. The first one landed and threw Mr Runge off balance causing him to stagger backwards and the second one landed square on Mr Runge's head causing him to collapse. He suffered severe injuries. This unprovoked assault occurred on a busy downtown

street during the summer. The impact on Mr Runge was significant, leading to headaches, emotional distress, and the need for rehabilitation. The Court determined that the offender had initiated the confrontation, acted aggressively and with hostility, and could have de-escalated the situation but chose not to. There was no element of self-defence present. The offender received a fourteen-month reformatory sentence;

(b) *R. v. Foster 2020,* QCCA 1172. The offender was convicted of aggravated assault. The uncontested facts are that at the closing of a bar, the respondent punched the victim in the face causing him to lose consciousness and fall to the ground. In this case, the assault on an unknown victim, caused cranial trauma, a broken nose, and cerebral edema, which required hospitalization. The unprovoked nature of the attack, coupled with the respondent's return to kick the unconscious victim's head, demonstrated the attack's inherent viciousness, and called for a more serious sentence. The Court also considered the respondent's history of Attention-Deficit/Hyperactivity Disorder, medication non-compliance, and persistent impulsive behaviour, which indicated a high risk of recidivism. The appeal court adjusted the sentence to fifteen months, subtracting ninety days of time served, recognizing the need for a more substantial penalty given the circumstances;

(c) *R. v. Grewal*, 2010 ABQB 346. Mr Grewal was found guilty of aggravated assault in the attack of Mr Dean. A group of young men, including Mr Grewal, attacked Mr Dean, a father of a soccer player from the opposing team, following a game. The attack stemmed from a heated verbal altercation in which Mr Dean used racial and religious slurs. Mr Grewal, of East Indian descent, was wearing a religious head covering. Racially charged language was exchanged. Mr Dean suffered severe injuries, including broken nasal passages and facial fractures, requiring surgery and a lengthy recovery. The Court imposed a sentence of twelve months in custody followed by twelve months of probation; and

(d) *R. v. Abdul Ali et al*., 2020 ONSC 7059. Two brothers were convicted of aggravated assault based on their attack on a defenceless victim. In a brutal and unprovoked attack, one brother, Shadib, punched Mr Shinwarie, causing him to fall violently, with his head hitting the concrete floor. As Mr Shinwarie lay helpless and motionless, the assailants kicked him repeatedly in the head while onlookers tried to intervene. The surveillance cameras at the warehouse recorded this assault, which lasted twenty seconds. Mr Shinwarie sustained facial injuries, including severe bruising, swelling around the right eye, swollen lips and cheek, and a significant facial cut that required medical attention. His right eye's vision was temporarily impaired, necessitating

> corrective lenses. Fortunately, there were no permanent injuries. The extreme level of violence was a defining factor in this case as the Court viewed it as a brutal and cowardly attack. As a result, the appropriate sentence for both defendants was fifteen months in custody, followed by two years of probation.

[46] Although the prosecution was careful in advising the Court that he was not trying to draw a direct comparable to matters where the offender was convicted of aggravated assault, he nonetheless provided almost exclusively cases of that sort, which are arguably situated at the highest end of the gravity of an assault.

[47] With respect to the cases presented by the prosecution, defence counsel argued that the prosecution's cases are not overly helpful and can be distinguished because of the nature of the facts, which are very different than those in the case at bar. In fact, he argued that they are not even similar.

[48] In support of his position, defence counsel provided the Court with the following cases:

(a) *R. v. Wren* Information No. 22-47101341, a currently unpublished decision of the Ontario Court of Justice, 29 June 2023. Brian Wren, a police officer with the Hamilton Police, pleaded guilty to assaulting Patrick Tomchuck. While observing a stolen vehicle, officers moved to arrest Mr Tomchuck at a gas station. While Mr Tomchuck was being restrained on the ground by three officers, Acting Sgt Wren kicked him multiple times in the head and face, breaking his own toe. Mr Tomchuck's injuries were documented, and he was medically cleared the next day. In sentencing, the Court acknowledged the seriousness of a police officer assaulting a citizen, especially one in custody or under police control. The Court stated, "Clearly, an assault by a police officer on a citizen is to be treated as a serious occurrence but more so when the victim is in custody or otherwise under police control at the time of the assault. Society places police officers between the law-abiding citizenry and those who seek to break the law." Like the case at bar, Mr Wren had an unblemished and fine record as a police officer. He had no previous criminal record. He had good community support and expressed his remorse. Most importantly, he pled guilty, accepting his responsibility for his action and stood before that community for sentencing. The Court suspended the passing of the sentence, and the defendant was placed on probation for eighteen months;

(b) *R. v. Johnson*, 2011 YKTC 70, 2011. Mr Johnson was originally charged with aggravated assault under section 268 of the *Criminal Code*, but the Crown consented to a guilty plea to the lesser included offence of assault

causing bodily harm. In the case of Mr Johnson, he and Mr Fromme were at Foxy's Cabaret in Whitehorse. A disagreement arose due to Mr Fromme's recent breakup, leading to heated verbal exchanges. Both were eventually escorted out, with Mr Fromme sent to the back and Mr Johnson to the front. Bouncers described their behaviour as chest-puffing. Moments later, a fight erupted with both parties claiming the other was the initial aggressor. The scuffle continued on the ground, with Mr Johnson delivering multiple kicks to Mr Fromme, who eventually signalled he was "done." But Mr Johnson kicked him again, rendering Mr Fromme unconscious. Injuries included cuts to their scalps, which required sutures. Mr Johnson, a twenty-seven-year-old member of the Kluane First Nation, had been in a stable common-law relationship for five years and had no dependents. He had been steadily employed and involved in community service. While he had a prior criminal record, it lacked violent offences. The aggravating factor was Mr Johnson's excessive kicks to Mr Fromme, stopped only by bystanders. The mitigating factors included Mr Fromme possibly being the initial aggressor, Mr Johnson's prior non-violent record, stable employment, and a stable relationship. It was noted that both received cuts requiring sutures. As a result, Mr Johnson received a fifteen-month conditional sentence after pleading guilty to assault causing bodily harm;

(c) *R. v. Reid*, 2015 ABCA 334. In this case, the respondent initially faced a charge of aggravated assault, but a jury convicted him of the lesser offence of assault causing bodily harm. The trial judge issued him a conditional discharge. The incident occurred at a Stampede party, where the respondent, who had been drinking, acted belligerently. The victim, who was also the respondent's boss at a drywall company, was asked to intervene and handle the situation. A physical fight ensued between them, leading the respondent to leave the party. However, the victim continued to call the respondent, seemingly seeking further confrontation. Eventually, they met again, and yelling began. It remains unclear who initiated the fight, but the sentencing judge believed it was likely the victim, who appeared eager for a confrontation. During the altercation, the respondent delivered a forceful blow to the victim's face, causing the victim to fall and potentially lose consciousness. The respondent then proceeded to strike the victim with his fists and feet, with witnesses likening the kicks to "kicking a soccer ball." The victim sustained multiple facial fractures, lacerations, and a concussion. He suffered from severe anxiety, impacting his daily life. He was hospitalized, experienced vision problems for weeks, and lacked confidence. He was unable to work for eight months, and at the time of the trial, he still had numbness in his right cheekbone. A self-defence argument presented by the respondent was rejected by the jury. On

appeal, the Crown contended that the original sentence was inadequate given the gratuitous violence, serious injuries, and a lack of mitigating factors. The Crown argued that the sentencing judge had given excessive weight to the respondent's personal circumstances and failed to consider the public interest. As a result, the appeal court agreed and overturned the conditional discharge, substituting a conviction. The substituted sentence consisted of a sixty-day intermittent sentence and two years of probation with specific terms and conditions;

(d) *R. v. Weasel Bear*, 2016 ABPC 244. Diagnosed with fetal alcohol spectrum disorder (FASD) and having faced numerous challenges in his life, Mr Weasel Bear pleaded guilty to a charge of assault causing bodily harm. His difficulties with learning, experiences of discrimination, abuse, and a history of epilepsy add significant context to the case. The victim, a forty-nine-year-old man with disabilities and alcoholism, became involved in a dispute with Mr Weasel Bear, who was heavily intoxicated at the time. The altercation escalated, leading to the victim being knocked to the ground and subjected to a vicious attack, as described by a witness. The victim suffered injuries to his head and face but thankfully did not sustain permanent impairment. Mr Weasel Bear's history includes various property-related offences, failures to comply with probation orders, unlawful entry into a dwelling house, and four convictions for common assault, including one shortly before the current offence. The pre-sentence report (PSR) also noted his difficulty responding positively to community supervision and his resistance to accepting support. The defence strongly advocated for a rehabilitation-focused sentence, primarily emphasizing probation. However, given the gravity and violence of the offence, the Court considered deterrence and denunciation as essential elements of sentencing. The PSR underscored Mr Weasel Bear's previous poor response to community supervision, which makes such an approach appear less effective. His history of hostility and resistance to support further raised concerns about rehabilitation. Nevertheless, the Court considered significant mitigating factors, particularly the *Gladue* factors and the FASD diagnosis. These factors contributed to a diminished level of moral culpability. After a comprehensive analysis, the Court determined an appropriate sentence for Mr Weasel Bear to be a term of incarceration for six months. This sentence reflected the need for deterrence and denunciation considering the serious offence while acknowledging the unique circumstances and challenges faced by the defendant;

(e) *R. v. Misiaczyk*, 2016 CM 3018. Warrant Officer (WO) Misiaczyk, a veteran infantry soldier with over twenty years of service in the CAF, faced sentencing for a violent incident that occurred during an exercise

in Corner Brook, Newfoundland. As the reconnaissance platoon warrant officer and acting platoon commander, he held a position of leadership and responsibility. On the night of 7 August 2015, WO Misiaczyk and other members, including Corporal (Cpl) Fernandes, consumed alcohol in town. Upon their return to the Gallipoli Armoury, a heated exchange ensued between WO Misiaczyk and Cpl Fernandes regarding the state of the kitchen's cleanliness. During the argument, WO Misiaczyk used derogatory language and eventually directed both soldiers to clean the kitchen. A further dispute escalated to a physical confrontation, with WO Misiaczyk pushing Cpl Fernandes onto a cot and delivering ten distinct punches to his face, causing injuries, including a bruised and swollen eye, a cut and swollen lip, and two slightly chipped teeth. The incident was witnessed by other subordinates, and a video recording captured the assault. As a result of this incident, WO Misiaczyk was sentenced to fifteen days of detention. The Court accepted a joint submission by counsel, acknowledging the severity of the assault and the need for a punitive response to such misconduct within the military ranks;

(f) *R. v. Ordinary Seaman J.D. Durante*, 2009 CM 1014. This case centres on an altercation between Ordinary Seaman (OS) Durante, aged twenty-two, and Leading Seaman (LS) Warford, aged twenty-six, both serving on different Canadian ships docked in Norfolk, Virginia. On the night of 22 November 2008, LS Warford, accompanied by younger sailors from his ship, went out for drinks, visiting a country bar and later Bar Norfolk inside a shopping mall. OS Durante, with some shipmates, also ended up at Bar Norfolk. Prior to their bar visit, both groups had consumed alcohol. Inside the bar, an encounter between OS Durante and LS Warford turned aggressive, with the latter inviting a fight. Bouncers had to separate them. Outside the mall, as OS Durante waited for a taxi, he saw LS Warford approaching. Despite warnings to stay away, LS Warford continued advancing, causing fear. OS Durante struck him in the face, leading to significant injuries, including a cracked skull and brain hematoma. LS Warford was placed in a medically induced coma, repatriated to Canada, and experienced severe headaches, delaying his training. Previously, LS Warford faced charges and a conviction for drunkenness and received a fine and a short confinement. However, OS Durante's career progression was hindered as he awaited his Qualification Level 3 basic trade qualification course, which was further postponed due to the incident. This case involved an alcohol-fueled altercation in a foreign port, escalating tensions, and a single punch causing severe injuries, impacting both individuals' military careers. The Court sentenced him to a severe reprimand and a fine in the amount o$2,000;

(g) *R. v. Corporal T.D. Ennover*, 2004cm3012. In this case, the offender was found guilty of assault causing bodily harm after an altercation with a private. The incident occurred while they were watching a film with other soldiers in the common room of a barracks building at CFB Borden. The quarrel between the two men stemmed from a dispute over a chair, which the Pte had brought into the common room but left briefly. The accused sat in the chair during his absence, leading to the confrontation. After the film, the private retrieved his chair and was at his bedroom door when the accused approached and struck him in the mouth with his elbow. This resulted in a profuse bleeding injury that required fourteen stitches after the private was transported to the hospital. There were notable mitigating factors related to both the offender and the offence. Cpl Ennover had an unblemished military record with a promising future in the CAF as a communications researcher. He immediately offered assistance and apologized to the victim following the incident, showing concern for his welfare. The defence recommended a fine as a disposition. However, the Court recognized a disturbing aspect of the case, where the accused had been subjected to verbal abuse, including derogatory racial epithets by other unit members, which played a part in prompting his actions. The Court condemned the use of such terms and adjusted the sentence accordingly. Despite Cpl Ennover's relatively clean record, his mature age, and the absence of prior violent offences, the Court sentenced him to fourteen days of detention for the assault causing bodily harm; and

(h) *R. v. Officer Cadet S.R.M. Warren*, 2008 CM 2005. The offender pleaded guilty to assault causing bodily harm and drunkenness. The incident took place at the Royal Military College in Kingston, Ontario. The offender, an officer cadet (ocdt), engaged in a confrontation with OCdt Cyr, a fellow cadet he did not personally know. The confrontation followed derogatory remarks made by the offender, expressing hatred toward the French. During a social gathering where alcohol was consumed, the offender punched OCdt Cyr in the chin area, causing serious injuries, including a broken jaw in three places. OCdt Cyr required multiple hospital visits, mouth surgery, and wore braces as part of his treatment. The injuries disrupted his studies and sporting activities, and he was unable to drive for some time due to medication. The prosecution argued for a sentence of thirty and forty-five days of imprisonment and the collection of DNA samples from the offender. While the offender claimed that his bigoted remarks were influenced by alcohol and not a reflection of his true character, the Court expressed concern over such expressions of bias within the CAF. Although it was not conclusively proven that the offence was motivated by bias or hate, the Court stressed that there is no place for bigoted sentiments within the military. Taking

> all circumstances into account, the Court sentenced the offender to twenty-one days of imprisonment, rejecting a suspended sentence. Additionally, the Court ordered the collection of DNA samples for identification. The Court declined to issue a weapons prohibition order.

[49] The wide range of cases before me range from a severe reprimand to lengthy terms of imprisonment, which underscores the extensive spectrum of potential punishments for the offence of assault causing bodily harm. Consequently, it is possible to find case law that supports a varied range of penalties for this offence.

[50] A comprehensive examination of the above case law underscores the critical importance of assessing the context and circumstances surrounding an assault when determining an offender's level of responsibility. I find that the jurisprudence relied upon by counsel highlights a critical distinction. In cases involving unprovoked assaults on unknown strangers or the use of weapons, courts have deemed them more deserving of the most severe sanctions.

[51] After a review of the case law provided by the prosecution, I find that all of them, aside from the case of *Grewal*, relate to unprovoked attacks on unknown individuals. The attacks were senseless, brutal, and unexplainable. After reviewing most of the prosecution’s case law, there are features which were significantly aggravating that are not present here. This assault was not premeditated. There was no planning on the part of Sgt Meeks and there were no weapons involved.

[52] In *Grewal*, the assault took place after an inflamed verbal altercation after a soccer match, where the victim had directed unsavoury racial and religious slurs at the offender. The sentencing judge noted that the assault for which Mr Grewel was convicted, involved a group of men and was fuelled by group dynamics. Mr Grewal was found guilty of the more serious offence of aggravated assault. The victim in that case suffered more serious injuries than the case at bar, requiring multiple surgeries and having to engage in a very lengthy road to recovery. In that case, the Court sentenced Mr Grewal to twelve months in custody followed by twelve months of probation.

[53] Conversely, when delving into court martial jurisprudence, and other more relatable civilian case law such as the case of *Wren*, which involved the actions of a police officer in Hamilton, a different perspective emerges. I noted that the case law submitted by the defence provides a cross-section of both military and civilian cases. I find that the cases provided by the defence provide a better comparator than the strictly civilian cases relied upon by the prosecution.

[54] As an example, the defence referred to a civilian case, *Reid*, which bears considerable similarities to the present case as it involved both the offender and the victim being colleagues. Notably, there was also a similar superior-subordinate dynamic in *Reid*, although this time, the superior was the victim. In that case, the injuries

sustained were slightly more severe compared to the current one. The significant point in the *Reid* case is that the trial judge initially imposed a conditional discharge as the sentence for the offender. However, upon appeal, the Alberta Court of Appeal (ABCA) made it clear that the level of violence and the nature of the offence warranted a jail term. Consequently, in imposing what they considered to be a fit sentence, they substituted the conditional discharge with a sixty-day intermittent sentence and two years of probation, which included specific terms and conditions.

[55] What sets the present case apart from the cases provided by the prosecution is the unique context in which the assault unfolded. Sgt Meeks was acting in the capacity of a senior non-commissioned officer (NCO) responsible for corralling a group of intoxicated privates and guiding them back to the garrison, all while being aware of a tragic incident. In exercising his authority, he faced insubordination and challenges to his command, circumstances that can be aggravating and provocative for a senior NCO accustomed to obedience to orders. Sgt Meeks, an experienced operational sgt, was known for taking the time to explain the reasons behind orders, as he was doing just prior to the incident as corroborated in the testimony of Capt Simmons. MWO Royce confirmed that this was a normal practice for Sgt Meeks. The environment and context in which this incident occurred distinguish it from the cases in the civilian context relied upon by the prosecution. Accordingly, the assessment of Sgt Meeks' degree of responsibility must consider the assault within the context in which it transpired.

[56] Although I would consider the cases of *Grewal* and *Reid* to be much more serious than the case at bar, they share the commonality that there was some provocation in the moment before the incident unfolded. Although nothing can justify kicking another soldier when they are down, I am mindful of how quickly these incidents unfolded.

[57] It is for this reason courts must exercise caution when retrospectively analyzing actions that transpired amid a rapidly evolving situation, akin to a fog of war scenario. This case should not be conflated with multiple assaults that unfolded on a summer evening, in the entertainment district of downtown Toronto, without provocation and on innocent, unsuspecting individuals.

[58] During high-pressure, real-time situations, decisions are made on the spot without the luxury of prior planning. Police officers and military members receive extensive training and draw from their experiential knowledge to respond to these dynamic events using techniques ingrained through training. This training is designed to establish preconceived routines and muscle memory, ensuring a rapid and instinctive reaction when there is no time for deliberation. However, sometimes, individuals cross the line of the standard expected, and it is that action which must be sanctioned.

[59] In my decision on finding, I found Sgt Meeks was engulfed in a situation with inflamed arguing which escalated very rapidly to a more physical confrontation. The

pivotal point for me is not whether Sgt Meeks possessed an initial right of self-defence in the given circumstances, but rather I must sentence him for the way he acted afterwards. However, in doing this, I must place this act of kicking within the context in which it unfolded. To do otherwise would be improper. Context is important in assessing Sgt Meeks' level of personal responsibility. In kicking Pte Meadows, he departed from the established principles of his military training, in contrast to the expected behaviour. This departure from standard procedures in the heat of the unfolding situation is precisely what the Court must address and sanction accordingly.

[60] After assessing the above case law in the context of the facts before me, and based on the injuries sustained by Pte Meadows, I find that a fit sentence lies between thirty days detention and six months of imprisonment. I am aware that there is a lone case which was settled by a severe reprimand and a fine, but I view that as an anomaly which relates more to two sailors of relatively the same rank.

Accounting for relevant aggravating or mitigating circumstances

[61] In the military justice system, under section 203.3 of the *NDA*, in imposing a sentence the Court shall take into consideration several principles relevant to the case. Firstly, under paragraph 203.3(a) of the *NDA*, the Court shall increase or reduce its sentence to account for any relevant aggravating or mitigating factors relevant to the offence or the offender.

Aggravating factors

[62] After hearing the submissions of counsel, the Court notes the following aggravating factors that should be considered:

(a) Nature of assault on Pte Meadows. Without recounting all the comments made by Mr Meadows in his VIS, it is evident that he was seriously injured because of Sgt Meek's actions on that day. At the time, Pte Meadows was unsuspecting and simply trying to be a good soldier as he stepped in to mitigate the escalating conflict. The fact that there was a kick delivered to Pte Meadows' head by Sgt Meeks when Pte Meadows was already on the ground is considered aggravating, due to the head being particularly vulnerable and that kicking it would likely cause serious injury;

(b) Junior in rank. Pte Meadows was junior in rank to Sgt Meeks;

(c) International exercise. The fact that it unfolded in a public area, in a foreign country, when the unit needed to come together for the success of the exercise;

(d) Conduct sheet. Sgt Meeks already had an incident for drunkenness; and

(e) Military impact statement (MIS). For those reasons set out therein.

Mitigating factors

[63] After hearing the submissions of counsel, the Court has determined that the following mitigating factors must be considered:

(a) Delay. There has been significant delay in this case that unfolded over four years ago. Although defence recognized that not all of the delay was attributed to the prosecution, and acknowledged that some of the delay was due to the surgeries that Sgt Meeks had to undergo as a result of injuries sustained in his military service, the important factor is that this has hung over Sgt Meeks' head for a long time causing him immeasurable stress;

(b) PTSD. Although defence counsel acknowledged that Sgt Meeks' PTSD diagnosis does not absolve him of the offence, it does carry weight at the time of sentencing. I will discuss the weight to be afforded to this factor below;

(c) Personal responsibility and rehabilitation. I will also discuss this in more detail below, but in short, Sgt Meeks has done everything asked of him to rehabilitate himself. He has taken personal responsibility for both his alcohol consumption and addressing his PTSD. He has sought out, accepted, and is receiving treatment for his mental health and other relationships;

(d) Good military service. By all reports both before and after this offence, Sgt Meeks' service in the CAF has been exemplary. The evidence suggests that he was a great soldier both before and after this event in a profession that is highly physical, requiring the jumping out of airplanes and engaging in physically demanding tasks;

(e) Out of character. In their respective testimonies, both Capts Simmons and Severin as well as MWO Royce admitted that the impugned conduct was out of character;

(f) Remorse. The Court heard from both Sgt Meeks and his wife regarding his level of remorse. Mrs Meeks described the shame that Sgt Meeks has felt since the event. When Sgt Meeks was given an opportunity to speak before sentencing, he took the opportunity to deeply apologize to Mr

Meadows for what he did and the injuries he sustained and how they still affect him. He apologized to his family and to the CAF at large; and

(g) Provocation. Even though there is no evidence that Pte Meadows provoked Sgt Meeks in any way, the evidence does suggest that there was provocation in the moment with drunk soldiers being combative with Sgt Meeks at the moment when Pte Meadows stepped in to intervene.

Balancing factors and determining sentence

[64] Relying on the case of *R. v. Burton*, 2014 CM 2024, the defence argued that the salient question in assessing how much weight to be provided to a member's PTSD diagnosis in mitigation is "on the facts of each case, can one say that 'but for' the presence of the condition, the accused person would not have committed the acts in question?" In *R. v. Meeks*, 2023 CM 2013 at paragraphs 45 to 57, I summarized the medical assessments confirming Sgt Meeks' medical diagnosis for PTSD. He was diagnosed with PTSD by multiple medical examiners, beginning as early as 11 January 2011 by Dr Smith, who determined that at that point, he met the diagnostic criteria of PTSD. Later, on 7 February 2012, Dr Quinn, a psychiatrist, also diagnosed him as having PTSD.

[65] During the testimony of the two medical experts at the court martial, there was tacit agreement that Sgt Meeks developed full criteria for PTSD after his first tour to Afghanistan in 2008 to 2009, however, it was also noted that he underplayed his symptoms in hopes of avoiding any negative impact on his career. It is also important for the military justice system to acknowledge that the PTSD Sgt Meeks suffers from arose directly from his military service to this country in combat in Afghanistan.

[66] As noted at paragraph 142 *of R. v. Meeks*, 2023 CM 2013, Dr Selaman, while noting that PTSD was a factor, also found that his consumption of alcohol was a contributing factor to the incident that unfolded.

> "The hyperaroused stated [sic] appeared to be due to trying to ensure everyone was following orders and also possibly related to hearing that his friend was dead. The disinhibition was related to the alcohol. This combination of factors is what, in my opinion, led to an "out-of-proportion" reaction to a provocation, no matter how slight that provocation might be perceived to be. This, in my opinion, demonstrates a rational motive to Sgt Meeks' actions, even if his actions appeared irrational due to their intensity."

[67] In my assessment of the evidence, and after reconciling the opinions of the two experts, I found that Sgt Meeks' consumption of alcohol and his PTSD were both

contributing factors to his actions that night and could also explain his lack of recall. The evidence suggested that he did experience a reaction from his PTSD arising from a trigger or stimuli, most likely from his belief that WO Oakley died, but I did not find that the PTSD reaction he experienced induced a dissociative state rendering him not criminally responsible.

[68] Although it is very difficult to assess with any certainty how much of a role his PTSD played in the incident before the Court, what is clear is that both alcohol and PTSD were contributing factors. The important part for the Court to consider now at sentencing is that upon his return to Canada, Sgt Meeks has taken personal responsibility for addressing both these factors by stopping his alcohol consumption and seeking help for his PTSD. This provides the Court with confidence that he has done everything in his power to ensure that a similar incident does not unfold.

[69] For this reason, Sgt Meeks is to be afforded significant weight in mitigation for the noteworthy progress he has made in addressing both triggering factors that led to the conduct before the Court.

The sentence

[70] The scale of punishments that may be imposed in respect of service offences is found under subsection 139(1) of the *NDA* and reads as follows:

> **139.** (1) The following punishments may be imposed in respect of service offences and each of those punishments is a punishment less than every punishment preceding it:
>
> (a) imprisonment for life;
>
> (b) imprisonment for two years or more;
>
> (c) dismissal with disgrace from Her Majesty's service;
>
> (d) imprisonment for less than two years;
>
> (e) dismissal from Her Majesty's service;
>
> (f) detention;
>
> (g) reduction in rank;
>
> (h) forfeiture of seniority;
>
> (i) severe reprimand;
>
> (j) reprimand;
>
> (k) fine; and
>
> (l) minor punishments.

[71] Upon a review of this subsection, it is evident that except for imprisonment and fines, there is no direct parity to those sentences generally available in the criminal justice system. Although some punishments might serve the same purpose and objectives found in criminal courts, others do not.

Custodial or non-custodial sentence?

[72] Defence argued that a non-custodial sentence would best serve Sgt Meeks' rehabilitation and reintegration into the community. He argued that it would permit him access to his mental health support. Further, he argued that a non-custodial sentence would ensure he remains close to his support system, his wife and daughter, an important goal for a person maintaining his rehabilitation.

[73] It is the defence position that a sentence of either imprisonment or detention would accomplish none of these objectives, while possibly harming his mental health. In short, he argued that a sentence that not only limits but impairs a member's rehabilitation ought to be avoided.

[74] I have already determined that the predominant principles of sentencing that apply to this case are general deterrence and denunciation. However, it is an error in law to consider that the principle of general deterrence can only be achieved by imposing a period of detention or incarceration. Paragraph 203.3(c) of the *NDA* is clear that an offender should not be deprived of liberty if less restrictive sanctions other than imprisonment or detention may be appropriate in the circumstances.

[75] In short, I must ask myself if only a term of imprisonment could resonate with would-be offenders as a consequence of engaging in this sort of conduct.

[76] The prosecution has advocated for a twenty to twenty-four-month term of imprisonment, relying upon a broad range of case law where civilian courts have awarded sentences for the same offence for which Sgt Meeks was found guilty.

[77] A fit sentence should mirror both the degree of moral culpability of Sgt Meeks and the gravity of the offence he was found guilty of. General deterrence demands a clear and unequivocal message to dissuade anyone from engaging in such violence against a subordinate.

[78] I acknowledge that conveying a message of general deterrence does not always necessitate imprisonment. Although there are instances where offenders convicted of assault causing bodily harm are afforded non-penal sanctions, the case law suggests that in most cases penal consequences are the norm. This principle was clearly reinforced in the ABCA decision in *Reid*. However, there may be exceptional circumstances where proportionality justifies a non-custodial or milder penal sanction. I find that although

the *Reid* case is remarkably similar to the case at bar, and the ABCA was quick to caution that just being a good citizen is not exceptional, I do find that there are stronger mitigating factors in this case which provide some justification for a slightly lower sentence than the ABCA imposed in *Reid*.

[79] In this case, Sgt Meeks has gone above and beyond in his efforts to rehabilitate himself. In the last four years since this incident, he has not faltered in his commitment to improve himself. He stopped drinking cold turkey and has engaged in consistent counselling for his PTSD diagnosis, while accessing the support of social workers and therapists to strengthen all his relationships. Importantly, his rehabilitation has been specifically focussed on remedying those exact factors that underlie the triggers in this incident. Further, he has proven that he is not just gainfully employable, but rather, his most recent performance has been applauded. He shows heartfelt remorse for the incident for which he has been charged and has acknowledged the harm his actions did physically to Pte Meadows, the CAF, and his unit for having compromised its military leadership and the important relationship of trust it holds with its soldiers.

[80] The overwhelming evidence shows that he has transformed his life, and it is evident that a severe sentence is not necessary to protect the public or CAF members. There seems to be nothing more that Sgt Meeks could do to address the underlying issues that led to his uncontrolled outburst. This incident has weighed heavily on him and guided his positive changes, which should inspire him to continue bettering himself in the future.

[81] Nonetheless, considering the severity of Pte Meadow's injuries, I find that some form of punitive consequence must be associated with this sentence. The paramount question for this Court is to determine the appropriate punitive sanction given the offence and the offender's circumstances.

[82] Keeping in mind that one of the guiding principles of sentencing is to impose the least necessary punishment to maintain discipline, I must assess whether the military punishment of detention is a more suitable choice. Both imprisonment and detention are punitive in nature, restricting an individual's freedom. Detention was initially introduced as an alternative to imprisonment, aiming to be rehabilitative, primarily for retaining individuals in the CAF. While I understand there is a pending medical release for Sgt Meeks, based on the evidence at hand, there's no reason to doubt his potential for rehabilitation and retention in some other trade within the CAF.

[83] After considering the gravity of the offence, Sgt Meeks' level of responsibility and his personal circumstances, I find that the punishment of detention is the most appropriate course of action for several compelling reasons. The Court must strongly convey that the CAF will not tolerate the kind of violence exhibited against Pte Meadows. An effective deterrent and denunciatory sentence for such a serious act of

violence upholds the fundamental principles of justice and fairness that both the victim and the military community rightfully deserve.

[84] Simultaneously, the punishment of detention for a period of thirty days is a just and suitable sentence for Sgt Meeks, who has made substantial strides in rehabilitation. I find that this case is one of those rare cases where a member has done everything that is possible to rehabilitate himself after such a failing and for this, the Court must provide significant credit on sentencing.

Suspension of Detention

[85] In his oral submissions, defence counsel argued that if this Court finds that a sentence of imprisonment is required, the accused requests that the sentence be suspended pursuant to section 215 of the *NDA*.

[86] Conversely, the prosecution argued that the Court should not consider suspension. He argued that given the importance of denunciation and deterrence as the overriding sentencing objectives, suspending a sentence of imprisonment would undermine public trust in the military justice system.

[87] Firstly, it is important to highlight that the consideration of a suspension of a term of detention does not come into play until the Court has made a determination that detention is at least one of the appropriate punishments, which I have done in this case. A court martial must avoid conflating an order for suspension of execution of a punishment of detention into a distinct form of punishment that does not exist within Division 2 of the *NDA*. It is not a punishment similar to a conditional sentence imposed in the civilian criminal justice system. The punishment itself is detention.

[88] Subsection 215(1) of the *NDA* reads as follows:

> 215 (1) If an offender is sentenced to imprisonment or detention, the execution of the punishment may be suspended by the service tribunal that imposes the punishment or, if the offender's sentence is affirmed or substituted on appeal, by the Court Martial Appeal Court.

[89] Further, subsection 216(2) of the *NDA* states:

> (2) A suspending authority may suspend a punishment of imprisonment or detention, whether or not the offender has already been committed to undergo that punishment, if there are imperative reasons relating to military operations or the offender's welfare.

[90] The *NDA* does not contain criteria for the application of section 215, nor does it stipulate what types of reasons would be sufficient to qualify as "imperative" with respect to an offender's welfare.

[91] In considering whether to suspend the execution of a punishment of imprisonment, the Court must weigh several factors.

[92] Based on court martial jurisprudence, to obtain a suspension of the custodial punishment, there are two requirements that must be met:

(a) the offender must demonstrate, on the balance of probabilities, that his or her particular circumstances justify a suspension of the punishment of imprisonment or detention; and

(b) if the offender has met this burden, the court must consider whether a suspension of the punishment of imprisonment or detention would undermine the public trust in the military justice system, in the circumstances of the offences and the offender including, but not limited to, the particular circumstances justifying a suspension.

[93] In advocating for the Court to suspend the execution of the period of imprisonment, defence counsel argued that there is clear evidence before the Court that the offender is suffering from PTSD that either directly or indirectly led to his reaction on that day.

[94] It is important to note that although there was significant evidence before the Court of the PTSD that contributed to the commission of the offence for which Sgt Meeks is being sentenced, there is no expert evidence that suggests that, for mental health reasons, he is unable to serve a period of detention. I acknowledge the evidence from the ordinary witnesses who came before the Court, but I am hopeful that the shorter term of detention within a CAF facility will be sufficient to ensure that Sgt Meeks' mental health is safeguarded. There is no evidence before the Court that medical or therapeutic care would not be available or would be inadequate to effectively monitor or deal with any issues that might arise.

[95] In short, the defence's proposal for the Court to suspend the carrying into effect of the sentence would make the punishment excessively lenient. Such a sentence could erode the trust of the victim and the military community in the military justice system. Suspending the sentence would essentially entail an additional year of supervision and rehabilitation, falling short of adequately condemning the offender's assaultive behaviour. As the ABCA found in *Reid*, it would lack a punitive component of the requisite magnitude to align with the gravity of the offence and the degree of the offender's responsibility.

[96] Although I did find that based on his personal circumstances, the lowest level of detention is appropriate, I do not find that his personal circumstances justify, on the balance of probabilities, a suspension of the punishment of detention.

Concluding comments

[97] I am deeply concerned about the lack of discipline among the soldiers leading up to this incident. If they had followed the order and been compliant as expected in this type of situation, we would not be here today. I understand that most have now released, but there is a lesson here that needs to be hoisted in by the CAF leadership. Just a reminder that discipline is the backbone of any effective military force, ensuring that orders are followed promptly and that individuals can be trusted to act in a responsible and controlled manner. When this discipline falters, as it did in this case, it not only jeopardizes the success of our missions but also poses significant risks to the safety and well-being of everyone involved.

[98] I have been around long enough to remember the lack of discipline that led to those unfortunate incidents, and the Somalia Inquiry serves as a reminder that a failure to uphold discipline inevitably leads to more problems.

[99] Sgt Meeks, you have reached the end of a grueling journey, one filled with tragic consequences stemming from a fateful day in June 2019. Your actions not only caused significant harm to Pte Meadows but also shattered many of your own cherished dreams.

[100] Mr Meadows, by stepping in to help during the escalating confrontation, you demonstrated exceptional courage and a true sense of duty. Your intervention came from a place of selflessness, showing your commitment to maintaining order and protecting those involved. Yesterday, Sgt Meeks apologized directly to you. The injuries you sustained during that intervention, both the visible physical wounds and any emotional trauma you carry, are a stark reminder of the sacrifice you made.

[101] Your courage, despite the personal cost, is something that says much about your character. You have shown what it truly means to put the well-being of others before your own, and for that, you deserve our utmost respect and gratitude.

[102] Sgt Meeks, you have always aspired to be a soldier, and you have been hailed as one of the best. This incident revealed the fragility of human behaviour when we are pushed to our limits. It was a nightmarish collision of circumstances that forever altered your career and life.

[103] Yet, from where I am standing, you now possess an incredible opportunity to not only enhance your life but also to unlock new opportunities.

[104] Take a moment and reflect on Kelly. She has stood by your side unwaveringly, witnessing every step of your journey over the last four years. The bond that has emerged between you is something many search a lifetime to find.

[105] Kelly, you stood by your husband's side throughout all the court martial proceedings. I have no doubt that your strength and unwavering support have been a beacon of light during the darkest of times. Your courage, resilience, and staunch loyalty have not only helped your husband find his way through the storm but have also set a remarkable example for all who have had the privilege of witnessing your incredible partnership. Thank you for being the rock that has held your family together and for embodying the true spirit of military families.

[106] Now Sgt Meeks, your dedication, resilience, and unwavering commitment to your rehabilitation have been an inspiration to us all. In fact, it is because of your rehabilitation that I am handing you the lightest sentence possible. There is really nothing more we could ask from you. We cannot turn back the clock nor change that day.

[107] Remember that every chapter in our lives, even the most challenging ones, eventually come to an end. After you serve your sentence, you must not carry the weight of this matter with you as you move forward. You are a changed person because of it, but you must focus on the opportunities ahead to learn, grow, and emerge from this experience as a stronger and wiser soldier. Every day will provide you with a new page, a fresh start, and a chance to rebuild. Embrace the opportunity to make amends and to rebuild your life.

[108] Approach the future with the same courage you exhibited in your infantry training, on operations and throughout your rehabilitation. You have an abundance to offer, and you are only getting started.

FOR THESE REASONS, THE COURT

[109] **SENTENCES** Sgt Meeks to detention for a period of thirty days.

[110] **ORDERS,** in accordance with section 196.14(1) of the *NDA*, that the number of samples of bodily substances that are reasonably required, be taken from Sgt Meeks for the purpose of forensic DNA analysis within 45 days after the proceedings are terminated, considering that the offence for which the Court has passed sentence is a primary designated offence within the meaning of section 196.11 of the *NDA*.

[111] The sentence was pronounced at 1118 hours, on 27 October 2023. I advise Sgt Meeks that, considering your sentence today, you are entitled to apply for Release Pending Appeal. As set out in QR&O article 118.03, you have twenty-four hours to submit this application to me. If you are considering this, please discuss with your defence counsel as soon as possible.

Counsel:

The Director of Military Prosecutions as represented by Major G.D. Moffat

Mr D. Berntsen (Lieutenant-Colonel, retired), assisting the Director of Defence Counsel Services, Counsel for Sgt J.K. Meeks