COURT MARTIAL

Citation: *R. v. Goulding*, 2023 CM 2019

Date: 20231110
Docket: 202166

General Court Martial

Halifax Courtroom Suite 505
Halifax, Nova Scotia, Canada

Between:

His Majesty the King

-and-

Master Corporal B. Goulding, Offender

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

RESTRICTION ON PUBLICATION

Pursuant to paragraph 183.5(2)(b) and subsection 183.6(1) of the *National Defence Act*, the Court directs that any information that could disclose the identity of the persons described in these proceedings as the complainants identified in the charge sheet as "S.O." and "C.T." as well as the witness "S.B." shall not be published in any document or broadcast or transmitted in any way. This order does not apply to disclosure of such information in the course of the administration of justice when it is not the purpose of said disclosure to make the information known to the community.

REASONS FOR SENTENCE

(Orally)

Introduction

[1] On 27 September 2023, at a General Court Martial (GCM), Master Corporal Goulding (MCpl) was found guilty of four charges. The facts related to the case flow from incidents that occurred on 3 October 2020, involving Canadian Armed Forces (CAF) members attending a Trade Qualification (TQ) basic course for the cook trade at

Canadian Forces Base (CFB) Borden. As the military judge presiding at this GCM, it is now my duty to determine the sentence on the charges for which MCpl Goulding has been found guilty.

[2] Most of the incidents that underlay the charges took place at the Huron Club (Junior Ranks Mess) after MCpl Goulding bought his students a celebratory drink for their victory in a sports activity over another cook's course earlier that week. All the charges flow from MCpl Goulding's drunken behaviour which culminated in him assaulting three different students. The offences ranged from tossing a shoe at an unsuspecting student, making unwarranted physical contact by tagging another student in his private area, and disrupting another's balance by shaking him while he was using the urinal. These actions, whether perceived as jokes or not, occurred at a critical juncture being the beginning of the members' basic cook trade training where MCpl Goulding was an instructor.

[3] The panel found MCpl Goulding guilty of the following four charges:

SECOND CHARGE Section 130 *National Defence Act*	**AN OFFENCE PUNISHABLE UNDER SECTION 130 OF THE *NATIONAL DEFENCE ACT*, THAT IS TO SAY, ASSAULT, CONTRARY TO SECTION 266 OF THE *CRIMINAL CODE*** *Particulars*: In that he, on or about 3 October 2020, at Canadian Forces Base Borden, Ontario, did assault C.T.
FOURTH CHARGE Section 130 *National Defence Act*	**AN OFFENCE PUNISHABLE UNDER SECTION 130 OF THE *NATIONAL DEFENCE ACT*, THAT IS TO SAY, ASSAULT, CONTRARY TO SECTION 266 OF THE *CRIMINAL CODE*** *Particulars*: In that he, on or about 3 October 2020, at Canadian Forces Base Borden, Ontario, did assault Private K. Telford. .
FIFTH CHARGE Section 130 *National Defence Act*	**AN OFFENCE PUNISHABLE UNDER SECTION 130 OF THE *NATIONAL DEFENCE ACT*, THAT IS TO SAY, ASSAULT WITH A WEAPON, CONTRARY TO SECTION 267 OF THE *CRIMINAL CODE***

	Particulars: In that he, on or about 3 October 2020, at Canadian Forces Base Borden, Ontario, did assault Sailor 3rd Class S. Harris with a weapon, to wit, a shoe.
SIXTH CHARGE Section 97 *National Defence Act*	**DRUNKENNESS** *Particulars*: In that he, on or about 3 October 2020 at Canadian Forces Base Borden, Ontario, was drunk."

[4] Unlike a Standing Court Martial where a judge sitting alone has a duty to give reasons for their finding, a panel only renders its ultimate verdict on each of the charges. Consequently, as the sentencing judge, I must do my best to determine the facts necessary for sentencing drawn from the issues before the panel and from the panel's respective verdicts. This does not require me to arrive at a complete theory of the facts, as I am only required to make those factual determinations necessary for deciding the appropriate sentence in the case at hand.

[5] There are two governing principles I must follow. Firstly, I am bound by the "express and implied factual implications of the jury's verdict" (see *R. v. Brown*, [1991] 2 S.C.R. 518 (S.C.C.), page 523). Accordingly, I "shall accept as proven all facts, express or implied, that are essential to the jury's verdict of guilty" (see *Criminal Code*, paragraph 724(2)(a)), and must not accept as fact any evidence consistent only with a verdict rejected by the jury (*see R. v. Braun*, (1995), 95 C.C.C. (3d) 443 (MB CA)).

[6] In cases such as this, when the factual implications of the panel's verdict are ambiguous, as the sentencing judge, I must not attempt to follow the logical process of the panel, but rather, I should come to my own independent determination of the relevant facts (see *Brown*; *R. v. N.F.*, 1994 ABCA 402).

[7] In so doing, I "may find any other relevant fact that was disclosed by evidence at the trial to be proven" (see *Criminal Code* paragraph 724(2)(b)). However, to rely upon an aggravating fact or a previous conviction, I must be convinced of the existence of that fact or conviction beyond a reasonable doubt; to rely upon any other relevant fact, I must be persuaded on a balance of probabilities (see *Criminal Code* paragraphs 724(3)(d) and (e)).

[8] The judge should first identify the issues on sentencing, and then find such facts as are necessary to deal with those issues and find only those facts necessary to permit a proper sentence to be imposed in the case at hand.

Evidence

[9] In this case, the prosecutor provided the documents required under *Queen's Regulations and Orders for the Canadian Forces* (QR&O) article 112.51 that were supplied by the chain of command. In addition, the following evidence was adduced at the sentencing hearing in the court martial:

(a) victim impact statement (VIS) by Sailor 1st (S1) Class Harris;

(b) testimony of Master Warrant Officer (MWO) O'Leary, prosecution witness;

(c) based on the agreement of both sides, the psychiatric report by Dr Rasic that was filed in a pre-hearing was entered in as an exhibit; and

(d) testimonies of the following defence witnesses, in order of appearance:

i. Chief Petty Officer (CPO2) Daigle, Base Food Services Operations Chief,

ii. Jennifer Mahaney, wife of MCpl Goulding,

iii. Dr Rasic, treating psychiatrist,

iv. Mr Monk, analyst from Directorate of Military Career Administration (DMCA), and

v. MCpl Goulding.

Positions on sentencing

Prosecution

[10] The prosecution suggested that the Court should impose a reduction in rank which on the facts of this case, since master corporal is an appointment and not an actual rank, the member would be reduced from master corporal to private.

Defence

[11] The defence submits that based on the circumstances of this case, a just and appropriate sentence is that of an absolute discharge. He argued that the facts that support the *Criminal Code* convictions are very minor and do not support the negative second-order effects that the offender will suffer in having the criminal convictions registered against him.

Circumstances of the offender

[12] MCpl Goulding is forty-one years old. He enrolled in the CAF on 22 August 2002 and has served with the CAF for over twenty-one years. He is a recipient of the

General Campaign Star – South-West Asia, Article 5, North Atlantic Treaty Organization – Operation ACTIVE ENDEAVOUR, Operational Service Medal – Expedition, Special Service Medal – North Atlantic Treaty Organization, Special Service Medal – Expedition and the Canadian Forces Decoration.

[13] He is recently married and a stepfather to two daughters who reside with them, and he financially supports his son who lives with his ex-partner in Newfoundland.

[14] After the events in question, MCpl Goulding reached out for help to control his use of alcohol. During his treatment, he was referred for a psychiatric assessment to address the other issues that were surfacing.

[15] On 9 March 2021, MCpl Goulding was diagnosed with posttraumatic stress disorder (PTSD) by Dr Rasic, Doctor of Medicine, Fellow of the Royal College of Physicians of Canada, flowing from traumatic incidents he experienced while serving in Afghanistan in 2008.

[16] In his report, Dr Rasic observed that MCpl Goulding had reported symptoms to medical authorities as early as September 2013 when he was seen by a psychiatrist Dr Maritz in Newfoundland. Dr Maritz reported that:

> "*He's complaining of having poor sleep, headaches, aches and pains, and increased anxiety and irritability. His symptoms started around 2008-2009 when he came back from Afghanistan*. The diagnosis and impression at the time was: "*Anxiety disorder*…"."

[17] His PTSD diagnosis has been duly recognized by the Veterans Review and Appeal Board with them classifying him as granting him a disability assessment of eighty-one per cent. He collects a monthly stipend from Veterans Affairs Canada (VAC) because of his disability.

[18] He currently has two separate administrative reviews (AR) ongoing. One deals with his current medical issues and the second was opened because of the underlying conduct related to the charges before the Court. With the ongoing ARs in process, it is likely that MCpl Goulding will be released from the CAF at some point in the future and will need to transition to civilian life. In his testimony, MCpl Goulding made it clear that he prefers to serve in the military for as long as possible.

[19] Although there is no direct evidence before me that PTSD was the underlying factor in the incidents before the Court, there was a clear admission from MCpl Goulding that he used alcohol to subdue his symptoms. The evidence suggests that the overuse of alcohol was the contributing factor to the incidents before the Court.

Victim impact statement

[20] S1 Harris provided the Court a VIS which he chose not to have read into the court record. He was the victim of the fifth charge and was hit in the head by the shoe tossed in his direction. In his testimony, S1 Harris admitted that he was not physically injured, but acknowledged the mental impact from the incident and how replaying the incident is a constant stress for him.

Analysis

[21] When crafting a sentence, the main goal is to impose a sentence that will maintain discipline, efficiency, and morale within the CAF. This is achieved by imposing a just punishment aligned with the objectives stated in the *National Defence Act* (*NDA*), which are consistent with Canadian values, but tailored to the unique circumstances of military service.

[22] The principle of proportionality has always been important in Canadian sentencing, and it is specifically codified in section 203.2 of the *NDA*.

[23] A just sentence considers the seriousness of the crime and the individual circumstances of the accused, following the principles outlined in section 203.3 of the *NDA*.

[24] The Supreme Court of Canada described sentencing as "one of the most delicate stages of the criminal justice process" (see *R. v. Parranto*, 2021 SCC 46). It is an important discretionary exercise requiring judges to consider and balance multiple factors.

[25] Nine objectives of sentencing have been provided by Parliament to guide military judges in the sentencing process. Military judges have discretion over which sentencing objectives to prioritize, and how much weight to afford to the secondary sentencing principles that are also set out therein.

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

[26] One of the objectives of sentencing is "to denounce unlawful conduct and the harm caused to victims or to the community." In courts martial, the sentence represents the judicial condemnation of the sanctioned conduct to the affected CAF community. Consequently, judicial sentences should be imposed in a manner that positively enforces the communal values of all serving CAF members as expressed by the *NDA*.

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

[27] Where the purpose of the sentence is to deter others who may be inclined to engage in similar conduct, then the Court must carefully consider the sentence from an objective perspective based on the facts and the context of the offence. I must consider the gravity of the offence, the number of incidents 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.

Rehabilitation

[28] In addition, I find that in the current case, the objective of rehabilitation is of paramount importance particularly given the offender's PTSD which arose directly from his military service. During these proceedings, the Court learned that MCpl Goulding has been proactive in reaching out and pursuing his own rehabilitation by seeking assistance with his mental health. In evidence, the Court has letters from Dr Rasic, Dr Fairfax and the Veterans Review and Appeal Board of Canada that confirm the severity of his PTSD as well as his ongoing treatment.

[29] During his sentencing, MCpl Goulding took responsibility for his actions and expressed regret for his actions on the evening in question.

Priority of objectives

[30] Based on the facts of this case, and after considering the context of what unfolded, I find that the objectives of sentencing that must be given the highest priority are general deterrence and denunciation, but not to the detriment of rehabilitation, which I find is very important in this case. In hoping to achieve the purpose of deterring others, the challenge lies in reconciling what is needed to deter others from committing something similar, while still ensuring that MCpl Goulding has the best possibility of success in his personal rehabilitation.

Gravity of offence and degree of responsibility

[31] It is a fundamental principle of sentencing that the military judge must impose a proportionate sentence based on the gravity of the offence and the offender's responsibility in the specific case. The charges before the Court involve assault, assault with a weapon and drunkenness. The facts that underlie the actual assaults were minor, however, in this case, the context must be informed by the level of intoxication that manifested itself in inappropriate and harassing comments to the students.

[32] During the trial, defence counsel made an application to the Court to put to the panel, the defence of *diminimis* on the fourth charge, which this Court denied in a decision rendered at *R. v. Goulding,* 2023 CM 2015.

[33] Now at sentencing, he strongly argued that on the facts of the case before the Court, the assaults are so minor that the second-order effects that flow from the *Criminal Code* convictions surpass the gravity of the initial offence. It is for this reason he argues that they merit an absolute discharge.

Parity

[34] To determine the appropriate sentence for MCpl Goulding, I must first identify the objective range of sentences for similar offences. This assessment considers typical offence characteristics, assuming the accused has good character and no criminal record.

[35] The sentencing process requires military judges to closely examine past precedents and compare the facts of the case with similar situations. Treating similar conduct with parity is crucial for maintaining discipline in the military context.

[36] In his submissions, the prosecution relied upon the following precedents:

(a) *R. v. Cadieux*, 2019 CM 2019 – The incidents underlaying the charges occurred during a multinational exercise, in Jamaica. During the exercise there was a no-alcohol policy, Operation HONOUR briefings were held to prevent sexual assault, and an all-female tent was established. Despite successful implementation, the no-alcohol policy was lifted at the end of the exercise for a barbecue. During the barbecue, the victim and Cpl Cadieux consumed alcohol. The victim left the barbecue early and went to bed in the all-female tent. Later that evening, Corporal Cadieux entered the all-female tent attempting to wake the victim who was fast asleep. She engaged him in a passionate kiss before she was awake and when she awoke and realized what was happening, she resisted and told him to stop. He was ordered out of the tent by another female member.

The next morning, Cadieux entered the all-female tent again, seeking alcohol and food. He was ordered to leave, but he stayed until someone escorted him out. Witnesses estimated Cadieux's intoxication level at about 9 out of 10, noting he appeared drunk and slurring words. Others observed stumbling and erratic behavior. As they started to load the buses to go to a resort for the day, Corporal Cadieux sat in the bus driver's seat, beeping the horn. When the bus finally headed to the resort, Corporal Cadieux was obnoxious annoying the other members by his demeanour. When the plans changed, they decided to go to a public resort, a decision was made to leave Corporal Cadieux at the camp. Corporal Cadieux was upset and got into a rental car to drive back to exercise control area when his supervisor took the keys away from him. The Court found Corporal Cadieux guilty of sexual assault and drunkenness and sentenced him to sixty days' detention and a severe reprimand. The Court rejected a request by the defence for an absolute discharge, but it suspended the execution of the sentence;

(b) *R. v. Rutherford*, 2018 CM 2022 – Aviator (Avr) Rutherford, a member of the CAF posted to Canadian Forces Leadership and Recruit School, engaged in inappropriate and harassing behaviour towards fellow platoon member B.J. During the first week of training, Avr Rutherford began touching B.J., escalating in the second week when he placed ice cubes

down her top without permission and forcefully pulled her hair. In the third week, he made explicit and unwelcomed advances, touching her inappropriately and making inappropriate comments. On one occasion, he pushed her against a wall, expressing a desire for control. In another incident, while in Avr Rutherford's cubicle, he pushed and physically restrained B.J., despite her objections. The pattern of harassment and unwanted physical contact continued, creating a hostile environment for B.J. within the training context. He was sentenced to dismissal from Her Majesty's service and a severe reprimand;

(c) *R. v. Simms*, 2016 CM 4001 – MWO Simms and his wife, both members of the CAF, encountered issues during a stopover at the Winnipeg airport on their way to Las Vegas. Concerns arose about perceived intoxication and disruptive behaviour, particularly from MWO Simms' wife. As they were denied boarding, MWO Simms became confrontational, leading to his arrest by airport security and subsequent involvement of military police. During the arrest, MWO Simms, displaying signs of intoxication, resisted and threatened Corporal (Cpl) Hall. Despite assistance from colleagues, he continued making threats, including intentions to harm the officers. MWO Simms, after initial compliance, later became agitated during transport to the MP detachment. The incident involved disruptive behaviour, intoxication, and threats. He was sentenced to a reduction in rank to the rank of warrant officer and a fine of $4,000 payable in ten monthly instalments of $400;

(d) *R. v. Castle*, 2013 CM 4008 – During a mess dinner and reception, the individual in question consumed a significant amount of alcohol, becoming increasingly disorderly. In the presence of fellow Regional Cadet Instructor School staff officers and course candidates, he used profanity to direct officer cadets, creating a makeshift dance floor and exhibiting inappropriate behaviour. Subsequently, when taking a shuttle van with three officer cadets, the individual grabbed Officer Cadet (OCdt) J.H.'s buttocks. While in the moving van, despite objections from OCdt J.H., the individual escalated his inappropriate actions, sliding his hand under her clothing. These actions were noted by other officer cadets present at the event, contributing to a series of concerning behaviours during the evening. He was sentenced to reduction in rank to the rank of lieutenant and a fine in the amount of $5,000. The fine shall be paid immediately; and

(e) *R. v. Worthman*, 2018 CM 2024 – MP were contacted about an intoxicated female, later identified as Cpl Worthman, causing a disturbance at the wrong residence. Signs of intoxication included difficulty standing, slurred speech, dishevelled clothing, and missing a boot. Cpl Worthman, believing she was at her own residence, became irate and verbally aggressive when corrected by MP members. She

refused to identify herself, leading to her arrest for drunkenness and causing a disturbance. During the arrest, she resisted and struck MCpl Riddolls. At the MP detachment, her behaviour ranged from calm to hostile. Following a medical review, she was deemed fit for cells and released the next day. Cpl Worthman later provided a written apology for her actions. She was convicted of assault and drunkenness and sentenced to detention for ten days (suspended).

[37] The defence provided the following precedents to support his position on sentencing:

(a) *R. v. D'Amico*, 2020 CM 2004 – Cpl D'Amico, aged thirty-seven, had served in the CAF for nearly six years, mainly as a military police patrolman in Meaford, Ontario. The offence in question involved the offender falling asleep, while in his police car and acting as a sentry to a live firing range. The incident arose during a challenging period in his personal life, involving acrimonious issues related to access to his daughter. Despite efforts by his detachment commander to accommodate him, he faced scheduling constraints that influenced his actions on 12 September 2018. Notably, prior to the incident, Cpl D'Amico had sought voluntary release due to stress and personal matters but did not follow through, presenting ongoing struggles with access arrangements for his daughter. Feedback on his performance highlighted challenges specifically linked to these ongoing personal issues. However, his more recent assessments indicated improvement, culminating in his successful completion of the Close Protection Course and recognition for physical fitness achievements. Cpl D'Amico's upcoming posting to the Close Protection Unit in Ottawa was seen as an opportunity for professional growth. Aggravating factors in the case included the offender falling asleep at the entrance to a live firing range, jeopardizing security; being an MP in full uniform and sitting in a police car, possibly unresponsive to duty calls; and a fundamental breach of personal discipline, despite some attempt at mitigation. Mitigating factors highlighted by the Court encompass the offender's acceptable post-conduct behaviour, stabilization of personal considerations underlying the incident, and evidence of rehabilitation and positive future prospects.

In considering whether an absolute discharge was appropriate in the case, the Court noted the lack of a conduct sheet and the fact that the offender had stabilized his personal circumstances. Further, the Court found that after reviewing the Military Police Professional Code of Conduct's presumption of discredit, an entry of conviction for the offence in question might have significant adverse repercussions for Cpl D'Amico due to the inequity in Section 5, as he opted for a court martial instead of a summary trial and concluded that the first condition was met. Regarding the second condition, not being contrary to the public

interest, the Court considered general deterrence, noting the strong message sent by the guilty verdict. The limited attendance from 2 MP Regiment and the absence of evidence for a particular need for general deterrence allowed the Court to focus on individual deterrence and rehabilitation. The court valued Cpl D'Amico's proactive communication about personal struggles, emphasizing the importance of not unduly penalizing members seeking help. The Court saw Cpl D'Amico's upcoming posting as a positive step for rehabilitation, emphasizing that a sanction could jeopardize his rehabilitation and pending posting. Therefore, the Court concluded that directing an absolute discharge was not contrary to the public interest;

(b) *R. v. McKie*, 2023 CM 2012 – WO McKie was found guilty of an offence contrary to subsection 92(2) of the *Criminal Code* for having in his possession six 30-round magazines, which were prohibited devices. The Court assessed whether directing an absolute discharge for WO McKie was appropriate. WO McKie, a retired veteran with twenty-seven years of service, provided evidence of overcoming obstacles and nearing the end of his medical release buffer. Defense counsel argued for an absolute discharge, emphasizing WO McKie's engagement with the community, his family, and potential benefits as he transitions to civilian life. The Court considered the first condition, focusing on WO McKie's character, lack of previous convictions, and the potential adverse repercussions of a conviction on his transition to civilian life. Recognizing the significant impact of a criminal record has on a veteran's transition, the Court concluded that WO McKie met the first condition, and an absolute discharge was in his best interests. For the second condition, the Court examined whether granting a discharge was contrary to the public interest. While acknowledging the importance of maintaining high standards of discipline within the CAF, the Court emphasized that WO McKie's guilt sends a message of deterrence and denunciation. Considering the severity of the offence and WO McKie's retirement, the Court believed that if the offender had been tried within the civilian system, he would likely have received an absolute discharge. The Court highlighted the offender's potential for rehabilitation and successful integration into the civilian sector, arguing that not burdening individuals with a criminal record increases their likelihood of leading productive lives. In WO McKie's case, the Court concluded that an absolute discharge would preserve his dignity, reputation, and positively impact his ability to secure employment and housing. The Court found that directing an absolute discharge for WO McKie served both his best interests and the public interest, aligning with the principles of proportionality and respect for the military justice system;

(c) *R. v. Barilko*, 2014 ONSC 1145 – Mr Barilko was found guilty of assaulting his former partner during a verbal argument in the presence of

their son. The trial court imposed an absolute discharge, considering Mr Barilko's six days of pre-sentence custody. The incident was triggered by a dispute over holiday custody arrangements for their son. Despite the complainant's conduct being described as "inappropriate" and possibly provoking, the trial judge directed an absolute discharge. M Barilko had a previous 2002 conviction for assaultive behaviour, raising concerns about specific deterrence and public protection. On appeal, the Court upheld the decision, stating that the trial judge did not err in principle or impose a manifestly unfit sentence based on the overall record;

(d) *R. v. Carson*, 2004 CanLII 21365 (ON CA) – The appellant, a police officer, faced charges related to an altercation with his fiancée and a breach of recognizance. He was convicted of assault and one breach, sentenced to ten months (with credit for pre-trial detention), leading to one-day incarceration on each conviction, followed by twelve months of probation. The altercation involved conflicting accounts: the complainant alleging assault and forcible confinement, while the appellant claimed he was preventing self-harm. The Court of appeal rejected specific appeals but disagreed with the need for incarceration. Given the appellant's pre-trial detention, lack of specific deterrence need, and potential negative repercussions, they found this an unusual case warranting relief. The Court granted a conditional discharge, setting aside convictions, substituting findings of guilt, and imposing a conditional discharge with twelve months of probation as determined by the trial judge;

(e) *R. v. Plonka*, 2014 BCPC 309 – In this case, the offender, Ms Plonka, committed assault by pepper spraying the complainant Helmut Schumann, to whom she pled guilty. Three years earlier, the Schumanns' dog had bitten Ms Plonka, causing significant injuries. Ms Plonka suffered nerve damage, lost her job, and underwent extensive treatment. On encountering the Schumanns again with their dog off-leash, she pepper sprayed them while yelling, "You are bad people." The Court considered the motive, questioning if it was anger, revenge, or fear. The Court, guided by the principle of proportionate sentencing, assessed the degree of responsibility and gravity of the offense. Despite the victims' fear, the Court noted the absence of a previous criminal record, Ms Plonka's remorse, and her engagement with the community. Referring to the principles of sentencing, it emphasized rehabilitation and reparations. The Court referenced *R. v. Fallofield*, [1973], 13 C.C.C. (2d) 450 (BCCA.) and determined that an absolute discharge was in Ms Plonka's best interests. It concluded that, considering the unique circumstances and Ms Plonka's ongoing volunteering and apologies, a further probation period was not warranted, opting for an absolute discharge; and

(f) *R. v. Singh*, 2023 ONSC 4949 – In this case, in its consideration of whether the offender should be granted an absolute or conditional

> discharge, Durno J., summarized important elements of the assessment and highlighted several cases where courts considered whether an absolute or conditional discharge was merited.

[38] Upon reviewing the case law that was provided, I do not find the ranges of cases provided by the prosecution to be particularly helpful. Many of the situations presented in their cases have facts that are much more aggravating than the case at bar. In the case of *Simms,* the member was a MWO who engaged in conduct much more egregious than the facts in this case, which included the offender placing his hands on the throat of MPs while yelling "I am going to kill you," then pushing the MP out of the holding cell. The fact that MWO Simms received a reduction in rank in that situation is very different from the facts before me. Importantly, the case of *Simms* can be distinguished on its facts because at the time of sentencing, MWO Simms had retired from the CAF, so there were minimal second order effects that flowed from his reduction in rank. Unlike the case of bar, the offender did not have to endure a significant reduction in pay. In fact, his pension would be financially unaffected by the imposition of such a penalty.

[39] The cases of *Rutherford* and *Worthman* had far more serious facts then the case before me. Importantly, I note that the punishments imposed were consistent with their ranks, individual personal circumstances, and their time in military service. As an example, in a joint submission, Cpl Worthman was not reduced in rank, but rather was sentenced to detention (which was subsequently suspended). In the case of *Rutherford*, the incidents unfolded in Saint-Jean during recruit training. Based on the facts, it was clear that Avr Rutherford had no future of military service in the CAF, so in a joint submission, he was dismissed for her Majesty's service as a punishment.

[40] Although the case of *Castle* relates to incidents that unfolded on a drunken evening, it also included multiple sexual assaults which exacerbated the sentence and likely would have been the rationale for the reduction in rank.

[41] I reviewed the case law provided by the defence on behalf of the offender and I will provide specific comments in my analysis below where I assess whether the facts of this case are such where an absolute discharge should be directed.

Accounting for relevant aggravating or mitigating circumstances

[42] Once the range of sentences is established, the judge's role involves adjusting the sentence upward or downward, considering relevant aggravating or mitigating factors. This includes personal circumstances of the accused, as well as the actual consequences of the offence.

Aggravating factors

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

(a) experience and position. At the time of the offences, MCpl Goulding had served in the CAF for eighteen years and had obtained the Primary Leadership Qualification (PLQ) and guided subordinates through their on-job-training packages. Given his leadership training, he should have known that his conduct of getting intoxicated with his students was unacceptable;

(b) difference in ranks and position. Although the evidence did not suggest that MCpl Goulding abused his position and authority per se, he was a newly tasked incremental staff for the cooks' course and involved in the training of new members to the CAF, who were encountering their first exposure to military life outside of basic training. Based on his rank and position, he should have been more attentive to the expectations associated with his rank;

(c) multiple victims. Throughout the evening, MCpl Goulding became increasingly rowdy, which led to three different confrontations and assaults; and

(d) nature of the assaults. Although the assaults were minor in nature, they were preceded by inappropriate comments, such as making insulting comments to Private (Pte) Telford on the size of his penis, before shaking him; mocking the way S1 Harris was holding his beer bottle, and when S1 Harris ignored him, he tossed a shoe that hit him in the face. Lastly, after C.T. advised MCpl Goulding that he was drunk and should not be in the smoke pit of the student quarters, he threatened his career and tagged him in his private area.

Mitigating factors

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

(a) MCpl Goulding does not have a criminal record or a conduct sheet and is a first-time offender;

(b) he has long military service, including multiple deployments and extended periods of time away at sea;

(c) his conduct appears out of character;

(d) good post-incident conduct;

(e) PTSD;

(f) he sought out and received treatment for underlying issues;

(g) he is a valued member and contributor of the Base Foods team;

(h) his age and potential, as the evidence suggests that MCpl Goulding has excellent potential to continue to serve and progress within the CAF; and

(i) remorse as he apologized when he was given the opportunity to address the Court.

Any indirect consequences of the finding of guilt or the sentence should be taken into consideration

[45] Pursuant to paragraph 203.3(e) of the *NDA*, defence counsel requested that the Court consider the indirect administrative consequences that flowed from the incident before the Court. Firstly, very shortly after the incident occurred, MCpl Goulding was returned to his unit being Her Majesty's Canadian Ship (HMCS) *Montreal*, and then he was later removed from serving on the ship which resulted in him losing his sea pay and the financial advantages that would have flowed from an upcoming deployment of HMCS *Montreal*.

[46] The prosecution argued that the Court should not give too much weight to the above-noted indirect consequences as no member is guaranteed a posting nor deployments. I accept that the manner in which MCpl Goulding was removed from the ship and landed to work on the base was not as transparent as it should have been and that it appears that he was denied some of the due process that should have been afforded, but absent more information to confirm exactly what conversations or agreements and expectations existed prior to these decisions being made, I am unable to draw any quantifiable conclusions that will assist in assessing the indirect consequences.

Consideration of sentence

[47] The imposition of a sentence must be individualized to MCpl Goulding while promoting the operational effectiveness of the CAF by contributing to the maintenance, efficiency, and morale of the unit.

[48] With respect to his individual circumstances, MCpl Goulding, is currently advantageously employed by a unit who feels that he is making a meaningful contribution. They view his service within the Base Foods organization in a very positive light.

Reduction in rank

[49] A reduction in rank was proposed by the prosecution. Reduction in rank is a punishment that must be considered when the offence to be sanctioned reflects a failure in the expectations of someone of their rank and experience.

[50] It is a disciplinary measure reserved for serious offences. Reduction in rank serves as a tangible consequence, signalling the severity of the individual's actions and providing a structured means of correction. The reduction underscores the principle that individuals in positions of authority must exemplify the highest standards of conduct.

[51] A reduction in rank allows for a member to reflect on their actions, learn from the experience, and work towards regaining the trust of their peers and superiors. It is crucial, however, that any disciplinary action, including a reduction in rank, is proportionate to the gravity of the offence and considers the individual circumstances surrounding the misconduct.

[52] As a punishment, reduction in rank has been imposed on numerous occasions in courts martial. In *R v Moriarity*, 2012 CM 3022, d'Auteuil M.J. had this to say regarding a reduction in rank:

> [37] In the Court Martial Appeal Court decision of *R v Fitzpatrick*, [1995] C.M.A.J. No. 9, Judge Goodfellow described at paragraph 31 the nature of such a sentence:
>
> > The sentence of reduction in rank is a serious sentence. It carries with it career implications, considerable financial loss, plus social and professional standing loss within the services. It is a truism that rank has its privileges, and to reduce one to the lowest rank is a giant step backwards which undoubtedly serves not only as a deterrent to the individual but also a very visible and pronounced deterrent to others. There are occasions when a sentence in the military context justifiably departs from the uniform range in civic street and certainly the reduction in rank is a purely military sentence.
>
> [38] Justice Bennett also expressed clearly the meaning of such a sentence, when she said in the Court Martial Appeal Court decision of *Reid v. R.; Sinclair v. R.*, 2010 CMAC 4, at paragraph 39:
>
> > A reduction in rank is an important tool in the sentencing kit of the military judge. It signifies more effectively than any fine or reprimand that can be imposed the military's loss of trust in the offending member. That loss of trust is expressed in this case through demotion to a position in which the offenders have lost their supervisory capacity.

[53] In short, although reduction in rank is a purely military sentence, it is imposed where the conduct before the Court has resulted in situations where the chain of command has lost trust in the offender and their ability to comport themselves in the manner expected of their rank and experience. It is also clear that when a member is reduced from master corporal down to private in such a fashion, there is no clear route back to their previous rank to redeem themselves. I am mindful of the pending ARs for

MCpl Goulding and the potential second-order effects that would flow from such a punishment.

[54] I note from MCpl Goulding's Member's Personnel Record Résumé that he has been a master corporal since 2018, and there is no evidence of him being unable to perform to the standard expected of him either in the two years before this incident or since it. Based on the prosecution's own admission, the incidents before the Court are isolated and out of character.

[55] Based on the testimony of CPO2 Daigle, who is the current Base Food Services Operations Chief, who advised the Court that his views represent those of the chain of command, confirmed that they are happy to continue to employ MCpl Goulding at his current rank. In fact, his testimony confirmed that MCpl Goulding has proven that he can work at his current level. He was not concerned about the nature of the convictions, repeat of the incidents or the safety of his people. The evidence suggests that he can be integrated back into the unit and be advantageously employed.

[56] Further, CPO2 Daigle confirmed that professionally, MCpl Goulding has not done anything wrong that causes them concern in the workplace. He told the Court that there have been no issues with his work ethic, and he is always respectful. Aside from the incidents before the Court, which the evidence suggests were both out of character and isolated incidents, there is no additional evidence to suggest that MCpl Goulding is not fit to perform the duties and expectations of the rank of master corporal.

[57] After properly considering all the relevant factors, I do not find that the imposition of a punishment of reduction in rank is appropriate in the circumstances.

Absolute discharge

[58] It is important to note that when imposing a punishment under section 139 of the *NDA*, even if there are findings of guilt on four different charges, courts martial follow the principle that "only one sentence shall be passed", and the sentence is considered valid if any one of the offences would justify it (see *NDA* section 203.95).

[59] However, in this case, the defence requests that the Court impose an absolute discharge, at least with respect to the *Criminal Code* offences. It was pointed out in court that absolute discharges are not one of the punishments set out under section 139 and section 203.8 of the *NDA* sets out the requirements to be met for the consideration of an absolute discharge. It is notable that based on the language, the direction of absolute discharges is considered based on "an offence", language which parrots exactly the *Criminal Code* language. This puts the consideration of an absolute discharge to be individually for each offence, in conflict with the imposition of section 203.95 which requires that only one sentence shall be passed.

[60] Section 203.8 of the *NDA* reads as follows:

> **Absolute discharge**

> 203.8(1) If an accused person pleads guilty to or is found guilty of an offence other than an offence for which a minimum punishment is prescribed by law or an offence punishable by imprisonment for 14 years or for life the [service tribunal] before which the accused appears may, if it considers it to be in the accused person's best interests and not contrary to the public interest, instead of convicting the accused person, direct that they be discharged absolutely.
>
> **Effect of discharge**
>
> (2) If a service tribunal directs that an offender be discharged absolutely of an offence, the offender is deemed not to have been convicted of the offence, except that
>
> (a) they may appeal from the determination of guilt as if it were a conviction in respect of the offence;
>
> (b) in the case of a direction to discharge made by a court martial, the Minister may appeal from the decision not to convict the offender of the offence as if that decision were a finding of not guilty in respect of the offence; and
>
> (c) the offender may plead *autrefois convict* in respect of any subsequent charge relating to the offence.
>
> **References to section 730 of *Criminal Code***
>
> (3) A reference in any Act of Parliament to a discharge under section 730 of the *Criminal Code* is deemed to include an absolute discharge under subsection (1).
> [My emphasis.]

[61] In conducting my analysis, I was particularly conscious of the submissions of the prosecution that it is challenging to unravel the charges to separate the conduct to provide a proper assessment.

[62] Section 203.8 sets out that where an accused has pleaded or been found guilty of "an offence", "if it considers it to be in the accused person's best interests and not contrary to the public interest", that "instead of convicting the accused person", the service tribunal may "direct that they be discharged absolutely" [My emphasis.]. The section does not describe the specific parameters for the service tribunal to assess in determining if a situation is in the accused's best interest, nor does it delineate when it is not contrary to the public interest.

[63] However, as previously discussed, subsection 203.8(1), requires an individual analysis based on the specific offence. Although subsection 203.8(1) is nested within the Sentencing Division of the *NDA*, the provision is not to be confused with a sentence or punishment considered under section 139 of the *NDA*. For this reason, in consideration of the offender's request, the Court must proceed with an individual assessment of each of the charges first and then proceed to sentence MCpl Goulding should absolute discharges not be directed on all the charges. To do otherwise, would not give Parliament's intended effect to the provision and it would render an injustice to the offender who seeks such consideration.

[64] In courts martial jurisprudence, in the cases of *McKie*, *Cadieux*, and *D'Amico* at paragraphs 37 and 38, in deciding whether the facts of the case are those where an absolute discharge should be directed, the Court adopted the judicial test set out by the British Columbia Court of Appeal I *Fallofield*. The direction set out in *Fallofield*, guides judges in considering whether the imposition of an absolute discharge is appropriate in the particular circumstances. This is the same test applied in civilian criminal courts under the almost identical *Criminal Code* provision.

[65] The first question I must consider is whether an absolute discharge is possible due to the number of charges before the Court. An absolute discharge is a rare and lenient disposition that typically applies to first-time offenders or individuals who pose minimal risk of reoffending. The Court must consider whether the fact that multiple incidents unfolded on the evening in question suggest a pattern of conduct that goes beyond a one-time lapse in judgment.

[66] I note that the test set out in *Fallofield* suggests that the accused be a person of good character, without previous conviction. Factually, this case meets that threshold, but there are multiple charges related to the same incident on 3 October 2020. In short, on the evening in question, while drunk, on three separate occasions, MCpl Goulding assaulted three different students. Factually, the assaults were more harassing than violent, but there were three different offences within a short period of time. Defence counsel argued that since they all unfolded within a very short period, were similar and were the result of MCpl Goulding's admitted drunkenness, they should be considered as one incident.

[67] In the above court martial cases of *McKie* and *D'Amico*, there were findings of guilt on one charge only which a survey of case law suggests is the norm. However, in the case of *Cadieux*, the member faced sentencing on two different charges, being the *Criminal Code* offence of sexual assault and the *NDA* offence of drunkenness. In its analysis, the Court only considered the finding of guilt with relation to the offence of sexual assault ultimately deciding that given the ongoing crisis in the CAF related to sexual assault, the granting of an absolute discharge was contrary to the public interest, and he was sentenced accordingly.

[68] A further survey of civilian case law suggests that where an individual with no prior criminal record is convicted of multiple minor offences that are intertwined or unfold together, there is no bar to the consideration of a discharge. Consequently, I find that there is discretion for a court to consider whether an absolute discharge is appropriate in a case such as the one before the Court, especially if the circumstances are unique and the mitigating factors are substantial (see *R. v. House*, 2012 NLCA 41, and *Carson*). In my review of the case law, I found that courts were frequently asked to consider the imposition of either absolute or conditional sentences in cases involving multiple counts, however, in many cases the severity of the conduct required a stronger message of deterrence and absolute discharges were not directed.

[69] In applying the same guiding principles drawn from the similar provision at section 730 of the *Criminal Code* to the military justice system, there are unique differences that must be accounted for and for which military judges should be mindful of. Given the unique nature of military service, minor breaches often become the subject of charges and are a necessary part of maintaining discipline within the CAF. Consequently, charging members for minor infractions is a common practice in the military and is considered a necessary ingredient to ensuring good order and discipline. On its face, it would then seem counterproductive to charge and try an offender for minor misconduct and then direct an absolute discharge due to the minor nature of the offence.

[70] However, it is important to recognize that members convicted of many offences under the *NDA* are not convicted of an offence where a criminal record is entered, whereas members convicted of *Criminal Code* offences through section 130 of the *NDA* acquire a criminal record which has second-order adverse effects and consequences. This is an important distinction that sets the military justice system apart from the civilian justice system.

[71] Where a member is found guilty of an *NDA* offence set out at subsection 249.27(1), they will not attract a criminal record, unless they receive a sentence from the scale of punishments set out at section 139 that exceeds one or more of the following punishments set out at paragraph 249.27(1)(a):

> (i) a severe reprimand,
>
> (ii) a reprimand,
>
> (iii) a fine not exceeding basic pay for one month, or
>
> (iv) a minor punishment[.]

[72] It is notable that even if the offence is one of the *NDA* offences set out at subsection 249.27(1), if the sentence exceeds the above punishments, then a criminal record will follow.

[73] Although the language in section 203.8 on absolute discharges applies to all offences tried under the *NDA*, I note that at subsection 203.8(3) of the *NDA*, "a reference in any Act of Parliament to a discharge under section 730 of the *Criminal Code* is deemed to include an absolute discharge under subsection 203.8(1)." In aligning the provision directly to section 730 of the *Criminal Code*, the relevant precedents and case law in the application of absolute discharges help inform the application of the identical *NDA* provision. In most cases, the guiding principle in these precedents turn on the implication of the negative and adverse consequences that flow from the entry of a criminal conviction.

[74] Although in substance, offences that do not lead to a criminal record such as offences contrary to section 97 of the *NDA* for drunkenness are not precluded from subsection 203.8(3), pragmatically based on the specific facts, the application of the

Fallofield test may render different results. The analysis in the guiding precedents will often turn on whether the entering of a conviction of the offence would render unduly harsh adverse consequences in relation to the factual circumstances of the case. In most cases, the entering of a conviction for an *NDA* offence will not render the same adverse consequences that flow from having a criminal record and consequently, in many cases, the entering of a conviction might not meet the bar in the *Fallofield* test.

[75] In the evaluation of an absolute discharge, the fact that the offender might avoid punishment for the offence cannot be the sole determinant. The consideration of the offender's best interests extends beyond the mere avoidance of paying a fine or receiving another punishment. An assessment on whether entering a conviction is in the offender's best interests encompasses factors such as rehabilitation, community safety, and the individual's potential for successful reintegration into society. An absolute discharge aims to weigh the broader spectrum of an offender's circumstances, recognizing that optimal outcomes involve more nuanced considerations than the mere absence of having a punishment. In its assessment, the Court must consider factors beyond the fact that the offender avoids punishment.

[76] Every case will turn on its own facts. As an example, in the case of *D'Amico*, although the charge in that case was an *NDA* offence and based on the facts, it would not lead to a *Criminal Code* conviction, the offender was an MP who had just been assigned to an important career posting. Section 5 of the *Military Police Professional Code of Conduct* set out a presumption that an MP is presumed to have discredited the military police in a case where he was convicted at court martial. The potential negative adverse career implications that would flow from the conviction were evident. For that reason, an absolute discharge was entered.

[77] In civilian courts, where offenders are convicted of criminal offences that are considered minor or in cases where the offence is more serious, but the offender was acting out of character, under particular stress or there are other unusual circumstances, a trial judge may direct an absolute discharge. The introduction of absolute discharges in the *NDA* in 2018 marked a crucial step towards aligning the military justice system with the *Criminal Code* and providing service tribunals with the same powers of civilian courts to consider such exceptional circumstances.

[78] The authority for a military judge to consider directing an absolute discharge in the military justice system is particularly important in cases where military members will soon become civilians or have already transitioned to civilian life. The proper consideration of whether absolute discharges are merited in exceptional cases is crucial to avoid unnecessarily burdening military offenders with long-lasting consequences for relatively minor transgressions where they would otherwise be granted an absolute or conditional discharge within the civilian justice system.

[79] By appreciating the specific dynamics of military service and the disciplinary framework in place, military judges must ensure a fair and proportionate legal response that considers both the needs of the military and the rights of the individuals involved.

[80] The severity and nature of the offences, along with considerations of public safety, the impact on victims, and the potential for rehabilitation, will all influence a military judge's decision. It is important to note that each case is unique, and judges carefully weigh various factors before determining an appropriate sentence or discharge. The goal is to achieve a fair and just outcome that reflects the specific circumstances of the case.

[81] In this case, MCpl Goulding was found guilty of three *Criminal Code* offences and one offence contrary to section 97 of the *NDA* for drunkenness all related to incidents on one evening.

[82] Noting the distinction of the second order effect from the entering of a conviction for the *Criminal Code* offences to the entering of a conviction for the non-criminal *NDA* offence of drunkenness, I proceeded with my analysis in a two-stage approach, by firstly considering the *Criminal Code* offences and secondly, I reviewed the *NDA* offence of drunkenness.

Criminal Code offences (charges 2, 4 and 5)

Is a discharge available based on the offence charged?

[83] Under section 203.8 of the *NDA*, for an offence to be eligible for consideration of an absolute discharge, the offence must be one where there is no minimum punishment prescribed by law or not punishable by imprisonment for fourteen years or for life.

[84] For cases of assault, section 266 of the *Criminal Code*, in civilian courts, where the Crown proceeds summarily the statutory range of punishment is from a fine of not more than $5,000, or to a term of imprisonment not exceeding two years less a day, or to both (see subsection 787(1) of the *Criminal Code*). In a case where the Crown proceeds by indictment, an offender is liable to imprisonment for a term not exceeding five years. Since all *Criminal Code* offences tried under the Code of Service Discipline are considered indictable, the upper threshold of five years applies. I find that an absolute discharge is within the range of dispositions available for common assault under section 266 of the *Criminal Code*.

[85] For the offence of assault with a weapon, section 267 of the *Criminal Code*, if the Crown proceeds summarily, the member is liable to a fine of not more than $5,000 or to a term of imprisonment of not more than two years less a day, or to both (see subsection 787(1) of the *Criminal Code*) And where the Crown proceeds by indictment, the range of punishments extends to not more than ten years. Considering that the military justice system always considers the higher end of punishment for an indictable offence, of not more than ten years, I find that an absolute discharge is within the range of dispositions available for assault with a weapon.

[86] Further, in a survey of the cases reviewed, cases that involve findings of guilt of assault or assault with a weapon, the direction of an absolute discharge are not without precedent.

Is it in the best interest of the offender?

[87] The first condition requires that a discharge only be granted where it is in the best interests of MCpl Goulding. As mentioned previously, this presupposes that: the offender is a person of good character; without previous convictions; that it is not necessary to enter a conviction against him to deter him from future offences or to rehabilitate him; and that the entry of a conviction against him may have significant adverse repercussions.

[88] MCpl Goulding provided evidence of the following: the PTSD he has been struggling with; that it pre-existed the time of the incidents; and of the action he has taken to overcome his drinking and PTSD symptoms. He is facing two ARs, any one which could lead to his release from the CAF. The evidence suggests that the incidents on 3 October 2020 were out of character and there is no evidence of any similar incidents either before or since that time.

[89] This Court acknowledged in the decision of *McKie*, at paragraph 36, the specific adverse effects affecting veterans who transition to civilian life while having a criminal record:

> It is no secret that having a criminal record can significantly impact a veteran's ability to successfully transition to civilian life. It can limit job opportunities and restrict access to certain resources and benefits. Additionally, it can negatively impact a veteran's mental health and social connections, further complicating the transition process. Veterans who do not have a criminal record are in a much better position to navigate the challenges of civilian life and take advantage of the opportunities available to them. They are more likely to be able to find stable employment and build healthy relationships with their community.

[90] Overall, the consequences of a criminal conviction in Canada are multifaceted, influencing various aspects of an individual's personal, professional, and social life carrying a range of serious consequences. As an example, individuals with criminal records may face challenges in securing employment, as many employers conduct background checks. MCpl Goulding testified that based on his preliminary research, having a *Criminal Code* record would most likely remove him from consideration for many of the jobs or government services that he would otherwise be qualified for. Additionally, travel restrictions can arise, as some countries such as the United States of America which is a popular destination of choice for Canadians may deny entry to individuals with criminal convictions.

[91] The evidence suggests that since the incidents, MCpl Goulding has felt great shame. He has sought help on multiple levels, stabilized his life, recently got married and he and his family have settled in a neighbourhood where MCpl Goulding has become an active community volunteer readily engaging and helping his neighbours

which appears to be assisting his mental health. In their home, they readily host other youths who are friends with his stepdaughters. I am aware that social stigma and strained personal relationships often accompany a criminal record, affecting one's standing in the community which in this case may also extend to his stepdaughters. I am also aware that many volunteer agencies do criminal background checks.

[92] Based on the evidence before the Court, and the admissions of counsel, MCpl Goulding meets this first condition as it is clearly in his best interests for the Court to consider an absolute discharge. Given his good conduct both prior to this incident and following it, the evidence before me suggests that it is not necessary to enter a conviction against him to deter him from future offences or to rehabilitate him and the entry of a criminal conviction against him would have significant repercussions.

Not contrary to the public interest

[93] The second condition precedent requires the Court to ensure that the granting of an absolute discharge is not contrary to the public interest. "Not contrary to the public interest" is a concept which includes a consideration of the need for the deterrence of others.

[94] The mere fact that the offender was charged, held to account, and was found guilty by a GCM for the three *Criminal Code* offences not only denounces the conduct, but it sends a strong message of general deterrence.

[95] In assessing whether an absolute discharge is not be contrary to the public interest, the Court must examine the nature of the offence, the prevalence of the offence within the CAF community, and whether the circumstances of the offences are something that should be a matter of public record. It is the prosecution's position that this is where the test fails.

[96] In weighing this condition, the Court must first determine whether an absolute discharge poses any significant risk to public safety. Based on MCpl Goulding's pre and post-incident conduct, the testimony from the chain of command represented by CPO2 Daigle, I find that the totality of the evidence suggests that there is not a significant risk to public safety. This was an isolated incident which was also out of character for the offender.

[97] I must also weigh the deterrent effect of the sentence, balancing the need to discourage similar behaviour against the individual circumstances of this case. In this case, if there is an increased likelihood for MCpl Goulding to continue his positive rehabilitation either inside or outside of the CAF, then this is particularly persuasive. Further, the Court must also consider whether it is against the public interest not to warn the public at large about the offender through the recording of a *Criminal Code* conviction on the public record.

[98] In their submissions, it was accepted by counsel that MCpl Goulding poses no risk to the public either now or in the future. Consequently, I see no reason why such a *Criminal code* conviction must be registered to prevent him from committing another offence or to warn the public.

[99] The actual assaults before the Court lasted seconds and involved touching that led to no injury. The events unfolded on an evening at the mess when both MCpl Goulding and several students from the cooks' course were drinking. MCpl Goulding was described as being in a good mood and having fun. This was not a drunken rampage that he engaged in but rather I would describe the incidents as flowing from his level of drunkenness, increasing obnoxious behaviour with a lack of filter that particularly aggravated those students who were sober, who subsequently became the victims.

[100] The factual underpinning of the fifth charge, being assault with a weapon arose when MCpl Goulding tossed a shoe that hit S1 Harris in the face, which left a mark, but no bruising. S1 Harris was the only victim who provided a VIS and he noted that the impact of the assault was more mental and, "It has left me weary and cautious of all members in a leadership role within the CAF. I find it difficult to trust those around me to lead and make decisions that would best help me in my career."

[101] The comments of S1 Harris in his VIS clarify his evidence given at trial and describe the level of discomfort he felt when the incidents unfolded. He told the Court that he was particularly uncomfortable with the intoxication of MCpl Goulding, and he became more uncomfortable with the loud obnoxious comments MCpl Goulding was making to him, which were inappropriate and offensive. He explained that he was doing his best to ignore MCpl Goulding when he felt the shoe hit the side of his face.

[102] The fourth charge related to an incident that unfolded in the men's washroom which started with Pte Telford using the urinal while MCpl Goulding was washing his hands. Although there was some debate as to exactly what was discussed while they were in the bathroom, during that time, MCpl Goulding made derogatory comments regarding the size of Pte Telford's private area and when MCpl Goulding was leaving, he shook Private Telford on the shoulder when he was in a very vulnerable position using the urinal. In coming to their finding, the panel rejected that MCpl Goulding's suggestion that the touch to Pte Telford while he was using the urinal was simply a sign of camaraderie between guys.

[103] The facts underlying charges 4 and 5 unfolded when MCpl Goulding was in what witnesses described as a rowdy and boisterous mood fuelled by alcohol.

[104] The second charge was different. When MCpl Goulding approached the smoking area outside of the student quarters when C.T., who was sober, told MCpl Goulding that he was really drunk, and he probably should not be there. The evidence suggests that these comments agitated MCpl Goulding who viewed the comments by C.T. to be confrontational and insubordinate. A short exchange of words followed when

MCpl Goulding hit C.T. in the private area. C.T. described MCpl Goulding as very drunk, smelling of alcohol and that he could barely understand him.

[105] The Court was asked to take judicial notice of the fact that the CAF is currently undergoing a recruiting and retention crisis. There are many reasons for the crisis, however, the prosecution suggested that the Court should impose strict sanctions to address conduct that might be viewed as aggravating the recruiting and retention crisis. However, I also find that if the court is to consider this as a fact, there is an additional layer that needs to be considered. The way an organization treats its members is also paramount to retention. People will make mistakes and often act in ways that will require disciplinary action. However, the way that this disciplinary process is executed, and its fairness is an important element in retention as there are people observing both inside and outside the organization.

[106] This is a case where MCpl Goulding voluntarily joined the CAF, fulfilling a desire he held from the time he was a young boy. The evidence suggests that aside from the incidents before the Court, he has served his country extremely well, there is no evidence of there being any issues with his conduct either before or after the incidents in question. This is despite his lengthy service, being away at sea on multiple international operations as well as his service in Afghanistan. His current chain of command was unanimous in showing their support for MCpl Goulding which reflects that he is regarded as a positive contributing member of their unit.

[107] In his case, the evidence is unrefuted that MCpl Goulding has been grappling with the enduring effects of PTSD that arose directly from his military service in Afghanistan. I noted earlier that there is no evidence to suggest that the PTSD contributed directly to the incidents, but court martial precedents (*Meeks*, *Simms*) show that members who are suffering from PTSD will engage in the overconsumption of alcohol to subdue their symptoms and seek relief. After the incidents, MCpl Goulding recognized his improper conduct most likely arose from his overconsumption of alcohol, and he reached out for help and fortuitously, his PTSD was discovered which he has now started to address. In addition to the evidence from Dr Rasic, his treating psychiatrist, the letter from Dr Fairfax, Registered Psychologist, confirms that MCpl Goulding has been attending weekly sessions with him and participating in a three-stage treatment protocol namely stabilization and cognitive behaviour therapy. He noted in his letter that MCpl Goulding is eager to begin trauma work through cognitive processing therapy shortly.

[108] Although there are few courts martial precedents to rely upon, I find that after the review of case law provided by defence that if these charges would have been pursued in the civilian justice system, MCpl Goulding would most likely be afforded an absolute discharge. Although the demands of military service require the pursuit of greater discipline, resulting in more charges and often stiffer penalties, it is imperative to separate the imposition of tough punishments with the adverse effects that flow from the entering into one’s record a *Criminal Code* conviction that will linger longer than any punishment.

[109] A VAC disability assessment of eighty-one per cent reflects the significant cost MCpl Goulding has suffered because of his service. It is imperative that members such as he be afforded the full spectrum of rights they would otherwise be afforded in civilian courts. Denying them these rights within the military justice system not only undermines the principles of justice but also contradicts the public interest and runs counter to the image that all members will be treated fairly, according to the law they serve to protect. Recognizing and addressing the psychological toll of certain types of service experiences is crucial in maintaining a just and compassionate society. Affording veterans their rightful legal protections ensures that those who sacrificed for the greater good are treated fairly and contribute to a societal ethos that values and upholds the principles of justice, even in the face of the unique challenges posed by military service.

[110] Not all our veterans and service members are heroes and when they act in a manner that is contrary to discipline, they must be held accountable and when they are tried, they are entitled to the same rights that exist for their civilian counterparts.

[111] It is notable that since the incidents before the court, MCpl Goulding has done everything possible to address the underlying issues that led to the three *Criminal Code* charges before the Court and embarked on rehabilitation that has been consistent and successful to date, with no setbacks. The evidence suggests that not only can MCpl Goulding continue the path of successful rehabilitation, but he also has both the desire and the skill set to continue to serve in the CAF in a meaningful way, which in a force currently strained due to lack of personnel, is desirable. By treating offenders such as MCpl Goulding fairly while rehabilitating them, serves both the best interests of the CAF and Canadian society.

[112] The above considerations have collectively assisted the Court in determining that based on the facts of this case, the directing of an absolute discharge on the three *Criminal Code* charges is not contrary to the public interest.

Drunkenness (charge 6)

Is a discharge available based on the offence charged?

[113] Section 97 of the *NDA* sets out the offence of drunkenness, which is an offence whereupon conviction, a member is liable to imprisonment for less than two years or to less punishment. It clearly qualifies as an offence where an absolute discharge is available.

Is it in the best interest of the offender?

[114] As highlighted above, the first condition requires that a discharge only be granted where it is in the best interests of MCpl Goulding. As mentioned previously, this presupposes that the offender is a person of good character, without previous

convictions, that it is not necessary to enter a conviction against him to deter him from future offences or to rehabilitate him, and that the entry of a conviction against him may have significant adverse repercussions.

[115] I am aware that it is not a prerequisite to imposing a discharge that there be significant adverse consequences such as the loss of employment (see *R. v. Myers*, (1997), 1977 CanLII 1959 (ON CA), 37 C.C.C. (2d) 182 (Ont. C.A.)). In *Myers*, the Court found that based on the facts before them, simply the entering of a *Criminal Code* conviction against the offender was sufficient. However, it is notable that the entering of a conviction of a *NDA* offence does not lead to the same level of adverse repercussions as the entering of a *Criminal Code* conviction.

[116] I find that based on the facts before the Court, if MCpl Goulding is convicted of the offence of drunkenness, based on paragraph 249.27(1)(a) of the *NDA* set out above, any punishment that I would consider would not elevate the offence to one in which a criminal record would be entered.

[117] Given the nature of the offence of drunkenness, there will be no entry of a conviction that will result in a criminal record. Consequently, I must then assess whether the entry of a conviction of the offence of drunkenness will have significant adverse repercussions in any other format.

[118] Based on the evidence of Mr Monk, I find that if a conviction is entered on the offence of drunkenness, it will have little effect on his ongoing Ars being conducted by DCMA. The reason for this is that an absolute discharge still acknowledges the findings of guilt as determined by the GCM, and Mr Monk made it clear that it is the underlying facts that are proven to the balance of probabilities that will be considered by DCMA.

[119] Based on the evidence before me, I find this case is unlike the situation in *D'Amico* where the mere entry of a conviction at court martial could lead to an adverse repercussion for the member's career. I do not have sufficient evidence before me to suggest that aside from the personal benefit of avoiding the punishment that flows from a conviction that directing an absolute discharge is in the member's best interest.

Not contrary to the public interest

[120] Although the Court is not required to assess the second condition, out of an abundance of caution, I reviewed it.

[121] In this case, the evidence suggests that it was the offensive nature of MCpl Goulding's drunken conduct that eclipsed the relatively minor severity of the physical assaults. What made the drunkenness particularly egregious was the context in which it occurred which was between an instructor and his highly impressionable students.

[122] I note that the assaults were preceded by insulting and degrading comments made by MCpl Goulding. In fact, several witnesses testified that it was MCpl

Goulding's level of intoxication that made them most uncomfortable. The subsequent assaults, while minor, were magnified by the toxic environment created by the drunken conduct of MCpl Goulding which based on the evidence, caused more harm than the actual touching.

[123] The cumulative effect of the offensive comments underscores the gravity of the drunken behaviour which was the catalyst for the conditions that led to the assaults. Given that the public interest arguments that exist in cases where the entry of a conviction leads to a criminal record do not apply directly here, the public interest rests with MCpl Goulding's rehabilitation which will be directly linked to his ability to control his alcohol consumption. Having a record on his conduct sheet will not serve as a detriment to this, but rather it will be a reminder of his need to stay the course.

Appropriate sentence

[124] Based on the facts linked directly to the drunkenness, I find that it is appropriate for the Court to impose a severe reprimand. Based on the scale of punishments set out within the *NDA*, the imposition of a severe reprimand is reserved for serious offences. A severe reprimand is intended to send a message to the larger community and the unit that conduct for which the offender has been found guilty is unacceptable and will be punished. It is intended to be a stain that stays on the member's record for the foreseeable future. There is merit to the imposition of such a punishment to ensure that the objectives of denunciation, general and specific deterrence are met.

[125] Further, the imposition of a significant fine as a punishment serves as a powerful deterrent. The prospect of substantial financial consequences operates as a compelling disincentive, dissuading individuals from engaging in such drunken behaviour. Unlike other forms of punishment, a substantial fine will directly impact MCpl Goulding creating a tangible and immediate consequence for his conduct. I must impose a fine that discourages this type of misconduct but also sends a clear message to the broader community about the severity of repercussions for violating established norms.

Final comments

[126] MCpl Goulding, you have been found guilty of several offences stemming from an unacceptable low in your conduct on one evening in October 2020, when you chose to indulge in excessive drinking in the presence of your influential students. This display of unprofessionalism not only tarnished the reputation of the school, but also the cook trade itself. More importantly, it raised serious questions about your ability to lead which is why the prosecution sought a reduction in rank.

[127] To compound matters, your actions while drunk exhibited what I would describe as inappropriate and harassing behaviour towards those who looked up to you for guidance. Such conduct not only undermines the principles of a healthy work environment but also erodes the trust that should exist between those in a leadership position and their subordinates.

[128] You need to take the time to reflect on the impact of your actions and understand why the events in question resulted in a breach of trust and professional standards. By doing so, you will be able to move forward in a productive way.

[129] However, you do need to be applauded for picking yourself up, seeking help and doing everything possible to remedy your personal situation. We are all inspired by the fact that since this incident you have been seeking professional help, medically, in counseling and therapy to address the underlying issues that may have contributed to such behaviour. You have made immense strides towards self-improvement, and I truly hope that you will continue this journey and path to self-improvement.

[130] Thank you for your service and I wish you the best moving forward.

FOR THESE REASONS, THE COURT:

[131] **DIRECTS** that MCpl Goulding be discharged absolutely on charges 2, 4 and 5 before the Court.

[132] **SENTENCES** MCpl Goulding to a severe reprimand and a fine in the amount of $4,800 for charge 6, drunkenness, which is payable in twelve monthly instalments of $400 per month, starting on 1 December 2023. In the event you are released from the CAF for any reason before the fine is paid in full, then the outstanding balance is to be paid the day prior to your release.

Counsel:

The Director of Military Prosecutions as represented Majors M. Reede and R. Gallant, Captains I.M. Shaikh and A. Gagné

Captain C. Da Cruz and Lieutenant-Colonel A. Bolik, Defence Counsel Services, counsel for Master Corporal B. Goulding