



COURT MARTIAL

Citation: *R. v. Bilodeau*, 2014 CM 4014

Date: 20141124

Docket: 201437

Standing Court Martial

Canadian Forces Base Petawawa Petawawa,
Ontario, Canada

Between:

Her Majesty the Queen

- and -

Corporal J.D.F. Bilodeau, Offender

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

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR SENTENCE

[1] Corporal Bilodeau, having accepted and recorded your guilty plea on the first and second counts in the charge sheet, the Court finds you guilty of these charges under section 129 of the *National Defence Act (NDA)*, for conduct to the prejudice of good order and discipline.

[2] It is now my duty as the military judge presiding over the Standing Court Martial to pass sentence. In my deliberations, I considered the sentencing principles that apply to criminal courts in Canada, as well as to the courts martial. I also considered the relevant facts in this case as set out in the statement of facts read by counsel for the prosecution, the summary of facts submitted by counsel for the defence and the evidence filed at the sentencing hearing. I also took the oral arguments of counsel, for the prosecution and for the defence, into consideration.

[3] The military justice system is the ultimate means to enforce discipline in the Canadian Forces and is a fundamental element of military life. The goal of this system

is to reinforce positive behaviour while adequately penalizing those who engage in misconduct. It is through discipline that an armed force ensures that its members carry out their missions successfully, in a reliable and trustworthy manner. By ensuring that persons subject to the Code of Service Discipline can be punished, this system serves the public interest in seeing the law enforced.

[4] It has long been recognized that the purpose of a system of military justice or courts is to allow the Canadian Forces to deal with matters that pertain to the Code of Service Discipline so as to foster the effectiveness and morale of the troops.

[5] As the Supreme Court of Canada recognized in *R. v. Généreux*, [1992] 3 SCR 259 at page 293,

[t]o maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently.

On the same page, it emphasized that in the particular context of military justice,

[b]reaches of military discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct.

[6] That said, any punishment to be imposed by a court, civilian or military, should constitute the minimum necessary intervention in the specific circumstances of any case. Indeed, moderation is the bedrock principle of the modern theory of sentencing in Canada. What the sentencing judge must do is pass a sentence that is proportionate to the gravity of the offence and the degree of responsibility of the offender, as specified in the *Queen's Regulations and Orders for the Canadian Forces (QR&O)*. In other words, all sentences must be tailored to the individual offender and the offence that he or she committed.

[7] The fundamental purposes of sentencing are to promote the operational effectiveness of the Canadian Forces by contributing to the maintenance of discipline, efficiency and morale; and to contribute to respect for the law. These fundamental purposes can be achieved by imposing sanctions that have one or more of the following objectives:

- (a) to protect the public, which includes the Canadian Forces;
- (b) to denounce unlawful conduct;
- (c) to deter the offender and other persons from committing offences;
- (d) to provide reparations for harm done to victims or to the community;
- (e) to separate offenders, if necessary, from other officers or non-commissioned members or from society generally; and

- (f) finally, to reintegrate offenders into society or military life.

[8] When imposing sentences, a military court also takes into consideration the following principles:

- (a) parity in sentencing, that is, given that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of an offender, it should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (b) a sentence should be the least severe sentence required to maintain discipline, efficiency and morale;
- (c) an offender should not be deprived of liberty by imprisonment or detention if less restrictive sanctions may be appropriate in the circumstances;
- (d) any indirect consequences of the finding of guilty or the sentence should be taken into consideration; and
- (e) finally, the sentence will be adjusted to account for any relevant aggravating or mitigating circumstances relating to the offence or to the offender.

[9] I came to the conclusion that in the circumstances of this case, sentencing should focus on the objectives of denunciation and general and specific deterrence, as the sentence imposed should deter not only the offender but also others in a similar situation who could be thinking of committing the same type of offence.

[10] As was mentioned earlier, a judge must impose sentences that are similar to those imposed on similar offenders. Corporal Bilodeau is 31 years old. He joined the Regular Force on July 20, 2011, after several years in the First Reserve with the Fusiliers de Sherbrooke. Since November 2012, he has been serving as a vehicle technician with 2 Service Battalion right here at Petawawa Garrison. He is unmarried and lives at the Garrison. Corporal Bilodeau filed a statement of facts in which he says that he regrets his actions, which have no place in society, let alone in the Canadian Armed Forces.

[11] An agreed statement of facts was read by counsel and accepted as true by Corporal Bilodeau. The circumstances of the offences are as follows:

- (a) In February 2014, Corporal Bilodeau was part of a group of vehicle technicians receiving on-the-job training with the 1st Battalion, Royal Canadian Regiment, at Petawawa Garrison.
- (b) On February 24, 2014, a female colleague having the rank of private was taking attendance in front of the group. When she looked at

Corporal Bilodeau, he said to her, in English, “What the fuck are you looking at? My dick is down here”. Corporal Bilodeau then pointed at his genitals with his hand.

- (c) On February 28, 2014, Corporal Bilodeau came up to this same female colleague with a piece of wood in his hand and tried to smack her bottom with it. She said three times that she did not want to be hit. Corporal Bilodeau nevertheless hit her on her bottom with the piece of wood. The colleague told him that these actions were inappropriate and unwelcome.
- (d) Corporal Bilodeau admitted the facts of the incidents to the persons in charge of the training. The Warrant Officer in charge asked him to apologize to his colleague, which he did a few minutes later. Corporal Bilodeau was taken out of the training at the 1st Battalion, Royal Canadian Regiment, and returned to his unit.

[12] In its assessment of what would be a fit and just sentence, the Court considered the objective seriousness of the offence, which under section 129 of the *National Defence Act* is punishable by dismissal with disgrace from Her Majesty's Service or to less punishment.

[13] In the circumstances of this case, the Court finds the subjective seriousness of the offences to be an aggravating factor, in that the offences were committed in the context of a training program and, in at least one instance, in front of a group of Forces members. Sexually harassing a work colleague is contrary to military ethics and the right of all Canadian Forces members to be treated fairly, respectfully and with dignity in a workplace free of harassment, as well as being contrary to their responsibility to treat others the same way, which is an important condition of service in the Canadian Armed Forces.

[14] Although no evidence was submitted on any impact the harassing remarks and actions may have had on the colleague, it appears from the facts that the offences did have an impact on the unit in which both of them were serving at the time of the incidents, as well as on their home unit, if for no other reason than that it was necessary to conduct an investigation and take certain administrative measures regarding the offences. The Court also considered Corporal Bilodeau's conduct sheet, which contains a prior conviction for drunkenness in 2007, although the lack of details on the circumstances of that offence make it impossible to brand the offender as a repeat offender.

[15] The Court also considered the following mitigating facts, as mentioned in the oral arguments of counsel and illustrated by the evidence introduced at the sentencing hearing, primarily by counsel for the defence:

- (a) first and foremost, there is the offender's guilty plea, which the court considers as a sign of remorse, and the evidence as set out in the statement that he accepts responsibility for his actions. Corporal Bilodeau gave his plea without delay, thus avoiding the expense of a trial;
- (b) despite my previous observations regarding the subjective seriousness of the sexual harassment offences, the fact remains that the evidence is indicative of immature, unpremeditated behaviour on the part of Corporal Bilodeau, who did not behave as a sexual predator in any way. As counsel mentioned, the circumstances place the offences at a rather low level on the scale of the seriousness of offences of conduct to the prejudice of good order and discipline;
- (c) there is also Corporal Bilodeau's performance and length of service in the Canadian Forces. A letter from a supervisor and personnel development reviews entered in evidence show that Corporal Bilodeau is a vehicle technician who has a positive attitude and is someone on whom his colleagues can generally rely; and
- (d) finally, there is the potential of the offender, who evidently can continue to contribute to Canadian society and the Canadian Armed Forces, as it seems to have been recognized from the fact that he successfully completed the period of supervision and conduct evaluation that was imposed on him as an administrative measure after the incidents.

[16] The prosecution and the defence presented a joint submission on sentencing to the Court. Counsel recommend that the interests of justice would be served if this Court imposed a sentence consisting of a fine of \$1,000. Since the Court has sole discretion in sentencing, it is not bound by such a joint submission. However, the Court is required to give the proposed sentence serious consideration, as the Court Martial Appeal Court (CMAC) decided in *R. v. Taylor*, 2008 CMAC 1 at paragraph [21]:

The sentencing judge should depart from the joint submission only when there are cogent reasons for doing so. Cogent reasons may include, among others, where the sentence is unfit, unreasonable, would bring the administration of justice into disrepute or be contrary to the public interest.

[17] In the present case, the Court considered the only case specifically submitted by counsel, namely, *R. v. Cpl J.F. Turgeon*, 2006 CM 1020, which dealt with a charge of sexual harassment. The discussion with counsel regarding that case allows me to adequately assess what type of penalty would be the appropriate sentence for Corporal Bilodeau in the circumstances of this case. Considering the nature of the offences, the circumstances in which they were committed, the applicable sentencing principles, including a sentence imposed by a court martial on another offender for a similar offence, and the aggravating factors and mitigating factors previously

mentioned, I find that the sentence proposed jointly by counsel is within a range of appropriate sentences in the circumstances of this case. The joint submission by counsel is not unreasonable, nor is it likely to bring the administration of justice into disrepute. I will therefore agree to approve it.

[18] Corporal Bilodeau, the circumstances of the offences that you admitted having committed show that you behaved in a manner that is completely unacceptable for a member of the Canadian Forces. I think you understood that. I hope that from now on you will be able to realize your full potential and that you will do everything possible so that I will be last person in authority to have to punish you for this sort of behaviour.

FOR THESE REASONS, THE COURT:

[19] **FINDS** Corporal Bilodeau guilty of the two charges of conduct to the prejudice of good order and discipline filed under section 129 of the *National Defence Act*.

[20] **SENTENCES** him to a fine of \$1,000, payable in five equal instalments of \$200 per month, beginning no later than January 1, 2015, with the total amount to be paid in full by July 1, 2015, or at the time of your release from the Regular Force, whichever is sooner.

Counsel:

Major J.E. Carrier, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Lieutenant-Commander P.D. Desbiens, Defence Counsel Services
Counsel for Corporal J.D.F. Bilodeau