



## COURT MARTIAL

**Citation:** *R. v. Mann*, 2010 CM 2013

**Date:** 20100825

**Docket:** 201028

Standing Court Martial

Canadian Forces Base Borden  
Borden, Ontario, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Leading Seaman J.G. Mann, Offender**

**Before:** Commander P.J. Lamont, M.J.

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### REASONS FOR SENTENCE

(Orally)

[1] Leading Seaman Mann, having accepted and recorded your plea of guilty to the this charge, a charge of conduct to the prejudice of good order and discipline, this court now finds you guilty of the first charge.

[2] It now falls to me to determine and to pass a sentence upon you. In so doing, I have considered the principles of sentencing that apply in the ordinary courts of criminal jurisdiction in Canada and at courts martial. I have, as well, considered the facts of the case as described in the Statement of Circumstances, Exhibit 6, and the other materials submitted in the course of this hearing; as well as the submissions of counsel, both for the prosecution and for the defence.

[3] The principles of sentencing guide the court in the exercise of its discretion in determining a fit and proper sentence in an individual case. The sentence should be broadly commensurate with the gravity of the offence and the blameworthiness or degree of responsibility and character of the offender. The court is guided by the sentenc-

es imposed by other courts in previous similar cases, not out of a slavish adherence to precedent, but because it appeals to our common sense of justice that like cases should be treated in similar ways. Nevertheless, in imposing sentence the court takes account of the many factors that distinguish the particular case it is dealing with, both the aggravating circumstances that may call for a more severe punishment and the mitigating circumstances that may reduce a sentence.

[4] The goals and objectives of sentencing have been expressed in different ways in many previous cases. Generally, they relate to the protection of society, which includes, of course, the Canadian Forces, by fostering and maintaining a just, a peaceful, a safe, and a law-abiding community. Importantly, in the context of the Canadian Forces, these objectives include the maintenance of discipline, that habit of obedience which is so necessary to the effectiveness of an armed force.

[5] The goals and objectives also include deterrence of the individual so that the conduct of the offender is not repeated and general deterrence so that others will not be led to follow the example of the offender. Other goals include the rehabilitation of the offender, the promotion of a sense of responsibility in the offender, and the denunciation of unlawful behaviour. One or more of these objectives will inevitably predominate in crafting a fit and just sentence in an individual case, yet it should not be lost sight of that each of these goals calls for the attention of the sentencing court, and a fit and just sentence should reflect a wise blending of these goals tailored to the particular circumstances of the case.

[6] As I told you when you tendered your plea of guilty, section 139 of the *National Defence Act* prescribes the possible punishments that may be imposed at court martial; those possible punishments are limited by the provision of the law which creates the offence and provides for a maximum punishment. Only one sentence is imposed upon an offender whether the offender is found guilty of one or more different offences, but the sentence may consist of more than one punishment. It is an important principle that the court should impose the least severe punishment that will maintain discipline.

[7] In arriving at the sentence in this case, I have considered the direct and indirect consequences for the offender, of the findings of guilt and the sentence I am about to pronounce.

The facts of this case are not complicated; they are disclosed in the Statement of Circumstances, Exhibit 6. After a night of socializing and drinking and returning to the base, the offender encountered a group of other individuals, apparently in a social setting, amongst whom was the complainant in this case, Private Korolyk. There is no evidence before me of any previous association, whether social, professional or otherwise between the offender and Private Korolyk. The offender repaired at his request to a couch to sleep. At some stage, Private Korolyk approached him and offered a blanket for his comfort. At that stage, it appears the offender grabbed Private Korolyk, pulled her towards him, suggesting that she could be the blanket. Private Korolyk obviously objected to this behaviour; she said no and attempted to get up, at which point the of-

fender apparently put his hand down the back of Private Korolyk's shorts, grabbing Private Korolyk by the buttocks. She screamed, at which point he released his grip and Private Korolyk escaped.

[8] I have no hesitation in concluding on these facts the offence as described and as charged of sexual harassment of Private Korolyk was committed by the offender.

[9] On these facts, counsel before me jointly recommend a sentence of a reprimand and a fine in the amount of \$1,000. As counsel have pointed out, the matter of a fit sentence is the responsibility of the court to determine and to pass, but where, as in this case, both parties agree on a recommended disposition, that recommendation carries considerable weight with the court. The Courts of Appeal across Canada, including the Court Martial Appeal Court in the case of *Private Chadwick Taylor*, have held that the joint submission of counsel as to sentence should be accepted by the court unless the recommended sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[10] The evidence before me establishes that the offender is a junior member of the Canadian Forces, who, so far as the court is aware, is making his first appearance before a court martial, and this is his first involvement in the military justice system. He has pleaded guilty to this offence, which in addition to avoiding the use of public resources in the conduct of a trial, also spares the complainant in this case the requirement to testify in a public forum. I am satisfied on the evidence before me that the accused is generally remorseful for his conduct, and it seems to me on all the circumstances that his misconduct, as exemplified in this case, is most unlikely to be repeated in the future.

[11] Considering all the circumstances, both of the offence and of the offender, I cannot say that the disposition proposed jointly by counsel would either bring the administration of justice into disrepute or is otherwise contrary to the public interest, and I, therefore, accept the joint submission.

[12] Leading Seaman Mann, you are sentenced to a reprimand and a fine in the amount of \$1,000. The fine is to be paid in equal monthly instalments of \$250 each, commencing 1 October 2010 and continuing for the following three months. In the event you are released from the Canadian Forces for any reason before the fine is paid in full, the then outstanding unpaid balance is due and payable the day prior to your release.

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**Counsel:**

Captain R.D. Kerr, Canadian Military Prosecution Service  
Counsel for Her Majesty the Queen

Captain S.L. Collins and Captain D.M. Hodson, Directorate of Defence Counsel Services  
Counsel for Leading Seaman J.G. Mann