



## COURT MARTIAL

**Citation:** *R. v. Wesley*, 2010 CM 2014

**Date:** 20100826

**Docket:** 201025

Standing Court Martial

Canadian Forces Base Borden  
Borden, Ontario, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Ordinary Seaman J.T.K. Wesley, Offender**

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

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**Restriction on publication:** By court order made under section 179 of the *National Defence Act* and section 486.4 of the *Criminal Code*, information that could disclose the identity of the person described in this judgement as the complainant shall not be published in any document or broadcast or transmitted in any way.

### **REASONS FOR SENTENCE**

(Orally)

[1] Ordinary Seaman Wesley, having accepted and recorded your pleas of guilty to the second charge, the fourth charge, and the sixth charge; being two offences of behaving in a disgraceful manner and one charge of failing to comply with a condition imposed under Division 3, this court now finds you guilty of the second charge, the fourth charge, and the sixth 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 3, and the other materials submitted during 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 sentences 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 circumstances of a particular case.

[6] As I told you when you tendered your pleas 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 impose.

The facts of this case are not complicated and are set out in Exhibit 3, the Statement of Circumstances.

Briefly put, on two separate occasions, some weeks apart, the offender acted in a sexually aggressive way towards two different members of the Canadian Forces. On the first occasion, the other member was asleep in his rack; on the second occasion, the member was outside a mess facility. On the second occasion, although alcohol appears to have been involved in both occasions, on the second occasion the offender's condition was described as intoxicated.

As a result of her arrest on the first charge, she was released on terms imposed by the custody review officer that required her to abstain from the consumption of alcohol. Thus, the guilty pleas tendered by the accused are fully supported by the facts adduced in the Statement of Circumstances in this case.

[8] Counsel before me jointly recommend a sentence of a reprimand and a fine in the amount of \$1500. As counsel have pointed out, the sentence to be pronounced is, of course, a matter for the court, 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*, 2008, CMAC 1, 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.

[9] Both counsel before me have referred to the aggravating and mitigating circumstances in this case. I have chosen to put particular emphasis on one mitigating circumstance in particular, and that is the evidence I have before me of the difficulties of a psychological nature that the offender was undergoing at the time of the commission of these offences. I am especially impressed with the report of the psychologist before me, which demonstrates that the offender has made great progress towards dealing with difficulties, which seem to me to be in large part attributable to the excessive consumption of alcohol. Ordinary Seaman Wesley, you are to be commended for realizing the source and cause of the behaviours that bring you before the court today. I am confident that you are well on the road to putting those difficulties behind you and that you can look forward to a long and successful career in the Canadian Forces in your chosen trade of steward.

[10] Considering all the circumstances, both of the offences 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.

[11] Ordinary Seaman Wesley, you are sentenced to a reprimand and a fine in the amount of \$1500. The fine is to be paid in monthly instalments of \$500 each, commencing 1 October 2010 and continuing for the following two 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 to be paid and discharged in full the day prior to your release.

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**Counsel:**

Captain M. Pecknold and 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 Ordinary Seaman J.T.K. Wesley