

**Citation:** *R. v. Sergeant D.A. Schaefer*, 2008 CM 1006

**Docket:** 200758

**STANDING COURT MARTIAL  
CANADA  
AREA SUPPORT UNIT CHILLIWACK  
CHILLIWACK  
BRITISH COLUMBIA**

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**Date:** 13 March 2008

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**PRESIDING: COLONEL MARIO DUTIL, CHIEF MILITARY JUDGE**

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**HER MAJESTY THE QUEEN**

**v.**

**SERGEANT D.A. SCHAEFER  
(Offender)**

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**SENTENCE  
(Rendered Orally)**

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[1] Sergeant Schaefer, the Court having accepted and recorded a plea of guilty to the first charge to the lesser and included offence of assault and having accepted and recorded a plea to the second charge for the offence of assault, the court finds you guilty of these charges accordingly.

[2] It has been long recognized that the purpose of a separate system of military justice is to allow the Armed Forces to deal with matters that pertain directly to discipline, efficiency and morale of the military. It is also recognized that in the military context sometimes a sentence may be more severe than if it would be committed in a purely civilian context in order to promote the necessary military objectives. That being said, the punishment imposed by any tribunal, military or civil, should constitute the minimum necessary intervention that is adequate in the particular circumstances. As said yesterday in another matter, sentencing is an individualized process. It means that the sentence must fit the crime but it must also fit the offender. It is a balancing exercise which is always the most difficult task for any judge.

[3] In determining sentence today, the Court has considered the circumstances surrounding the commission of the offences as revealed by the statement of circumstances that you have accepted as conclusive evidence. The events supporting

the charges indicate that during the afternoon of 29 June 2006 you attended a social function with other members of your unit at the Combined Mess Bar. Alcohol was available throughout the event and at the time you were employed as a supervisor in the Maintenance Section of Area Support Unit Chilliwack. During the event, one of the Maintenance Section Employee, Mr Delory, started a dispute with the offender over mess traditions. It became personal and intense, as it had happened before apparently between the two individuals. Later during the evening, as they had both been drinking heavily, Mr Delory started again his personal verbal attacks against Sergeant Schaefer regarding work-related issues. Sergeant Schaefer reacted angrily and forcefully and the dispute again became intense. One hour later, Mr Delory, again, accused Sergeant Schaefer of work improprieties. The argument became, once again intense, but this time Sergeant Schaefer grabbed his accuser, Sergeant Hernandez and Corporal Coombs who witnessed the altercation immediately separated them. As Sergeant Hernandez stepped forward, the offender pushed Mr Delory away where he ended going head first into the canteen table. Sergeant Schaefer turned to face Sergeant Hernandez and punched him three times before Corporal Coombs intervened. They all fell on the floor piled up with Mr Delory at the bottom. As a result of the fight, Mr Delory suffered a cut on the chin requiring sutures and other lacerations and bruising. Mr Delory remained off work on sick leave for a period of approximately seven weeks. Sergeant Hernandez suffered a cut lip and chipped teeth, I don't know how many, that required dental treatment.

[4] The court has listened carefully to the evidence heard during the sentencing hearing from Major Yost, Master Warrant Officer Villeneuve and your current commanding officer, Major Gibbs. It is clear that Master Warrant Officer Villeneuve and Major Yost had different views and perspectives concerning the seriousness of these events and their overall effect on the unit. Although nothing was practically done for about 50 days, Master Warrant Officer Villeneuve as the head of the Maintenance Section treated this incident as a physical altercation between co-workers, albeit Sergeant Schaefer was holding a higher position than Mr Delory. He went on to meet Mr Delory at his own residence in order to enquire as to his physical and medical condition as well as inquiring whether Mr Delory wished to lay a formal complaint against Sergeant Schaefer, which, according to the master warrant officer, was not his intention. The unit authorities waited for Mr Delory's return and then some steps—agreed to by Sergeant Schaefer—were taken to resolve the matter administratively through the Alternate Dispute Resolution Process. Although Major Yost stated that Mr Delory did not want to do it, Master Warrant Officer Villeneuve said that both Schaefer and Delory were willing to participate. However, on his return to work after a period of seven weeks, Mr Delory expressed his intention to resign. The commanding officer then took formal steps starting with the request to conduct a police investigation and the separation of both individuals in the work place. This led ultimately to charges being laid, Sergeant Schaefer placed on Counselling and Probation for Alcohol Misuses and a posting to ASU Calgary in summer of 2007. Major Yost testified that Mr Delory did not want to see Sergeant Schaefer because he was afraid of

him. That is not supported by the evidence; only Mr Delory could tell the profound reasons as to why he did not want to see the offender. Major Yost testified also that he did believe that Sergeant Schaefer was not remorseful for what happened and that he felt he had to support Mr Delory in this event. Major Yost added that this incident was being looked at by the civilians working in this unit, approximately 24 individuals, and that he felt concerned for the safety of the civilians under his direction. However the court noted that this is the first and only incident of that nature to have happened here and the only one incident of violence involving the offender during his career of over 33 years in the Canadian Forces. Based on the evidence before this court, there is absolutely no support to the proposition that civilians or military personnel safety were at risk in the workplace. If speculations, hearsay or innuendos from the staff led to that belief, someone in authority should have corrected the facts straight up, get people to work together, stop speculating and wait for the outcome or the pending completion of the administrative and disciplinary processes. With regard to the evidence of Major Gibbs, it clearly indicates that Sergeant Schaefer was transparent upon arrival about this incident at his unit and that he has performed in an outstanding manner since. Sergeant Schaefer has demonstrated excellent performance and leadership in a variety of situations, including in social settings. He is extremely well appreciated in his new workplace. And finally the court has considered, of course, the documentary evidence that was files during the sentencing hearing by both Mr Prosecutor and Madam Defence Counsel. This entire evidence was assessed in light of the applicable sentencing principles including those set out in section 718, 718.1 and 718.2 of the *Criminal Code* when they are not incompatible with the sentencing regime provided under the *National Defence Act*. Finally, the Court has considered very carefully the representations made by both counsel including the case law provided to the court.

[5] In order to contribute to military discipline, the sentencing principles and objectives could be listed as:

firstly, the protection of the public and this includes the Canadian Forces;

secondly, the punishment and the denunciation of the unlawful conduct;

thirdly, the deterrence of the offender and other persons from committing similar offences;

fourthly, the separation of offenders from society, including from members of the Canadian Forces, where it is necessary;

fifthly, the rehabilitation of offenders;

sixthly, the proportionality to the gravity of the offence and the degree of responsibility of the offender;

seventhly, the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; and

eighthly, and offender should not be deprived of liberty, if less restrictive punishment or combination of punishments may be appropriate in the circumstances.

After all that, of course the court has to consider any relevant aggravating or mitigating circumstances relating to the offence and to the offender and, of course, those principles will vary from case to case. Some will have precedence over others depending of the seriousness of the crime and the circumstances of the crime.

[6] Counsel for the prosecution recommends that the sentence should emphasize the principles of general deterrence, denunciation and punishment mainly because the nature of the offence and the surrounding circumstances were that a senior NCO having command responsibility and being the Mess PMC had attacked a civilian employee and another senior NCO in a social setting in the presence of subordinates and other employees. The prosecution asks the court to impose the punishment of detention for a period of 14 days in order to repair the damage done to the unit, restore discipline and confidence in the chain of command. The defence asks the court to impose a severe reprimand and a fine between 2500 and 3000 dollars. The court believes that the primary objectives should emphasize general deterrence and the denunciation of the unlawful conduct in order to ensure the protection of the public and the Canadian Forces. Those principles must however be weighed with every other sentencing principle and objective that apply in this context.

### **Aggravating Factors**

[7] The Court considers to be aggravating:

1. The objective gravity of this offence. A person found guilty of assault under section 266 of the *Criminal Code* is liable to imprisonment for a period of five years and it is, per se, a serious offence.
2. The position of leadership that Sergeant Schaefer occupied at the time and the exemplary conduct that is expected of senior leaders when they participate in social events within or outside military establishments. I agree with the prosecution that your voluntary intoxication aggravates the sentence in this particular set of circumstances.
3. I consider to be aggravating your rank and experience in the Canadian Forces.

4. The disruption and direct impact that your actions caused to your unit. On this point, however, the court believes that this situation should have been handled rapidly and firmly in order to avoid the poisoning of the workplace.

### **Mitigating Factors**

[8] The Court considers the following factors to mitigate the sentence:

1. The fact that you have acknowledged full responsibility for your actions by pleading guilty before this court for these offences. I do consider that your plea of guilty is a genuine sign of remorse and that all the steps taken as a result of your misconduct, such as your Anger Management course, your attendance at the Middle Management course and your willingness to participate at the earliest stage to the ADR process corroborate that. The prosecution made a comment to the effect that there was no evidence that you even offered an apology to Mr Delory. It may be the case but once someone is told to stay away from the victim, is willing to participate in ADR but the process is shut down before it starts, it seems difficult to offer such an apology. For those who doubt about your sincerity on the remorse, they may not have seen the tears in your eyes when counsel were making their submissions, but I did.
2. I consider mitigating your previous record in the Canadian Forces and it is really clear. You have had 33 years of exemplary service and you continue to perform in an outstanding manner with your new unit who truly appreciates your efforts. You are also very dedicated to the Canadian Forces throughout your work, but you are also very supportive of your subordinates and involved in your community. But you may have to think that in a professional career someone will find more satisfaction depending with whom you work with as opposed to where you work.
3. I consider mitigating the fact that the evidence clearly indicates that this event was completely out of character and that you never displayed any signs of violence in the past.
4. Your absence of conduct sheet or criminal record.

5. The fact that your actions were the result of serious and persistent provocation from the victim himself who was as intoxicated as you were.
6. The fact that you have been posted outside of this unit and been subject to administrative sanctions as a result of your actions.
7. The delay since the commission of the offence and the reasons for that delay as explained by the evidence of Master Warrant Officer Villeneuve and that of Major Yost.

[9] Your counsel provided the court with various cases in support of her submissions and I agree with the prosecution, there is no precedent that truly compares to this case. Major Yost said himself that it is the first time in his career that he sees a case like this. In other words, the evidence does not support the likelihood that a similar scenario is foreseeable in a distant future, neither here or in any other unit. However, it is not necessary to be in the presence of a pattern of similar incidents before stressing the need for general deterrence and denunciation. These principles must be emphasized in cases such as this one. However, it is not the role of this court to correct the damage done to the unit as proposed by the prosecution. Nor is it the role of this court to restore discipline and confidence in the chain of command. That belongs clearly to the authorities of the chain of command. I cannot conceive how the punishment of imprisonment of an individual for an event that took place almost two years ago by a person who had had an unblemished career and who acted, although totally inappropriately, out of character, would restore discipline in any unit and confidence in the chain of command. In my view, a fair sentence commensurate to the seriousness of the misconduct, the blameworthiness of the offender and his degree of responsibility and the particular circumstances of the offender would clearly restore discipline and morale. A sentence as the one proposed by the prosecution is in my view disproportionate to the gravity of the offence in the circumstances of the case.

[10] The Court accepts the submission made by your counsel that a sentence composed of a severe reprimand and a stiff fine would best serve the interests of military discipline, and I would add, the administration of fair justice. However, the fine should be more substantial to clearly indicate the reprobation of your conduct.

[11] So, please, stand up. For those reasons, the Court sentences you to a severe reprimand and a fine in the amount of 5400 dollars. Should you be released from the Canadian Forces prior to the full payment of the fine, the remaining portion will be payable on the date immediately preceding your effective date of release. The sentence will be payable according to the request made by the defence, 2500 dollars payable

today and the remaining portion at a rate of 100 dollars per month starting 13th of April 2008.

COLONEL M. DUTIL, C.M.J.

COUNSEL

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