

**Citation:** *R. v. ex-Warrant Officer J.A.G. Deschamps*, 2009 CM 1013

**Docket:** 200917

**STANDING COURT MARTIAL  
CANADA  
QUEBEC  
SHERBROOKE HUSSARS**

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**Date: September 22, 2009**

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**PRESIDING: LIEUTENANT-COLONEL M. DUTIL, C.M.J.**

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**HER MAJESTY THE QUEEN**

**v.**

**EX-WARRANT OFFICER J.A.G. DESCHAMPS  
(Offender)**

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**SENTENCE**

**(Rendered orally)**

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OFFICIAL ENGLISH TRANSLATION

[1] Having accepted and recorded your plea of guilty on the third and fifth counts, the Court now finds you guilty of these counts.

[2] It should be recalled that at the commencement of these proceedings, the Court authorized the prosecution to withdraw all of the other counts. In this case, the parties reached an agreement to present a joint submission on sentencing, and that submission is the following: that you be sentenced to a reprimand with a fine of \$4000, payable in equal monthly installments of \$400.

[3] It is well established in case law that the Court should not disregard a joint submission unless this submission is fundamentally inadequate, for instance, if it is clearly inferior to or below the range of sentences normally imposed in similar circumstances or cases or, quite simply, if the proposed sentence is likely to bring the administration of justice into disrepute.

[4] After having analyzed the applicable factors and the case law applicable in this matter, the Court has concluded that the joint submission is perfectly acceptable, and I am therefore confirming it.

[5] As the prosecution mentioned earlier, the main purposes of and principles applicable to sentencing are generally the following:

First, the protection of the public, which includes the protection of the Canadian Forces;

Second, the punishment and denunciation of the offender and of the act itself;

Third, the sentence must satisfy the principles of deterrence, namely general deterrence and specific deterrence;

Fourth, the sentence should enable the rehabilitation or reintegration of the offender;

Fifth, the sentence must be commensurate with the gravity of the offence and correspond to the offender's degree of responsibility;

Sixth, the Court must respect the principle that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; and

Last, the Court will take into account the aggravating and mitigating circumstances of the offender as well as those pertaining to or resulting from the facts and circumstances of this case.

[6] The Court agrees with the joint statement by counsel that in this case, the greatest emphasis must be placed on the following principles: punishment of the offender and denunciation of the offender's act; general deterrence, meaning that the sentence should send a clear message to persons tempted to commit similar acts; specific deterrence of Mr. Deschamps to ensure that this type of behaviour will remain an isolated incident; and, lastly, I agree with the statement by the defence that the aspect of rehabilitation is also important in this case, especially since Mr. Deschamps was released from the Canadian Forces and has now begun a public career as a real estate agent.

[7] As regards the main aggravating circumstances in this case, there is first the objective nature of the offences of which he stands accused. A person who commits the offence of behaving in a disgraceful manner within the meaning of section 93 of the *National Defence Act* is liable to imprisonment for a term not exceeding five years or to less punishment, and any person whose conduct is to the prejudice of good order and discipline within the meaning of section 129 of the *National Defence Act* is liable to a dismissal with disgrace from Her Majesty's service or to less punishment. These are serious offences.

[8] The Court finds the circumstances specific to this case to be a second aggravating factor. The statement of circumstances reveals that Warrant Officer Deschamps was the operations officer of his unit when he committed the offences. With regard to the third count, the complainant, Sergeant Martel, was a member of the same unit and held the

position of the unit's orderly room clerk at the time when the offence contained in that count was committed.

[9] Between May 2 and May 5, 2008, the unit was involved in an exercise that required administrative services to be available at all times. In the afternoon on Sunday, May 4, 2008, Warrant Officer Deschamps and Sergeant Martel were both on a firing range as part of the exercise. Over the course of the afternoon, Warrant Officer Deschamps was making jokes of a sexual nature in the presence of Sergeant Martel by alluding to threesomes.

[10] Upon returning from the firing range, shifts had to be organized to ensure that there would be someone in the unit's orderly room. Warrant Officer Deschamps asked Sergeant Martel to be on duty with him for the night of May 4, 2008, until the following morning. Near midnight, both persons sat down to watch a film on a makeshift sofa that the offender set up by placing cushions on the floor of the unit's orderly room. Later on that night, the offender began moving closer to the complainant and the later at night it became, the more the offender moved towards her. Each time, she moved away from him. Mr. Deschamps put his hand on her shoulder approximately four times. The complainant tried to move away from the offender as best she could. At one point during this time, the offender masturbated himself through his pants until he ejaculated. Once finished, he got up to go to the washroom and, when he came back, lay down and went to sleep. When he woke up in the morning on May 5, 2008, the offender said something to the complainant resembling, [TRANSLATION] "We've only got one life to live. Nothing's changed in my life, and I hope it's the same for you". And the complainant did not reply to that comment.

[11] With regard to the other count, namely the fifth count, which is for conduct or behaviour that is to the prejudice of good order and discipline, the facts show that on May 8, 2008, the offender sent an e-mail to the complainant, Sergeant Martel, and to one Kathy Breton, simply stating, in reference to an earlier e-mail, [TRANSLATION] "I'll say it again, girls are good". From the facts placed before this court, the offender was referring to comments that he had made previously in these persons' presence about a sexual fantasy of his.

[12] The record shows that the recipients of the e-mail did not appreciate the nature of the comments or the contents of the e-mail, and that they found those comments to be offensive. This is a direct violation of DAOD 5012-0, entitled "Harassment Prevention and Resolution". The evidence also reveals that the offender was well aware of the Canadian Forces policy on harassment that applied in the circumstances.

[13] In particular, with regard to the third count, namely of behaving in a disgraceful manner, these facts clearly establish that the bond of trust between the complainant and the offender was broken when they were both on duty at the time that the offence was committed.

[14] Equally aggravating in this context is the impact that the behaviour which the offender stands accused of on the third count had on the complainant, or the victim in this

case. It has been adduced into evidence that the incidents of the night of May 4, 2008, had a certain impact, truly a certain impact, on the complainant, Sergeant Martel, and on her work environment. Moreover, the facts in the record show that shortly after the incidents, she was obliged to go on sick leave and had to receive counselling from a psychologist. So, the impact on the victim is relatively significant in this case. Furthermore, she left the unit to continue her service in the Canadian Forces in another unit, but she still had to leave the unit. Obviously, the quality of the complainant's work is not on record, but the evidence does at least show that her departure had an impact on the unit, which lost the services of an experienced sergeant, and that this had a direct impact on the unit in question.

[15] The Court also considers aggravating the fact that in the circumstances, the offences were committed by a person who had served in the Canadian Forces for over 24 years--23 years at the time of the offences--at a time when he was the unit's operations warrant officer, a very important position in any Canadian Forces unit and for which, in the context of a reserve unit, it is required that the person performing those duties have at least the rank of warrant officer. This demonstrates that and makes the offence much more serious in the context, considering the rank and experience of the person who committed it.

[16] As for the mitigating factors, the Court obviously finds that one such factor is the plea of guilty to the charges--in this situation, to the only charges that were before the Court--namely the third and fifth counts. I believe that this information was not submitted before the Court, and I think that it was simply an omission by counsel, who had informed me quite some time ago of the intention of the accused, or the offender in the circumstances, to plead guilty at his first opportunity. In this context, I understand that the joint submission of the parties takes into account the intention that the offender has had for some time. So, it is not something that happened on the spur of the moment this morning; if I understand correctly, that information was conveyed to counsel for the prosecution as early as possible so that, in particular, the person mentioned in the third count would not have to testify and relive embarrassing moments that disturbed her in the past. The plea of guilty must be viewed in that particular context, and I believe that in the circumstances, it is an indication of the offender's remorse and shouldering of responsibility for his actions. Therefore, that is the Court's finding.

[17] I also consider the lack of a criminal or disciplinary record to be a mitigating factor. Third, the Court also finds Mr. Deschamps' 24-year career in the Canadian forces, during which he served on many occasions as part of military operations either in Bosnia or Cyprus, to be a mitigating factor.

[18] Lastly, his family situation is a mitigating factor. Mr. Deschamps has been married for 23 years and has three children, one of whom is a preteen, if I understand correctly. And in the circumstances of a public trial and public legal proceedings, it must be understood that the offender's children and spouse themselves are clearly able to understand the acts that were done. There is no doubt that the family context in this type of situation means that the offender's family and personal situations are relevant to

specific deterrence. So, those are the mitigating situations or circumstances that the Court finds in this case.

[19] Therefore, after analyzing the case law submitted to me and the applicable legal principles, I have concluded that the joint submission or suggestion of the parties is entirely acceptable in the circumstances.

[20] Accordingly--please rise--this Court sentences you to a reprimand and a \$4000 fine, payable in equal monthly installments of \$400.

COLONEL M. DUTIL, C.M.J.

Counsel:

Major J. Caron, Regional Military Prosecutor, Eastern  
Counsel for Her Majesty the Queen

Lieutenant P. Desbiens, Director of Defence Counsel Services  
Counsel for Warrant Officer J.A.G. Deschamps