**COURT MARTIAL**

**Citation:** *R v Lough*, 2011 CM 2022

**Date:** 20111125
**Docket:** 201125

Standing Court Martial

Canadian Forces Base Cold Lake
Cold Lake, Alberta, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Ex-Corporal A.M. Lough, 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Code, information that could disclose the identity of the persons described in this judgment by their initials shall not be published in any document or broadcast or transmitted in any way.**

## REASONS FOR SENTENCE

(Orally)

[1] Mr Lough, having accepted and recorded your pleas of guilty to three charges, a charge of breaking and entering and committing the offence of sexual assault in the first charge, a charge of ordinary assault in the fifth charge, and an offence of sexual assault with threat to a third party in the sixth charge, and having considered the alleged and admitted facts, this court now finds you guilty of the three charges as pleaded.

[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 disclosed in the Statement of Circumstances, Exhibit 13, the evidence heard

during this trial, and the other evidence and materials submitted during the course of the sentencing 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 the 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, of which, of course, the Canadian Forces is a part, 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 an appropriate blending of these goals tailored to the particular circumstances of the case.

[6] 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.

[8] The facts surrounding the offences are set out in Exhibit 13, the Statement of Circumstances. In brief, in the summer of 2010, a number of young cadets attended

Canadian Forces Base Cold Lake for cadet summer training. They were housed in trailers on the base. The offender was serving as an aviation technician with 1 Air Maintenance Squadron as a corporal and was residing in married quarters on the base. Around 3 a.m. on the morning of 1 August 2010, 19 year old cadet, M.A., was asleep in her room, room 317, in one of the trailers known as building 506. She awoke to find an unknown male person in her room. The male person got on her bed, straddled her, and pinned down her arms, saying, "Don't move or I'll hurt you." Cadet M.A. struggled, kicked her assailant, and yelled for help. The male person ran out of the room. M.A. called 911 at the suggestion of her room-mate, who had awoken to see the assailant leave the room. Cadet M.A. believed she was about to be raped. As a result of the attack she suffered some bruising to her upper arms that lasted a few days.

[9] Cadet S.M. had gone to bed that night in her room, room No. 820 in building 511. She awoke around 3 a.m. when a male assailant entered her room and gripped her by the throat. When she tried to scream he tightened his grip. She struggled in her bed and yelled, thereby waking her room-mate; the assailant fled.

[10] Cadet M.C. was 18 years old in the summer of 2010. She was an experienced cadet and was part of the cadet training staff. She was given supervisory responsibilities for 30 other cadets. Around 3 a.m. she was asleep alone in her room, room 701 of building 510, and awoke to find an unknown male person in her room. He jumped on her in her bed and she struggled and tried to yell for help. The assailant then struck her in the face between five and ten times and told her that if she didn't do what he said he would just go and do it to someone else. Cadet L.G. in the adjacent room heard the sounds of the struggle and heard Cadet M.C. say "Stop" and "Not my girls." The assailant demanded that she remove her clothing. Cadet M.C. complied and when she was entirely naked the assailant rubbed his hands over her body. She believed that she would be raped and so she suggested that he use a condom. He asked where it is and she directed him to a dresser drawer. He rummaged in the drawer and then returned to the bed. He pinned her down in the bed and then was distracted by lights coming in through the window. He asked what that was and Cadet M.C. replied that the MPs regularly check on the cadets. The assailant then left.

[11] Cadet M.C. suffered extensive physical injury. In addition to bruising lasting up to two weeks, her nose was swollen and her right eye was swollen almost shut. She received medical attention and now has a permanent scratch to the cornea requiring the wearing of glasses and permanent total hearing loss in one ear.

[12] The offender, Corporal Lough, was arrested at the scene by RCMP officers and military police as he attempted to get into his vehicle, which was parked between two of the trailers housing the cadets.

[13] The prosecution submits that a fit sentence in this case would be no less than three years' imprisonment. As well, the prosecution seeks a weapons prohibition order for a period of 10 years, an order to provide DNA samples, and an order that the offender comply with the sex offender registry.

[14] Counsel on behalf of Corporal Lough, relying on some previous cases, including previous dispositions at court martial, submits that a fit sentence would involve imprisonment in the range of nine to eighteen months, and concedes that the additional orders sought are appropriate.

[15] I consider that the offences under consideration in this case are very grave.

[16] The Alberta Court of Appeal case of *R v T.L.G.*, (2006) 214 CCC (3d) 353 was referred to by counsel. At paragraph 13, the court referred to an earlier decision and stated:

> ... [T]he principle articulated in ***R. v. Matwiy*** (1996), 105 C.C.C. (3d) 251 at para. 26, that "offences which strike at the right of members of the public to security of their own homes and to freedom from intrusion therein, must be treated with the utmost seriousness", is applicable here. A break and enter into a home for the purpose of committing a sexual assault is very serious and the sentence imposed must reflect that.

[17] I agree with this statement. The accommodations occupied by the cadets during summer camp were for all intents and purposes their temporary homes. They were entitled to feel just as safe there as they feel in their permanent residences elsewhere in Canada. That is the implied undertaking made by the Canadian Forces, both to cadets and to their parents and caregivers when they encourage their teenage children to take part in the cadet programme.

[18] These offences were not a single incident, but rather a course of conduct involving three innocent victims. The offender's conduct escalated in seriousness over the course of these attacks, and when a simple threat to hurt the first victim did not achieve his purposes, he ultimately resorted to gratuitous violence and threats against other vulnerable young women in order to overcome the resistance offered by Cadet M.C. As the level of the threats increased, so did the offender's resort to physical violence in order to achieve his purposes.

[19] I also consider the effects upon these three young women of the actions of the offender. In the evidence they gave, either orally or by written statements, we learn of the tragic consequences each of them has suffered as a result of the offences committed against them. These consequences extend to harmful effects upon other people in their young lives, including, in the case of Cadet M.C., her mother. These consequences are likely to be long term, and will in all probability extend well beyond the time to be served by the offender pursuant to the sentence of this court.

[20] I am asked to consider the guilty pleas and the apology offered by the offender as a demonstration of genuine remorse on his part for his actions. I note, of course, that the pleas of guilty were tendered on the fourth day of the trial, after the victims had been required to testify and relive their horrific experiences. The written apology, ad-

dressed "to those I have hurt" was made while the offender was being questioned by the police and after he had initially denied responsibility for the attacks. In all the circumstances I attach little weight to the change of pleas to guilty as I am not persuaded that in this case the pleas were motivated by a genuine sense of remorse.

[21] The offender is now 29 years of age. He joined the Canadian Forces as a Reservist in March of 1999 and was called out on Class B service regularly until October 2002. In November of 2005, he went to the Supplementary Reserve until March of 2007 when he joined the Regular Force. He was released on 6 June 2011.

[22] The offender has no related record of disciplinary or criminal infractions; although his conduct sheet shows that he was fined $250 for failing to comply with a condition of his release that he abstain from the consumption of alcohol. He was originally denied bail on the present charges and spent 52 days in pre-trial custody before he was released pending the trial. As a result I have reduced the sentence I would otherwise have imposed by two months.

[23] It is submitted by his counsel that the effect of alcohol upon the offender at the time is a mitigating factor on sentence. I accept the evidence that the offender has a serious problem with alcohol dependency for which he has followed two residential treatment programs, but I am not satisfied that the offender was significantly under the influence of alcohol at the time of these offences. The evidence on this point is sparse. Master Corporal Laflamme testified that when he was arrested the offender was slightly intoxicated. The offender had a hard time walking and had to be held up during the short walk to the police vehicle, but he was not "falling down drunk."

[24] Other evidence I heard on the trial shows that the offender was thinking rationally and moving nimbly, driving a car and negotiating the steps at the entrances to the three trailers housing the cadets. I do not consider the evidence of alcohol consumption on the occasion of these offences to be a mitigating factor.

[25] Of the previous case authorities referred to by defence counsel I find it necessary to deal with two. In the case of *Corporal Rivas*, the offender was found guilty by the panel of a General Court Martial of sexual assault and drunkenness. He entered the room of the female complainant on the base in the middle of the night and performed an act of cunnilingus while she slept. She awoke to find him in her room and chased him out. As to sentence, I declined to accept the joint recommendation of counsel of a sentence of 90 days detention and imposed a period of imprisonment of nine months. In my view this case is of little assistance in determining a proper sentence in the present case. *Rivas*'s was an isolated instance of a sexual attack in the quarters of the complainant, whereas in the present case I am dealing with a course of conduct involving three victims. Importantly, there was no gratuitous violence perpetrated by Rivas upon the complainant, whereas the level of violence in the present case varies among the three victims, but culminated in very serious violence toward Cadet M.C. As well, the complainant in the case of *Rivas* was affected by the criminal behaviour of Rivas, but not nearly to the same extent as the young cadets in the present case.

[26] The second case relied upon by defence counsel is the sentence in the case of *Master Corporal J.P. Grant* decided 16 September 2005. In that case the offender was sentenced to a reduction in rank for one offence of breaking and entering with intent to commit an indictable offence. While it is true that the premises broken and entered was the room of the female complainant in that case, there was no suggestion that Grant's purpose in being in the room was sexual. The victim in that case knew Grant as an instructor on her course. There was no sexual attack or any other kind of violence. Apart from the fact that the offence took place in the private quarters of the complainant, the *Grant* case bears no useful factual similarity to the case before me today.

[27] On all the circumstances of this case, both the circumstances of the offences and of the offender himself, I consider that a prison sentence involving federal time is the minimum sentencing response. I am aware, of course, that this will be the first jail sentence for the offender, but bearing in mind the guidance of the Alberta Court of Appeal in the case of *T.L.G.*, as well as that of the Saskatchewan Court of Appeal in *R v Bellegarde*, decided February 4, 2010, and that of the Manitoba Court of Appeal in *R v Flatfoot*, decided 28 October, 2009, I am of the view that a term of imprisonment that is any less than penitentiary time is simply not fit.

[28] As the offence of sexual assault with threats to a third party is a primary designated offence within the meaning of section 196.14 of the *NDA* and section 487.04 of the *Criminal Code*, there will be an order that the offender provide suitable samples for DNA analysis.

[29] Pursuant to section 147.1 of the *NDA*, there will be a weapons prohibition order in the usual terms for a period of 10 years from today's date.

[30] With respect to the application for an order that the offender comply with the sex offender registry, the offence of break and enter is a designated offence within the meaning of section 227 of the *National Defence Act* and section 490.011(1)(b) of the *Criminal Code*. The order to comply with the sex offender registry is therefore mandatory. Section 227.02 of the *NDA* deals with the duration of the order. Since the offence of break and enter of a dwelling house is punishable by a maximum of life imprisonment, and the offence was committed with the intent to commit the offence of sexual assault, which is a designated offence under paragraph (a) of the definition in section 490.011(1) of the *Criminal Code*, I order, pursuant to section 227.01(2) of the *National Defence Act*, that the offender comply with the sex offender registry for life.

**FOR THESE REASONS, THE COURT:**

[31] **SENTENCES** the offender, ex-Corporal Lough, to imprisonment for a period of 34 months. The sentence is pronounced at 1105 hours, 25 November 2011.

**Counsel:**

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Co-counsel for Her Majesty the Queen

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