



COURT MARTIAL

Citation: *R v Lemoyne*, 2014 CM 1006

Date: 20140317

Docket: 201368

Standing Court Martial

St-Jean Royal Military College
Saint-Jean-sur-Richelieu, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Midshipman Naval Cadet V.D. Lemoyne, Offender

Before: Colonel M. Dutil, C.M.J.

OFFICIAL ENGLISH TRANSLATION

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Code*, information that could disclose the identity of the person described in this judgment as the complainant shall not be published in any document or broadcast or transmitted in any way.

REASONS FOR SENTENCE

(Orally)

[1] Midshipman Naval Cadet Lemoyne admitted his guilt on two counts, first, the offence of assault, contrary to section 266 of the *Criminal Code*; and, second, the offence of conduct to the prejudice of good order and discipline, contrary to section 129 of the *National Defence Act*, for harassing another person, contrary to Defence Administrative Order and Directive (DAOD) 5012-0.

[2] Harassment is defined in DAOD 5012-0. Harassment is any improper conduct by an individual that is directed at and offensive to another person or persons in the workplace, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises any objectionable act, comment or display that

demeans, belittles or causes personal humiliation or embarrassment, and any act of this nature.

[3] Counsel in attendance presented a joint submission, namely, a severe reprimand. Upon analysis, the Court concludes that this recommendation is within the range of sentences applicable in similar circumstances.

[4] The facts of this case are reproduced in the Statement of Circumstances that was filed before the Court. In short, the events occurred on 28 October 2012, at Valcartier Garrison, Courcelette, province of Quebec, when the offender and his victim, who was his superior in rank, attended as students a weekend training course to become workplace harassment advisers, for cases of conflict and abuse of cadets, together with other officers from the various cadet corps of the Regional Cadet Support Unit, Eastern Region. Midshipman Naval Cadet Lemoyne and his victim were both on Class A service during this training. A few hours before the incident, following the day's training, a group of officers went to the Valcartier Garrison's All Ranks Mess in order to relax, hang out together and also have a few drinks. The victim and Midshipman Naval Cadet Lemoyne, obviously, were part of this group. At around 01:30 in the morning, the victim tried to get up to go to the washroom. In doing so, he lost his balance and fell back on his chair. The offender helped him get up and accompanied him, putting his hand on his back, all the way to the washroom. Upon arrival, the victim stood at the urinal and urinated. Midshipman Naval Cadet Lemoyne remained close to him, perpendicular to his victim. According to the Summary, it seems that Midshipman Naval Cadet Lemoyne did not stop looking at him. When the victim had finished, the offender lowered his eyes and looked at his genitalia. Immediately, the victim tried to pull up his pants. But before he was able to do so, Midshipman Naval Cadet Lemoyne tried to touch his penis, telling him, [TRANSLATION] "let yourself go". At this point, the victim quickly turned his back to him, telling him not to touch him. At that point, Midshipman Naval Cadet Lemoyne blocked his path. The victim extricated himself and went to the exit. The offender barred his way and, patting his shoulder, told him [TRANSLATION] "let yourself go", "it'll relax you", "I'll give you \$1" and "it'll make you feel better". The victim finally managed to get out of the washroom and to return to the other officers. Upon his return, one of his colleagues noted that his behaviour had changed. When this was pointed out to him, the victim told him what had just happened, in the presence of his other colleagues. The following day, Midshipman Naval Cadet Lemoyne apologised to his victim when the latter confronted him about his behaviour of the previous night. The victim then decided, rightly so and following the advice of an instructor, to inform the chain of command of the situation. An investigation followed. During the investigation, the offender was met with after being given the relevant warning. He first denied the facts, but then admitted many of them and attempted to explain them.

[5] At the sentencing hearing, it was entered into evidence that Midshipman Naval Cadet Lemoyne is a 22-year-old young man who is currently completing his college diploma in accounting and management and who is planning to take a university degree in accounting very soon. He is currently living with his parents in Rouyn-Noranda and

does not have a part-time job. Regarding his career as a cadet instructor officer, he was removed from his military duties in the weeks that followed the commission of the offences he is accused of, because his commanding officer felt that, even if the allegations involved behaviour between adults, he had reasonable grounds to believe that it was preferable to remove him from his duties since the nature of his work entailed him being in direct contact with vulnerable individuals. This administrative measure continues to apply. The evidence reveals that the offender has been involved in the cadet movement since the age of 12. At the end of his cadet experience, he remained in the movement as a civilian instructor, and he enrolled as an officer cadet in November 2011.

[6] The commanding officer of the Cadet Corps of RCS Rouanda, in Rouyn Noranda, knows him well, and has done so for about eight years. She describes him as an exemplary young man who completed his time in the cadet movement as a cadet commander. He is described as a reliable, autonomous and responsible person, but especially as someone who is respectful of his colleagues. She says of him that he is upright and loyal. Barely 22 years old, he stands before this Court today, having never had any trouble with the law before, regardless of the jurisdiction. I hope that this will be his last time.

[7] The current commanding officer of the Regional Cadet Support Unit did not testify, but the parties agreed to the filing of a letter signed by him and dated 14 March 2014. It appears that his former cadet corps commanding officer had considered him to be a candidate for the human rights officer position for the cadets of his unit. He finds the context, the nature of the alleged events, especially worrying since the offender was responsible for supervising and fostering the development of young cadets. He is planning to take administrative measures against Midshipman Naval Cadet Lemoyne following this court martial.

[8] It is important to emphasize that this was a spur-of-the-moment, spontaneous act committed in a situation where, once again, there was alcohol and that, once again, involved young adults. It involved a young adult who lacked judgment and who acted contrary to his reputation among individuals who have known him for a long time. This was not an abuse of trust with respect to vulnerable individuals, and there is no evidence before this Court that he represents a danger to young cadets. This does not mean, however, that young people he might deal with in future, if he is given the opportunity to do so, should blindly trust him, but giving him such an opportunity is not the choice or the decision of this Court. That duty or responsibility properly belongs to the chain of command. He testified—and there is no doubt in the Court's mind—that he regrets his actions and that he is deeply embarrassed and ashamed about not only his behaviour, but also his having to face a court martial today for the acts that he committed, in front of a full hearing room. In addition to the sentence that will be imposed on him, he will have to live with the heavy consequences that will result from the enforcement of the *Criminal Records Act*. I will let his counsel explain the ins and outs of this Act to him and the implications it will have for him.

[9] In imposing an appropriate sentence on an accused for the wrongful acts that he or she has committed and the offences of which he or she is guilty, certain objectives are aimed for in light of the principles applicable to sentencing, which vary slightly from one case to the next. The fundamental purpose of sentencing in a court martial is to maintain military discipline and build respect for the law by imposing fair punishments having one or more of the following objectives:

- a. to denounce unlawful conduct;
- b. to deter the offender and other persons from committing offences;
- c. to separate offenders from society, where necessary;
- d. to assist in rehabilitating offenders, in order to return them to their environment in the Canadian Forces or to civilian life; and
- e. to promote a sense of responsibility in military members who are offenders.

[10] The sentence must also take the following principles into account. It must be proportionate to the gravity of the offence, the previous character of the offender and his or her degree of responsibility. The sentence should also take into consideration the principle of parity in sentencing, that is, a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. Before considering depriving an offender of liberty, the Court has a duty to consider whether less restrictive sanctions may be appropriate in the circumstances. Last, all sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances related to the offence or the offender and to account for any indirect consequences of the verdict or the sentence on the offender. The imposed sentence will therefore be the result of a weighing process that will translate into the minimum sentence that the Court finds adequate to meet the sentence that will consist of a punishment or a combination of punishments that the court considers to be minimal, as I said, while contributing to the maintenance of military discipline and respect for the law.

[11] Counsel's joint submission must be consistent with the abovementioned objectives and principles that apply in the present case; otherwise, the Court has no choice but to reject it. Here, the prosecution submits that the proposed sentence would maintain discipline and respect for the law while focussing on general and specific deterrence and denunciation of the act. The Court accepts this submission, but the sentence must also foster the rehabilitation of the accused, specifically because of his age.

[12] These are serious offences, even if the events are at the lower end of incidents related to such charges at court martials, as pointed out by counsel based on the case law submitted to the Court. It is my opinion that counsel's joint recommendation cannot

be disregarded as it is not unreasonable and would not bring the administration of justice into disrepute. A reprimand is a serious punishment, even it does not entail any direct financial consequences or deprivation of liberty. It sends a clear message that the conduct at issue must be strongly condemned, and it may have lasting consequences for the offender.

FOR THESE REASONS, THE COURT

[13] **FINDS** you guilty of the first charge, but with regard to the lesser and included offence of assault contrary to section 266 of the *Criminal Code*, and guilty of the second charge of conduct to the prejudice of good order and discipline contrary to section 129 of the *National Defence Act*.

AND

[14] **SENTENCES** the offender, Midshipman Naval Cadet Lemoyne, to a reprimand.

Counsel:

Major G. Roy, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Lieutenant-Commander P. Desbiens, Defence Counsel Services
Counsel for Midshipman Naval Cadet V.D. Lemoyne