



## COURT MARTIAL

**Citation:** *R v S.O.M.*, 2011 CM 2007

**Date:** 20110403

**Docket:** 201105

Standing Court Martial

Canadian Forces Base Kingston  
Kingston, Ontario, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Private S.O.M., Offender**

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

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### REASONS FOR SENTENCE

(Orally)

[1] Private S.O.M., having accepted and recorded your plea of guilty to the second charge in the charge sheet; a charge of conduct to the prejudice of good order and discipline, this court now finds you guilty of the second charge.

[2] It now falls to me to determine and to pass a sentence upon you. And in so doing I have considered the principles of sentencing that apply in Youth Court under the *Youth Criminal Justice Act* and at courts martial. I have as well considered the facts of the case as described in the Statement of Circumstances, Exhibit 6, and the 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 sentenc-

es 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. In most cases that come before this court 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. But in this case the court is dealing with an offender who was a "young person" within the meaning of the *Youth Criminal Justice Act* at the time of the offence. I am therefore guided by the general principles and the sentencing principles in both sections 3 and 38 of the *Youth Criminal Justice Act*. Deterrence and denunciation do not apply in this case, rather the court is principally concerned with rehabilitation with accountability and with proportionality.

[5] As I told you when you tendered your plea 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.

[6] In arriving at the sentence in this case I have considered the direct and indirect consequences for the offender both of the finding of guilt and the sentence I am about to pronounce.

[7] The facts of the offence are not complicated; they are set out in Exhibit 6, the Statement of Circumstances. In brief, the offender was on his Basic Military Qualification Course when he entered the room of one of his female course-mates. He made advances of a sexual nature toward his course-mate and was rebuffed. I am satisfied that the offender should have known that his behaviour was unwelcome, yet he persisted. I am therefore satisfied that his behaviour constituted harassment, as that term is understood in DAOD 5012-0, and that the harassing behaviour was carried out in circumstances of a sexual nature.

[8] Counsel before me jointly recommend a sentence of a fine in the amount of \$1,000. 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] I have considered the aggravating and mitigating circumstances in this case, which have been referred to by counsel. I attach particular weight to the young age of the offender who was about two months shy of his 18th birthday at the time of his offence.

[10] I accept the submission of defence counsel that the offender regrets his actions and has amply demonstrated his remorse for his behaviour.

[11] Considering all of the circumstances both of the offence 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.

**FOR THESE REASONS, THE COURT:**

[12] **FINDS** you guilty of the second charge, for an offence under section 129 of the *National Defence Act* and orders a stay of the first charge, for an offence under section 130 of the *National Defence Act*.

[13] **SENTENCES** you to a fine in the amount of \$1,000, the fine is to be paid by 31 May 2011.

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**Counsel:**

Captain R.D. Kerr, Canadian Military Prosecution Service  
Counsel for Her Majesty the Queen

Lieutenant-Commander P.D. Desbiens, Directorate of Defence Counsel Services  
Counsel for Private S.O.M.