**Citation:** *R. v. Master Corporal V.P. Bonnar,* 2007 CM 3003

**Docket:** 200701

**STANDING COURT MARTIAL**
**CANADA**
**NOVA SCOTIA**
**CANADIAN FORCES BASE GREENWOOD**

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**Date:** 30 January 2007

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**PRESIDING: Lieutenant-Colonel L -V. d'Auteuil, M.J.**

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**HER MAJESTY THE QUEEN**
**v.**
**MASTER CORPORAL V.P. BONNAR**
**(Offender)**

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**SENTENCE**
**(Rendered orally)**

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[1] Master Corporal Bonnar, having accepted and recorded a plea of guilty in respect of the first and third charge, the court finds you, now, guilty of these charges. Consequently, the court directs that the proceedings be stayed on the second and fourth charges. Additionally, considering that the prosecution, in support of the fifth charge, presented no evidence, as I mentioned earlier this court finds you not guilty of this charge. You may break off and sit with your defence counsel.

[2] The military justice system constitutes the ultimate means to enforce discipline in the Canadian Forces, which is a fundamental element of the military activity. The purpose of this system is to prevent misconduct, or in a more positive way see the promotion of good conduct. It is through discipline that an armed force ensures that its members will accomplish, in a trusting and reliable manner, successful missions. As stated by a legal officer, Major Jean-Bruno Cloutier, in his thesis on the use of section 129 of *National Defence Act* offences, the military justice system, and I quote and translate,"has for purpose to control and influence the behaviours and ensure maintenance of discipline with the ultimate objective to create favourable conditions

for the success of the military mission."

[3] The military justice system also ensures that the public order is maintained and that those who are subject to the Code of Service Discipline are punished in the same way as any other living in Canada. It has been long recognized that the purpose of a separate system of military justice or tribunals is to allow the Armed Forces to deal with matters that pertain to the respect of the Code of Service Discipline and the maintenance of efficiency and morale among the Canadian Forces. That being said, the punishment imposed by any tribunal, military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances. It also goes directly to the duty imposed to the court to, and I quote, "impose a sentence commensurate with the gravity of the offences and the previous character of the offender," as stated at QR&O 112.48(2)(b).

[4] Here, in this case, the prosecutor and the counsel for the defence have made a joint submission on sentence. They have recommended that this court sentence you to 14 days' detention, a fine in the amount of $5,000, and a forfeiture of seniority for three years. Although this court is not bound by this joint recommendation it is generally accepted that a joint submission should be departed from only where to accept it would be contrary to public interest and would bring the administration of justice into disrepute.

[5] The court has considered the joint submission in light of the relevant facts as set out in the Statement of Circumstances and their significance, and I have also considered the joint submission in light of the relevant sentencing principles, including those set out in sections 718, 718.1 and 718.2 of the *Criminal Code,* when those principles are not incompatible with the sentencing regime provided under the *National Defence Act*. These principles are the following: Firstly, the protection of the public, and the public includes the interests of the Canadian Forces; secondly, the punishment of the offender; thirdly, the deterrent effect of the punishment, not only on the offender, but also upon others who might be tempted to commit such offences; and fourthly, the reformation and rehabilitation of the offender. The court has also considered the representations made by counsel, including the case law provided to the court and the documentation introduced.

[6] I must say that I agree with the prosecutor when he expressed the view that the protection of the public must be ensured by a sentence that emphasizes denunciation and general deterrence. It is important to say that general deterrence means that the sentence imposed should deter, not simply the offender from re-offending, but also others in similar situations from engaging, for whatever reasons, in the same prohibited conduct.

[7] Here, the court is dealing with an offence of assault on Private Levesque and an offence of aggravated assault on Private Crevier in the context of a dispute that occurred during a social event at the junior ranks mess at CFB Borden. Consumption of alcohol was involved. They are very serious offences; however, the court will still impose what it considers to be the necessary minimum punishment in the circumstances.

[8] In arriving at what the court considers a fair and appropriate sentence, the court has considered the following mitigating and aggravating factors. The court considers as aggravating:

> Firstly, the objective seriousness of the offences. The two offences you were charged with were laid in accordance with section 130 of the *National Defence Act* for an assault and an aggravated assault in accordance with section 266 and 268 of the *Criminal Code*. These offences are punishable by an imprisonment for a term not exceeding 5 and 14 years respectively, or to less punishment;
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> Secondly, the subjective seriousness of the offence. The fact that you were an educated and very experienced soldier on training and at the rank of master corporal put on you the additional burden to lead by example which you failed to do twice in overreacting the way you did;
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> Thirdly, the fact that you wounded, very seriously, a private as established in Exhibits 7, 8, the photographs, and 9, the medical report by Dr David Finkelstein, to the point that he will keep forever on his face an obvious mark of your loss of temper and lack of self control. The injury has had the potential for more serious medical consequences for the private, but fortunately, so far, it has not.

The court considers that the following circumstances mitigate the sentence:

> Through the facts presented to this court, the court considers that your plea of guilty is a clear, genuine sign of remorse and that you are very sincere in your pursuit of staying a valued asset to the Canadian community and the Canadian Forces. It disclosed the fact that you're taking full responsibility for what you did. Also, the court would not want to jeopardize your chances of success because rehabilitation is always a key element when sentencing a person;
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> The facts and the circumstances of this case including your personal situation and your steps to find support in order to go through some personal challenges as established in Exhibit 10, the letter from the clinical social worker. The court encourages you to continue to do so;
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> Your record of service in the Canadian Forces, as established in Exhibit 11, the letter of work performance, 12, your PER, and 13, the PDR. Except for this incident, your service in the Canadian Forces was very good. It appears to the court that you are a knowledgeable soldier with personal problems that affected your conduct to the extent that you were unable to behave with the usual expectations for people at your rank level;
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> Finally, the fact that you did not have a conduct sheet or criminal record related to

similar offences.

[9] Having said that, considering the factors and circumstances of this case, the court believes that the joint submission is not unreasonable. In consequence, the court will accept the joint submission made by counsel to sentence you to the punishment of detention for 14 days, a fine in the amount of $5,000, and a forfeiture of seniority for 3 years, considering that it would not be contrary to the public interest and would not bring the administration of justice into disrepute.

[10] And I just want to add, for our understanding, I had a look about the forfeiture of seniority through 104.11. And, at Note A, it says that:

> NOTE (A)
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> An offender cannot, by a punishment of forfeiture of seniority, be deprived of more seniority than that held in rank at the time of the imposition of the punishment.

So as a master corporal, I checked on the MPRR, there is not three years. However, when you look at —and I don't have the QR&O with me, but in Volume I, master corporal is not a rank it's an appointment. So there is no issue here because we have more than three years in the rank of corporal, and seniority, as established in the same chapter, relevant chapter, makes clear that when you talk about seniority you go with the rank of corporal not master corporal. So we have more than three years for this.

[11] And I would like to read to you, Master Corporal Bonnar, the note, Note A, of 104.09 in the QR&O. It talks about detention, and I will just read it. I want to be sure that you understand the meaning of this punishment:

> NOTE (A)
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> In keeping with its disciplinary nature, the punishment of detention seeks to rehabilitate service detainees, by re-instilling in them the habit of obedience in a structured, military setting, through a regime of training that emphasizes the institutional values and skills that distinguish the Canadian Forces member from other members of society. Specialized treatment and counselling programs to deal with drugs and alcohol dependancies and similar health problems will also be made available to those service detainees who require them. Once the sentence of detention has been served, the member will normally be returned to his ... unit without any lasting effect on his or her career.

So the main purpose of detention is rehabilitation, and I want to be clear on this.

[12] So Master Corporal Bonnar, please stand up. Therefore, the court sentences you to the punishment of detention for 14 days, a forfeiture of seniority for three years, and a fine in the amount of $5,000. The fine is to be paid in monthly installments of $416.66 each commencing on 1 March 2007 and continuing for the following 11 months. In the event you are

released from the Canadian Forces for any reason before the fine is paid in full the then outstanding unpaid amount is due and payable the day prior to your release.

[13] Also, in accordance with section 196.14 of the *National Defence Act*, considering that the first charge is a primary offence as defined at section 196.11 of the *National Defence Act*, I order, as indicated in the prescribed form attached to this decision, that the number of samples of bodily substances that are reasonably required for forensic DNA analysis be taken on Master Corporal Bonnar.

[14] The sentence was passed at 1646 hours on 30 January 2007. Officer of the Court, march out Master Corporal Bonnar. The proceedings in respect of Master Corporal Bonnar are terminated subject to an application for release pending appeal pursuant to QR&O 118.03.

LIEUTENANT-COLONEL L.-V. d'AUTEUIL, M.J.

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