



COURT MARTIAL

Citation: *R v Pearson*, 2012 CM 1004

Date: 20120426

Docket: 201208

Standing Court Martial

Canadian Forces Base Esquimalt
Victoria, British Columbia, Canada

Between:

Her Majesty the Queen

- and -

Lieutenant(N) L.M. Pearson, Offender

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

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Code*, information that could disclose the identity of the person described in this judgement as the complainant shall not be published in any document or broadcast or transmitted in any way.

REASONS FOR SENTENCE

(Orally)

[1] Lieutenant(N) Pearson has pleaded guilty to the lesser and included offence of assault under section 266 of the *Criminal Code* to a charge laid under section 130 of the *National Defence Act* contrary to section 271 of the *Criminal Code*. He has also admitted his guilt to a charge laid under section 129 of the *National Defence Act* for conduct to the prejudice of good order and discipline contrary to Defence Administrative Orders and Directives 5012-0 (Harassment Prevention and Resolution).

[2] It is now incumbent upon me to determine what shall be an appropriate, fair, and just sentence that will maintain discipline. In the context of sentencing an offender under the Code of Service Discipline, the Court Martial Appeal Court has expressly stated that a court martial should guide itself with the appropriate sentencing purposes, principles, and objectives, including those enunciated in sections 718.1 and 718.2 of the *Criminal Code*. The fundamental purpose of sentencing at court martial is to contribute to the respect of the law and the maintenance of military discipline by imposing punishments that meet one or more of the following objectives: the protection of the public and it includes the Canadian Forces; the denunciation of the unlawful conduct; the deterrent effect of the punishment, not only on the offender, but also upon others who might be tempted to commit such offences; and the reformation and rehabilitation of the offender.

[3] The sentence must also take into consideration the following principles: the sentence must be commensurate with the gravity of the offence, the previous character of the offender and his or her degree of responsibility; and the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. A court must also respect the principle that an offender should not be deprived of liberty if less restrictive punishments may be appropriate in the circumstances. In other words, punishments in the form of incarceration should be used as a last resort. Finally, the sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender. However, the court must act with restraint in determining sentence in imposing such punishment that should be the minimum necessary intervention to maintain discipline. It must be emphasized that sentencing in Canada is an individualized process.

[4] The facts and circumstances surrounding the commission of the offences reveal that the events that led to the charges occurred in the summer of 2011 onboard Her Majesty's Canadian Ship (HMCS) OTTAWA, who was conducting a training mission in the South Pacific for a period of four and a half months. Lieutenant(N) Pearson, a marine engineer, was onboard HMCS OTTAWA for a training mission in the summer of 2011. He was the head of the department (HOD) for the combat systems engineers division (**Portion of this paragraph removed, as it contains information that could disclose the identity of the person described in this judgement as the complainant**) Lieutenant(N) Pearson was in a situation of authority and trust towards her. (**Remainder of this paragraph removed, as it contains information that could disclose the identity of the person described in this judgement as the complainant**).

[5] During that period, Lieutenant(N) Pearson made inappropriate comments towards the victim in her presence that a reasonable observer would conclude were sexual in nature and demonstrated harassing behaviours towards her. To these kinds of comments and behaviours (**portion of this paragraph removed, as it contains information that could disclose the identity of the person described in this judgement as the complainant**), the victim would either tell Lieutenant(N) Pearson that she did not want to talk about it or would not say anything, not wanting to be singled out as a female that complained and reported harassment all the time.

[6] On one occasion onboard and during their duty, Lieutenant(N) Pearson asked the victim where she kept her feminine products. **(Remainder of the paragraph removed, as it contains information that could disclose the identity of the person described in this judgement as the complainant);**

[7] On 14 June 2011, while at port in Hawaii, the victim went to the beach with a group of colleagues, including Lieutenant(N) Pearson. The victim was putting on spray sunscreen and trying to reach her back. Lieutenant(N) Pearson extended his assistance and while doing it he put his hands up and underneath the back of her bikini top to rub in the sunscreen, which made her feel very uncomfortable.

[8] On 21 June, the day prior to the incident, the victim was out in Pago Pago with the ship's company. In order to prevent the locals from dancing with her in a drinking establishment where they were spending the night, Lieutenant(N) Pearson would intervene and begin dancing very close to her. The victim, being very uncomfortable with this behaviour, shifted to swing dancing to prevent him from being too close to her.

[9] On 22 June, HMCS OTTAWA was in port at Pago Pago in the American Samoa. Around 1800 hours, a number of the ship's company attended the wardroom where they began drinking. At around 1900 hours, the victim and some of her colleagues left the wardroom to attend a drinking establishment in Pago Pago. While at that place, Lieutenant(N) Pearson pulled her away from the group on a few occasions and engaged her in heart-to-heart conversations about her behaviour in a lecturing fashion. She felt that his remarks were not deserved or appropriate as she believed that her behaviour was proper and had not raised the attention of other senior officers present. In addition, out of context, Lieutenant(N) Pearson asked her what she would do if one of her cabin mates was being sexually inappropriate with a subordinate. Also, while with some other junior officers, Lieutenant(N) Pearson told about a young woman he knew who had shaved her pubic area, a story that the victim and another female officer perceived as clearly inappropriate in the circumstances. These unusual conversations made the victim extremely uncomfortable to the point where she attempted to avoid Lieutenant(N) Pearson for the rest of the evening.

[10] At around 2330 hours, the victim, accompanied by the same female officer, Lieutenant(N) Pearson, and another colleague took a cab and returned to the ship. Upon arriving back at the ship, the victim went directly to the wardroom to get water. The lights in the wardroom were out and the music was playing loudly. The only light was coming from the television. She leaned against the bar, facing it while drinking her water. Lieutenant(N) Pearson approached the victim from behind, placed his face on her neck, then proceeded to put his hand down under her shorts and undergarments, reaching the beginning of her pubic hair. As this was occurring, the victim felt extremely uncomfortable to the point where she just froze up. After a few seconds, the other female officer arrived in the wardroom and seeing Lieutenant(N) Pearson's behaviour and the victim visibly in distress, said loudly to Lieutenant(N) Pearson, "Stop being so creepy" or words to that effect. Lieutenant(N) Pearson backed off and removed his

hand from her pants; he then left the wardroom. The conduct of Lieutenant(N) Pearson and the victim's reaction were also witnessed by Sub-Lieutenant Giraldo-Mejia, who was present in the mess, sitting on a couch with Sub-Lieutenant Patterson.

[11] The victim left the wardroom followed by the other female officer who asked her if she was okay. Upset and crying, the victim followed her to report the incident. On their way they met Lieutenant(N) Pearson. The other female officer confronted him about the incident to which he replied that "She must be upset about the bar hours" or words to that effect. The victim went to inform the chain of command of what had happened.

[12] At around midnight, Lieutenant(N) Gray returned from a bar in Pago Pago to HMCS OTTAWA and attended the wardroom. The said officer observed Lieutenant(N) Pearson sitting on a couch, staring off blankly at the TV. After approaching him and asking how his night was, Lieutenant(N) Pearson answered that it was, "Not good, not good at all." After inquiring further he stated, "I think I fucked up. I think I may have crossed the line with A., and J. has a huge mouth and she is going to tell everyone and I'm going to get a lot of shit" or words to that effect.

[13] Lieutenant(N) Pearson was sent ashore on the 23rd of June. He flew out of Pago Pago that same day.

[14] After the events, the victim did not feel comfortable on the ship anymore. She had lost trust in the people she sailed with, even the ones who didn't do anything to her. She felt that the best course of action for her was to be sent back home, although she knew that she was undergoing training and understood that this would have consequences on her training and her career. These events caused her not to have her heart into her studies for her trade training and especially her trade training examinations, which had to be completed within one year.

[15] The court was informed that at this time there is only one month and a half left for the victim to complete her examinations and she does not feel that she is going to be focussed enough on her studies to do it in that time frame, causing her more stress. Consequently, she feels that she has lost months in her preparation for her career examinations. The parties agree that these events also caused the victim a lot of stress and stigma. The base is a small environment and everybody knows about what happened. It has put her life into the spotlight and everywhere she goes she is recognized as being **(word removed, as it contains information that could disclose the identity of the person described in this judgement as the complainant)** who was assaulted on the ship in Pago Pago, causing her to feel a lot of discomfort towards people. Once back ashore, the victim had a rough time with her boyfriend in relation to these events, but they were able to work it through. She sought help and was seeing a social worker. The victim still has difficulty to talk about these events to her family. Now that the court martial is taking place, the victim feels like she needs to seek help again. The court was informed that she provided the information about the consequences the offences had on her after being informed that Lieutenant(N) Pearson intended to enter a

guilty plea on these charges. She felt relieved of not having to testify in these proceedings and was satisfied that this information could be presented to the court through the Statement of Circumstances as agreed by counsel.

[16] At the sentencing hearing the prosecution called as a witness Commander J.C. Allsopp, who was the commanding officer and the ship's captain onboard HMCS OTTAWA during the summer of 2011. His testimony revealed the negative consequences of Lieutenant(N) Pearson's behaviour on the morale, cohesion, and overall efficiency of the training mission. The immediate repatriation of Lieutenant(N) Pearson had a serious impact on the ship's operations. As one of the senior HODs, Lieutenant(N) Pearson was responsible for approximately 50 subordinates, among which 15 to 20 were trainees. The combat systems engineers division was the ship's third largest department. As the events occurred at the early stage of the training mission, the said department was left without a HOD for a period of two weeks, until a first replacement arrived onboard, but to leave only shortly after. Over the next three months, three replacements had to be sent to the ship. This instability had a negative impact on the ship's training mission.

[17] Commander Allsopp testified that he observed that the personnel under his command were affected by the events that led to the charges, but he said that he did not perceive that it had a more negative impact on his female officers and sailors. He described that he immediately took measures to reiterate his expectations to his subordinates with regard to the consumption of alcohol, conduct at sea or ashore, and that his officers were reminded that they had to lead by example. Commander Allsopp testified that the ship's dynamics were adversely affected. He said that the days following the events, he felt that the atmosphere onboard was dark and pessimistic. Commander Allsopp offered his opinion as to the employability of Lieutenant(N) Pearson to carry out his duties as combat systems HOD if guilty of the charges. After commenting on the ship's eroded morale and his view that Lieutenant(N) Pearson had lost his integrity, Commander Allsopp stated without nuance or reserve that he would not trust him.

[18] The defence did not call witnesses, but introduced documentary evidence, namely the Personnel Evaluation Reports (PERs) for the period 09/10 and 10/11 concerning Lieutenant(N) Pearson, as well as a copy of a merit award presented to Lieutenant(N) Pearson in February 2011 for an exceptional contribution to the effectiveness and efficiency of the public service and the material group at the National Defence Headquarters. His recent PERs reveal that he is an outstanding performer. Commander A.J. Allsopp reviewed his potential as his commanding officer in May 2011, one month prior to the events that led to the charges. He expressed his opinion by stating the following:

"Lieutenant(N) Pearson's potential to succeed as a lieutenant-commander is excellent. His leadership as PMO HCM was superb and proven to be at the next level when acting as the lieutenant-commander subsection head for four months. As CSEO, his leadership is solid, garnering immediate credibility with his department from his direction, strong technical knowledge and operational background. Moreover, his ability to lead oth-

er HODs through technically-intensive and CSED-led sea trials indicate his ability to assume duties at the lieutenant-commander level. As a divisional officer, he shows genuine interest and empathy for his personnel, and devotes whatever time necessary from his personal life to attend to their needs. His initiative to educate himself on DND and contractor policy, as well as all associated technical documents as PMO, demonstrate the interest and drive in professional development required to become a lieutenant-commander. As CSEO, his communication skills are strong and at the lieutenant-commander level, as he paints an in-depth picture, both verbally and in writing about technical issues within his department. His planning and organization skills are superb and showcased by the arrangement of all CSTA trials as PMO HCM and the coordination of vital maintenance from FMF as CSEO. His administration is well above what is expected from a lieutenant(N), producing well researched and thorough correspondence, enabling me to make informed decisions. His dedication is tremendous, always placing the needs of the ship above his own. Lieutenant(N) Pearson is a highly devoted officer with superb potential."

[19] The court was informed that Lieutenant(N) Pearson has no disciplinary or criminal record. He obtained his bachelor degree in science (physics) from the University of Waterloo in 1992. He enrolled in the Canadian Forces that same year as an ordinary seaman. He commissioned from the ranks in 1999. Lieutenant(N) Pearson is 42 years old and he is married. The couple has three children born between 1997 and 2003. The court was also informed that Lieutenant(N) Pearson's conduct has caused an important disruption in his marital relationship. Other than his current pay entitlement, the court has not been provided with Lieutenant(N) Pearson's financial situation. He now serves in Ottawa and he will perform his military duties in the same position until an administrative review concerning his conduct that led to the charges takes place. The parties have informed the court that his current chain of command has not made a decision with regard to their recommendation as to Lieutenant(N) Pearson's future in the Canadian Forces. It awaits the verdict and sentence of this court prior to doing so.

[20] The prosecution asks the court to impose a sentence of reduction in rank to sub-lieutenant and a fine of \$3,000. Counsel argues that such punishments would ensure the protection of the public by stressing the importance of denunciation of the conduct, general and specific deterrence. In addition to the objective seriousness of the offences, the prosecution submits that the most aggravating factors relate to the very serious breach of trust of Lieutenant(N) Pearson in relation to the victim, but also to the breach of trust towards his own chain of command. The prosecution further submits that these events had a serious impact on the ship and on the victim. Counsel for the prosecution indicated that the consequences on the victim are still ongoing and that the accused's conduct was not an isolated incident, but a series of improper comments and gestures over a significant period. The victim felt humiliated and had also to be repatriated. In support of its recommendation, counsel for the prosecution has provided a series of decisions from courts martial and the Court Martial Appeal Court.

[21] Counsel for the defence submits that the minimal punishment to achieve for the purpose and principles of military sentencing does not necessitate that Lieutenant(N) Pearson be reduced in rank. He submits that a sentence that would include the punishments of a severe reprimand accompanied by a fine in the amount of \$5,000 would be appropriate in the circumstances.

[22] The aggravating factors in this case can be summarized as follows and not in order of gravity:

- (a) The objective seriousness of the offences. A common assault under section 266 of the *Criminal Code* is punishable on indictment to a maximum of five years' imprisonment, whereas a person guilty of conduct to the prejudice of good order and discipline under section 129 of the *National Defence Act* is liable to dismissal with disgrace from Her Majesty's service;
- (b) The subjective seriousness of the offences as it clearly appears from the surrounding circumstances of the events. They took place onboard ship in the early stage of an important four months' training exercise in the South Pacific. The court could not emphasize enough how detrimental to the cohesion and morale of a naval unit the offender's actions are destructive, when male members abuse the sexual integrity of fellow female officers or sailors by unsolicited and inappropriate touching and other forms of physical abuse or harassment;
- (c) The fact that the offender, Lieutenant(N) Pearson, is an experienced naval officer who had received training on the Canadian Forces policies concerning harassment prevention in the workplace called "SHARP Sensitization course" in 1995;
- (d) **(Paragraph removed, as it contains information that could disclose the identity of the person described in this judgement as the complainant);**
- (e) The fact that Lieutenant(N) Pearson's misconduct caused a significant impairment to the effectiveness of the combat systems division onboard ship and the serious administrative burden caused by the early repatriation of the offender and ultimately of the trainee. In addition, the situation created by Lieutenant(N) Pearson caused a significant crisis onboard ship, which necessitated the direct intervention of the ship's captain in order to restore cohesion, morale, and effectiveness; and
- (f) Finally, the fact that Lieutenant(N) Pearson's misconduct has caused a serious negative impact on the victim and that she continues to suffer emotionally and professionally as a result.

[23] There are, however, significant mitigating factors in this case:

- (a) Lieutenant(N) Pearson has pleaded guilty to the lesser and included offence of assault and to the offence of conduct to the prejudice of good order and discipline at the earliest opportunity. The court considers this admission of guilt as a sincere expression of remorse and the full acceptance of responsibility for his actions. In doing so, he has saved the victim to testify and cause her more grief than what she has already endured as a result of the offender's conduct. This is the most important mitigating factor in the present case;
- (b) Second, the absence of any previous disciplinary or criminal record;
- (c) Third, the fact that Lieutenant(N) Pearson has had a long and distinguished career until the events. In addition, his performance and potential described in his PERs of the most recent years have been outstanding. Based on the evidence the court accepts that his misconduct is attributable in part to a profound lack of judgement that seems inconsistent with his previous character, particularly in light of the documented performance indicators expressed in his PERs concerning reliability and ethics and values; and
- (d) Finally, the fact that his family has suffered as a result of his misconduct.

[24] In the context of this case, the court accepts that the decisions of *Able Seaman G.G. Bernier v Her Majesty The Queen*, 2003 CMAC 3; *R v Master Corporal J.E. Hopkins*, 2004 CM 40; *R v Warrant Officer Quirk* 2006, Standing Court Martial 5 December 2006; *R v ex-Warrant Officer Deschamps*, 2009 CM 1013; *R v Sergeant D.G. MacDonald*, 2010 CM 2018; *R v Captain(Retired) Amirault*; and *R v Petty Officer 2nd Class Rayment*, 2012 CM 1003 provide an adequate range of sentences. With the exception of *Quirk*, where the military judge accepted a joint submission made by counsel and imposed the punishment of reduction in rank to sergeant, all other offenders were sentenced to a severe reprimand and a large fine. In *Deschamps*, the court sentenced the offender to a reprimand and a \$4,000 fine after endorsing a joint submission on sentence.

[25] The court considers that an appropriate, fair, and just sentence that will maintain discipline must emphasize the denunciation of the unlawful conduct; the deterrent effect of the punishment, not only on the offender, but also upon others who might be tempted to commit such offences, and the reformation and rehabilitation of the offender. The sentence shall mainly consider the principles of proportionality and parity, the aggravating and mitigating circumstances previously described including that the offender, in committing the offences, abused his position of trust or authority in relation to the victim.

[26] In *Able Seaman G.G. Bernier v Her Majesty The Queen*, 2003 CMAC 3, the appellant appealed his convictions for two counts of assault and one count of conduct to the prejudice of good order and discipline involving sexual harassment. He also appealed his sentence of reduction in rank to the rank of able seaman and to a fine in the amount of \$1,500 in respect of his three convictions. Ewaschuk J.A. for the Court Martial Appeal Court allowed the appeal on sentence and stated, at paragraph 9:

In this case, I find that the Trial Judge erred in law by not considering the appropriateness of a severe reprimand coupled with a fine. In the circumstances, I am satisfied that the appropriate sentence for the non-violent assaults and sexual harassment will be a severe reprimand and a \$5,000.00 fine. Accordingly, the appeal against sentence will be allowed.

[27] In *Amirault*, the accused was found guilty of sexual assault contrary to section 271 of the *Criminal Code*. The underlying facts revealed that the complainant, a female bombardier, on the date alleged in the charge, was taking part in an exercise with her unit in the Petawawa training area. As part of her reconnaissance duties she was sitting by herself in the backseat of a military vehicle when the accused approached her. They had some small talk and then he put his hand on her left thigh and massaged her thigh up to the region of her groin and groped her vaginal area over her combat clothing. She was stunned and shocked, laughed nervously and brushed his hand away with her own hand. Then he reached out and touched her breast area inside her outer clothing, but over her t-shirt. He stopped when she became more forceful and aggressive in pushing him away. He chuckled and stated that "both of them could get in trouble for this." The incident lasted for maybe five minutes. She felt unsafe and went elsewhere in order to be around other people. The following day she encountered the accused at a social function and he apologized. Lamont M.J. found him guilty of sexual assault and sentenced him to a severe reprimand and a fine of \$8,000.

[28] In the case at bar, the offender, Pearson, has pleaded guilty to the lesser and included offence of assault under section 130 of the *National Defence Act* contrary to section 266 of the *Criminal Code* and to conduct to the prejudice of good order and discipline under section 129 of the *National Defence Act* for his repeated harassment against the victim, which clearly caused actual prejudice to good order and discipline as it appears from the circumstances. The court finds that the recent decision in *Amirault* is nevertheless a proper comparator for the purposes of parity of sentence. However, the totality of the circumstances, including the impact of the offender's conduct on the unit morale, cohesion and effectiveness and the impact on the victim, are demonstrably more serious in the case at bar.

[29] After a careful analysis of the abovementioned judicial precedents and the applicable principles of sentencing, I conclude that the mitigating circumstances previously described weigh in favour of the offender to refrain from imposing a sentence that otherwise would have justifiably exceeded the punishments imposed by Lamont M.J. in *Amirault*. For these reasons, I conclude that the minimal, fair, and just sentence consists of a severe reprimand and a fine of \$8,000.

FOR THESE REASONS, THE COURT:

[30] **FINDS** you, Lieutenant(N) Pearson, guilty of assault, an offence punishable under section 130 of the *National Defence Act* contrary to section 266 of the *Criminal Code*; and guilty of conduct to the prejudice of good order and discipline under section 129 of the *National Defence Act* for harassment contrary to Defence Administrative Orders and Directives 5012-0.

[31] **SENTENCES** you to a severe reprimand and a fine in the amount of \$8,000. The terms of payment for the fine will be \$300 per month in equal monthly instalments until full payment of the fine, starting 15 May 2012.

Counsel:

Captain A.C. Samson, Canadian Military Prosecution Services
Co-counsel for Her Majesty the Queen

Lieutenant-Colonel M. Trudel, Canadian Military Prosecution Services
Co-counsel for Her Majesty the Queen

Major D.M. Hodson, Directorate of Defence Counsel Services
Counsel for Lieutenant(N) L.M. Pearson