



COURT MARTIAL

Citation: *R v Castle*, 2013 CM 4008

Date: 20130502

Docket: 201275

Standing Court Martial

Canadian Forces Base Esquimalt
Victoria, British Columbia, Canada

Between:

Her Majesty the Queen

- and -

Captain B.M. Castle, Offender

Before: Lieutenant-Colonel J-G Perron, M.J.

RESTRICTION ON PUBLICATION

Restriction on publication: By court order made under section 179 of the *National Defence Act* and section 486.5 of the *Criminal Code*, any information that could disclose the identity of the person described in this judgement as the complainant shall not be published in any document or broadcast or transmitted in any way.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] Captain Castle, having accepted and recorded your pleas of guilty to charges number one and two, the court now finds you guilty of these charges laid under section 93 and 97 of the *National Defence Act*. The court must now determine a just and appropriate sentence in this case.

[2] The statement of circumstances to which you formally admitted the facts as conclusive evidence of your guilt provides this court with the circumstances surrounding the

commission of this offence. At the time of the offences you were employed at the Regional Cadet Instructor School (RCIS) Pacific as an instructor. On 31 May 2012 you attended a course graduation mess dinner for a Basic Officer Training Course that was run at the RCIS from 25 May to 3 June 2012. This Basic Officer Training Course provides initial training and qualification for officer cadets as CIC officers. While you had given a lecture on the course, you were not part of the course staff, nor were you a syndicate leader on that course. You attended the mess dinner along with other staff of the RCIS and graduating course candidates. All of the course candidates on the Basic Officer Training Course were adults, 19 years old or older. No cadets were present at the graduation mess dinner. During the mess dinner and reception all participants were in uniform.

[3] During the course of the mess dinner and the subsequent reception you consumed a significant amount of alcohol. You became increasingly loud and disorderly as the evening progressed. During the evening, in the presence of other RCIS staff officers and course candidates, you used profanity in ordering officer cadets to leave their quarters following the dinner and to go to the mess, moving furniture to create a makeshift dance floor at the mess, and then shouting at officer cadets to encourage them to dance; and swearing at the course duty driver when she attempted to replace the furniture at the end of the evening. A number of the officer cadets present at the mess dinner and reception noted your drunken and inappropriate behaviour over the course of the evening.

[4] At the end of the mess dinner function a DND van driven by the course duty driver was used to shuttle candidates and staff from the mess to their quarters. At approximately 0030 hours on 1 June 2012 you and three officer cadets took the last shuttle from the mess. As the group walked toward the duty vehicle you reached out and grabbed Officer Cadet J.H.'s buttocks.

[5] When the group entered the duty van despite the fact that the back rest of the rear bench was folded down over the seat you moved to the rear and sat beside Officer Cadet J. H. As you were sitting down you leaned back and fell into the rear cargo area of the van as the backrest for the rear seat was folded down. Officer Cadet J.H. helped you to sit up again on the seat.

[6] Once the van was moving you slid your hand up under Officer Cadet J.H.'s tunic and into her skirt, under her underwear, grabbing her buttocks. She told you to stop twice, but you continued moving your hand from her buttocks towards her vaginal area. At that point she told you that your actions were not appropriate, got up from where she was sitting and moved to the empty seat on the middle bench.

[7] As indicated by Court Martial Appeal Court, sentencing is a fundamentally subjective and individualized process and it is one of the most difficult tasks confronting a trial judge.

[8] The Court Martial Appeal Court clearly stated that the fundamental purposes and goals of sentencing as found in the *Criminal Code of Canada* apply in the context of the military justice system and a military judge must consider these purposes and goals when

determining a sentence. The fundamental purpose of sentencing is to contribute to respect for the law and the protection of society, and this includes the Canadian Forces, by imposing just sanctions that have 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;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

[9] The court must determine if protection of the public would best be served by deterrence, rehabilitation, denunciation or a combination of those factors.

[10] The sentencing provisions of the *Criminal Code*, ss. 718 to 718.2, provide for an individualized sentencing process in which the court must take into account not only the circumstances of the offence, but also the specific circumstances of the offender. A sentence must also be similar to other sentences imposed in similar circumstances. The principle of proportionality is at the heart of any sentencing. Proportionality means a sentence must not exceed what is just and appropriate in light of the moral blameworthiness of the offender and the gravity of the offence.

[11] The court must also impose a sentence that should be the minimum necessary sentence to maintain discipline. The ultimate aim of sentencing is the restoration of discipline in the offender and in the military society. Discipline is one of the fundamental prerequisites to operational efficiency in any armed force.

[12] The prosecution and your defence counsel have jointly proposed a sentence of a reduction in rank to the rank of lieutenant and a fine in the amount of \$5,000. The Court Martial Appeal Court has stated clearly that a sentencing judge should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute or unless the sentence is otherwise not in the public interest.

[13] I will now set out the aggravating circumstances and the mitigating circumstances that I have considered in determining the appropriate sentence in this case. I consider the following to be aggravating:

- (a) section 93 of the *National Defence Act*, disgraceful conduct, is objectively a serious offence since one can be sentenced to imprisonment for five years or to lesser punishment in the scale of punishments. Section 97 of

the *National Defence Act*, drunkenness, is objectively not as serious an offence since one can be sentenced to imprisonment for less than two years or to lesser punishment in the scale of punishments;

- (b) these offences are subjectively serious offences in a military context. Your disgraceful conduct amounted to the abuse of the physical and sexual integrity of a subordinate. You showed total disregard for her physical and emotional well-being;
- (c) you were drunk and you abused your rank and your authority throughout the evening. You did not conduct yourself in a manner that is expected of a captain with 13 years experience in that rank. You had even served as an acting major on at least two occasions in the previous years. You did not show to the officer cadets the leadership qualities we need and want in our officers. You were definitely not the example we wish to provide our young future leaders. I agree with the prosecutor that this situation could have a negative impact on the respect the public has in the Canadian Forces and the Cadet movement; and
- (d) you were 39 at the time of the offence and had been in the Cadet Instructor Cadre for 17 years. You had been employed continuously at the RCIS in a Class A or Class B service since 2002. You have also attended numerous courses such as harassment prevention. You knew that such behaviour is not tolerated in the Canadian Forces. Basically, you were old enough and had enough experience to know better.

[14] As to the mitigating circumstances, I note the following:

- (a) you do not have a conduct sheet, therefore, you are a first time offender. You have pled guilty. A plea of guilty will usually be considered as a mitigating factor. This approach is generally not seen as a contradiction of the right to silence and of the right to have the Crown prove beyond a reasonable doubt the charges laid against the accused but is seen as a means for the courts to impose a more lenient sentence because the plea of guilty usually means that witnesses do not have to testify and that it greatly reduces the costs associated with the judicial proceeding. More importantly, it is usually interpreted to mean that the accused wants to take responsibility for his or her unlawful actions and the harm done as a consequence of these actions;
- (b) your defence counsel has informed the court that a charge sheet containing a sexual assault charge had been preferred on 28 November 2012 and that you indicated your intention to plead guilty to other charges in January 2013. I agree with the prosecutor that this incident of sexual misconduct is not at the highest portion of the scale of sexual offences but it is not at the lowest end of that spectrum either;

- (c) I have reviewed Exhibit 8, your six Performance Evaluation Reports (PER) from the period 2006-2007 to 2011-2012. They describe a good performance as an instructor. I do note the last three PERs comment on the fact that you needed to improve your people skills and show more respect towards your peers. While your past performance is considered a mitigating factor, the information in the PERs also tells the court that your lack of respect for others did not just present itself that evening when you were drunk;
- (d) you have sought treatment regarding your alcohol consumption. You had had blackouts while drinking alcohol in the past and recognized that you were a binge drinker. You were assessed by a mental health nurse on 5 June 2012 and attended seven treatment sessions between June and August 2012. The Base Addictions Counsellor suggested a diagnosis of Problematic Alcohol Use and recommended that you limit your consumption of alcohol. Since your arrest on 1 June 2012 you have been under conditions of release to abstain from drinking alcohol. Once the conditions are lifted, your stated intention is to abstain from or extremely limit your alcohol consumption when in a work social environment;
- (e) it appears from your PERs and your attempts to deal with your problem with alcohol that you can be a candidate for rehabilitation but you will also have to correct your lack of respect of others if you wish to fully rehabilitate yourself; and
- (f) although you have kept your employment with the RCIS since the incident, you were removed as an instructor and your commanding officer will most likely terminate your Class B terms of service. And an administration review of your suitability to serve within the CIC will also be initiated and it is quite possible you will lose your employment with the CIC.

[15] I have concluded that denunciation and general deterrence are the main sentencing principles that need to be applied in the present case. Having reviewed the totality of the evidence, the jurisprudence and the representations made by the prosecutor and your defence counsel, I have come to the conclusion that the proposed sentence would not bring the administration of justice into disrepute and that the proposed sentence is in the public interest. Therefore, I agree with the joint submission of the prosecutor and of your defence counsel.

[16] The court must impose the minimum sentence that will provide a clear message to you and to others that this type of conduct is unacceptable and a sentence that will assist you in taking responsibility for your offences and assist you in your rehabilitation.

FOR THESE REASONS, THE COURT:

[17] **FINDS** you guilty of the first charge, for an offence under section 93 of the *National Defence Act* and guilty of the 2nd charge, for an offence under section 97 of the *National Defence Act*.

[18] **SENTENCES** you to a reduction in rank to the rank of lieutenant and a fine in the amount of \$5,000. The fine shall be paid immediately.

Counsel:

Lieutenant-Colonel S.D. Richards, Canadian Military Prosecution Services
Counsel for Her Majesty the Queen

Lieutenant-Commander B.G. Walden, Directorate of Defence Counsel Services
Counsel for Captain B.M. Castle