COURT MARTIAL

Citation: *R. v. Paradis*, 2010 CM 3025

Date: 20101202
Docket: 201039

Standing Court Martial

Academy of Valcartier Garrison
Quebec, Canada

Between:

Her Majesty the Queen

- and -

Lieutenant M.J.M. Paradis, offender

Restriction on publication: By order of this Court under section 179 of the *National Defence Act* and section 486.4 of the *Criminal Code*, information that could identify the persons described in this judgment as the victim shall not be published in any document or broadcast or transmitted in any way.

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

OFFICIAL ENGLISH TRANSLATION

REASONS FOR SENTENCE
(Rendered orally)

[1] Lieutenant Paradis, the Court Martial having accepted and recorded your admission of guilt on the first and second charges, the Court now finds you guilty of both charges.

[2] As the military judge presiding at this Standing Court Martial, it now falls to me to determine the sentence.

BACKGROUND OF PROCEEDINGS BEFORE THE COURT

[3] In the particular circumstances of this case, the Court considers it necessary to begin by summarizing the proceedings that have taken place in order to properly situate all of the parties involved and allow the decision to be understood more readily.

[4] Lieutenant Paradis made his first appearance before this Standing Court Martial on Wednesday, 20 October 2010 at 0930 hours, as required in the convening order (Exhibit 1).

[5] First, the prosecution filed a motion (Exhibit R1-1) requesting an order that no information that could identify the victim in this case be published, broadcast or transmitted in any way, which motion was allowed by the Court. That decision is still in effect.

[6] Next, Lieutenant Paradis recorded a plea of guilty to both charges on the charge sheet (Exhibit 2) dated 6 August 2010 in respect of the events that took place between 23 June and 15 August 2006.

[7] After having followed the procedure prescribed in article 112.25 of the *Queen's Regulations and Orders for the Canadian Forces* (QR&Os) regarding the acceptance of a plea of guilty, the Court accepted and recorded the accused's plea of guilty to the two charges.

[8] Afterwards, in accordance with the sentencing procedure set out at QR&O article 112.51, the prosecution provided the Court with the usual information on the offender by filing Exhibits 3 to 5. The prosecution read the statement of circumstances, which was admitted as true by the offender and filed as Exhibit 6. Last, the prosecution submitted having no further evidence to adduce with regard to sentencing. Defence counsel presented documentary evidence to the Court (Exhibits 6 to 11) and called Lieutenant Paradis to testify as witness on sentencing.

[9] Counsel then presented their respective submissions to the Court. Counsel made a joint submission on sentencing, recommending that the Court sentence Lieutenant Paradis to imprisonment for a term of 45 days and a $3,000 fine. They also suggested that the Court suspend the sentence of imprisonment. Following a comment by the Court regarding the fate of the victim in this case, defence counsel presented, with the prosecution's consent, a request to reopen the evidence, which the Court granted. Therefore, a joint summary of facts was read to the Court by defence counsel and accepted as evidence by the Court as admissions made by the offender at trial.

[10] The parties received the Court's permission to make further pleadings in light of the new evidence adduced, and the Court retired to determine the sentence in this case.

[11] On the afternoon of Thursday, 21 October, the Court reconvened and informed the parties that while explaining the procedure prescribed at QR&O article 112.25 for accepting a plea of guilty, it had made a fundamental error of law regarding the maximum punishment the Court could impose on the offender for the first charge, that is, the charge that is objectively the most serious. This error concerned the fact that the maximum punishment of imprisonment that the Court could impose for an offence

contrary to section 153 of the *Criminal Code* of Canada was a term of not five years, but 10 years, and that since 1 November 2005, the same section also has provided for a minimum punishment of imprisonment for a term of 45 days, which is contrary to what the Court had initially told the offender with the express consent of counsel.

[12] Therefore, in accordance with paragraph 126(1) of the QR&Os, the Court ordered that a plea of not guilty be substituted for the plea of guilty recorded by the offender in respect of both charges, given that the interests of justice demanded that it do so in the circumstances.

[13] The accused then immediately informed the Court, through his counsel, that he intended to re-record a plea of guilty in respect of both charges. Furthermore, the parties informed the Court of their intention to present the same joint submission on sentencing as they had previously.

[14] In lieu of that, the Court decided to adjourn proceedings until the following afternoon. The first reason for this decision was to allow the accused to adequately consult with his counsel and properly appreciate the potential enforcement of the relevant provision regarding the maximum sentence that could be imposed by the Court in respect of the first charge. The second was to allow the parties to prepare adequately, considering that the joint submission on sentencing that they intended to resubmit to the Court now corresponded to the minimum sentence provided at section 153 of the *Criminal Code*.

[15] On the afternoon of Friday, 22 October 2010, the Court reconvened the hearing of the case, and Lieutenant Paradis once again recorded a plea of guilty to both charges on the charge sheet. The Court accepted and recorded the accused's plea of guilty to both charges only after it had again followed the procedure set out at QR&O article 112.25.

[16] As part of the sentencing procedure under QR&O article 112.51, the parties relied on the same evidence as was presented at the hearing on Wednesday, 20 October. In addition, defence counsel, with the prosecution's consent, filed two documents before the Court in addition to those he had already filed (Exhibits 12 and 13).

[17] Counsel then made their respective submissions to the Court. Counsel made a joint submission on sentencing. They recommended that the Court sentence Lieutenant Paradis to imprisonment for the minimum term of 45 days set out at section 153 of the *Criminal Code* and a $3,000 fine. They also suggested that the Court suspend the sentence of imprisonment.

[18] Once the submissions were completed, the Court, in accordance with the requirements set out by the Court Martial Appeal Court in *Taylor*,[1] informed counsel that it was considering departing from the joint submission on sentencing presented by the parties because it appeared to the Court to be unfit, unreasonable and such that it would bring the administration of justice into disrepute.

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[1] See *R. v. Taylor*, 2008 CMAC 1, paragraph 21.

[19] More specifically, the Court told counsel that in its view, the minimum punishment of 45 days' imprisonment set out at section 153 of the *Criminal Code* is not the minimum punishment applicable in the circumstances. The Court stated that in accordance with the principle of parity in sentencing, that is, that similar sentences be imposed on similar offenders for similar offences committed in similar circumstances, and in the pursuit of the objectives of denunciation and deterrence in relation to the two offences and, more specifically, to the offence of sexual abuse, a punishment of imprisonment for a term of 6 to 12 months should be considered instead. The Court also mentioned that the evidence seemed to show that the offender felt some remorse over the consequences entailed by the disciplinary proceedings instituted against him but no remorse for the consequences of the actions he committed towards the victim, which could be an aggravating factor in itself. As well, the Court stated that it was confounded by the utter lack of evidence regarding the likelihood that the offender would reoffend in terms of the offence of sexual abuse and that the mere passage of time between the commission of the offence and these proceedings and the statement to that effect made by the parties in their respective submissions does not amount to sufficient evidence in that respect.

[20] In addition, the Court clearly expressed to counsel that, in its opinion, it had not been proven on a balance of probabilities that there were exceptional circumstances particular to the offender which could justify suspending the sentence of imprisonment in accordance with section 215 of the *National Defence Act*. The Court stated that on its own, the evidence of loss of employment could not be sufficient to meet the required burden of proof. Accordingly, the Court stated that it would provide counsel with the opportunity to make further submissions in light of its intention to reject the parties' joint submission on sentencing, all of which is consistent with the procedure set out in *Taylor*.[2]

[21] After a short recess, defence counsel informed the Court of his intention to resubmit his request to reopen the evidence as part of the further submissions he wished to make to the Court, but he also stated that he first wished to apply for an adjournment until November 2010. Instead, the Court adjourned the trial hearing until Saturday afternoon to allow the parties to properly assess the developments in the file and prepare their further submissions.

[22] In the early evening on Saturday, 23 October, the trial hearing resumed, and defence counsel told the Court that before making his submissions, he still wished to apply for an adjournment and move to reopen the evidence. Instead, the Court decided to proceed immediately with hearing the defence's motion to reopen the evidence.

[23] After having specified that the offender wished to file a document and a therapist's report as evidence and considered the criteria applicable to such a request and the prosecution's support of the request, the Court granted defence counsel leave to reopen his evidence to allow, only and exceptionally, those two items of evidence to be adduced. Subsequently, the Court accepted an application for adjournment made by

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[2] Ibid.

defence counsel and supported by the prosecution, and the hearing of the case was postponed until Tuesday, 30 November 2010, at 0900 hours.

[24] Therefore, the hearing of the Court Martial resumed on the scheduled date at the scheduled time. Defence counsel presented the evidence identified in his motion to reopen the evidence, that is, a sexological assessment report (Exhibit 15) and a document written by the offender at the time of his meeting with an NIS investigator, in which he apologized to the victim for what had happened (Exhibit 16). Afterwards, counsel presented their further submissions. The Court retired to determine the sentence.

INTRODUCTION

[25] In the particular context of an armed force, the military justice system constitutes the ultimate means of enforcing discipline, which is a fundamental element of military activity in the Canadian Forces. The purpose of this system is to prevent misconduct, or, in a more positive way, promote good conduct. It is through discipline that an armed force ensures that its members will perform their missions successfully, confidently and reliably.

[26] The military justice system also ensures that public order is maintained and that those subject to the Code of Service Discipline are punished in the same way as any other person living in Canada.

[27] Imposing a sentence is the most difficult task for a judge. In *Généreux*, the Supreme Court of Canada held that "[t]o maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently."[3] It emphasized that, in the particular context of military justice, "[b]reaches of military discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct".[4] However, the law does not allow a military court to impose a sentence that would be beyond what is required in the circumstances of the case. In other words, any sentence imposed by a court, be it civilian or military, must be adapted to the individual offender and constitute the minimum necessary intervention, since moderation is the bedrock principle of the modern theory of sentencing in Canada.

JOINT SUBMISSION

[28] In this case, the prosecution and defence counsel have presented a joint submission on sentencing. They recommended that the Court sentence you to 45 days' imprisonment and a $3,000 fine. They also suggested that the Court suspend the sentence of imprisonment.

[29] The Court Martial is not bound by this recommendation. However, it is well established in the case law that there must be compelling reasons for the Court to

[3] See *R. v. Généreux*, [1992] 1 S.C.R. 295, at page 293.
[4] Ibid.

disregard it.[5] It is also generally recognized that the Court should accept the recommendation unless doing so would be contrary to the public interest or bring the administration of justice into disrepute.

OBJECTIVES AND PRINCIPLES OF SENTENCING

[30] The fundamental purpose of sentencing in a Court Martial is to ensure respect for the law and the maintenance of discipline by imposing punishments that have one or more of the following objectives:

a. to protect the public, which includes the Canadian Forces;

b. to denounce unlawful conduct;

c. to deter the offender and other persons from committing the same offences;

d. to separate offenders from society, where necessary; and

e. to rehabilitate and reform the offender.

[31] When determining the punishments to constitute the sentences imposed, a military court must also take into consideration the following principles:

a. a sentence must be proportionate to the gravity of the offence and to the degree of responsibility and previous character of the offender;

b. a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

c. an offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances. In short, the Court should impose a sentence of imprisonment or detention only as a last resort; and

d. last, all sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[32] The Court is of the opinion that sentencing in this case should focus on the objectives of denunciation and general and specific deterrence. It is important to remember that the principle of general deterrence means that the sentence imposed should deter not only the offender from re-offending, but also deter others in similar situations from engaging in the same prohibited conduct. Furthermore, it should be noted that section 718.01 of the *Criminal Code* states that the Court must give primary consideration to those two objectives when a person under 18 years of age is subjected to abuse.

[5] See above, note 1.

NATURE OF THE OFFENCES

[33] In this case, the Court is dealing with an offence with regard to the offender's having touched a young person towards whom he was in a position of authority, contrary to paragraph 153(1)(*a*) of the *Criminal Code*, and an offence of conduct to the prejudice of good order and discipline to the effect that the offender had a prohibited relationship with a cadet, contrary to the *Cadet Administrative and Training Orders* (CATO), all of which is contrary to section 129 of the *National Defence Act*.

[34] Regarding section 153 of the *Criminal Code*, it appears that the nature of this offence aims essentially to prohibit exploitation of a young person's vulnerability by an adult for a sexual purpose. To that effect, Justice Laforest of the Supreme Court of Canada, in his analysis of the notion of trust attached to this section while writing for the majority in *Audet*,[6] described Parliament's purpose and objective in relation to this section as follows:

> 35. The French word "*confiance*", according to *Le Grand Robert*, is a belief in or firm expectation of something, or faith in someone, and the confidence that results therefrom. In English, the word "trust" can have various meanings, especially in a legal context. However, considering that Parliament used the word "*confiance*" in the French version, I doubt that the word "trust" as used in s. 153(1) refers to the concept as defined in equity. I therefore agree with the reservations expressed by Blair J. "Trust" must instead be interpreted in accordance with its primary meaning: "[c]onfidence in or reliance on some quality or attribute of a person or thing, or the truth of a statement". The word "confidence" is defined as follows: "[t]he mental attitude of trusting in or relying on a person or thing; firm trust, reliance, faith".
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> 36. I would add that the definition of the words used by Parliament, like the determination in each case of the nature of the relationship between the young person and the accused, must take into account the purpose and objective pursued by Parliament of protecting the interests of young persons who, due to the nature of their relationships with certain persons, are in a position of vulnerability and weakness in relation to those persons.

[35] With regard to the second charge, brought under section 129 of the *National Defence Act*, it should be noted that the cadet order infringed was also aimed at preventing such a situation of exploitation of the vulnerability and weakness of young persons who are cadets by the members of cadet staff in areas such as emotional, romantic or sexual relationships, but from a staff management perspective.

[36] Like the civilian courts, military courts are sensitive to offences of this type relating to an abuse of trust or authority in the context of such a movement for young persons, particularly when this abuse involves an adult and a young person. In such a

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[6] See *R. v. Audet*, [1996] 2 S.C.R. 171, at paragraphs 35 and 36.

context, this abuse has an impact on the cohesion and morale of cadet units and their members, since it is a matter of applying the principles of respect for others, integrity and responsibility which must be followed by all adult Canadians, including Canadian Forces members, and even more particularly Cadet Instructors Cadre (CIC) officers in the Canadian Cadet Movement, both in and outside Canada.

[37] It is important to recall that the Canadian Cadet Organization is a youth program sponsored by the federal government and that it is not comprised in the Canadian Forces, as set forth at subsection 46(3) of the *National Defence Act*. Cadets are youth of not less than 12 years of age who have not attained 19 years of age, as specified at subsection 46(1) of the *National Defence Act*. It should be noted that this same subsection states that the authority to form a cadet organization resides with the Minister of National Defence, and that such an organization is placed under the control and supervision of the Canadian Forces.

[38] As set forth at Chapter 11-03 of the *Cadet Administrative and Training Orders* (CATO) made under the authority of the Chief of the Defence Staff, the Cadet Program's mission is as follows:

> 6. **Mission**. The mission of the Cadet Program is to contribute to the development and preparation of youth for the transition to adulthood, enabling them to meet the challenges of modern society through a dynamic, community-based program.

[39] Only the officers in the CIC are Canadian Forces members. The CIC is a sub-component of the Reserve Force, which is comprised in the Canadian Forces, just as are the Regular Force and the Special Force, as set out in Chapter 2-8 of the *Canadian Forces Administrative Orders* (CFAOs), also made under the authority of the Chief of the Defence Staff.

[40] The duties of CIC officers are to administer, train and supervise cadets, as provided by Chapter 23-01 of the CATOs. As part of summer training, staff cadets and cadets are cadets who may assist officers with training, supervision and administrative duties. Obviously, just as in the Canadian Forces, there is a hierarchy between CIC officers, staff cadets and cadets on account of the rank and functions of each.

CIRCUMSTANCES RELATING TO THE COMMISSION OF THE OFFENCES

[41] The circumstances of this case may be summarized as follows. In the summer of 2006 at Valcartier Garrison, Lieutenant Paradis was on Class B service at the Valcartier cadet summer training camp as platoon commander with the rank of second lieutenant. At that time, he had been a CIC officer for approximately 18 months. Before the start of the cadet summer training camp, he participated in a week of training during which he was familiarized with Chapter 25-05 of the CATOs, which provides that relationships of an emotional, romantic or sexual nature between a staff member and a cadet, while in the chain of command, are not permitted. At the same time, the victim, a 16-year-old

boy, was a staff cadet with the rank of sergeant, who was serving in the same company as the offender, and was therefore in the same chain of command as the offender.

[42] A staff cadet approached Lieutenant Paradis regarding whether he could meet with the victim about a personal problem. This staff cadet was aware of the fact that Lieutenant Paradis was homosexual and asked him whether he could meet with the victim to help and advise him, since the staff cadet in question was questioning his sexual orientation. The offender met with the victim and had a few discussions with him on the subject.

[43] On Saturday, 15 July 2006, the offender kissed the victim on the mouth and caressed the victim's knee and thigh while they were in the administrative offices of L Company. The victim also kissed the offender.

[44] Four to five days later, Lieutenant Paradis went to wake the staff cadet in his room to remind him that he was on duty and kissed him on the mouth.

[45] On Friday, 4 August 2006, the offender and the victim went shopping together in the Galeries de la Capitale in Québec. Afterwards, Lieutenant Paradis stopped by his home in Lévis to pick up a piece of equipment. While the offender's vehicle was parked in front of his home and he was inside the vehicle with the staff cadet, he kissed him, caressed him and masturbated him through his pants.

[46] On the return journey, from his home to the Valcartier Garrison cadet camp, the staff cadet performed fellatio on the offender in the vehicle while they were on Autoroute Henri IV. This was the first time the staff cadet had performed such an act.

[47] When the cadet summer training camp ended, the staff cadet cut off all relations with Lieutenant Paradis. One person at the camp was aware of the offender's relationship with the victim and, after the camp, another person conveyed to Lieutenant Paradis his concerns about the relationship that Lieutenant Paradis had had with the staff cadet.

[48] In 2007 and 2008, Lieutenant Paradis and the staff cadet took part in two other cadet summer training camps at Valcartier Garrison, where they crossed paths. The victim sought to avoid the offender because he still felt a form of anger towards him.

[49] In summer 2009, only the offender returned to the cadet summer training camp. However, after having made a visit to this same camp in summer 2009 and being advised by his friends to file a complaint, the victim met with a National Investigation Service (NIS) investigator in summer 2009 to make a complaint about the events that had taken place in 2006 with Lieutenant Paradis.

[50] At the meeting with the NIS investigator, the victim stated that he was ambivalent about the sexual acts that had been performed with Lieutenant Paradis. He told the investigator that the reason was that, on the one hand, he had not consented to a relationship between himself and the accused, but he had had no choice but to act has he had because he feared receiving a poor end of camp report from his supervisors. He also

stated that, on the other hand, he had never clearly indicated a refusal to the sexual activities that he had engaged in with the offender. He stated that he had turned the page and distanced himself somewhat from those events. He stated that he had not really experienced any after-effects from those events. He even expressed his intention to join the CIC as an officer.

[51] Following the victim's complaint in August 2009, Lieutenant Paradis' Class B terms of service were prematurely cancelled two days before they were scheduled to end, as were all of his duties within the cadet movement as manager for the cadets belonging to the biathlon centre, and he no longer had access to the building where his cadet corps was located. He met with the NIS investigator, to whom he confessed what had happened and with whom he co-operated fully. At that meeting, he also wrote a letter of apology to the victim, in which he expressed that he regretted what had happened, stating that he had never wanted to cause him any harm.

[52] Lieutenant Paradis' involvement with the cadets in various functions over the course of a year enabled him to earn a sufficient salary. Since he no longer had access to those functions, he had to search for a full-time job and, in September 2009, found one working in a hotel. In January 2010, his employer promoted him to assistant manager.

[53] On 22 July 2010, Lieutenant Paradis was released from the Canadian Forces under item 5(*f*), unsuitable for further service, in relation to the events before this Court.

[54] He began a vocational diploma in accounting while working full time as an assistant manager at a hotel. He is president of the student council but, following the publicity in relation with this case, the school board temporarily delegated his duties to someone else. His ambition is to increase his responsibilities in his current job or to work in a larger hotel.

[55] The sexological assessment report written by a clinical sexologist and psychotherapist, dated 18 November 2010, was filed by the offender and provided the Court with the following additional facts:

> a. During the period related to the commission of the offences to which Lieutenant Paradis pleaded guilty, he was going through an active period of affirmation of his sexual orientation. He drank alcohol more regularly and took drugs. He went out to bars and sought acceptance through his behaviour. He had not been living with his parents for some time because of the fact that he had told his father that he was homosexual. He had been in a few relationships with older men which had only lasted a few months because those men had tried to impose on him a manner of conducting his romantic relationship. He was experiencing a type of emotional instability and impulsiveness that caused him to be more inclined towards a relationship with the victim, who was younger than him. In fact, he felt that with this young man, he was for once in an emotional relationship between equals, which allowed him to assert himself more and come out of his shell because he did not feel threatened by the other person. The therapist also concluded in his report that Lieutenant Paradis'

actions towards the victim [TRANSLATION] "appeared to have occurred in a situational context" and did not result from a sort of tendency or deviance afflicting the offender. The therapist was of the opinion that it was the absence of framework that led the offender to have greater difficulty keeping control, thus contributing to his greater instability and emotional impulsiveness. The therapist noted that these factors were present at a time that coincided with the period when the offences were committed.

b. The therapist was of the opinion, on the basis of certain tools used to predict the risk of a sexual re-offence and the situation described by Lieutenant Paradis, which corresponds to the situation presented to this Court, that Lieutenant Paradis was in a low-risk to moderate-risk category for a sexual re-offence.

c. The therapist stated that with the passing of time, Lieutenant Paradis understands that he conducted himself improperly and that the victim was in a situation where he could not say no, considering his uncertainty about his sexual orientation.

d. The offender is currently emotionally stable because of the following factors: the presence and support of his immediate family, which has a significant prosocial influence on him, and the fact that he does not exhibit hostility and is not experiencing a situation of rejection or solitude, that he is more reasonable than impulsive in his decisions, that he has better job stability, that he is going to school and that he has no heightened sexual concerns. This situation has the effect of further reducing his risk of reoffending and enables the therapist to view and characterize this risk as low.

AGGRAVATING AND MITIGATING FACTORS

[56] In the Court of Appeal of Québec's decision in *R v. L.(J.J.)*,[7] Justice Otis, writing for the Court, listed a series of factors characterizing the criminal responsibility of an offender with regard to passing sentence for sexual offences, including the following:

[TRANSLATION]

a. The nature and intrinsic gravity of the offences, which may involve, among other things, the use of threats, violence, or manipulation, etc.

b. The frequency of the offences and the time period over which they occur.

c. The abuse of the relationship of trust and authority between the offender and the victim.

[7] 1998 CANLII 12722 (QCCA), at pages 4 to 7.

d. The disorders underlying the commission of the offences: the offender's psychological distress, pathologies and deviance, intoxication, etc.

e. The offender's prior convictions, their proximity in time to the alleged offence and the nature of the prior convictions.

f. The offender's conduct before and after the offences were committed: confessions, co-operation with the investigation, immediate enrolment in a treatment program, rehabilitation potential, financial assistance where appropriate, compassion and empathy for the victims (remorse, regret, etc.).

g. The time between the commission of the offence and the conviction as a mitigating factor, depending on the conduct of the offender (offender's age, social and occupational integration, commission of other offences, etc.)

h. The victim: gravity of the attack on his or her physical and psychological integrity, which may involve, among other things, age, the nature and magnitude of the assault, the frequency and duration, the victim's characteristics and vulnerability (mental or physical disabilities), abuse of trust or authority, lasting trauma, etc.

[57] Clearly, there are other factors that are not mentioned in that decision, such as whether or not the offence was premeditated, whether drugs or alcohol were involved and how much time passed before charges were laid. Any other factors may also be considered, as this list is not exhaustive.

[58] In arriving at what it considers to be a fair and appropriate sentence, the Court has therefore considered the aggravating and mitigating factors presented by the facts of this case.

[59] The Court finds the following factors to be aggravating:

a. First, the objective seriousness of the offences. You were found guilty of an offence punishable under section 130 of the *National Defence Act* for having touched, for a sexual purpose, a young person towards whom you were in a position of authority, contrary to paragraph 153(1)(*a*) of the *Criminal Code*. The objective seriousness of this offence speaks for itself, given that there is a minimum punishment of 45 days' imprisonment and a maximum punishment of 10 years' imprisonment, reflecting the repudiation and aversion that Canadian society attaches to the commission of such an offence. Furthermore, you were also found guilty of an offence under section 129 of the *National Defence Act* for having had a prohibited relationship with a cadet contrary to a specific order of which you were aware, for which you were liable to dismissal with disgrace from Her Majesty's service or to less punishment.

b. The subjective seriousness of the offence, which consists of four aspects. First of all, you benefited from a particular context and from an opportunity that you were offered, both personally and as an officer, to influence ably and to

your advantage the initial relationship you had with the victim. By imposing your vision of matters, that is, that it was a relationship between equals, you distorted the relationship that should have existed between you and the victim, that is, the relationship between an adult and a young person who is questioning himself and searching for his identity, and also the relationship between an officer of the Cadet Organization instilling the necessary knowledge for a cadet's passage from young person to adult, and this resulted in sexual relations with a young person.

c. The fact that there were four episodes of a sexual nature over a six-week period, including one involving explicit sexual relations.

d. In summer 2006, your emotions obscured your judgment to the point that you failed completely as regards the relationship that was developing between you and the victim. He had been directed to you so you could use your knowledge and experience to help and guide this young staff cadet. Your experience in the cadet movement, your training as an officer, including your training on prohibited relationships between staff and the cadets themselves, and your personal experience in exploring and affirming your sexual orientation should have been sufficient for you to understand that to enter into a romantic and sexual relationship with a young person of 16 who is questioning his sexual orientation, and therefore in a vulnerable position, was an abuse of trust and authority towards him. What is more, you abused the trust that was placed in you by your superiors, the parents and the members of Canadian society in general, which has specific expectations as to the respect of the cadets' mission. In that regard, I repeat the words of Justice Lamont in *Mahaney*:[8]

> An effective cadet training programme requires that the Canadian Forces repose a special trust in the officers of the Cadet Instructor List whose role is to be a model of behaviour and example for the young people in their charge. The parents of young cadets are also entitled to be confident that members of the Canadian Forces who are involved in the cadet programme are above reproach. And, of course, the cadets themselves are entitled to be confident that their supervisors will always be mindful of their welfare. I regard the betrayal of these important trusts as a serious matter, especially where the issues of sexual misconduct between cadets and cadet leaders have been brought home to the offender in the course of his training as a course leader.

e. At the time of the incidents, the victim felt confused by the situation to a certain extent because he was experiencing a form of anxiety in relation to the consequences that could arise from that situation—hence the statement the staff cadet made that he did not think he had a choice, to a certain point, but to do what he did with you. The evidence shows that afterwards, for an unspecified reason, this young person felt some frustration following the events in question, resulting in a certain tension between you and he during the following two summers, culminating in a complaint being filed against you with the police,

[8] See *R.* v. *Mahaney*, 2010 CM 2003, at paragraph 8.

which seems to have had a liberating effect on this individual. In fact, it now seems that he has turned the page on this entire matter and has reconciled himself with the cadet community to the point that he wants to be a part of it.

f. The incidents that occurred with the staff cadet in the summer of 2006 did not arise from an unexpected situation, but from purposeful actions and words which led you to have an emotional and sexual relationship with him—actions and words that you could have stopped at any time. Consequently, the Court must take the view that this is a form of premeditation in the commission of those two offences.

[60] The Court considers the following to be mitigating factors:

a. Your plea of guilty is clearly a sign that you are remorseful and sincere in your intention to remain a valid asset to Canadian society. As well, in your testimony before the Court, you clearly showed remorse for the consequences of your actions. Furthermore, when the NIS investigator confronted you about the events resulting in the complaint formulated by the victim, you admitted the facts, co-operated fully and even wrote a letter of apology to the victim.

b. Your age and your career potential as a member of the Canadian community; being 26 years old, you have many years ahead to make a positive contribution to Canadian society in general.

c. Your lack of a criminal record or conduct sheet referring to similar offences.

d. In addition, the fact that your military career came to a precipitate end in relation to the incidents of summer 2006, to the point that your career was subjected to an administrative review and terminated by the Canadian Forces by your release on ground 5(*f*) because you were considered unfit for further military service, is a mitigating factor which must be considered even though it is not, in itself, a disciplinary sentence. In fact, the termination of your service as a Canadian Forces officer is a purely administrative process guided by different legal parameters from those of the disciplinary system, but which the Court must take into account because of the facts related to and the indirect consequences resulting from that termination.

e. The fact that you had to face this Court Martial, which was announced and accessible to the public and which took place in the presence of some of your colleagues, some of your peers and the media, has no doubt had a very significant deterrent effect on you and on them. The message is that the kind of conduct that you displayed will not be tolerated in any way and will be dealt with accordingly.

f. The fact that the victim of your actions did not really experience any after-effects from the incidents and states having turned the page on the events.

g. The relatively short period during which the events took place.

h. The four years' time since the incidents. It appears that during this timeframe, no other such incident was flagged or reported about you, which seems to indicate that you have matured enough for such an incident not to happen again. This also confirms that it was a situational incident more than anything else.

i. The unlikelihood that you will direct such actions towards a young person again because of the emotional stability you have achieved on account of the support of your friends and family, your personal situation of stable employment and your maturity in controlling your emotions. In addition, the therapist expressed the opinion, in his report, that you are at a low risk of reoffending.

SENTENCE

[61] Since the beginning of the hearing of this case, the parties have been clear. They both suggest incarceration in the form of imprisonment as the only adequate punishment for the offences committed by the offender and, at the same time, they submit to the Court that there is no other appropriate punishment or combination of punishments for the offences and the offender. Moreover, their suggestion ties in with the military case law developed in similar matters, be it in *Verreault*,[9] *Pruneau*[10] or by the Court Martial Appeal Court in *Paquette*.[11]

[62] In addition, with the coming into force on November 1, 2005, of the amendments to section 153 of the *Criminal Code*, the parties had no choice but to make such a suggestion given that, since that date, a plea of guilty to this offence requires that the courts impose a sentence of imprisonment for a minimum term of 45 days.

[63] The Court must therefore impose the punishment of imprisonment on the offender, both because it is necessary to ensure the respect of the law and the maintenance of military discipline consistent with the military case law developed on the subject and because it is required in accordance with the effects of the combination of paragraph 130(2)(*a*) of the *National Defence Act*, which provides for the imposition of the minimum punishment prescribed in the applicable provision of the *Criminal Code*, and section 153 of the *Criminal Code*, which provides for the mandatory imposition of a sentence of imprisonment for a minimum term of 45 days.

[64] The question now is what the duration of such a sentence of imprisonment should be to ensure the respect of the law and to maintain discipline.

[65] It is important to emphasize that the Court is of the opinion that when the act as charged goes beyond the scope of discipline and is criminal in the true sense, the

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[9] *R. v. Lieutenant Verreault*, Standing Court Martial, 4 April 2000.
[10] *R. v. Master Corporal Pruneau*, Standing Court Martial, 24 May 2000.
[11] *Captain Luc Paquette v. Her Majesty the Queen*, CMAC 418 (30 December 1998).

military judge who imposes the sentence must examine the offence not only in light of the values and skills of members of the Canadian Forces, but also from the perspective of the exercise of concurrent criminal jurisdiction.

[66] Sexual contacts between a staff cadet, who is a young person of 16 years of age, and a CIC officer is a criminal offence in itself. The expectations that parents and Canadian society have of the cadet movement are that the young persons in this organization will be safe from any form of abuse from the adults, including the officers in charge of their training. The burden in relation to those expectations is always on the officer, who has the duty to reject any suggestion, incitement or initiative that would lead to the performance of acts of a sexual nature with cadets. When an officer oversteps the bounds that must remain in place with a cadet by having sexual relations with that cadet and is found guilty of such an act, the officer is not merely committing a military offence by violating the Code of Service Discipline, but also committing a criminal offence because that act is contrary to a provision of the *Criminal Code*, since it is primarily an act committed by an adult towards a young person. In that respect, it is an act that goes beyond the purely disciplinary framework.

[67] Both parties made a joint submission on sentencing regarding the number of days of imprisonment that the Court should impose on the offender, that is, the 45-day minimum. The Court initially stated that it disagreed with this suggestion because, in its opinion, this was not the minimum necessary intervention in the circumstances of the case. The Court also noted that a punishment of imprisonment for a term of 6 to 12 months was more appropriate in its opinion.

[68] The further submissions of counsel and the evidence adduced by reopening the evidence made it possible to define more clearly the context in which the offences were committed and the number of days of imprisonment that should be imposed on the offender.

[69] I fully agree with the presentation made to the Court by defence counsel, in which he stated to the Court that the principle of proportionality between the seriousness of the offence, the degree of responsibility of the offender and the previous character of the offender is central to determining the sentence, as reiterated by the Supreme Court in *Nasogaluak*,[12] and that when it is a matter of imposing a minimum required sentence, the offender need not demonstrate that the Court is facing the least serious offender for the least grave offence for the Court to impose the minimum required sentence.

[70] In fact, the exercise for this Court consists in determining the sentence that is appropriate and just in the circumstances. However, when a joint submission on sentencing has been made as a result of bargaining between the two parties in a criminal context, the Court must have commanding reasons to reject the parties' joint recommendation, that is, the Court must be of the opinion that the sentence is

[12] See *R. v. Nagosaluak*, 2010 SCC 6, at paragraph 41.

inappropriate, unreasonable, of such a nature as to bring the administration of justice into disrepute or contrary to the public interest.

[71] The principle of parity in sentencing is another principle that may assist the Court in the circumstances. More specifically, the Court examined the decisions of the courts regarding sentences imposed for an offence under section 153 of the *Criminal Code* involving offenders having an educator's function, be it as a teacher or trainer, as those functions share certain similarities with those of an officer in a cadet movement. The Court noted that it is difficult to find examples involving similar circumstances because, very often, the relationship between the adult and the young person is of relatively long duration and involves numerous repeated instances of sexual relations, or there are many victims or the victims experience serious after-effects, which did not happen in the case before the Court. In addition, the cases I reviewed are listed in the appendix to this decision and include those presented by the parties.

[72] After having reviewed the case law, taken into account the principles and objectives applicable to sentencing including those related to denunciation and deterrence and considered the aggravating and mitigating factors, I find that a punishment of imprisonment for a term of 60 days would be appropriate and just in the circumstances.

[73] However, despite the fact that it seems to me very indulgent in the circumstances, I find that counsel's joint submission on sentencing of imprisonment for a term of 45 days, which is the minimum punishment that the Court must impose on the offender, does not seem to me inappropriate, unreasonable, of such a nature as to bring the administration of justice into disrepute or contrary to the public interest in the circumstances of the case, particularly in light of the mitigating factors. Those factors are the very contextual aspects of the incident, the absence of after-effects experienced by the victim, the nature, period and limited frequency of the incidents and the low probability that the offender will commit such an offence again.

SUSPENSION OF THE SENTENCE

[74] The prosecution and defence jointly suggested to the Court that it suspend the sentence of 45 days' imprisonment by means of its powers under section 215 of the *National Defence Act* because it is warranted on account of the exceptional circumstances of the offender allegedly demonstrated in this case.

[75] Section 215 of the *National Defence Act* reads as follows:

> 215. Where an offender has been sentenced to imprisonment or detention, the carrying into effect of the punishment may be suspended by the service tribunal that imposed the punishment.

[76] This section is in Division 8 of the Code of Service Discipline in the *National Defence Act*, which contains the provisions applicable to imprisonment and detention. The suspension of a punishment of imprisonment is a discretionary and exceptional power that may be exercised by a service tribunal, including a court martial. This power

is different from the power provided by section 731 of the *Criminal Code*, which allows a civilian court of criminal jurisdiction to suspend the passing of sentence while subjecting an offender to a probation order, or the power provided by section 742.1 of the *Criminal Code* on imprisonment with conditional sentencing, which allows a civilian court of criminal jurisdiction to sentence an offender to serve a punishment of imprisonment in the community. It should be noted that since the offence of sexual abuse is an offence for which there is a minimum punishment of imprisonment, the use of those two measures is expressly excluded by the provisions of the *Criminal Code*.

[77] The *National Defence Act* does not contain any particular criteria for the application of section 215. To this day, the Court Martial's interpretation of its application is quite clear and has been established by various military judges in other cases.[13] Essentially, if the accused demonstrates, on a balance of probabilities, that his or her particular circumstances or the operational requirements of the Canadian Forces justify the necessity of suspending the sentence of imprisonment or detention, the Court will make such an order. However, before doing so, the Court must consider, once it has found that such an order is appropriate, whether or not the suspension of that sentence would undermine the public trust in the military justice system as part of the Canadian justice system in general. If the Court finds that that it would not, the Court will make the order.

[78] Defence counsel submitted that this provision should be interpreted differently in cases where a member has already been released from the Canadian Forces when a Court Martial imposes a sentence of incarceration on that member. Defence counsel argued that in light of the view expressed by the Court Martial Appeal Court in *St-Onge*,[14] this Standing Court Martial has no other choice but to suspend the sentence of imprisonment which must be imposed by the Court because of the fact that the offender was released from the Canadian Forces in July 2010.

[79] Defence counsel bases his argument on paragraph 64 of this decision, which reads as follows:

> If the public, in this context, is the Canadian Forces, it is apparent that the objective of protecting the public was significantly advanced by removing the appellant from the public, by means of his administrative release. Furthermore, if one of the purposes of imprisonment is to prepare an offender for his return to civil society, a sentence of imprisonment serves no purpose if the offender has already been returned to civil society at the time sentence is imposed. There may be cases where the offender's conduct is so egregious that the objectives of denunciation and punishment are paramount, so that the imposition and execution of a sentence of imprisonment following the offender's administrative release from the Canadian Forces would be justified but, in those cases, the military and correctional objectives of the sentence would be advanced, in spite of the offender's administrative release.

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[13] See *R. v. Constantin*, 2008 CM 29; *R. v. Labrie*, 2008 CM 1013; *R. v. Bryson*, 2008 CM 1002; and *R. v. Tardif*, 2008 CM 3010.

[14] *R. v. St-Onge*, 2010 CMAC 7.

[80] I do not agree with the statement by defence counsel. The decision of the Court Martial Appeal Court in *St-Onge* imposes no obligation on the Court to exercise the power set out at section 215 of the *National Defence Act*, that is, to suspend the sentence of imprisonment in the circumstances of this case.

[81] To the contrary, the Court Martial Appeal Court in *St-Onge* merely asks military judges to give further consideration to the effects of imposing and executing a sentence of incarceration in the particular context in which a member has already been released from the Canadian Forces. In that decision, the Court underscores that insofar as the sentence of imprisonment considered is for the specific purpose of preparing an offender for a return to civilian life, such a sentence becomes pointless when a member has already been released from the Canadian Forces because it no longer serves its intended purpose. The Court Martial Appeal Court also reiterated that if a sentence is imposed to serve the objectives of denunciation and punishment because of an offender's reprehensible conduct, then that sentence can be imposed.

[82] To summarize, the Court Martial Appeal Court stated in *St-Onge* that an offender's release from the Canadian Forces is an important factor to consider when a Court Martial is deciding whether or not to impose a sentence of imprisonment on the offender. In so doing, it noted that this measure is a last resort that must be considered in accordance with the principles and objectives applicable to sentencing. To do otherwise could result in undermining public confidence in the system of military justice, as a component of the Canadian justice system in general.

[83] In this case, it is not a matter of whether or not the Court must impose a punishment of imprisonment, since that punishment is imposed automatically by operation of law. Rather, it is a matter of whether or not that sentence must be executed, considering, among other things, the fact that the offender was released from the Canadian Forces about four months ago.

[84] This Court has the duty to examine this question from the perspective of imposing a sentence for a criminal offence rather than a strictly disciplinary offence.

[85] I am still of the opinion, despite the additional evidence adduced by the offender and the further submissions made by the parties, that the offender has failed to establish, on a balance of probabilities, that there are exceptional circumstances particular to him which would justify suspending the sentence of 45 days' imprisonment imposed by this Court.

[86] Contrary to the submission by defence counsel, I am of the opinion that if Lieutenant Paradis were to serve this sentence of imprisonment, it would not jeopardize the factors which contributed to the emotional stability he has achieved that now enables him to reflect instead of acting impulsively on his emotions. With regard to his employment, the evidence that he would lose his job is scant and unconvincing, considering the relatively short period of incarceration. Given that he is well regarded in his workplace and was promoted early this year because of his job performance, it seems unlikely to me that the offender will be dismissed merely because of his

incarceration. At the very least, he has not demonstrated, on a balance of probabilities, that there is a need to suspend the sentence of incarceration for such a reason.

[87] With regard to his studies, I was informed at the hearing by defence counsel that Lieutenant Paradis had taken a leave of absence of one month from his studies to resolve this matter. I understand that his studies may be delayed because of his incarceration, but the offender has not demonstrated that such a delay will have consequences for his receiving a promotion or obtaining a different job. In that respect, a need to suspend his sentence has also not been shown on a balance of probabilities.

[88] The sentence of 45 days' imprisonment imposed by this Court is primarily intended to serve the purposes of sentencing related to denunciation and deterrence. It is also intended to reflect society's denunciation of both the commission of the offence of sexual abuse in the context where a cadet is abused by a CIC officer, that is, a young person is abused by an adult, and the commission of the offence of establishing such a relationship, which is clearly prohibited by the applicable policies. When a CIC officer who is in a position of trust and authority engages in emotional, romantic or sexual activities with a cadet and thus fails to maintain a professional and appropriate relationship, the officer must receive such punishment as reflects that breach of the officer's commitment to cadets, the cadet movement and Canadian society in general. In short, this is essentially a case where your conduct was so egregious that the objectives of denunciation and punishment must prevail.

[89] As stated by Judge Weiler of the Court Martial Appeal Court in *Paquette*,[15] which concerned offences of the same nature, I am of the opinion that the suspension of the sentence of 45 days' imprisonment imposed by this Court would undermine the public's confidence in the military justice system as a component of the Canadian justice system in general. For, in my opinion, to do as the offender asks, to the extent that he had made the necessary demonstration to the Court justifying suspension of the sentence, would not adequately reflect the societal concern that such conduct must not be tolerated when such offences are committed, and would therefore go against the objectives of denunciation and punishment arising from the commission of such reprehensible offences.

RELATED ORDERS

[90] In accordance with section 196.14 of the *National Defence Act*, considering that the offence for which I have passed sentence is a primary designated offence within the meaning of section 196.11 of the *National Defence Act*, I order, as indicated on the attached prescribed form, that the number of samples of bodily substances that is reasonably required be taken from Lieutenant Paradis for the purpose of forensic DNA analysis.

[15] See above, note 11 at paragraph 23 [typographical error; should read paragraph 61].

[91] Since the prosecution refrained from making an application in accordance with section 227.01 of the *National Defence Act*, the Court will not make an order requiring you to comply with the *Sex Offender Information Registration Act*.

[92] I have also considered whether this is an appropriate case for a weapons prohibition order, as stipulated under section 147.1 of the *National Defence Act*. In my opinion, such an order is neither desirable nor necessary for the safety of the offender or of any other person in the circumstances of this trial, particularly in light of the criteria applicable under section 109 of the *Criminal Code* in the context of an offence of sexual abuse. Even though the above offence carries a 10-year maximum sentence of imprisonment, I am of the opinion that in the commission of this offence, violence against a person was not used, threatened or attempted and I will not make an order to that effect.

DECISION

[93] A just and equitable sentence should take into account the gravity of the offence and the offender's degree of responsibility in the specific context of the case. Accordingly, the Court will accept in part the recommendation made by counsel to sentence you to imprisonment for a term of 45 days, given that this sentence is not contrary to the public interest and would not bring the administration of justice into disrepute. However, contrary to the suggestion made to it, the Court will not suspend this punishment of imprisonment or sentence you to pay a fine.

[94] Lieutenant Paradis, stand up. The Court sentences you to imprisonment for a term of 45 days. The Court makes an order under section 196.14 of the *National Defence Act* but makes no order under section 147.1 of the *National Defence Act*.

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