



## COURT MARTIAL

**Citation:** *R v Sheffar*, 2004 CM 3028

**Date:** 20041109

**Docket:** 200461

Standing Court Martial

Canadian Forces Base Halifax  
Halifax, Nova Scotia, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Petty Officer 2nd Class T. Sheffar, Offender**

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

---

**Restriction on publication: By court order made under section 179 of the *National Defence Act* and section 486.3 and 486.4 of the *Criminal Code*, information that could disclose the identity of the person described in this judgment as the complainant shall not be published in any document or broadcast or transmitted in any way.**

### **REASONS FOR SENTENCE**

(Orally)

[1] Petty Officer 2nd Class Sheffar, having accepted and recorded your plea of guilty to charge number two, the court now finds you guilty of charge number two and directs a stay of proceedings with respect to charge number one.

[2] It now falls to me to determine and to pass a sentence upon you. In so doing, I have considered the principles of sentencing that apply in the ordinary courts of criminal jurisdiction in Canada and at courts martial. I have, as well, considered the facts of the case as described in the statement of circumstances, Exhibit 6, the materials filed

during the mitigation phase and the submissions of counsel, both for the prosecution and for the defence.

[3] The principles of sentencing guide the court in the exercise of its discretion in determining a fit and proper sentence in an individual case. The sentence should be broadly commensurate with the gravity of the offence and the blameworthiness, or degree of responsibility and character of the offender. The court is guided by the sentences imposed by other courts in previous, similar cases, not out of a slavish adherence to precedent but because it appeals to our common sense of justice that like cases should be treated in similar ways. Nevertheless, in imposing sentence the court takes account of the many factors that distinguish the particular case it is dealing with; both the aggravating circumstances that may call for a more severe punishment and the mitigating circumstances that may reduce a sentence.

[4] The goals and objectives of sentencing have been expressed in different ways in many previous cases. Generally, they relate to the protection of society, which includes, of course, the Canadian Forces, by fostering and maintaining a just, a peaceful, a safe and a law-abiding community. Importantly, in the context of the Canadian Forces these objectives include the maintenance of discipline; that habit of obedience which is absolutely essential to the effectiveness of an armed force. The goals and objectives also include deterrence of the individual so that the conduct of the offender is not repeated, and general deterrence so that others will not be led to follow the example of the offender. Other goals include the rehabilitation of the offender, the promotion of a sense of responsibility in the offender, and the denunciation of unlawful behaviour. One or more of these goals and objectives will inevitably predominate in arriving at a fit and just sentence in an individual case. Yet, it should not be lost sight of that each of these goals calls for the attention of the sentencing court and a fit and just sentence should be a wise blending of these goals, tailored to the particular circumstances of the case.

[5] As I explained to you when you tendered your plea of guilty, section 139 of the *National Defence Act* prescribes the possible punishments that may be imposed at courts martial. Those possible punishments are limited by the provision of the law which creates the offence and provides for a maximum punishment, and may be further limited to the jurisdiction that may be exercised by this court. Only one sentence is imposed upon an offender, whether the offender is found guilty of one or more different offences, but the sentence may consist of more than one punishment. It is an important principle that the court should impose the least severe punishment that will maintain discipline. In arriving at the sentence in this case, I have considered the direct and indirect consequences of the finding of guilt and the sentence I am about to impose.

[6] The agreed facts of this case may be briefly stated. While he was a passenger in a vehicle driven by the complainant, the offender placed his hand on the complainant's thigh, fondled the thigh and asked the complainant if she liked the contact. The complainant did not reply. After a minute or so, the offender withdrew his hand and there

was no further physical contact. At the time of the offence the offender was supervising the on-job-training of the complainant aboard HMCS ST JOHN'S.

[7] The offender cooperated with the investigation and immediately upon being charged instructed his counsel that he would plead guilty to the offence. I am told that the complainant has not suffered unusual psychological injury as a result of the offence and the offender has apologized to the complainant in writing.

[8] The offender is a mature man of 32 years of age, married and a father of two boys. He has served since September 1990 and was promoted to his current rank effective January 2002.

[9] The performance evaluation reports filed with the court refer to periods both before and since his latest promotion and they show that he performs his duties as a Naval Communicator at a very high level of competence and he is a positive influence upon the junior Naval Communicators.

[10] In 14 years of service with the Navy, the offender has no previous disciplinary offences. I am satisfied that the offender is genuinely remorseful and that the conduct he displayed on the occasion in question was an isolated occurrence that is very unlikely to be repeated.

[11] In this case, both counsel submit that the appropriate sentence is a reprimand and a fine in the amount of \$2000. The sentence to be pronounced is, of course, a matter for the court. But where, as in this case, both parties agree on a recommended disposition, that recommendation carries great weight with the court. The courts of appeal across Canada, including the Court Martial Appeal Court, have held that the joint submission of counsel as to sentence should be accepted by the court unless the recommended sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[12] Taking account of all the circumstances, both of the offence and of the offender, I cannot say that the sentence recommended by counsel is either contrary to the public interest or would bring the administration of justice into disrepute and accordingly I accept the joint submission. In the absence of an application by the prosecution I decline to make an order for DNA samples.

[13] Stand up, Petty Officer 2nd Class Sheffar. You are sentenced to a reprimand and a fine in the amount of \$2000 to be paid at a rate of \$200 per month commencing 15 December 2004 and continuing for the following nine months. In the event you are released from the Canadian Forces for any reason, the entire amount of the unpaid fine then outstanding is to be paid the day prior to your release. March out Petty Officer 2nd Class Sheffar.

[14] The proceedings of this court martial in respect of Petty Officer 2nd Class Sheffar are hereby terminated.

**Counsel:**

Captain A.M. Tamburro, Directorate of Law/Training

Assistant Attorney for Her Majesty The Queen

Major B.J. Wakeham, Regional Military Prosecutor, Western Region

Attorney for Her Majesty The Queen

Lieutenant-Commander J.A. McMunagle, Directorate of Defence Counsel Services

Attorney for Petty Officer 2nd Class T. Sheffar