



## COURT MARTIAL

**Citation:** *R. v. Jonasson*, 2019 CM 2002

**Date:** 20190205

**Docket:** 201819

Standing Court Martial

Asticou Centre  
Gatineau, Quebec, Canada

**Between:**

**Lieutenant-Colonel J.D. Jonasson, Applicant**

- and -

**Her Majesty the Queen, Respondent**

**Before:** Commander S.M. Sukstorf, M.J.

---

### **DECISION ON A MOTION OF NO PRIMA FACIE**

(Orally)

#### **Introduction**

[1] The applicant is facing two charges which are alternatives to each other as follows:

“FIRST CHARGE  
(Alternative to Second Charge)  
Section 95 *N.D.A.*

ILL-TREATED A PERSON WHO BY  
REASON OF RANK WAS  
SUBORDINATE TO HIM

*Particulars:* In that he, on or about 13  
October 2017, at or near Petawawa,  
Ontario, pulled the hair of Captain C.T.  
and kissed her.

SECOND CHARGE

DRUNKENNESS

(Alternative to First Charge)  
Section 97 N.D.A.

*Particulars:* In that he, on or about 13 October 2017, at or near Petawawa, Ontario, was drunk.”

[2] Pursuant to the *Queen’s Regulations and Orders for the Canadian Forces* (QR&O) paragraph 112.05(13), at the close of the prosecution’s case, defence presented a motion that no prima facie case has been made out on charge number two for the offence of drunkenness.

[3] The burden of proof rests on the applicant to demonstrate, on a balance of probabilities, that a prima facie case on the charge has not been met. The applicant submitted that the prosecution did not present any evidence that Lieutenant-Colonel Jonasson was under the influence of any alcohol or drug nor that it contributed to him acting in a disorderly manner or in a manner likely to bring discredit on Her Majesty’s service.

[4] In response to the motion, the prosecution summarized the complainant’s evidence, relying on the fact that the applicant consumed red wine at approximately 6:30 p.m. on 12 October 2017, and that in the early morning hours of 13 October 2017, the applicant pulled the complainant’s hair and tried to kiss her. However, relying upon the case of *R. v. Master Corporal R.E. Barkley*, 2006 CM 23, the applicant argued that the evidence does not support that the alleged behaviour set out in charge number one flowed from the applicant being under the influence of a drug or alcohol.

### **The law**

[5] The test to be applied in determining if a prima facie case has been made out is captured in Note (B) to QR&O article 112.05:

(B) A *prima facie* case is established if the evidence, whether believed or not, would be sufficient to prove each and every essential ingredient such that the accused person could reasonably be found guilty at this point in the trial if no further evidence were adduced. Neither the credibility of witnesses nor weight to be attached to evidence are considered in determining whether a *prima facie* case has been established. The doctrine of reasonable doubt does not apply in respect of a *prima facie* case determination.

[6] In rendering a decision on a motion alleging that no prima facie case has been made out, the court martial must not weigh or assess the quality of the evidence on the essential elements of the charges. The test is whether there is some evidence upon which a properly instructed jury might convict notwithstanding that some of evidence may in fact still be insufficient to establish guilt beyond a reasonable doubt.

### **Analysis**

[7] The complainant testified that early in the evening of 12 October 2017, she arrived at the golf course club house around 6:30 p.m. When the complainant was asked

if she saw the applicant drinking, she said, “Yes, he was drinking red wine.” She stated that she was sitting at a table and he was on the other side. She saw him with two bottles of red wine that she thought were being shared with the Deputy Commanding Officer, Major Ayotte. She confirmed that was all she saw. She also acknowledged that the accused bought a bottle of white wine, of which the complainant had a glass. Without assessing this evidence, there is arguably “some” evidence, if believed, that the applicant consumed “some” alcohol early in the evening on 12 October 2017.

[8] After the reception at that golf course club house, a group decided to continue to a bar they all referred to as the Warehouse. The complainant stated that at the Warehouse, most of their group was drinking, and some consumed at least three rounds of shots.

[9] When asked if the accused was drinking alcohol at the Warehouse, the complainant stated that she believed so, since everyone had a drink in their hands; however, she was unsure what he had in his hand. When she was asked to describe what she saw, she retreated and said she was not sure who was drinking what. Under cross-examination, she stated that she did not specifically see the applicant drinking alcohol at the Warehouse.

[10] With respect to their interactions at the Warehouse, the complainant provided no evidence that she saw the applicant consume alcohol nor could she provide specific evidence of why she thought he was intoxicated. When asked to describe her observations of him, she simply said he was very friendly and looked intoxicated by his behaviour, although she said, “not to the point that he couldn’t walk, only buzzed.” She described him as being friendly. The Court noted that she did not describe blurred speech, glazed eyes, staggering or other typical signs of someone being intoxicated.

[11] It is imperative to clarify that being intoxicated from alcohol or a drug is not, in and of itself, an offence under section 97 of the *NDA*. (see *R. v. Simard*, 2002 CMAC 6, 6 C.M.A.R. 270 at paragraph 3; *R. v. Yanchus*, 2016 CM 1014 at paragraph 60; *R. v. Barkley*, *supra*, at paragraphs 7 and 8). Drunkenness, as an offence defined in the *NDA*, is proven only where one of the means set out in subsection 97(2) is established beyond a reasonable doubt.

### **Elements of the offence of drunkenness**

#### ***Drunkenness***

[12] To be found guilty of the offence of drunkenness, the prosecution must prove beyond a reasonable doubt, the identity of the offender as well as the date and the place described in the particulars of the charge and his blameworthy state of mind. Subsection 97(2) of the *NDA* reads as follows:

When committed

(2) For the purposes of subsection (1), the offence of drunkenness is committed where a person, owing to the influence of alcohol or a drug,

- (a) is unfit to be entrusted with any duty that the person is or may be required to perform; or
- (b) behaves in a disorderly manner or in a manner likely to bring discredit on Her Majesty's service.

R.S., 1985, c. N-5, s. 97; R.S., 1985, c. 31 (1st Supp.), s. 60.

[13] To prove a charge of drunkenness, it is incumbent upon the prosecution to prove beyond a reasonable doubt that, owing to the influence of alcohol or a drug, the accused is unfit to be entrusted with any duty that the accused is or may be required to perform, behaves in a disorderly manner, or behaves in a manner likely to bring discredit on Her Majesty's service.

[14] The prosecution led no evidence of paragraph 97(2) (a), so this Court focused on the other two means by which the offence may be committed; namely, behaviour that constitutes disorderly conduct or behaviour likely to bring discredit to Her Majesty's service.

[15] The applicant argued that there was no evidence that the alleged discreditable or disorderly conduct was "due to the influence" of alcohol or a drug. In fact, the alleged conduct set out within charge number one, the alternative to charge number two, could easily have occurred without the influence of a drug or alcohol. I agree with this assessment.

[16] The Court noted that the complainant stated that in general, during the course, the applicant was a relaxed and laid-back individual. Her description of him being intoxicated was simply that he was friendly.

[17] Although the prosecution is not required to prove that the accused was intoxicated, it cannot rely upon the mere assertion that because he drank some wine six hours earlier, that he was drunk with respect to alleged conduct that occurred later. There must be some evidence to suggest that the alleged disorderly conduct or conduct that brings discredit on Her Majesty was influenced in some way by the consumption of alcohol or a drug.

### **Conclusion**

[18] In the Court's assessment, there is "some" evidence that the applicant was under the influence of alcohol based on the complainant's testimony that she saw him consume red wine early in the evening.

[19] However, in this case, the charge of drunkenness requires more than having had a few glasses of wine. The actual influence of the applicant's consumption of alcohol

must be linked to the requirements set out in subsection 97(2) of the *NDA*. There is no evidence before the court that provides such a causal link.

**FOR ALL THESE REASONS, THE COURT:**

[20] **FINDS** that the prosecution has not established a prima facie case for the offence of drunkenness.

[21] **FINDS** Lieutenant-Colonel Jonasson not guilty of the second charge.

---

**Counsel:**

Lieutenant-Commander J.E. Léveillé, Defence Counsel Services, Counsel for  
Lieutenant-Colonel J.D. Jonasson

The Director of Military Prosecutions as represented by Major R. Gauvin